



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

83 WRIT PETITION NO. 1861 OF 2018

The Maharashtra State Electricity
Distribution Company Ltd,
Circle Office, Latur,
Through its Executive Engineer

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Petitioner
(Orig. Respondent)

Versus

M/s. Navjeevan Tyres Pvt. Ltd.,
Plot No.F-8, Kallam Road,
MIDC Latur Tq. District Latur-431512,
Through its Authorized Signatory

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Respondent
(Orig. Complainant)

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Advocate for the Petitioner : Mr. A. S. Shelke
Advocate for Respondent : Mr. J. R. Shah

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CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 02.04.2026

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties at the stage of admission.

2. The petitioner is aggrieved by the order dated 03.10.2017 passed by the Electricity Ombudsman, Nagpur in Representation No. 35 of 2017, more particularly to the extent of clauses (c) and (d) of the operative order.

3. **The brief facts of the case:-**

3.1 It is the case of the petitioner that the petitioner is an authority of

the Maharashtra State Electricity Distribution Company Limited, engaged in distribution and supply of electricity under the provisions of the Electricity Act, 2003 (for short, “the Act”). The respondent is a consumer, carrying on business of tyre re-treading. The respondent obtained electricity supply on 16th September, 1989. As per Commercial Circular No.243 dated 3rd July, 2015, the activity of Tyre re-treading falls under LT-II (Non-Residential / Commercial) category.

3.2 On 23.02.2016, the Flying Squad, Ratnagiri, inspected the premises of the respondent and, upon verification of the installation, noticed irregularities. It was observed that the respondent was being billed under Industrial Tariff instead of Commercial Tariff. Accordingly, the concerned Sub-Division of the petitioner issued an assessment bill dated 10.03.2016 for an amount of Rs.6,17,870/-. Being aggrieved thereby, the respondent approached the Internal Grievance Redressal Cell (IGRC) on 21st September, 2016. After considering the contentions of both sides, the grievance came to be rejected, holding that categorization of the consumer was proper in view of Circular Nos.175 and 243. Being further aggrieved, the respondent approached the Consumer Grievance Redressal Forum (CGRF), Latur. The CGRF, after hearing both sides, partly allowed the grievance and directed the petitioner to revise the assessment bill of Rs.6,17,870/-. It further directed that recovery be restricted to a period of two years prior to 24.02.2016 i.e. till 24.02.2014 without application of delayed payment charges (DPC) and interest.

3.3 Being aggrieved by the said order, the respondent preferred Representation No.35/2017 before the Electricity Ombudsman, Nagpur. The petitioner appeared and supported the order of CGRF, Latur. The Electricity Ombudsman, Nagpur, by the impugned order, directed the petitioner to charge the differential amount between LT-II (Commercial) and LT-V (Industrial) tariff only for the period from 24.02.2016 (date of inspection) to 30.10.2016, without imposing any delayed payment charges (DPC) or interest. It was further directed to revise the bills accordingly and refund the excess amount after re-calculation, if any. The petitioner thereafter filed Review Application No.05/2017 before Electricity Ombudsman, Nagpur which came to be rejected on 09.02.2018. Being aggrieved by the said order, the present petition is filed.

4. The learned counsel for the petitioner, Mr. Shelke submits that the impugned order passed by the Electricity Ombudsman is contrary to the facts on record. He submits that the respondent is carrying on the business of Tyre re-treading, which is classified under the Commercial category as per Circular Nos.175 and 243. However, the respondent-consumer was erroneously billed under the Industrial tariff category since the year 2012. This irregularity came to be noticed on 23.02.2016 during inspection carried out by the Flying Squad, Ratnagiri.

5. Pursuant to the inspection, the petitioner-company issued an assessment bill towards differential charges for the period from August,

2012 till 24.02.2016. It was the contention of the petitioner that though judgments of the this Court and the Hon'ble Apex Court were cited before the Electricity Ombudsman, the same were not considered. It was contended that the bar of two years under Section 56(2) of the Electricity Act, 2003 would not apply to such recovery, even if the period exceeds two years.

6. The learned counsel for petitioner further submits that the Electricity Ombudsman, Nagpur has relied on an order passed by the Maharashtra Electricity Regulatory Commission dated 11.02.2003 in Case No.24 of 2001, which was rendered prior to the coming into force of the Act. He submits that the present assessment has been made under the provisions of the Act and, therefore, such reliance is misplaced and not sustainable in law. The learned counsel for the petitioner, therefore, submits that the impugned order passed by the Electricity Ombudsman deserves to be quashed and set aside.

7. In support of his submissions, the learned counsel relies upon the following judgments:—

- i) *Maharashtra State Electricity Distribution Company Limited v. Suhasini D. Naik, AIR Online 2024 BOM 1209.*
- ii) *Maharashtra State Electricity Distribution Company Limited v. Electricity Ombudsman and ors., 2019 AIR (Bom) 113.*
- iii) *Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and Another v. Rahamatullah Khan alias Rahamjulla, 2020 (4) SCC 650.*
- iv) *Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Limited, 2021*

DGLS(SC) 564

v) *Maharashtra State Electricity Distribution Company Limited v. M/s. Jamiya Mohamad Education Society, AIR 2024 Bombay 379.*

8. Per contra, the learned counsel for the respondent, Mr. J. R. Shah, supports the impugned order passed by the Electricity Ombudsman. He submits that the respondent is running a Tyre re-treading unit, which is an industrial undertaking, and has been regularly paying electricity bills under the Industrial tariff category.

9. He submits that the primary activity of the respondent falls within the ambit of industrial activity involving a manufacturing process. According to him, till the inspection conducted by the Flying Squad on 23.02.2016, the petitioner had consistently billed the respondent under the Industrial tariff category, which was appropriate and justified.

10. It is further submitted that the change in tariff category from Industrial to Commercial, pursuant to the inspection dated 23.02.2016, and issuance of the assessment bill with retrospective effect from August, 2012, is illegal and unsustainable. The respondent, therefore, approached the Internal Grievance Redressal Cell contending that the unit is a manufacturing unit and does not involve any commercial activity.

11. The learned counsel submits that there was no fault or misrepresentation on the part of the respondent. The respondent had been continuously charged under the Industrial tariff category since 1989

till February, 2016, and only after the inspection by the Flying Squad, the tariff category came to be changed.

12. It is further submitted that such reclassification of tariff cannot be equated with a case of escaped billing or clerical error. Therefore, recourse to recovery under Section 56 of the Act is not permissible. He submits that the Electricity Ombudsman has rightly appreciated these aspects and has correctly directed revision of bills and refund of excess amount recovered pursuant to the assessment bill. In view of the aforesaid submissions, the learned counsel for the respondent prays for dismissal of the writ petition.

13. Having heard the learned counsel for the parties at length, there is no dispute that the respondent has been carrying on the business since 1989. Upon considering the nature of activities of the respondent, the Flying Squad submitted its report and, based thereon, the assessment bill came to be issued to the respondent on the premise that the respondent's classification falls under Commercial use.

14. This Court in the case of ***Maharashtra State Electricity Distribution Company Limited (supra)*** has held in paragraph nos.8, 9 and 10, which read thus:-

“8. CGRF then has taken into consideration the Judgment of the Hon’ble Supreme Court in the case of Prem Cottex (supra) and has held that the electricity company can recover electricity bill for bonafide mistake and it is further held that the mistake in this case is not bonafide and therefore the judgment has no application thereto. With this discussion the grievance Case No. 071 of 2022 was partially allowed. Electricity company was directed to revise supplementary bill issued in June -2022 considering 793

units for the month of November- 2020 after adjusting the payment made by the consumer and the interest was also directed be waived.

9. At this stage, it would be relevant to take note of the Judgment of a three Judge Bench of Hon'ble Supreme Court in the case of *K.C.Ninan Vs. Kerala State Electricity Board and Others* (2023 SCC OnLine SC 663), after taking into consideration judgment in case of *Prem Cottex (Supra)* and *Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and Anr. Vs. Rahamatullah Khan* has passed judgment and it would be fruitful to refer to the relevant paragraph Nos. 122 to 136 thereof which read thus:

“122.....

129. The second issue pertains to the implication of the period of two years provided in Section 56(2) on the civil remedies of Utilities to recover electricity dues. Section 56(2), which begins with a non obstante clause, provides a limitation of two years for recovery of dues by the licensee through the means of disconnecting electrical supply. It puts a restriction on the right of the licensee to recover any sum due from a consumer under Section 56 after a period of two years from the date when such sum became first due. If this provision is invoked against a consumer after two years, the action will be permissible when the sum, which was first due, has been shown continuously as recoverable as arrears of charges for electricity supplied. Under Section 56, the liability to pay arises on the consumption of electricity and the obligation to pay arises when a bill is issued by the licensee for the first time. Accordingly, the period of limitation of two years starts only after issuance of the bill.

130. Before we deal with the implication of Section 56(2) on the civil remedies available to a licensee, it is important to clarify that when the liability incurred by a consumer is prior to the period when the 2003 Act came into force, then the bar of limitation under Section 56(2) is not applicable. In *Kusumam Hotels Pvt Ltd v. Kerala State Electricity Board*, this Court has held that Section 56(2) applies after the 2003 Act came into force and the bar of limitation under Section 56(2) would not apply to a liability incurred by the consumer prior to the enforcement of the Act. In terms of Section 6 of the *General Clauses Act 1897*, the liability incurred under the previous enactment would continue and the claim of the licensee to recover electricity would be governed by the regulatory framework which was in existence prior to the enforcement of the 2003 Act.

131.....”

10. It is thus clear from this judgment, that it is open for the electricity company to issue a revised bill if it is found that the previous bill issued is under bonafide mistake. In the instant case, revised bill has been issued with specific contention that multiplying factor 1 instead of 20 was applied. There is no dispute made by the consumer with regard to this fact. If it is so, it does not stand to any reason or justification to hold that this is not bonafide mistake of the electricity company, as observed by CGRF. In view

of the judgment of the Hon'ble Supreme Court in the case of K. C. Ninan(supra), the electricity company is within its right to issue revised bill once such bonafide mistake is found out."

15. The Hon'ble Apex Court in the case of ***Prem Cottex (supra)***,

particularly in paragraph nos.23 to 25, has stated as follows:-

"23. Coming to the second aspect, namely, the impact of Sub-section (1) on Sub-section (2) of [Section 56](#), it is seen that the bottom line of Sub-section (1) is the negligence of any person to pay any charge for electricity. Sub-section (1) starts with the words "where any person neglects to pay any charge for electricity or any some other than a charge for electricity due from him.

24. Sub-section (2) uses the words "no sum due from any consumer under this Section". Therefore, the bar under Sub-section (2) is relatable to the sum due under [Section 56](#). This naturally takes us to Sub-section(1) which deals specifically with the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by [section 56](#), under sub-section (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.

25. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Sub-section (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer under this Section", appearing in Sub-section (2)."

16. Considering the issue involved, it is necessary to refer to Section 56

of the Electricity Act, 2003, which reads thus:—

"56. Disconnection of supply in default of payment.—

(1)Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:Provided that the supply of electricity shall not be cut off if such person deposits, under protest,—

(a)an amount equal to the sum claimed from him, or

(b)the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,whichever is less, pending disposal of any dispute between him and the licensee.

(2)Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

17. Upon perusal of Section 56(2) of the Act, it is evident that the bar contained therein is not only in respect of disconnection of supply but also operates against recovery of dues beyond the prescribed period, unless the conditions stipulated therein are satisfied.

18. In the present case, it is an admitted position that the respondent obtained electricity supply on 16th September, 1989. As per Commercial Circular No.175 dated 05th September, 2012 and Commercial Circular No.243 dated 03rd July, 2015, the activity of Tyre re-treading falls under LT-II (Non-Residential / Commercial) category.

19. Merely because the respondent was erroneously billed under the Industrial tariff due to certain irregularities, the same cannot be a ground to continue such classification, if in fact the activity falls within the Commercial category. Once the activity of Tyre re-treading is classified as Commercial, the respondent is liable to pay charges in accordance with the applicable Commercial tariff.

20. It is necessary to note that the petitioner is bound to follow the regulations and tariff classifications framed by the Maharashtra Electricity

Regulatory Commission. Once the activity of the respondent is categorized as Commercial, the billing must necessarily be aligned with such classification.

21. In that view of the matter, the assessment bill issued in the year 2016, pursuant to the Flying Squad inspection, for recovery of differential charges on account of wrong tariff application, cannot be said to be illegal merely because the respondent was previously billed under the Industrial category.

22. In view of the aforesaid discussion, this Court finds that the Electricity Ombudsman has committed an apparent error while allowing the representation filed by the respondent. The impugned order, therefore, warrants interference. Hence, I proceed to pass following order:-

ORDER

- i. The writ petition is allowed.
- ii. The order dated 03.10.2017 passed by Electricity Ombudsman, Nagpur in Representation No.35/2017 is hereby quashed and set aside.
- iii. Rule is made absolute in the above terms.
- iv. Pending Civil Applications, if any, stand disposed of.

[SIDDHESHWAR S. THOMBRE]
JUDGE