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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14147 OF 2023**

Maharashtra State Electricity Distribution ... Petitioners
Company Ltd and Anr

vs.

Neelkamal Grani Marmo LLP and Anr ... Respondents

Mr. Hassan Khan, for Petitioners.

Mr. Advait U. Shukla for Respondent.

Mrs. M.P. Thakur, AGP for the State.

CORAM : GAURI GODSE, J.

DATED : 26th FEBRUARY, 2024

P.C. :-

1. Heard.
2. By consent of the parties, petition is taken up for final disposal.
3. Learned counsel for the petitioners submits that the Appellate Authority has set aside the final assessment order based on the test report prepared at the time of granting connection, for approving industrial tariff. He further, submits that based on the spot inspection report, provisional assessment was made, on the ground that there

was only commercial load found, and hence, tariff was required to be changed. He further, submits that final assessment order concluding tariff for commercial load was challenged by respondent no.1 by filing an appeal. He submits that the Appellate Authority has allowed the appeal, essentially by relying on the test report and that the spot inspection report showing commercial load has not been taken into consideration. He referred to the observations made in the impugned order and submitted that there is no finding recorded on the spot inspection report. He therefore, submits that the matter is required to be remitted back to the Appellate Authority for reconsideration regarding commercial load as reflected in the spot inspection report.

4. Learned counsel appearing for respondent no.1 submits that the contents of the spot inspection report would not support the contentions raised on behalf of the petitioners, as the same does not indicate that there is only commercial load. He submits that usage of respondent no.1 is based on the machineries which were approved at the time of test report. He therefore, submits that no purpose would be served by remitting the matter back to the Appellate Authority.

5. I have considered the submissions made on behalf of both

the parties. Perused the record. Perusal of the observations made by the Appellate Authority indicates that the spot inspection report mentions commercial load, which is contrary to the test report issued at the time of granting connection. The Appellate Authority has also referred to sanctioned load based on the equipments to be used by the respondent no.1. Further, the Appellate Authority has relied upon the test report and arrived at the conclusion that the test report images matches with the Say given by respondent no.1. It is not in dispute that the test report is the report at the time of giving connection and approving tariff for industrial use. Observations recorded by the Appellate Authority does not indicate any findings recorded on the spot inspection report, which records commercial load. Hence, I find substance in the arguments raised on behalf of the petitioners that the Appellate Authority was required to take into consideration the spot inspection report which mentions commercial load, which is contrary to the test report. Thus, it is necessary to record specific findings on the applicability of the tariff, on the basis of change of the use, if any, found, based on the spot inspection report and the observations recorded by the petitioners in the provisional assessment and final assessment order.

6. Hence, for the reasons recorded above, the petition is partly

allowed by passing following order:

I) The impugned order dated 17th August 2022, passed by the Appellate Authority and the Superintending Engineer, Pune Regional Electrical Inspection Circle, Pune in Case No. 5/2020-21, is quashed and set aside.

II) Case No. 5/2020-21, is restored to the file of the Appellate Authority and the Superintending Engineer, Pune Regional Electrical Inspection Circle, Pune, for hearing afresh.

7. Writ Petition is disposed of in the above terms.

8. It is clarified that the case be considered uninfluenced by the observations made in the impugned order.

(GAURI GODSE, J.)