



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO.7515 OF 2022

- 1) Maharashtra State Electricity
Distribution Company Limited -
Through its Executive Engineer
(Adm.), O&M. Circle, MSEDCL,
Darva Road, Lohara, Yavatmal.

.... Petitioner(s)

// VERSUS //

- 1) GM, DBL Chaparda RHS
C/o. M/s. DBL Yavatmal Wardha
Highways Pvt. Ltd., through its
director, Plot No.05, Inside Govind
Narayan Singh Gate, Kolar Road,
Chunabhatti, Bhopal, 462016;
- 2) Consumer Grievance Redressal Forum,
Amravati Zone, Amravati, "Vidyut
Bhavan", Shivaji Nagar, Amravati,
444603.

... Respondent(s)

Shri S.V. Purohit, Advocate for the Petitioner/s

Shri D.V. Chauhan, Advocate for the Respondent No.1

CORAM : ANIL S. KILOR, J.

DATED : 23.10.2023

JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by
consent of the parties.

3. The order dated 27.05.2022 passed in Representation No.23/2022 by the Consumer Grievance Redressal Forum, Amravati Region, Amravati, allowing the representation and thereby directing the petitioner/MSEDCL to retain the category of connection in respect of the respondent No.1 to 'street light' category and adjust the difference of amount collected from the respondent No.1 on account of reclassification of category in the ensuing bills of the applicant/respondent No.1, is under challenge in this writ petition.

4. The brief facts of the present case, are as under:

The respondent No.1 is the concessionaire, incorporated solely for the purpose of executing the concession agreement with NHAI dated 09.06.2017 and obligations of the works provided therein i.e. four-laning of Butibori to Tuljapur road on hybrid annuity mode.

5. The respondent No.1 secured electricity connection for installment of street lights on the said road and it was granted under the tariff LT-VI(A) category for the purpose of street lights on the

national highway project. The petitioner accordingly, issued bills in the said category from time to time and they were duly paid.

6. However, the petitioner/MSEDCL made reclassification from LT-VI(A) category to LT-II(B) category and thereby made upward revision of electricity bills.

7. Feeling aggrieved by such reclassification, the respondent No.1 submitted its grievance before the Internal Grievance Redressal Cell, Yavatmal on 14.03.2022. However, as no decision was given, the respondent No.1 approached to the Consumer Grievance Redressal Forum, Amravati Zone, Amravati (in short “the Consumer Forum”), raising challenge to the reclassification.

8. The said representation came to be allowed directing the petitioner/MSEDCL to retain the category of connection i.e. ‘street light’ category and adjust the difference of amount collected from the respondent No.1 by the petitioner on account of reclassification, vide order dated 27.05.2022, the same is the subject matter of challenge in this writ petition.

9. I have heard the learned counsel for the respective parties.

10. The learned counsel for the petitioner submits that the Consumer Forum committed error in ignoring the fact that the connection for the street lights on the national highway was provided to the private agency i.e. the respondent No.1 and the use of these highway lights are not for the people to carry out their daily works but mainly for vehicles passing through the highway which are paying the charges at the Toll Plaza. He therefore, submits that it is a commercial activity and therefore, it cannot be categorized in LT-VI(A) category i.e. 'street light'.

11. It is submitted that on spot inspection, the Additional Executive Engineer, Flying Squad, submitted the report for change of tariff category from LT-VI streetlight to LT-II commercial. The report was in accordance with the tariff order dated 03.04.2020. It is submitted that the activity of the respondent No.1 is purely commercial and therefore, the reclassification was rightly done.

12. On the other hand, the learned counsel for the respondent/consumer submits that the street lights installed on the highways are the parts of the project facility as defined in EPC

agreement. The project facility include provision of street light in clause 2.1 and schedule 'C' of the agreement. It is submitted that NHAI exercises proprietary and controlling right over the project facility including street lights. As such the respondent No.1 is merely a concessionaire in respect of the project and it's facilities. It is submitted that the respondent No.1 does not exercise any proprietary, operational and commercial control over the project facilities. It is submitted that the respondent No.1, being contractor, has handed over the project facilities to the NHAI for operation of the Toll Plaza and is liable only towards maintenance of the project and not for collection of user fee from the users of the National Highway.

13. It is submitted that the street lights installed by the respondent No.1 render the function of municipal category, as there was no revenue generated from such usage of street lights, rather the connection is for services only for the general public use. He therefore, submits that considering the above referred fact, the Consumer Forum has rightly allowed the representation.

14. The learned counsel for the respondent No.1 further submits that the petitioner, without any reasonable cause, has revised the tariff without affording any opportunity of fair hearing. It is therefore, submitted that the decision of reclassification is erroneous and it was accordingly, rightly held by the Consumer Forum.

15. The learned counsel for the respondent No.1 has pointed out the various decision of the Consumer Forum as well as the Ombudsman, wherein a similar view was taken, as taken in this case by the Consumer Forum. He therefore, submits that once the specialized Tribunal has taken certain view, in such matter the Courts have to tread with extreme care and caution. It is submitted that a body that deals with a particular type of matters on an everyday basis would be expected to have greater command over the law applicable in the field and a Constitutional Court would not interfere with a view expressed on interpretation unless it appears to be grossly inappropriate and almost outlandish. In support of his submission, he has placed reliance on the judgment of *Ri Kynjai*

*Serenity by the Lake and Others Vs. Principal Commissioner of Income Tax and Another*¹.

16. In light of the rival submissions of the parties, I have perused the record and the impugned order.

17. After going through the impugned order, it is evident that the Chairman of the Consumer Forum has held in favour of the respondent No.1 and retained the category of connection as 'street light'. Whereas, the Member Secretary has recorded contrary view and held that the petitioner has rightly applied the commercial tariff to the respondent No.1.

18. According to the Chairman of the Consumer Forum, the respondent No.1 has not provided street lights on entire stretch of the highway but certain specific places like service roads, intersection of villages & towns etc. which are for use of local residents free of charge. It is further observed that, the street lights provided on the high way passing through the villages/towns are for ease of local residents to carry out their day to day activities and to

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avoid accidents and mis-happening and nothing to do with the collection of toll. It is also observed that the respondent No.1 is not entitled to collect the toll from the vehicles and the petitioner has given connection for street lights only and not for Toll Plaza and other amenities.

19. Thus, considering the actual usage and not considering the nature of activities, the Chairman of the Consumer Forum, arrived at a conclusion that since it is for the public benefits, tariff should be 'street light' tariff category.

20. Contrary to the same, the Member Secretary has observed that these highway lights are not for the people to carry out their daily works but mainly for the vehicles passing through the highway, as these vehicles are paying the charges at the Toll Plaza and since it is commercial activity, the tariff should be of commercial tariff category.

21. It is pertinent to note that, the street light category tariff i.e. LT-VI is applicable for the electricity used for lighting of public streets thorough fares which are open for use by the general public

at Low/Medium Voltage and at High Voltage. Street lights in residential complexes, commercial complexes, industrial premises etc. will be billed at the tariff of the respective applicable categories.

22. Whereas, LT-II i.e. the non-residential/commercial tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating cooling, cooking, washing/cleaning, entertainment/leisure and water pumping in, but not limited to, the premises enumerated under the said category.

23. Thus, it is apparent that the usage of electricity is relevant in the matter at the hand. It is not the case of the petitioner that the street lights are provided for the entire stretch of the highway. From the record, it can be seen that the street lights are provided at certain specific places like service roads, intersection of villages and towns. The photographs filed by the respondent No.1 along with the reply support the case of the respondent No.1 that the street lights are installed for use of local residents free of charge.

24. The petitioner has not pointed out anything to show that the usage is commercial which is meant for operating various appliances used for purposes of specified in LT-II, which is the pre-requisite to apply LT-II category i.e. the commercial category tariff.

25. The mere fact that street lights are installed on over bridges and under bridges or at bus bay and bus shelter locations, build up sections on the project highways, is not sufficient to arrive at a conclusion that the use of electricity is for commercial consumption. Similarly, the fact that the street lights are installed on certain highways is not sufficient to hold that it is for commercial consumption and not for the use of general public.

26. Moreover, the NHAI comes under the Ministry of Roadways under the Government of India. The highway is for the purpose of benefiting the general public at large and the purpose of streets is not to earn the profit but to provide connectivity and facilities to the citizens of India. A huge investment required for such construction of highways and therefore, the toll is being collected. However, it will not make the activity as commercial one.

27. Thus, I find substance in the submission of the learned counsel for the respondent No.1 that the respondent No.1 is merely a concessionaire in respect of the project and its facilities and do not exercise any proprietary, operational and commercial control over the project facilities.

28. It is also evident that the respondent No.1, as a contractor, has handed over the project facilities to NHAI for operation of Toll Plaza and the respondent No.1 is liable only towards maintenance of the project and not for collection of user fee from the users of the national highways. Thus, in the peculiar facts and circumstances of this case, it is difficult to accept that it is the commercial activity to which the LT-II tariff will apply.

29. In the circumstances, I do not find any merits in the present matter, accordingly, the writ petition is **dismissed**.

Rule is discharged. No order as to costs.

[ANIL S. KILOR, J.]