IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9058 OF 2020

1. Maharashtra State Electricity Distribution Company through, Additional Executive Engineer, Chikhalthana Sub Division, Aurangabad. .. Respondents

2. Additional Executive Engineer, Maharashtra State Electricity Distribution Company, (Flying Squad), Aurangabad.

Versus

1. M/s. Ravi Food Products Plot No.37, Chikhalthana, Aurangabad, Through its Managing Director. .. Respondents

2. The Appellate Authority/ Superintending Engineer Regional Electrical Inspector, Industrial/Energy and Labour, Department, Shivdas Trade Center, Trimurti Chowk, Jawahar Colony, Aurangabad.

Mr. Anil M. Gaikwad, Advocate for the petitioner.
Mr. S.S. Bora, Advocate for respondent No.1.
Mrs. D.S. Jape, AGP for the respondent No.2.

CORAM : KISHORE C. SANT, J.
DATED : 13.07.2023

PC :-

01. Heard learned Advocates for the parties. Taken for final disposal at the admission stage by consent of the parties.

02. The petitioners have assailed an order passed by respondent No.2 – Appellate Authority on an appeal from the order passed under section 127 of the Electricity Act by the Authorities of the petitioner-company. It is case of the petitioners that when they inspected the premises, they found that the premises is not being used for the industrial purpose, but the same is being used for the purpose of commercial activity, as it was found that only products were being sold in the premises under the name and style of Ravi Pickles and Spices Pvt. Ltd. Since the unit was being run from 2012, the assessment was made and the bill was issued for the period from September, 2012 till September, 2019 i.e. till the date of inspection.

03. Respondent No.1, therefore, challenged the order on various grounds, alleging that the activity is not being commercial activity. It is only an unit of main manufacturer for display and for sale. Merely because some of the activities appear to be commercial activity, it cannot change user of the

consumer. In-fact, the unit is identified as manufacturing unit and Udyog Aadhar Kendra has also issued license and in such case it cannot be considered to be a commercial unit.

04. The learned Appellate Authority after considering all the activities and the panchanama held that no specific details are given about the electricity rate etc. No proper opportunity was given and the electricity connection was disconnected. It is further held that there is no basis given for charging the bill for 128 months and no documents supporting to such claim are produced. Thus, the entire bill came to be set aside by order dated 12.06.2020.

05. The learned Advocate for the petitioners vehemently argued that the assessment was made on the basis of panchanama and site inspection. As a matter fact, the photographs were attached clearly showing that the activity being carried out in the premises was clearly an activity of commercial nature. No manufacturing activity was going on at the place. He also placed reliance upon leave and license agreement to show that Ravi Food Products, to whom the connection was given in the said premises, has executed the leave and

license agreement in favour of Ravi Pickles and Spices Pvt. Ltd. & the said company is registered under the Shop Act and the nature of the activity is shown to be commercial i.e. business. The nature of business is also given as repacking, distributor, retailer, wholeseller. Thus, he submits that all these activities are clearly commercial in nature. The photographs produced on record also show that in-fact it was an establishment being run in the premises, which is not disputed. He, therefore, submits that the assessment was rightly done. There was no reason to quash and set aside the said order.

06. The learned Advocate for respondent No.1 vehemently opposes the petition stating that there is no specific assessment as regards the period of alleged unauthorized use of the electricity. In-fact, the unit, namely, Ravi Pickles and Spices Pvt. Ltd. is one of the units of Ravi Food Products only. The said unit was being run in other name and therefore license was required under Shops and Establishments Act., by itself cannot be said to be a commercial activity.

07. The learned Advocate for respondent No.1 submit that taking the case as it is, in view of section 126(5), if no conclusion can be reached about

the period of unauthorized use, then such period shall be limited to a period of 12 months immediately preceding the date of inspection. In this case, the date of inspection was 27.09.2019. He thus submits that at the most the bill with commercial rate could have been charged only for a period of 12 months.

08. Considering the submissions and the material on record, this Court finds that in-fact the activity being carried in the premises appears to be commercial activity. The photographs produced on record also show that the commercial activity was going on. This Court finds substance in the submission of learned Advocate for respondent No.1 that when no exact assessment is done in respect of time for which unauthorized connection was being use, then the petitioners shall be entitled to charge tariff only for 12 months and not beyond it, therefore, finds that the impugned order deserves to be quashed and set aside. However, it is made clear that the petitioner shall be entitled to charge bill to the petitioner at commercial rate only for a period of 12 months. Hence, following order :-

<u>O R D E R</u>

(i) The writ petition is partly allowed.

(ii) The impugned order dated 12.06.2020 is quashed and set aside.

(iii) The petitioner shall be entitled to charge the bill as per commercial tariff only for a period of 12 months i.e. from September, 2018 to September, 2019.

(iv) The assessment period shall be only 12 months. The Authorities shall adjust the amount that is already deposited towards 50% amount of the penalty assessment in further bills.

[KISHORE C. SANT, J.]