

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8966 OF 2017

Maharashtra State Electricity Distribution
Company Ltd.

.. Petitioner

Versus

M/s. Hi Media Laboratory Pvt.Ltd. and Anr.

.. Respondents

Mr. Sumit Palsuledesai i/by M.V. Kini & Co., for the Petitioner.

Mr. Vishnu Hadade, for the Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.

DATED : MARCH 16, 2023

PER COURT :

1. Heard. By this petition, the challenge is to the judgment and order dated 23.04.2015 passed by the Appellate Authority under Section 127 of the Electricity Act, 2003. By the impugned order, the appeal of the Respondent , as against the final order issued by the Assessing Officer, MSEDCL came to be allowed and as such the final assessment order was quashed and set aside and it was directed that 50% amount already paid shall be refunded or adjusted in the forthcoming bills.

2. Learned counsel appearing for the Petitioner submits that the respondent-laboratory was engaged in research and development and the respondent was having only research and development testing load and as such the respondent was required to be billed as per

commercial tariff. He has invited the attention of this Court to the guidelines dated 05.08.2010, which is annexed at page 44 of the petition. In support of his submission, he would contend that the premises were inspected on 12.12.2013 and the said inspection report shows that the exact purpose was testing of raw material.

3. Per contra, learned counsel appearing for the respondents submits that the Respondent Company was a SSI Manufacturer having unit at W 239B and additional plot being W 239 pt was allotted by MIDC. He would further submit that both the plots were amalgamated and Respondent Company was into manufacturing activity. He submits that the Petitioner has failed to consider the production activity.

4. Considered the submissions of the parties.

5. The Appellate Authority has observed that the appellant is owner of two premises namely W239B and W239PT and additional load of 100 HP was sanctioned to W239PT and the consumer number was meant for plot No.239PT and not for plot No.239B. Learned counsel for the petitioner has pointed out page 49 of the petition, in which the address shown as "Plot W.239 B". Further it needs to be noted that as observed by the Appellate Authority, these two plots were amalgamated *vide* MIDC letter dated 22.10.2012. It is also required to be noted that during the inspection, the Petitioner has failed to record the machinery/ equipment along with its equipment

and in the remark column, the address was written as 239Pt. Even if, the submission of the learned counsel for the petitioner is accepted that the consumer address was plot No.239B, it appears that in the remark column the premises is mentioned as “production K1239PT”. There is no clarity about the premises which were inspected and the findings in the site inspection report. The report referred to by the learned counsel for Petitioner refers to production K1 239PT. Learned Counsel for Petitioner has not been able to explain the anomaly in the site inspection report.

6. As the petitioner seeks to change the tariff from industrial tariff to commercial tariff, the burden was upon the petitioner to conclusively establish that only research and development was carried out. On the basis of the material produced on record, the Appellate Authority has concluded that the details of process carried out in the premises was specified by the Respondent from which it can be ascertained that manufacturing process is carried out along with testing of material. The Appellate Authority has come to a conclusion that the remaining load was run for manufacturing activities.

7. Learned Counsel for Petitioner has not been able to demonstrate any error in this factual finding of the Authority. In exercise of powers of judicial review, this Court is not inclined to interfere with the factual findings and it is necessary to show perversity in the impugned order. In my opinion, the Appellate Authority has rightly assessed the material on record and has come to the conclusion

that both the manufacturing and testing activities were carried out in the premises. In light of the above, no interference is warranted.

8. Writ Petition stands dismissed.

(SHARMILA U. DESHMUKH, J.)