



Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8545 OF 2015

Iliyas Mangroo Shaikh,

Age 43 years, Occupation Business,
carrying business at Kasam Compound,
Main Road, Dharavi, Mumbai 400 017
SC No.410995-X-X
Category of Service LT II b

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... Petitioner

V/s.

- 1. Bombay Electricity Supply and Transport Undertaking,** having its office at BEST Bhavan, BEST Marg, Colaba, Mumbai 400 001
- 2. Chief Vigilance Officer,** Bombay Electricity Supply and Transport Undertaking, Third Floor, New multi-storey Building, BEST Marg, Colaba, Mumbai 400 001
- 3. Assessing Officer,** Bombay Electricity Supply and Transport Undertaking, Seventh Floor, New multi-storey Building, BEST Marg, Colaba, Mumbai 400 001
- 4. The Superintendent Engineer,** The Appellate Authority under Section 127 of the Indian Electricity Act, 2002, at 3rd Floor, PWD Building, Mumbai

... Respondents

Mr. Sachin B. Thorat with Mr. Dhananjay K. Bhosale,
for the Petitioner.

Mr. Harinder Toor with Ms. Shradha Nagaonkar, i/by
Sagar Shetty, for the Respondents.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 11, 2025

JUDGMENT:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner challenges the judgment and order passed by the Appellate Authority under Section 127 of the Electricity Act, 2003. The Appellate Authority set aside the final assessment order passed by the Assessing Officer, which had held the petitioner guilty of unauthorised use of electricity on the allegation that the petitioner had bypassed the electricity meter installed at its premises.

2. The petitioner runs a unit for manufacturing plastic granules since 2006 and has been a consumer of the respondent-licensee since 2008. On 26 February 2011, at about 00:12 hours, respondent No.2 along with other officers inspected the petitioner's factory and meter cabin. During the inspection, the officers noticed that the petitioner's plastic processing machines were running. However, according to the respondents, the meter did not show any corresponding load. After some delay in obtaining the key to the meter cabin, CMRI data was downloaded at 00:31 a.m. The data, according to the respondents, supported the discrepancy. A provisional assessment was issued on the basis of connected load. The petitioner sought a personal hearing.

3. Respondent No.2, after examining the downloaded data, noted that only phase B showed a constant load of 2.2 amperes. The other two phases showed zero amperes, although the machinery was a three-phase load. The respondents treated this as unauthorised use of electricity under Section 126(6)(b)(ii) of the Act. A final assessment followed. The petitioner challenged the assessment under Section 127. He contended that the machinery was not operating at the time of inspection and that the workers had nearly completed their work. He deposited 50 percent of the assessed amount as required by Section 127(6). The Appellate Authority heard both sides and allowed the appeal. It held that the Assessing Officer had not adopted the correct procedure for concluding that there was unauthorised use. The final assessment was set aside. The Authority directed refund or adjustment of the 50 percent deposit in future bills. The Appellate Authority, however, declined to grant interest. The petitioner has filed the present petition seeking interest on the statutory deposit made under Section 127(6).

4. Learned counsel for the petitioner submitted that an amount of Rs. 6,75,000 was deposited under Section 127(2). He relied on Section 127(6), which prescribes interest at 16 percent per annum, compounded every six months, whenever a consumer defaults in payment of the assessed amount after thirty days from the date of assessment. According to him, when the statute imposes interest on the consumer for delayed payment, fairness requires that the licensee should also pay interest if the assessment is later declared unsustainable. He submitted that the statutory scheme treats the

assessment as a financial burden. Therefore, when that burden is lifted by an appellate order, the amount deposited must be restored with interest. He referred to Section 62(6) of the Act and submitted that if a licensee recovers any amount in excess of the tariff determined under that provision, then the excess must be refunded with interest at the bank rate. He submitted that this indicates the legislative intent that any amount recovered without authority of law must carry interest. On this basis, he claimed entitlement to interest at 18 percent. Learned counsel for the petitioner placed reliance on several judgments of High Courts where refund with interest was directed. He submitted that on parity of reasoning, similar relief ought to be granted in the present case.

5. The learned advocate for the respondents submitted that the deposit under Section 127(2) is not a payment towards consumption charges. It is a statutory pre-condition for filing an appeal. He submitted that Section 62(6) is not attracted. He submitted that Section 127(6) creates a right in favour of the licensee to recover interest when the appeal fails and the consumer defaults in payment of the assessed sum. The statute does not create any reciprocal right in favour of the consumer to claim interest if the appeal succeeds. He further submitted that the Court cannot introduce such a right when the legislature has consciously not provided for it. It is further submitted that the amount deposited by the petitioner has already been adjusted against the electricity bill for December 2015. Despite such adjustment, according to the respondents, the petitioner has defaulted in

subsequent bill payments. Learned counsel relied on the judgment of this Court in *Executive Engineer, Maharashtra State Electricity Distribution Co. Ltd. v. Pioneer Estate Corporation, Writ Petition No. 71 of 2019, decided on 5 February 2020*. This Court held that interest payable by a defaulting consumer cannot be invoked to grant interest to a consumer whose appeal is allowed. It is argued that the judgments relied upon by the petitioner contain directions confined to their own facts. They do not lay down any binding principle that a statutory deposit under Section 127 must carry interest. The respondents submit that the decision in *Pioneer Estate Corporation* squarely covers the issue and must govern the present case. The respondents pray that the petition be dismissed.

6. Having heard learned counsel for the petitioner and the learned advocate appearing for the respondent-licensee, and having perused the record, the controversy lies in a narrow compass. The assessment of unauthorised use of electricity under Section 126 of the Electricity Act, 2003 has already been set aside by the Appellate Authority under Section 127. The only surviving question is whether the petitioner is entitled to interest on the statutory deposit of 50% of the assessed amount made under Section 127(2), for the period during which the amount remained with the licensee.

7. The scope of the present writ petition under Article 227 of the Constitution must be kept in view at the threshold. This Court does not sit in appeal over the decision of the Appellate Authority. The Court examines whether the Authority has acted within its jurisdiction, has applied the correct legal principles and whether

its view is a possible and tenable view on the material before it. Interference is warranted only when there is patent error of law, perversity or failure to exercise jurisdiction. The petitioner must, therefore, demonstrate that the refusal to grant interest is contrary to the statute or to a binding legal principle.

8. The statutory scheme under Sections 126 and 127 of the Electricity Act is clear. Section 126 provides for assessment in cases of unauthorised use of electricity and prescribes the manner and basis for such assessment. Section 127 provides for an appeal against such assessment. Section 127(2) stipulates that no appeal shall be entertained unless the consumer deposits, in the prescribed manner, half of the assessed amount. This statutory deposit is thus a condition precedent for invoking the appellate remedy. It is not a voluntary payment of consumption charges. It is a compulsory pre-deposit, designed by the legislature to balance two considerations: to secure the licensee to a reasonable extent and at the same time to permit a consumer to challenge the assessment without first paying the entire amount.

9. Section 127(6) deals with interest. It reads that the consumer shall be liable to pay interest at such rate as may be prescribed, in no case exceeding 16% per annum, compounded every six months, if he fails to pay the assessed amount within thirty days of the order of assessment. The provision is cast in clear language. It fastens liability on the consumer in the event of default in payment of the assessed amount. It does not speak of any liability of the licensee to pay interest if the assessment is set aside in appeal. The legislature has consciously spoken of one

situation and one liability. It has not provided for the converse situation.

10. The first limb of the petitioner's argument is based on the principle of reciprocity. Learned counsel submitted that if the statute visits a consumer with interest for delayed payment of the assessed amount, then on first principles of fairness and equality, the licensee must equally be made liable to pay interest when the assessment is found to be unsustainable and the consumer's appeal is allowed. In substance, the submission is that the Court should read into Section 127 a corresponding, though unexpressed, right of the consumer. This submission cannot be accepted. The Court is required to interpret the statute, not to amend it. Where the legislature, in a fiscal or quasi-fiscal scheme, has created a specific right or liability in express terms, the Court must be slow to add to it by implication. If the legislature had intended to create a reciprocal obligation upon the licensee, it could have done so by simple words. It has not done so. The Court cannot supply what is known as a *casus omissus*. The silence of the statute on a reciprocal right is significant. In the field of statutory interest, particularly where the rate is capped and the incidence is linked to default, the Court cannot, in the name of equity, impose upon the licensee a liability which the statute itself does not recognise.

11. The second limb of the petitioner's argument rests on Section 62(6) of the Act. The submission is that Section 62(6) indicates the legislative policy that whenever a licensee recovers an amount not authorised by law, such amount must be refunded with interest at the bank rate and that this policy should guide the present case.

It is, therefore, argued that the amount deposited under Section 127(2), once found to be unwarranted in view of the appellate order, stands on the same footing as an excess recovery under Section 62(6). This argument proceeds on a misreading of Section 62(6) as well as the nature of the deposit under Section 127(2). Section 62 deals with determination of tariff. Section 62(6) contemplates a situation where a licensee or generating company recovers a price or charge in excess of the tariff determined under Section 62. The excess, which is recovered as a part of tariff or price for supply, transmission or wheeling of electricity, must be refunded with interest. The premise is that the consumer paid an amount as tariff which, at the time of payment, stood in excess of what the law allowed. The present case is different in character. The petitioner did not pay the amount in question as tariff or consumption charge under Section 62. The amount of 50% was deposited because the statute compelled such deposit as a pre-condition to maintain the appeal. It was not an amount unilaterally “recovered” by the licensee as a component of tariff. The deposit remained subject to the fate of the appeal. Once the appeal succeeded and the assessment was set aside, the Appellate Authority rightly directed refund or adjustment. Section 62(6) does not apply to such a statutory pre-deposit. To extend Section 62(6) to deposits under Section 127 would be to rewrite the section and to obliterate the distinction between tariff proceedings and assessment proceedings for unauthorised use.

12. The third plank of the petitioner’s case is based on certain judgments where High Courts have ordered refund along with

interest. Those judgments, as correctly pointed out by the respondents, do not lay down any general principle that every statutory pre-deposit under Section 127 must carry interest. Many of those decisions turn on their own facts, on the nature of the levy involved and on the specific statutory provisions governing the levy. Some fall in the area of general public law restitution where the State had retained amounts without any statutory backing for long periods. In the present field, however, there is a specific statutory scheme and a direct authority of this Court in the case of *Executive Engineer, Maharashtra State Electricity Distribution Co. Ltd. v. Pioneer Estate Corporation*. The respondent-licensee has relied on the decision in Pioneer Estate Corporation. There, this Court considered the very question whether a consumer is entitled to interest on the statutory deposit made under Section 127(2) when the appeal is allowed. The Court examined Sections 126, 127 and 62(6), and held that the provision for charging interest from a defaulting consumer cannot be invoked to direct payment of interest to the consumer. The Court noted that no provision in the Act creates such a right in favour of the consumer and that Section 62(6) had no application to a deposit made under Section 127. The ratio of that decision is directly attracted to the present case. It lays down a binding principle, not a mere factual direction.

13. So long as *Pioneer Estate Corporation* holds the field, a coordinate Bench is bound to follow it. If this Court were to take a different view, the proper course would be to refer the matter to a larger Bench, not to disregard the earlier decision. On a plain reading of the reasoning in Pioneer Estate Corporation, there is no

apparent conflict with any judgment of the Supreme Court that would justify departure by a Single Judge. On the contrary, the reasoning aligns with settled principles that interest is a matter of substantive law and that a right to interest must trace itself to a statute, contract or well-recognised principle of restitution in cases of illegal exaction. Here, the petitioner's case does not fall in the latter category because the amount was not extracted without legal authority. It was deposited under a valid statutory provision as a condition of appeal.

14. The petitioner sought to invoke general notions of equity and fairness by contending that the licensee enjoyed the use of money for several years. While such considerations may appeal at first glance, once the statute has spoken and the field is occupied by clear provisions, equity cannot run contrary to the statute. The Electricity Act is a self-contained code on these aspects. It not only prescribes the requirement of deposit, but also defines when and against whom interest is payable. The Court cannot enlarge the scope of interest liability by resort to general notions of fairness in the teeth of the express scheme.

15. Even on the factual plane, the equities are not wholly one-sided. The material on record shows that the amount deposited by the petitioner has already been adjusted towards the electricity bills for December 2015. Therefore, there is no present subsisting amount with the licensee which can be characterised as an unjust enrichment. The Appellate Authority had already protected the petitioner by directing refund or adjustment of the 50% deposit. That direction has been implemented. What the petitioner now

seeks is an additional monetary benefit by way of interest which the statute does not confer.

16. Viewed from the perspective of Article 227, the impugned order of the Appellate Authority discloses no jurisdictional error. The Authority took note of the petitioner's prayer for interest, considered the statutory provisions and declined to grant interest in the absence of any specific provision. The Authority did what the law required it to do. It set aside an unsustainable assessment and directed appropriate adjustment of the deposit. Its refusal to go further and award interest, though open to debate at a policy level, cannot be termed illegal or perverse, especially in the light of the binding view of this Court in Pioneer Estate Corporation.

17. The argument that the Appellate Authority ought to have read a reciprocal right into Section 127(6) also cannot be accepted. That would have amounted to judicial legislation. The proper forum for such a plea is the legislature, not the Court. So long as the statutory text and the binding precedent stand as they are, this Court is not justified in exercising supervisory jurisdiction to rewrite the scheme in the manner suggested by the petitioner.

18. In the result, on a careful examination of the statutory provisions, the rival submissions and the binding precedent, I hold that the petitioner has no enforceable right to claim interest on the statutory deposit made under Section 127(2) of the Electricity Act, 2003, once the deposit has been refunded or adjusted pursuant to the appellate order. The refusal of the Appellate Authority to grant interest is neither contrary to the Act nor to any declared legal

principle.

19. No case for interference under Article 227 is made out. The writ petition, therefore, fails on merits and stands dismissed.

20. There shall be no order as to costs.

(AMIT BORKAR, J.)