

MHTH060029852022



Order below Exh.4 in Criminal Misc. Application No.153/2022
(CNR NO.MHTH06-002985-2022)

Kishan Nandram Vasita

..... Applicant

Vs.

M.S.E.D.C.L.

..... Respondent

1] Read the application and the say filed by Ld. Advocate for respondent. Heard both the sides. Perused the documents.

2] It is submitted for the applicant that, as per the provisions of section 154(5) of the Electricity Act, the Court can determine the civil liability of the consumer for 12 months preceding the date of incident, however, the officers of the MSEDCL have made the assessment illegally, hypothetical, exorbitant and that they have not calculated as per the provisions of Electricity Act. It is further submitted that the applicant is residing in the said house along with his family members, that they are residing in the darkness, that the officers of the MSEDCL have not followed the due procedure of law before conducting the raid, that they have not assessed the electricity properly, that they have immediately disconnected the electric supply of the applicant and the provisional bill under section 135 of the Electricity Act

dated 11.10.2021 amounting to Rs.5,20,720/- in respect of consumer no.021514205091 was issued. It is further submitted that the applicant has not committed any theft of electricity, that the applicant has filed Criminal Anticipatory Bail Application before Hon'ble Sessions Court for grant of anticipatory bail, that the said application was allowed by order dated 03.03.2022 in which he was directed to deposit 30% amount of the total amount of the electricity theft within 8 days and accordingly he has paid 30% amount of the theft assessment bill to the respondent. The applicant has placed on record the xerox copies of the order passed in Criminal Anticipatory Bail Application No.142/2022 dated 03.03.2022 and receipt of payment dated 11.03.2022 for the amount of Rs.1,56,220/- showing that he has already paid 30% amount in the office of MSEDCL. It is further submitted that, in such situation, it is necessary to restore his electric supply. Hence, it is submitted that the application be allowed, as prayed.

3] The Ld. Advocate for the respondent has submitted that, in view of the provisions of section 135 of the Electricity Act, upon detection of such theft of electricity, the MSEDCL can disconnect the supply of electricity immediately and on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of the Electricity Act, the electric supply can be restored, that there is no provision to file an application for restoration of power of supply before the Special Court, that the consumer has to pay 100% of the assessment amount of the bill as per section 135(1)(A) and under section

154(6) of the said Act, if any excessive amount is deposited, it can be refunded with interest to the consumer. It is submitted that the consumer has to clear the civil liability in total as per the bill assessed and then to get the electricity supply restored. The respondent has followed due procedure of the Electricity Act, that the bill which is assessed is due and proper as per the said act, that if without clearing the civil liability, if the electric supply is restored, the respondent will have to face financial hardship, that there is prima-facie case of theft made out against the applicant, that the applicant will never turn up, if the electric supply is restored without clearing the civil liability. Hence, it is submitted that the application be rejected.

4] In view of the ratios held in the case of (1) **Niyaz Ahamad Khan Vs. Maharashtra State Electricity Distribution Company Ltd. & Ors.,** in Writ Petition No.11879/2017, and (2) **M/s. Royal Aircon Private Ltd. & Anr. Vs. Maharashtra State Electricity Distribution Company Ltd. & Ors.,** in Writ Petition No.12973/2017, the application for interim relief of restoration of electricity supply is maintainable.

5] On going through the abovesaid observations by the Hon'ble High Court, it appears that till decision of the matter on merit, the Hon'ble High Court has directed the petitioner therein to deposit certain amount under protest and after depositing the amount, it is directed to restore the electricity connection.

6] Both the sides have raised various issues regarding the assessment of the electricity charges. All the issues would be taken into consideration and decided at the time of final argument. However, at this juncture, the applicant has come with the case that he is residing in his house with his family in darkness as the electricity connection has been discontinued by the MSEDCL. In such situation, I am of the view that the interim relief as prayed can be granted in favour of the applicant. Now the question would arise what would be the amount that should be directed to be deposited. It appears that the respondent MSEDCL has raised the bill for the total amount of Rs.5,20,720/-, whereas, the Ld. Advocate for the applicant has submitted that as per the directions given by the Hon'ble Sessions Court in Criminal Anticipatory Bail Application No.142/2022, the applicant has already deposited 30% of the total amount of the bill. In such situation, I am of the opinion that the applicant can be directed to deposit, additional 20% amount of the total amount of the bill for the temporary restoration of the electricity connection. Therefore, without considering the merits of the case, taking into consideration the need of the applicant and the situation brought by him on record, the temporary restoration can be allowed. Hence, I pass the following order :

Order

- 1] The application is allowed.
- 2] The respondent is directed to restore the electricity supply of the applicant's house i.e. Room No.01, Vasita House, Near Barrack No.1244, Ulhasnagar – 4, bearing LT Consumer

No.021514205091 on depositing 20% amount in addition to 30% amount previously deposited by the applicant vide receipt dated 11.03.2022, of the provisional bill by the applicant, under protest, without prejudice to his rights in the office of MSEDCL.

3] The applicant shall submit undertaking before the court that he would regularly pay the electricity charges as per the demand of the MSEDCL within time as specified in the bill.

Kalyan.
01.04.2023

(Rajeev P. Pande)
Additional Sessions Judge,
Kalyan.