IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2319 OF 2017

Omega Properties Management Pvt.
Ltd. Through Authorized Officer
S. R. Bhat .. Petitioner

Versus

Executive Engineer and Nodal Officer
Maharashtra State electricity
Distribution Co. Ltd. and another .. Respondents

WITH
WRIT PETITION NO. 2390 OF 2017

Omega Properties Management Pvt.
Ltd. Through Authorized Officer
S. R. Bhat .. Petitioner

Versus

Executive Engineer and Nodal Officer
Maharashtra State electricity
Distribution Co. Ltd. and another .. Respondents

WITH
WRIT PETITION NO. 2394 OF 2017

Omega Properties Management Pvt.
Ltd. Through Authorized Officer
S. R. Bhat .. Petitioner

Versus

Executive Engineer and Nodal Officer

Maharashtra State electricity
Distribution Co. Ltd. and another .. Respondents

WITH
WRIT PETITION NO. 2395 OF 2017

Omega Properties Management Pvt.
Ltd. Through Authorized Officer
S. R. Bhat .. Petitioner

Versus

Executive Engineer and Nodal Officer
Maharashtra State electricity
Distribution Co. Ltd. and another .. Respondents

WITH
WRIT PETITION NO. 2396 OF 2017

Omega Properties Management Pvt.
Ltd. Through Authorized Officer
S. R. Bhat .. Petitioner

Versus

Executive Engineer and Nodal Officer
Maharashtra State electricity
Distribution Co. Ltd. and another .. Respondents

Shri Satyajit S. Bora, Advocate for the Petitioner in all matters.
Shri Avishkar S. Shelke, Advocate for Respondent Nos. 1 and 2.

CORAM : S. V. GANGAPURWALA AND
A. M. DHAVALE, JJ.

DATE ON WHICH CLOSED FOR ORDERS: 24.04.2018

DATE ON WHICH ORDER PRONOUNCED : 08.06.02918

<u>ORDER</u> (Per S. V. Gangapurwala, J.) :-

. All these matters are based on similar set of facts and revolve around similar issues, as such are decided together.

02. The petitioner herein assails the order passed by the Electricity Ombudsman, Mumbai dated 19.09.2016 on representations filed by the petitioner thereby upholding the order dated 27.05.2016 passed by the Consumer Grievance Redressal Forum, Jalgaon and also the order passed by the Internal Grievance Redressal Cell, Jalgaon dated 23.02.2016.

03. The grievance of the petitioner is that, the petitioner is issued electricity connection for the tariff category of either LT-IV (Agriculture) and/or LT-V (Industrial) since November 2011. Without prior intimation the distribution company changed the category to LT-II (non residential/commercial) from the billing month January 2012 claiming retrospective recovery. The Ombudsman partly allowed representations of the petitioner and directed to charge the tariff category LT-II from August 2012.

04. Mr. Bora, the learned counsel for the petitioner submits that, the State Government in the year 2006 has taken a policy decision to increase the tourism activities in the State of Maharashtra. The State Government by policy decision has decided to give various exemptions to the private companies who

come forward for setting up tourism project, such benefit including concession in electricity charges. In view of this policy of the State, the Crescent Entertainment and Tourism Company submitted its detailed proposal for setting up mega project. The State Government accorded the status of mega tourism project to the project set up by Crescent Entertainment and Tourism Company. The petitioner has obtained the management rights from the said Crescent Entertainment and Tourism Company in order to provide service which includes street light services, water supply, gardening, lift and escalator, public and passage lighting, cooling system and I. T. offices and accordingly respondent Maharashtra State Electricity Distribution Company Ltd. (for short "MSEDCL") provided various electricity connections by considering end use of the electricity, such as tariff category LT-IV (Agriculture) and LT-V (Industrial), but in violation of the guidelines issued by the Maharashtra Electricity Regulatory Commission (for short "MERC") as well as in violation of principles of natural justice, the tariff category was abruptly changed to non domestic/commercial with effect from January 2012.

05. According to the learned counsel, the MERC by its order dated 11.02.2003 in Case No. 24 of 2001 had clearly directed that no retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer. The respondents unilaterally are classifying the tariff category in violation of

principles of natural justice. No opportunity of hearing was provided. Regulation 4.82 of the Model Code of Forum of Regulators provide that the reclassification can be done under the appropriate category only after a notice of 30 days period is given to the licensee to file objections and it is only after considering consumer's reply the classification can be altered. The impugned action is in violation of clause 4.82. The commercial circular dated 02.07.2003 bearing No. 377 also prohibits claiming of retrospective recovery of arrears on the basis of abrupt reclassification. According to the learned counsel, the Government pursuant to G. R. dated 07.04.1999 accorded tourism the status of an industry. The respondents were expected to apply industrial tariff to the connections of the petitioner company. The Energy Department of the State of Maharashtra pursuant to G. R. dated 08.04.2008 has taken a decision to charge tourism project the electricity duty at industrial rates. All these aspects have been ignored in rejecting the contention of the petitioner by respondents and the authorities. The learned counsel submits that, as principles of natural justice are violated, the impugned action deserves to be set aside. The learned counsel relies on the judgment of the Apex Court in a case of **Union of India and others Vs. Shiv Raj and others** reported in ***AIR 2014 SC 2242***.

06. Mr. Shelke, the learned counsel for respondent Nos. 1 and 2 submits that, the petitioner company has not been in a position

to establish its relationship with the Crescent Entertainment and Tourism Ltd. Though the electricity connection was sanctioned in the tariff category LT-IV (Agriculture) and/or LT-V (Industrial), the petitioner was using the said connection for commercial purpose in the commercial premises of Khandesh Central Mall. In view of that, the respondents applied the tariff of LT-II non residential/commercial considering the net use of the electricity supplied to the consumer. The learned counsel submits that, the industry status is given by the Maharashtra Government for purpose of taxation and license only. The Maharashtra Electricity Regulatory Commission in exercise of powers conferred as per Sec. 61, 62, 86(1)(a) and (b) of the Electricity Act, 2003 determines the tariff for supply of the electricity by the MSEDCL. The MERC clarified in Case No. 111 of 2009 that the classification under industry for tax purpose and other purpose by Central or State Government shall have no bearing on the tariff determined by the Commission under the Electricity Act 2003.

07. The learned counsel submits that, even the verification committee after physical verification of the consumer's premises decided to correct tariff. According to the learned counsel, this Court would not sit in appeal over the judgment of the authorities regarding the classification of the tariff. The learned counsel relies on the judgment of the Apex Court in a case of **Waryam Steel Castings Private Limited Vs. Punjab State**

Power Corporation Ltd. reported in ***(2017) 8 SCC 190***. The learned counsel submits that, principles of natural justice in these cases would be an empty formality. The classification has been determined after considering the relevant aspects. In such a case the petitioner cannot claim right of hearing. The binding nature of classification will apply to the petitioner. The learned counsel relies on the judgment of the Apex Court in a case of **Ashok Kumar Sonkar Vs. Union of India** reported in ***(2007) 4 SCC 54***. The classification has already been categorized as per the order of MERC.

08. We have considered the submissions canvassed by the learned counsel for respective parties. So also have gone through the orders passed by the authorities.

09. The Government of Maharashtra has given mega status to the tourism project of M/s Crescent Entertainment and Tourism Limited. The petitioner claims to have entered into a property management agreement with M/s. Crescent Entertainment and Tourism Ltd. for providing services such as :

> **4. SERVICES TO BE PROVIDED BY OPMPL**
>
> a) Housekeeping and Cleaning of the Common areas of Centre.
>
> b) Operations & Maintenance of all common equipment, plant & Machinery including EV, elevators, escalators, lifts, fire services equipment, air conditioning

plant and generators

c) Operations & Maintenance of all Common Areas i. e. all parking spaces, roads, pavements, gardens, water drainage, lighting and other common facilities and services.

d) Insurance

e) General Security.

10. It appears that, the electricity connections have been given to the petitioner in its own name and not in the name of M/s Crescent Entertainment and Tourism Ltd. The petitioner is given the electricity connections under various categories, such as LT-V (Industrial), LT-IV (Agriculture), LT-VI (Street Lights) and LT-III (Public Water works). The categorization was changed into LT-II (Commercial) with effect from January 2012. The petitioner as such filed representations. The details are as under :

3. The Appellant Consumer has filed five separate representations as below :

(a) **Representation No. 65 of 2016** : Three separate connections were released under category LT-III: Public Water Works and Sewage Treatment Plants which category was changed into LT-II (Non Residential or Commercial) from the month of January 2012.

(b) **Representation No. 66 of 2016** :

Nine connections were released under category LT-V (Agriculture) which was changed to LT-II from January 2012.

(c) **<u>Representation No. 67 of 2016</u>** : One connection was released under category LT-IV (Agriculture) which was changed to LT-II from January 2012.

(d) **<u>Representation No. 68 of 2016</u>** :Three connections were released under category LT-VI (Street Lights). The category was changed to LT-II from January 2012.

(e) **<u>Representation No. 69 of 2016</u>** : Two connections were released under category LT-V (Industrial). The category was changed to LT-II from January 2012.

11. The same were negatived. Aggrieved thereby the petitioner has approached the Ombudsman. Ombudsman had partly allowed the appeals and directed the MSEDCL to apply LT-II (Commercial) tariff for all connections from 01st August, 2012 as per the tariff order dated 16th August, 2012 in Case No. 19 of 2012 so as to obviate the objection of the petitioner that prior notice was not given to the petitioner.

12. The electricity connections are given in the name of

petitioner and not in the name of M/s Crescent Entertainment and Tourism Ltd. Moreover, it has been observed in the order of MERC dated 12th September, 2010 in Case No. 111 of 2009 that classification under industry by the Central or State Government is for tax and other purposes and shall apply to matters within their jurisdiction and have no bearing on the tariffs determined by the Commission under the Electricity Act 2003 and the import of categorization as industry under other specific laws cannot be applied to seek relief under other statutes. The Commission in its tariff order dated 12th September, 2012 has not included the tourism as an industry. So also electricity connections are in the name of the petitioner and are not in the name of M/s Crescent Entertainment and Tourism Ltd.

13. The *prima dona* contention of the petitioner is that, the classification has been altered without prior notice to the petitioner as mandated under Clause 4.82 of the Model Code of Forum of Regulators. The tariff order dated 16th August, 2012 determines the classification. The same is binding on the parties. Clause 4.82 of the Model Code of Forum of Regulators reads thus :

> **Reclassification of Consumer Category**
> 4.82 If it is found that a consumer has been wrongly classified in a particular category, or the purpose of supply as mentioned in Agreement has changed, or the consumption of

> power has exceeded the limit of that category as per the Commission's order, the licensee may consider reclassifying the consumer under appropriate category. The consumer shall be informed of the proposed reclassification through a notice and duly given a 30-day notice period to file objections, if any. The licensee after due consideration of the consumer's reply, if any, may alter the classification. In case of any dispute, the matter shall be referred to the Consumer Grievance Redressal Forum.

14. Said clause provides that, if it is found that the consumer has been wrongly classified in a particular category, the licensee may consider reclassifying the same under appropriate category. The consumer has to be informed of the proposed reclassification through a notice of 30 days so as to enable the party to file objection and after considering the reply the classification can be altered.

15. In the present cases, admittedly notice was not issued to the petitioner. The tariff order dated 16th August, 2012 in Case No. 19 of 2012 is also not a subject matter of challenge. Under the said tariff order the categorization has been considered. It is clear that pursuant to the tariff order dated 16th August, 2012, the licensee can change the tariff category. The Ombudsman had directed the MSEDCL to apply LT-II tariff for all connections

from 01st August, 2012.

16. It is the contention of the respondents that, the hearing would be an empty formality and in such case the non observance of principles of natural justice would not be fatal and for the said purpose reliance is placed in the case of **Ashok Kumar Sonkar Vs. Union of India** (supra).

17. In the present matters clause 4.82 of the Model Code of Forum of Regulators clearly provides that when the categorization is required to be changed, notice has to be given to the party.

18. It needs to be considered that, the respondents had also appointed a Committee for determination of tariff in respect of 30 consumers under commercial premises of Khandesh Central at Jalgaon. The petitioners were amongst the said 30 consumers. The committee consisted of Executive Engineer (Circle Office) Jalgaon, Executive Engineer (Nodal Office), Jalgaon, Executive Engineer, Zone Office, Jalgaon, Deputy Manager (F & A), Zone Office, Jalgaon and Deputy Manager (F & A), Circle Office, Jalgaon. The Committee visited the premises and considered the end use and has submitted its report. The report is self speaking. The report states that, the documents were verified as shown by the representatives of the consumers. The questions were asked by the Committee members to these representatives.

They did not get satisfactory reply, nor the employees produced any such documents and upon consideration of all the aspects has held that considering the actual end use the tariff to be applied is commercial LT. The said report is of April 2013. It would be seen that the Committee threadbare considered all the aspects. It had also asked the representatives of the consumers including the petitioner about the documents. Queries were put and thereafter has held that category for tariff would be commercial LT. These persons are experts. It has been held in the case of **Waryam Steel Castings Private Limited Vs. Punjab State Power Corporation Ltd.** (supra) by the Apex Court that, this Court would not sit as an appellate authority over the formation of opinion and determination of tariff by the specialized bodies. All the authorities have concurrently held that, the tariff applicable would be of commercial LT, considering the end use. This Court certainly would not sit over the decision taken by them.

19. It would appear that, the tariff was charged with retrospective effect. The report is submitted by the Joint Committee on 10th April, 2013. The documents were verified, the end use was verified, even the representatives of the petitioner were questioned, in view of that, regulation 4.82 was in principle complied. However, the Ombudsman had directed to apply the changed tariff from August 2012 instead the same ought to be from April 2013, considering the report of the Joint

Committee for determination of tariff. The same would take care of objection of the petitioner of non adherence to clause 4.82 as quoted supra.

20. In the light of the above, we modify the order of the Ombudsman to the effect that, the respondent/MSEDCL shall apply LT-II (Commercial) tariff for the connections of the petitioner from 01st April, 2013. The excess amount recovered shall be adjusted in the future bills of the petitioner. The writ petitions accordingly are partly allowed. No costs.

[A. M. DHAVALE, J.] **[S. V. GANGAPURWALA, J.]**

bsb/June 18