

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.493 OF 2016.

M/s. A And A Hotels Pvt. Ltd., A Private Limited Company, registered under the Companies Act, 1956, under No. U55101MH2006PTC163476, with its Registered Office at 6A, Sindhu House, Nana Bhai Lane, Fort, Mumbai-1, represented in this Petition by its Accounts Manager, Mr. Nilesh G. Madkaikar, Son of Mr. Ganesh Madkaikar, Residing at Madkaim, Ponda Goa.

.... Petitioner

Versus

1. State of Goa, through the Secretary of Power with office at Secretariat, Porvorim, Bardez, Goa.
2. Chief Electrical Engineer, with office at Electricity Department, Vidyut Bhavan, Near Ferry Wharf, Panaji Goa.
3. Executive Engineer with office at Electricity Department, Elect. Division-I(O &M) Vidyut Bhavan, 2nd Floor, Near Ferry Wharf, Panaji, Goa.

.... Respondents.

Shri J. E. Coelho Pereira, Senior Advocate with Shri. V. Braganza, Advocate for the petitioner.

Shri S. Dhargalkar, Additional Government Advocate for the respondents.

**Coram:-F. M. REIS,
, NUTAN D. SARDESSAI,JJ.**

Date: 4th May,2016.

ORAL JUDGMENT (Per F. M. REIS, J)

Heard Shri J. E. Coelho Pereira, learned Senior Counsel appearing for the petitioner and Shri S. Dhargalkar, learned Addl. Govt. Advocate appearing for the respondents.

2. Rule.

3 Heard forthwith with the consent of the learned Counsels appearing for the respective parties.

4. Shri S. Dhargalkar, learned Addl. Govt. Advocate waives notice on behalf of the respondents.

5. The main grievance of the petitioner appears to be that the impugned demand by the respondent no.3 dated 19.1.2016 at annexure "A" was made without issuing show cause notice nor giving a hearing to the petitioner. It is the contention of the learned Senior Counsel that the petitioner has been paying the amounts of the bills submitted by the concerned department regularly and all of sudden the respondent no.3 issued the impugned demand without any justification. The learned Senior Counsel further submits that as such demand was

without giving an opportunity to the petitioner of being heard it stand vitiated for breach of the principles of natural justice. The learned Senior counsel further submits that in similar cases by judgment dated 3.2.2016 passed in Writ Petition No. 29/2016 in the case of **M. R. F. Limited Vs State of Goa and others**, this Court has taken a view that such demand cannot be made without given a hearing to the concerned parties. The learned Counsel as such points out that the impugned demand be quashed and set aside.

6. On the other hand, the learned Addl. Govt. Advocate points out that the petitioner is at liberty to approach the Consumer Redressal Forum constituted under Section 42(5) of the Electricity Act in case the petitioner is aggrieved with the impugned demand.

7. Upon examining the rival contentions it is undisputed that the impugned demand by the respondent no.3 was without giving a hearing to the petitioner. In such circumstances, we find that the impugned demand stand vitiated for breach of the principles of natural justice. The question of examining this aspect by the Consumer Redressal Forum would not arise as there is no grievance or representation which has been made by the petitioner with regard to any dispute in connection with any

bills issued by the respondents.

8. Shri Dhargalkar, learned Addl. Govt. Advocate also produced an order dated 10.3.2014 passed in Writ Petition No.53/2014, the said order was in a different context and the prayer itself of the petitioner therein was for a direction to decide the grievance raised by the Consumer Redressal Forum.

9. In the present case, the demand itself is being disputed on the ground that the respondents are not entitled to claim such amounts in terms of law and as such, we have no reason not to take the same view as reflected in the order in the said Writ Petition in the case of MRF Limited (supra).

10. In view of the above, we disposed off the above petition by keeping all the contentions of the parties on merits open and direct the respondent no.3 to examine the subject demand afresh and take a fresh decision on such demand after hearing the petitioner in accordance with law. Until such further decision the respondents shall not act on the disputed demand at annexure 'A' which shall be subject to further decision which may be taken by the respondent no. 3 in the light of the above observations.

11. Rule is made absolute in the above terms.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

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