

MHTH230025312023

Criminal M.A. No. 127/2023

Nasir Nazir Khan Vs. Maharashtra State Electricity
Distribution Co. Ltd.

ORDER BELOW EXH. 4

The main application is filed by the applicant for assessing the civil liability *vide* Sec. 154(5) of the Electricity Act 2003.

2] By way of present application, applicant is claiming interim relief of restoration of electric supply till disposal of the main proceeding.

3] Brief facts of the case are as under :

Applicant is carrying stone crusher unit. He is a consumer of respondent. Respondent provided three phase industrial electric connection bearing consumer no. 002289047920, on the said unit having sanction load of 490 k.w. On 08/09/2023 respondent alongwith other visited premises of the applicant for checking electric meter. Respondent inspected the meter in premises and alleged that applicant committed theft of electricity and issued bill of ₹.1,52,49,850/- for 779033 units to the applicant. Applicant submitted that calculation of theft of electricity is not calculated as per guidelines given in Circular No. 133 and as per provisions of section 154(5) of the Electricity Act 2003. Applicant further submitted that he had not committed any theft of electricity as alleged by the respondent. Applicant also submitted that he is ready

to pay liability amount of ₹.5,13,079.74. Applicant also submitted pursis Exh.10 on record that without prejudice, he is ready and willing to deposit amount of ₹.25,00,000/- with respondent for restoration of electricity. Applicant also submitted on record calculations prepared by him for determination of civil liability.

4] After receipt of notice, respondent appeared and submitted reply on record. Respondent denied the claim of the applicant and submitted that applicant is the consumer of MSEDCL to whom it has supplied electric supply with sanction load of 490 k.w. On 08/09/2023 at about 11.20 p.m. respondent no.2 along with his associates visited the premises of the applicant to which high tension supply was given during inspection it was found that theft of the electricity was continued since December 2022 till the date of inspection by way of tampering electric meter. Therefore, theft assessment bill for 779033 units of ₹.1,52,49,850/- was issued on 15/09/2023 to applicant. Also FIR bearing crime no.231/2023 for offence punishable under section 135, 138 and 150 of Electricity Act 2003 is registered against the applicant. Respondent further submitted that bill for theft of electricity issued to applicant is as per the circular and guidelines and as per the provisions of Electricity Act 2003. Hence, submitted to reject the application.

5] Heard Ld. Advocate Shri N.V. Sawant for applicant and Adv. Smt. Archana Patil for respondent. Ld. Advocate for applicant also submitted written notes of argument Exh 09 on record. I have gone through it. He further submitted that applicant's stone crusher units runs in general shift. Hence, number of hours are to be taken as 10 hours. He further submitted that connected load found at the

time of inspection is 580.265 k.w. and as per circular 60% of the connected load is to be taken under consideration, it comes to 348.15 k.w. but maximum demand is taken as 430 k.w. for calculation. Number of days are to be taken as 25 days. He further submitted that formula for calculation is assess MD in K.W. x No of hours per day x No of days per month x load factor i.e. $430 \times 10 \times 25 \times 0.4 \times 10 = 430000$ units. Net theft unit will be theft unit – bill units i.e. $430000 - 392767 = 37233$ units. Theft amount will be net theft unit x twice the trief rate i.e. $37233 \times 13.78 = ₹.5,13,070.74$. Accordingly he is ready to pay it for restoration of supply . He also relied on the case of **Diamond Ice Factory Vs. MSEDCL**, criminal application no. 151/2022, decided by Hon'ble Bombay High Court dated 19/07/2022, in which trial Court directed to deposit 50% amount of the bill for restoration of electric supply. Hon'ble Bombay High allowed criminal application and set aside order of the trial court and directed to restore electric supply to deposit amount of ₹.25,48,195/- .

6] He also relied on the case of **Samadhan Arun Doiphode vs. MSEDCL** decided by Hon'ble Bombay High Court in Criminal Application no. 750/2018 dated 07/08/2018.

7] On the other hand, Ld. Advocate for the respondent submitted that spot inspection note shows that respondent no.2 visited spot of incident during night time i.e. at 11.20 pm. At that time crusher unit of the applicant was working. His machines were on. It shows that it was working in three shifts, thereby, 21 hours is to be considered. Further maximum load used was 600 k.w. since

December 2022. Hence, load calculated by applicant is not proper. At the time of inspection it was found that electric meter was tampered since December 2022, which reflects in data of the MSEDCL and accordingly calculations are made and bill for the amount is issued. She also submitted that respondent had challenge the order of Hon'ble High Court in Diamond Ice Factory before Hon'ble Supreme Court, which is subjudice. She further stated that only operative order of the order passed by Hon'ble High Court is kept on record. Lastly, she submitted that submissions made by applicant is liable to be rejected and submitted that applicant be directed to deposit entire amount of bill of theft of electricity for restoration of supply.

8] I have gone through the documents filed on record by both the sides. Also gone through authorities filed on record. Spot panchanama submitted by respondent shows that respondent visited spot on 08/09/2023 at 11.20 p.m. i.e. at mid-night. It also shows at that time crusher unit was in running conditions and its machinery was working. Prima facie documents filed by respondent on record cannot be doubted at this stage. Further respondent also submitted data since prior to December 2022. It shows since the month of December 2022, there is a sudden fall in consumption.

9] At present only interim application for restoration of electric supply is to be considered. Section 154(5) provide for determination of civil liability. It does not speaks about restoration of electric supply. But section 135 of Electricity Act speaks about restoration of electric supply after payment of electric charges

including theft charges. As far as contention of applicant regarding excess calculation are concerned, those are to be decided on merit after giving an opportunity of adducing evidence to both the sides. Further, Section 154 of Electricity also provides that in case of excess payment by the consumer that amount is to be refunded to the consumer with interest. Under such circumstances no prejudice will be caused to the applicant in case he is ordered to deposit 50% amount of the bill of ₹.1,52,49,850/-

10] Considering the fact that electricity is an essential supply and the submission on behalf of the applicant that he is ready to deposit the amount of ₹.25,00,000/- as well as taking recourse to the authority of the Hon'ble High Court of Telangana viz. **Mirza Mahmood Baig** and **Syed Shah Najeer Uddin Alvi** and Writ Petition No. 7785/2019, I pass the following order.

ORDER

1. The application Exh.4 is partly allowed.
2. The applicant shall pay 50% of ₹.1,52,49,850/- in the office of the MSEDCL as a condition precedent for the restoration of the supply line of electricity.
3. After the receipt of the amount as aforesaid, the MSEDCL shall restore the supply of electricity within 48 working hours. (Consumer No. 002289047920)

sd/-

Place: Vasai

(S. V. Khongal)

Date: 10/11/2023

Additional Sessions Judge, Vasai

Certificate

“I affirm that the contents of this P.D.F. file Judgment / Order are same word to word as per the original Judgment / Order.”

Name of Stenographer : Mrs. A.M. Raikar,

Name of the Court : Mr. S.V. Khongal
District Judge-1 & Additional
Sessions Judge, Vasai

Date : 10/11/2023

Judgment/order signed by the : 10/11/2023
Presiding Officer on

Judgment/order uploaded on : 10/11/2023