IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2358 OF 2009

B.E.S.& T Undertaking ....Petitioner
vs
M/s. Balaji Heart Hospital & Diagnostic
Centre Pvt. Ltd. & Anr. ...Respondents
.....
Mr. Harinder Toor, a/w. Ms. Lakshmi Bussa and Mr. Rakesh Singh, i/b. M.V. Kini & Co., for the Petitioner.

Mr. Prakash Shah, a/w. Mr. Durgaprasad Poojari, i/b. PDS Legal, for Respondent No. 1.
……
CORAM : S.C. GUPTE, J.

DATED: 12 APRIL 2019

P.C.:

. Heard learned Counsel for the parties. This writ petition challenges an order passed by Electricity Ombudsman under Section 42(5), (6) and (7) of the Electricity Act.

2. The subject matter of controversy in the petition concerns classification of Respondent No.1, who runs a multi-speciality hospital known as 'Balaji Hospital', under the schedule of electricity tariffs. The Respondent's case was that it was a hospital enjoying exemption from levy of general tax under Section 143(1)(a) of Mumbai Municipal Corporation Act, 1888 ('MMC Act') and entitled as such to be classified under "SN" category of the schedule of tariffs. On the other hand, it is the case of the Petitioner, who is a distribution licensee, and who enjoys

the right to classify or reclassify consumers under electricity tariffs, that the hospital of the Respondent was liable to be classified under category “H” as a hospital owned or controlled by a private or individual institution. The controversy pertains to assessment of the Respondent for the period between 1 April 2006 to 1 October 2006. It is not in dispute that the Petitioner has classified the Respondent as a consumer under category “SN” for the later period, i.e. between 1 October 2006 to 31 March 2007. The Ombudsman held that the Respondent was entitled to be classified under tariff category “SN” even for the prior period, i.e. 1 April 2006 to 1 October 2006. The second part of the controversy concerns classification of the Respondent effective from 1 April 2007. It is the Respondent's case that for this period, as a Government aided hospital, they were entitled to be classified under tariff item “LT-I”, namely, residential. On the other hand, it is the case of the Corporation that for this period the Respondent was liable to be classified as “LT-II”, namely, non-residential or commercial. It is claimed by the Petitioner that the Respondent is not aided by Government; aid, if any, is granted to their hospital by a local authority, namely, in this case, Municipal Corporation of Greater Mumbai. The Ombudsman held that the word 'Government' appearing in clause (c) of Sr. No.2 of the Tariff Schedule should be construed broadly so as to include even local authorities. He, accordingly, classified the Respondent under Tariff item “LT-I”. Both these aspects of the impugned order of the Ombudsman are subject matter of challenge in the present petition.

3. For the first period, i.e. for the period between 2005-2006, the relevant tariff categories “SN” and “H” were as follows :

> "Sr. No.3
> Abbreviation: SN
>
> Electricity used at low/medium voltage in
> i) … …
>
> ii) … … …
>
> iii) Premises owned or run by public trust or religious or charitable institution for all purposes which are granted exemption for levy of general tax under Section 143(1)(a) of the BMC Act.
>
> Serial No.4.
> Abbreviation: H
>
> Electricity used at low/medium voltage in premises used for hospitals owned or controlled by private individuals or institutions or those owned or run or controlled by public trust or religious or charitable institutions not exempted from levy of general tax under section 143(1)(a) of the BMC Act……."

4. The Ombudsman essentially held that these entries showed that hospitals were placed into two categories for levy of tariff, the first category, "SN", included hospitals, which were granted exemption from levy of property taxes under Section 143(1)(a) of MMC Act, and there was no other criterion or condition for entitlement to "SN" tariff for hospitals; the second category, "H", included hospitals, which were not so exempted. The Ombudsman observed, and it cannot be seriously disputed by learned Counsel for the Petitioner, that the Respondent hospital was exempted from payment of general tax under Section 143(1)(a) of MMC Act. The Ombudsman's conclusion is challenged on the ground that the building or land of the Respondent hospital was not "exclusively occupied for …. charitable purposes", which could only be the basis for grant of any exemption under Section 143(1)(a). In other

words, the Petitioner is questioning the wisdom of the local authority in extending the benefit of Section 143 (1)(a) to the Respondent Hospital. I am afraid that is not within the purview of the distribution licensee whilst classifying consumers under different entries of a tariff schedule or an Electricity Ombudsman whilst considering any challenge to such classification. What the law requires is 'exemption of an assessee under Section 143(1)(a)' and not its 'entitlement to exemption under Section 143(1)(a)' for such classification.

5. At any rate, the Ombudsman's view is clearly a pre-eminently possible view on the classification of the Respondent hospital. There is nothing wrong either in the decision making process here or with the decision itself from the point of view of a judicial review contemplated under Articles 226 or 227 of the Constitution. The decision making process was in accordance with law and the decision itself cannot be termed as perverse or impossible. It is a decision arrived at on a fair and reasonable construction of the respective tariff entries. The decision, thus, does not admit of any interference in the writ jurisdiction of this Court.

6. Coming now to the classification of the Respondent hospital for the second period, i.e. from 1 April 2007 onwards, the relevant tariff entries may be noted as follows:-

> “Sr. No.2
> Abbreviation: LT-I: Residential
>
> Applicability: Electricity used at low/medium voltage for operating various appliances used for purposes like lighting, heating, cooling,

cooking, washing/cleaning, entertainment/leisure, pumping in the following places.

a)…………………….

b)…………………….

c) Government aided educational institutions, hospitals and dispensaries.

……………………….

Serial No.3.
Abbreviation: LT-II: Non Residential cum Commercial

Applicability : Electricity used at low/medium voltage in all non residential, non industrial premises for commercial consumption with sanctioned load upto and including 100KW except premises falling within LT I, LT III and LT VIII meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, washing/cleaning, entertainment/leisure, pumping, in following places:

a)…………………….

b) Eduction Institutions, Hospitals and Dispensaries other than those mentioned

c) Hospitals, other than those mentioned at LTI

d)……………"

7. The question to be considered by the Ombudsman here was whether the Respondent hospital could be said to be a Government aided hospital. The submission of the Petitioner before the Ombudsman was that any Government aided institution or hospital or dispensary coming within clause (c) of Sr. No.2 must be a State or Central Government aided institution, hospital or dispensary. On the other hand, the Respondent's case was that the term "Government aided" must be

construed broadly, that is to say, as including all institutions, hospitals or dispensaries, which are supported or aided by any Government and this would include even a local self Government or local authority such as the Municipal Corporation of Greater Mumbai in the present case. The Ombudsman held that the expression used in the tariff entry was simply "Government aided"; the entry did not specify "which Government", whether State or Central or local, was included in the expression. The Ombudsman, in the premises, delved into the very provisions of tariff applicable to such institutions in the preceding and subsisting tariffs, to arrive at a reasonable and logical conclusion. The Ombudsman observed that there were originally two categories for levy of tariff for hospitals, one exempted from levy of general tax and the other not so exempted. The Ombudsman noted that obviously all hospitals and institutions aided by the Municipal Corporation by way of exemption of taxes, etc. were given preferential treatment for exemption of levy by way of "SN" tariff. These exemptions were presumably given to enable such institutions, including hospitals, etc. to provide charitable services with the stated objectives. So also, the Ombudsman noted that the subsequent tariff schedule effective from 1 October 2006 merged the tariff categories comprising of "R", "S" and "SN" into one consumer category, namely, LF-I, Residential. Thus, all consumers in the "SN" category were subsequently given benefit of concessional tariff by merging into LF-I (residential) category post October 2006. The earlier consumers in "H" tariff (which levied higher charges compared to "SN") were not given the benefit of LF-I tariff. The Ombudsman observed that it was, thus, clear that Municipal aided hospitals [i.e. "SN" tariff category getting exemption under Section 143(1)(a)] were entitled to "LF-I" tariff.

Subsequently, i.e. with effect from 1 April 2007, residential tariff was amended to “LT-I: Residential” so as to include “Government/local authority aided hospitals and dispensaries”. The Ombudsman, in the premises, observed that it was evident from these circumstances that the word 'Government' in the tariff from 1 April 2007 had to be broadly understood as any Government, be it Central Government, State Government or local self Government, for the purposes of tariff LT-I. The Ombudsman observed that any other interpretation would exclude municipal hospitals from getting the benefit of LT-I category and that certainly could not have been intended. On a consideration of all this material, the Ombudsman held that a local self Government aided hospital, such as the Respondent's hospital, was entitled to be classified under “LT-I” category for the purposes of electricity tariff.

8. Once again, the view expressed by the Ombudsman in this behalf can be said to be a legitimate and reasonable view. It involves a fair and reasonable construction of the relevant tariff entires, and cannot be said to be either an impossible or a perverse view. It, accordingly, warrants no interference under Article 226 or 227 of the Constitution of India.

9. There is, accordingly, no merit in the challenge. The petition is dismissed.

(S.C. GUPTE, J.)