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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2195 OF 2019

The Brihan Mumbai Municipal Corporation, a Statutory Authority duly constituted under the provisions of the Mumbai Municipal Corporation Act, 1888, through General Manager / Assessing Officer, the Brihan Mumbai Electric Supply and Transport Undertaking, having Office at BEST Bhavan, BEST Marg, Mumbai – 400 001 ... **Petitioners**

Vs.

Mustaffa Saqib Khan, 14, Ground, Kopergaon Estate, Love Lane, Byculla, Mumbai – 400 010 ... **Respondent**

WITH
WRIT PETITION NO.2196 OF 2019

The Brihan Mumbai Municipal Corporation, a Statutory Authority duly constituted under the provisions of the Mumbai Municipal Corporation Act, 1888, through General Manager / Assessing Officer, the Brihan Mumbai Electric Supply and Transport Undertaking, having Office at BEST Bhavan, BEST Marg, Mumbai – 400 001 ... **Petitioner**

Vs.

Sakib Khan / Abdul Qayyumm Mustaffa Khan, Shop Nos.4, 5, 6, & 7, Ground Floor, Kopergaon Estate, Love Lane, Byculla, Mumbai – 400 010 ... **Respondent**

Mr. Harvindeer Toor with Mrs. Karishma Jhaveri i/by Navdeep Vora & Associates for the petitioner.

Mr. Prerak Sharma with Mr. Hamid Ansari i/by Ms. Mansi Jain for the respondent in WP/2195/2019.

Mr. Nakul Jain with Mr. Hamid Ansari i/by Ms. Mansi Jain for the respondent in WP/2196/2019.

CORAM : AMIT BORKAR, J.

RESERVED ON : JUNE 22, 2026.

PRONOUNCED ON : JUNE 30, 2026

JUDGMENT:

1. Since both these writ petitions involve the same facts and the same legal issues, they are being decided together by this common judgment.

2. The present writ petitions are filed under Articles 226 and 227 of the Constitution of India. By these petitions, the petitioner has challenged the common order dated 3 October 2017 passed by the Appellate Authority in Appeal Nos. 9 and 10 of 2015.

3. For deciding the issues raised in these writ petitions, it is necessary to briefly refer to the facts as stated by the petitioner. According to the petitioner, the respondent is its consumer and is carrying on industrial work of electroplating. The respondent was supplied an electricity connection for commercial use at the concerned premises. According to the petitioner, the industrial activity carried out by the respondent is of a continuous nature. An electricity meter bearing No. Q971100 was installed on 11 March 2008 for commercial electricity supply to the premises. On 9

September 2009, the Vigilance Team of the petitioner inspected the respondent's factory. During the inspection, the team noticed certain irregularities in the said meter. It was found that the meter terminal block seals were missing. The two pink acrylic seals on the body of the meter appeared to have been tampered with. Scratch marks were also noticed on the reading counter. It was further observed that the electricity consumption shown by the meter was not matching with the connected electrical load installed at the premises. After completing the inspection, the Vigilance Team prepared an inspection report and also drew a panchanama in the presence of Abu Barkat Izamul Haq and Kamaluddin Ansari, who were working at the respondent's factory. During the inspection, in the presence of the authorised officer of the petitioner, the Vigilance Team recorded the connected electrical load available at the premises. It consisted of eighteen tube lights of 40 watts each, six polishing machines of 1375 watts each, one AIV blower of 750 watts, two exhaust fans of 60 watts each, one pedestal fan of 180 watts, one barrel machine of 1375 watts, five ceiling fans of 40 watts each, two rectifiers of 1500 watts each, three rectifiers of 1000 watts each, one polish drum of 750 watts, one power press machine of 1500 watts and another power press machine of 850 watts. In view of the discrepancies and irregularities noticed during the inspection, the officers of the Vigilance Squad sealed the said meter and took it into their custody. This was done after preparing a panchanama in the presence of the panch witnesses and the two workers of the respondent.

4. Thereafter, by letter dated 9 September 2009 bearing No. VIG(N)/196/T09/20, the respondent was served with a provisional assessment bill of Rs.12,36,670/-. According to the petitioner, this amount represented the provisional civil liability assessed by the Assessing Officer on account of alleged tampering with the electricity meter. The assessment was made on the basis of an alleged loss of 66,847 KWH units of electricity. Thereafter, the Review Committee of the petitioner undertaking examined the facts and circumstances of the case and passed the final assessment order. The respondent challenged the assessment before the Appellate Authority. By a common order dated 3 October 2017, the Appellate Authority decided Appeal Nos. 9 and 10 of 2015. It is this order which is under challenge in the present writ petitions.

5. Mr. Toor, learned Advocate appearing for the petitioner, submitted that the Appellate Authority committed an error in setting aside the final assessment only because no laboratory test of the meter was carried out. According to him, the Appellate Authority failed to appreciate that the terminal block seal of the meter was missing, both pink acrylic seals on the meter body were found tampered, scratch marks were noticed on the reading counter, and the electricity consumption shown by the meter did not match the connected load. These circumstances, according to the petitioner, were sufficient to show that the meter had been tampered with and, therefore, no laboratory testing was required. He further submitted that neither the Electricity Supply Code, 2005 nor Section 8 thereof requires a tampered meter to be tested in an NABL accredited laboratory or requires installation of a check meter at the consumer's premises.

6. Learned counsel further submitted that the respondent had voluntarily paid an ad hoc amount of Rs.3 lakh towards the assessed liability and had also shown willingness to settle the matter, as reflected from the letter dated 13 September 2009. According to him, this payment was made by the respondent to avoid criminal prosecution and not because of any force or pressure from the petitioner. He further submitted that while calculating the assessment, the Assessing Officer had not taken the actual electricity usage. Though the respondent was carrying on an electroplating business, which normally requires electricity round the clock, the Assessing Officer calculated the assessment by taking the working hours at only 14 hours per day after considering factors such as diversity, workload and business requirements. According to him, this was much less than the actual usage.

7. It was further submitted that during inspection, the connected load was found to be 20.595 KW as against the sanctioned load of 18.70 KW. According to the petitioner, this amounted to unauthorized use of electricity within the meaning of Section 126 of the Electricity Act, 2003. It was therefore submitted that the final assessment order passed by the Assessing Officer was legal, proper and did not require any interference.

8. On the other hand, Mr. Sharma and Mr. Jain, learned Advocates appearing for the respective respondents, submitted that the petitioner's officers inspected the respondent's premises on

9 September 2009 and thereafter issued a provisional assessment of Rs.12,36,670/- for a period of 601 days from 18 January 2008 to 9 September 2009 alleging theft of electricity by tampering with the meter. They submitted that the respondent was carrying on electroplating work in Room No.14, where power press machines, polish drums and other plating machines were installed. According to them, the factory worked only from 10.00 a.m. to 7.30 p.m. every day because water required for the electroplating process was supplied by the Municipal Corporation only between 7.50 p.m. and 9.00 p.m. As the process could not continue without water, the work was stopped by 7.30 p.m. and the factory actually functioned only for about 8.30 hours a day.

9. Learned counsel for the respondents further submitted that on 9 September 2009, around noon, about 32 representatives of the petitioner entered the respondent's premises for inspection. During the inspection, an inspection report was prepared. According to the respondents, there was no evidence or proof to show that the meter had recorded reverse reading or that electricity had been stolen. For this reason, the respondent refused to sign the format prepared by the petitioner alleging theft of electricity. However, it is alleged that on 14 September 2009, the petitioner obtained the signature of one of the respondent's relatives on that document. It was further submitted that the printed format itself mentioned that a police case could be registered under Section 135 and that the respondent was ready to deposit the amount. According to the respondents, the petitioner had already called the police on 9 September 2009 itself and a complaint was registered at the police station at about 3.50 p.m.

10. It was further submitted that the petitioner threatened to disconnect the electricity supply and, under such pressure, recovered a total amount of Rs.3,38,700/- from the respondent. According to the respondents, on every letter issued by the petitioner they had clearly written the words "not agreed". After the incident, the respondent sought information under the Right to Information Act regarding Meter No. Q971100. From the information supplied, the respondent came to know that the disputed meter had never been sent to the Testing Department after it was removed during the inspection in September 2009. It was also revealed that the meter had been manufactured in the year 1996, had earlier been installed at the premises of another consumer bearing Consumer No.329513033, was removed from that consumer on 6 February 2006, and was thereafter installed at the respondent's premises on 11 March 2008.

11. Learned counsel further pointed out that in the reply filed by the petitioner before the Appellate Authority, it was stated that the "consumer is suspected to have tampered meter". According to the respondents, this itself shows that even the petitioner was not certain that the respondent had actually tampered with the meter.

12. It was also submitted that even before the inspection, by a letter dated 17 August 2009, the respondent had requested the petitioner to inspect the disputed meter. According to the respondents, despite this request, the petitioner thereafter came with about 32 representatives and conducted the inspection on 9

September 2009 in a pre-planned manner with an intention to take action against the respondent. It was submitted that the petitioner had no proof of reverse reading of the meter and had also failed to carry out proper testing of the disputed meter.

13. Lastly, learned counsel submitted that the respondent's factory operated only for about 8.30 hours every day. While making the assessment, the actual working hours and use of the machines were not properly considered. It was submitted that the respondent had never tampered with the electricity meter and that the entire action was taken only to falsely implicate the respondent. According to them, because the assessment amount was forcibly recovered, the respondent had suffered financial loss and was therefore entitled to appropriate relief.

REASONS AND ANALYSIS:

14. I have carefully considered the rival submissions and have gone through the material placed on record. I have also examined the inspection report, panchanama, provisional and final assessment orders, the order passed by the Appellate Authority and the statutory provisions of the Electricity Act, 2003. The principal question is whether the Appellate Authority was justified in interfering with the final assessment made by the Assessing Officer.

15. The petitioner has relied upon various other circumstances mentioned in the inspection report. Before recording any conclusion, this Court is required to examine submissions made by both sides. It is true that in the reply filed before the Appellate

Authority, the petitioner has stated that the respondent was "suspected" to have tampered with the meter. Normally, use of such word may show that the petitioner was not stating with certainty that tampering had already been established. At the same time, this circumstance cannot conclude the controversy. The Court is required to appreciate the entire record and thereafter arrive at its conclusion. In my view, undue importance cannot be attached to the use of the expression "suspected" while overlooking the material collected during the inspection.

16. The Court also cannot overlook the inspection report prepared by the Vigilance Team after the inspection of the respondent's premises. The panchanama prepared on the same day also records the condition of the meter as noticed by the officers present during inspection. According to the inspection report, the terminal block seal of the meter was missing. Both pink acrylic seals fixed on the body of the meter were found tampered. Scratch marks were noticed on the reading counter. It was also recorded that the electricity consumption shown by the meter was not matching with the connected load available at the premises. These facts form part of the documents prepared at the time when the inspection was carried out. Such contemporaneous documents carry their evidentiary value and cannot be brushed aside unless there is material showing that they were incorrectly prepared or fabricated.

17. Whether these circumstances are sufficient to establish unauthorized use of electricity is another question which has to be decided after appreciating the evidence available on record.

However, merely because in one part of the reply the petitioner used the word "suspected", the Court cannot ignore the irregularities recorded in the inspection report and the panchanama. Therefore, I am unable to accept the contention of the respondents that the use of the word "suspected" is sufficient to invalidate the assessment proceedings.

18. The respondents have next submitted that the inspection was not carried out properly and that the exercise was pre-planned to implicate them. According to them, nearly thirty-two officers of the petitioner entered the premises for carrying out inspection. It is also their case that before such inspection, by letter dated 17 August 2009, the respondent had requested the petitioner to inspect the disputed meter. According to the respondents, instead of conducting a inspection on such request, the petitioner came with a large team of officers and proceeded with a pre-determined view that theft of electricity had been committed. It is further submitted that there was no proof showing reverse reading of the meter and still allegations of theft were levelled. It is also alleged that after the respondent refused to sign the inspection papers, signatures of one of his relatives were obtained and criminal proceedings were initiated. On the basis of these circumstances, it is argued that the inspection was unfair and the action taken by the petitioner was not bona fide.

19. Such submissions deserve careful examination. Every statutory authority is expected to exercise its powers fairly, and in accordance with law. Whenever allegations of arbitrariness, or mala fide action are made, the Court cannot reject them without examining the material.

20. After going through the material available on record, I do not find sufficient material to accept the allegation that the inspection was fabricated or carried out with mala fide intention. Serious allegations require satisfactory material. Mere allegations, are not sufficient. The burden to establish such allegations lies upon the party making them. Merely because a large number of officers participated in the inspection or because the respondent had earlier requested inspection of the meter, it cannot lead to the conclusion that the inspection became illegal. In matters relating to suspected unauthorized use of electricity or tampering of electricity meters, inspections are carried out by vigilance teams consisting of several officers. Therefore, the mere presence of thirty-two officers at the premises cannot make the inspection doubtful.

21. Apart from making these allegations, the respondents have also not produced any material to establish that the inspection report or the panchanama was fabricated. No technical material has been placed before the Court to show that the defects noticed by the Vigilance Team were impossible or incorrectly recorded. Mere denial of the contents of an official inspection report cannot displace the evidentiary value attached to such contemporaneous record. Findings of the Court have to be based upon evidence available on record. Therefore, in absence of any supporting material, I am unable to accept the allegation that the inspection was fabricated.

22. The respondents have also argued that the Assessing Officer proceeded on an incorrect basis while calculating the working hours of the factory. According to them, the electroplating work depended upon water supplied by the Municipal Corporation during evening hours and, therefore, the factory functioned for about eight and half hours. It is submitted that by assuming longer working hours, the Assessing Officer has made unrealistic assessment.

23. However, on reading of the assessment order, it does not appear that the Assessing Officer proceeded on the footing that the respondent's factory was functioning for twenty-four hours every day. On the contrary, the petitioner has explained that although electroplating industries require electricity for longer duration and in some cases may even function continuously, the assessment in the present case was restricted to only fourteen working hours per day after taking into consideration the nature of business and work pattern. According to the petitioner, the assessment was made on a reduced basis and not on the maximum working hours. Whether the working hours ought to have been taken as eight and half hours or fourteen hours may have some bearing upon the amount assessed. However, that issue relates to the correctness of the computation. It does not answer the principal question whether there was unauthorized use of electricity. The question of unauthorized use and the question of quantification of liability are distinct issues.

24. The petitioner has also placed reliance upon the connected load found during inspection. According to the inspection report, the connected load was found to be 20.595 KW whereas the sanctioned load available to the respondent was 18.70 KW. According to the petitioner, this circumstance attracts Section 126 of the Electricity Act. In my view, this submission carries substantial force. The legal position on this aspect is now well settled. The Supreme Court in *Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill, (2012) 2 SCC 108* has held that consumption of electricity in excess of the sanctioned or contracted load amounts to unauthorized use of electricity. The Supreme Court has further observed that such excess load is not merely a breach of the contractual conditions but is also likely to adversely affect the electricity distribution system and other consumers. Therefore, once excess connected load is established during inspection, the Assessing Officer acquires jurisdiction to initiate proceedings under Section 126 of the Electricity Act.

25. The Supreme Court has explained the distinction between proceedings under Sections 126 and 135 of the Electricity Act. Proceedings under Section 126 are civil in nature and are meant for assessment arising from unauthorized use of electricity. On the other hand, Section 135 relates to the criminal offence of theft of electricity where dishonest intention is important. The object and consequences under both provisions are different. Therefore, the standard of proof required in criminal proceedings cannot be applied while examining an assessment made under Section 126. If this distinction is ignored, the scheme of the Electricity Act would become unworkable.

26. The respondents have argued that unless theft or tampering is proved, the assessment cannot be sustained. In my view, this submission proceeds on an incorrect understanding of the statutory provisions. Even if the material available on record may not be sufficient to establish criminal liability under Section 135, that circumstance cannot invalidate proceedings under Section 126. The Assessing Officer is not required to establish the criminal offence of theft beyond reasonable doubt. What is required is that he should arrive at a conclusion that there was unauthorized use of electricity. Therefore, the respondents cannot challenge the assessment by contending that the available evidence may not be sufficient for prosecution.

27. The respondents have also submitted that the amount of Rs.3 lakh was recovered because the petitioner threatened disconnection of electricity supply and initiation of criminal prosecution. According to them, such payment was not voluntary and cannot be treated as admission. According to the petitioner, the respondent expressed willingness to settle the matter and voluntarily deposited the amount. Thus, two versions have been placed before the Court. The material available on record does not establish either version. In some cases, a consumer may deposit an amount to avoid interruption of business. In other situations, such payment may be made voluntarily with an intention to settle the dispute. Both possibilities are available. Therefore, I am not inclined to treat such payment either as a admission of liability or as proof of coercion. In absence of material supporting either version, this circumstance cannot determine the legality of the assessment.

28. Coming now to the order passed by the Appellate Authority, it appears that the reason assigned for interfering with the assessment was that the disputed meter had not been subjected to laboratory testing. In my considered view, such approach cannot be accepted. Neither Section 126 of the Electricity Act nor the applicable Electricity Supply Code provides that laboratory testing is an essential requirement before an assessment can be made. The statute nowhere states that unless the meter is examined in a laboratory, the assessment must fail. Once the legislature has not imposed such condition, the Appellate Authority could not have introduced one.

29. The Assessing Officer is expected to consider the material collected during inspection. Such material may include the inspection report, the panchanama, the physical condition of the meter, the connected load, the consumption pattern and the other surrounding circumstances noticed during inspection. After considering the effect of all these materials, the Assessing Officer has to arrive at conclusion. If it is held that assessment under Section 126 must fail only because laboratory testing has not been conducted it would amount to reading into the statute a condition which the legislature has not provided. Laboratory examination may strengthen the evidence, but its absence cannot invalidate the assessment where other material is available.

30. The Supreme Court has also explained the position while interpreting Section 126 of the Electricity Act. It has held that proceedings under Section 126 are intended to determine civil liability arising from unauthorized use of electricity. The Assessing Officer is required to inspect the premises, collect the material and form his opinion. A provisional assessment is then issued. The consumer is given an opportunity to file objections and to be heard. Thereafter, a final assessment order is passed. Against such final order, the statute provides a right of appeal under Section 127. Thus, the entire procedure from inspection till appeal has been provided by the legislature and constitutes a complete code governing assessment for unauthorized use of electricity.

31. It appears that the Appellate Authority attached importance to the absence of laboratory testing while not undertaking a examination of the remaining evidence. In my view, such approach is not in consonance with the scheme governing proceedings under Section 126 of the Electricity Act and therefore cannot be sustained.

32. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) Both the writ petitions are allowed;

(ii) The common judgment and order dated 3 October 2017 passed by the Appellate Authority in Appeal Nos. 9 of 2015 and 10 of 2015 is quashed and set aside;

(iii) The final assessment order passed by the Assessing Officer under Section 126 of the Electricity Act, 2003 is restored;

(iv) Rule is made absolute in the above terms;

(vi) There shall be no order as to costs.

(vi) Pending interim applications, if any, stand disposed of.

(AMIT BORKAR, J.)