



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

WRIT PETITION NO. 428 OF 2019

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| 1. Maharashtra State Electricity Distribution Company Limited – (MSEDCL) – Through its Additional Executive Engineer, Flying Squad Unit, MSEDCL, Akola. | (Original Respondent No.1) |
| 2. Deputy Executive Engineer – MSEDCL Sub-Division Patur, District – Akola. | (Original Respondent No.2) |
- ... PETITIONERS**

...VERSUS...

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| 1. Azhar Ahmed Qaisar Ahmed,
Aged about 45 years, Occupation : Business,
Resident of Aqua Plant, Balapur Road, Patur,
Taluka Patur, District – Akola. | ... <u>RESPONDENTS</u>
(Original Appellant) |
| 2. The Appellate Authority & Superintending Engineer, Nagpur Region, Electrical Inspection Circle, Industries Energy & Labour Department, Plot No.19, Ramkrishna Nagar, Ajni Square, Near UCO Bank, Wardha Road, Nagpur – 440 015. | |

Mr. S. V. Purohit, Advocate for the Petitioners.
Mr. H. R. Gadhia, Advocate for Respondent No.1.
Mr. A. R. Chutke, A.G.P. for Respondent No.2.

CORAM : MRS. VRUSHALI V. JOSHI, J.
JUDGMENT RESERVED ON : 02.07.2025
JUDGMENT PRONOUNCED ON : 09.07.2025

JUDGMENT :

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned Counsel appearing for the parties.

2. By this petition, the petitioners are challenging the final order dated 24.10.2018 whereby respondent No.2 Appellate Authority

has quashed and set aside the Demand Bill issued to respondent No.1 i.e. consumer by holding that the assessment bill is erroneous. The Appellate Authority has also issued the ancillary directions, which are also under challenge.

3. The facts in brief are as under :

On 13.06.2018, Spot Inspection was carried out in the premises, which were used by respondent No.1. It was found that the supply of electricity was originally sanctioned under the Industrial Category as it was being used for manufacturing of the mattresses. Further, it was found that the purpose of use of electricity was changed to commercial category. It was not informed to the petitioners that the consumer had used the electricity for commercial purpose. The consumer i.e. respondent No.1 has installed the water filtering plant, cooling the same and selling it in Packaged Water Cans and as such, it amounts to using the electricity for commercial purpose.

4. After hearing the respondent No.1, the final order was passed under Section 126 of the Electricity Act, 2003 on 17.07.2018. It was held in the final order that the action taken by MSEDCL was in accordance with law and that the bill issued to the respondent No.1, for the sum of Rs.02,19,000/- was correct and respondent No.1, was liable to pay the same.

5. Respondent No.1 has filed the appeal challenging the order passed by the MSEDCL before the respondent No.2 i.e. the Appellate Authority. Respondent No.2 passed the final order dated 24.10.2018 and set aside the order passed by the MSEDCL. Feeling aggrieved by the said order, the petitioners have filed this appeal.

6. The learned Counsel for the petitioners has stated that, respondent No.2 – Appellate Authority has not understood the purport of Section 126 of the Electricity Act, 2003 and, therefore, erred in setting aside the demand order. The original consumer respondent No.1 was sanctioned electricity supply for manufacturing of mattresses, however, respondent No.1, who was the occupier at the time of inspection, was found using the electricity for the purpose of Filtering, Cooling, Packaging Water in Cans and further selling them to his customers. According to the MSEDCL, such activity was not an industrial activity but a commercial activity. The Flying Squad Personnel upon inspection in presence of the respondent No.1 has found that the electricity was being used for the purpose other than the purpose for which it was authorized/sanctioned. The Flying Squad Personnel, therefore, came to the conclusion that there was unauthorized use of electricity. Accordingly, Provisional Assessment and Final Assessment orders were passed by the Competent Authority in accordance with Section 126 of the Electricity Act, 2003. The activity of respondent No.1 in the matter of RO Plant, such as Lifting, Filtering,

Cooling and Selling does not come under the industrial activity. It is not informed to the petitioners while shifting the original business. It is therefore, the case of the unauthorized use of electricity. Hence, prayed to set aside the order passed dated 24.10.2028 by the Appellate Authority in Appeal No.1/2018 by allowing this petition.

7. The respondent No.1 has filed reply and opposed the petition stating that there are various categories of tariff which includes Industrial, Residential, Commercial etc.. The action taken by the petitioner - MSEDCL is not supported by MERC tariff order and nowhere in tariff order the aforesaid activity is covered within the scope of commercial activity. There is no reference of any order of MERC either in the documentary process done at the time of giving provisional assessment or at the time of passing the final order acting as a quasi judicial authority. The respondent No.1 submits that it is the contention of the petitioner – MSEDCL that change in activity from manufacturing of Mattresses to Aqua Purified Water Cans [i.e. change in activity] amounts to change in use of electricity is not correct as it does not amount to unauthorized use of electricity and cannot come under Section 126 of the Electricity Act, 2003.

8. The respondent further argued that the MSEDCL i.e. the petitioner has issued the Guidelines/Circular explaining that the loss of revenue to the petitioner -MSEDCL and financial gain to consumer would

be an essential ingredient while deciding unauthorized use of electricity. The respondent No.1 has quoted paragraph 4 of the aforesaid Circular which reads thus :

“It should be noted that as long as consumption is fully recorded by the metering arrangement/meter and used in the authorized premises for the authorized purpose and the consumer is not availing any wrongful gain at the cost of licensee or supplier, there cannot be a case of unauthorized use of energy under section 126 of EA 2003 against the consumer.”

It has also made clear that,

“Consumer paying higher tariff due to predominant load and using electricity for lower tariff category not causing any loss to company shall not be taken as case under section 126.”

9. He has further stated that if both the clauses are read collectively, it is clear that change in the use of electricity/power supply resulting in the revenue loss to the petitioner – MSEDCL would then attract Section 126 of the Electricity Act, 2003 and not otherwise. The MERC has not expressly mentioned this activity under industrial tariff category. However, it does not mean that it is not industrial one as there are thousands of activities covered under industrial category and it is not possible for the MERC to mention each and every category in its tariff order.

10. The respondent No.1 has placed reliance on the order in Case No.48/2016, while defining LT Industrial tariff category, MERC

incorporated only 13 types of industries in its tariff order. However, it has expressly stated that, it shall also be applicable for use of electricity/power supply for (but not limited to) the purposes mentioned in the reply, filed by respondent No.1.

11. The respondent No.1 has stated that the emphasis was put on “Not limited to” by the MERC in its order prior to mentioning the list of eligible industries has great significance while deciding the controversy and therefore, the opinion of Directorate of Industries or list of industries notified by the Ministry of Small and Medium Enterprises is of utmost importance which in this case was not done by the petitioner -MSEDCL. The entire action of the petitioners appears to be deliberate and with an ill intention. Hence, prayed to dismiss the petition.

12. Heard both the learned Counsel for the parties.

13. The action is taken under Section 126(1) of the Electricity Act, 2003. Section 126 of the Electricity Act, 2003 reads thus :

“126. Assessment – (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.”

14. On going through the provisions of Section 126(1), it appears that there must be unauthorized use of electricity meter. Earlier, the activity of manufacturing of mattresses was going on which was under the head of the industrial activity. The change in activity from manufacturing of mattresses to Aqua Purified Water Cans does not change the use of electricity. It cannot be termed as unauthorized use of electricity. The guidelines which are filed on record clearly show that merely change in activity from manufacturing of mattresses to manufacturing of packaged water cans would not be a ground for action under Section 126 of the Electricity Act, 2003 as long as it has not caused loss of revenue to the petitioner -MSEDCL. Any action on the part of consumer resulting in revenue loss to the petitioner would be necessary to take action under Section 126 of the Electricity Act, 2003. It appears from the record that, nowhere in the tariff order issued by the MERC, it is mentioned that even manufacturing of mattresses is included in industrial tariff. MERC cannot mention name and each and every activity and the term industrial is itself has a wider meaning.

15. The petitioners have not filed any document on record to show that the activity of Water Cooling or Selling, Packaging Water in Cans is defined as commercial activity. On the other hand, the record shows that in communication the Chief Engineer Commercial has stated that the tariff in respect of aqua mineral water plant is not specified in

tariff order dated 26.06.2016, it is specifically mentioned at Annexure – G as under :

“In this regards, it is to inform that if the consumer is registered as SSI or Industry, then Industrial tariff may be applied after due verification and confirmation of the process carried out. If not, the Commercial tariff may be applied.”

16. The learned Counsel for the petitioners has pointed out that at page No.62, the respondent No.1 consumer has filed on record the document as the certificate but it is not a certificate. It is an application for issuance of certificate. On perusal of the said document, it appears that it is Udyog Aadhaar Registration Certificate. The Udyog Aadhaar number is also mentioned there. The another document which is filed on record by the respondent No.1 is about Packaged Drinking Water of the Micro Small and Medium Enterprises – Development Institute. The said preparation has started on 25.02.2011. Therefore, these documents are required to be considered by the Authority while passing the order and which is correctly considered by the Appellate Authority while setting aside the order passed by MSEDCL.

17. The action is taken under Section 126 of the Electricity Act, 2003 for unauthorized use of the electricity on the basis that, though the meter was issued for industrial purpose, it was used for commercial purpose. In this context, the petitioner has failed to prove how the

activity carried out by the respondent No.1 is commercial activity and how it was used unauthorizedly.

18. On perusal of the Inspection Report, it appears that it is specifically mentioned that the electric meter was not used for any other purpose. Merely because instead of using it for manufacturing of mattresses, it was used for the activity of purification of water, it cannot be termed as the commercial activity. The petitioner has relied on the judgment/order of the Consumer Grievance Redressal Forum, Akola Zone in the Complaint No.02/2019 decided on 02.01.2019 wherein it is specifically mentioned as under :

“Forum is of the view that Aqua mineral R.O. water plant engaged in processing the hard water and converting it to soft water by removing impurities and hardness satisfies the criteria of manufacturing for applicability of industrial tariff as “Reverse Osmosis” process is involved as per flow chart of process filed on record and is industrial activity and held that N.A. M.S.E.D.C.L and Flying squad of MSEDCL erred in reclassifying Aqua mineral R.O. water plant to commercial category of the complainant. Forum is also of the view that N.A. M.S.E.D.C.L were correct in applying industrial tariff to the Aqua water plant of complainant on 21.01.2013 and should continue to apply industrial tariff in future till reclassification by MERC in any other category and held that Flying squad of MSEDCL is not the authority to reclassify the tariff. Forum is of the view that SSI certificate or registration under D.I.C. is not made mandatory by MERC in applying industrial tariff though the complainant’s unit was registered with D.I.C. Buldana on 30/08/2012.”

19. The reliance is also placed on the judgment of the Hon'ble Apex Court in the case of *Ganapath Singh Gangaram Singh Rajput Vs. Gulbarga University Represented by Its Registrar and Ors.* reported in **(2014) 3 SCC 767**, wherein it is observed in paragraph No. 14 as under :

“When two views are possible and the expert body has taken a view, the same deserves acceptance.”

20. In support of his argument that the *categorization of electric tariff is on the basis of ‘usage’* and not ‘the term of usage’, the learned Counsel for the petitioners has also relied on the judgment of this Court in the case of *Malabar Hills Citizens’ Forum Vs. Best Undertaking and Ors.* reported in **2016(4) Mh.L.J. 437**, which read as under :

“Category of tariff is fixed on basis of ‘usage’ of electricity – Electricity used by petitioner for sports complex, which houses athletic track, a gymnasium and a Tennis Court is correctly assessed and charged under tariff item LT-II, which is for ‘Non-residential or Commercial use.’

21. The judgment on which the learned Counsel for the petitioners has relied on, is of no use as nowhere it is mentioned by the MSEDCL that the activity carried out by the respondent No.1 is a commercial activity. As it does not come under the provisions of Section 126 of the Electricity Act, 2003 and that the document filed on record shows that Udyog Aadhaar Registration Certificate is issued and it comes under the Micro Small and Medium Enterprises-Development Institute, the order dated 24.10.2018 passed by the Appellate Authority does not

require any interference at the hands of this Court. Hence, the petition stands dismissed.

Rule is discharged.

(MRS. VRUSHALI V. JOSHI, J.)