



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5997 OF 2022

PETITIONER :- M/s. Jhajharia Nirman Private Limited (now limited since December, 2013), a company duly incorporated under the provisions of the Companies Act, 1956, through its Authorized Signatory and Power of Attorney Holder Mr. Pratik S/o. Naresh Agrawal, aged about 39 years, Registered Office:- WZ 688A – Shiv Nagar Extension, Jail Road, Janakpuri – 110058, Delhi.

..VERSUS..

RESPONDENT :- Maharashtra State Electricity Distribution Company Limited, through its Nodal Officer, Executive Engineer, MSEDCL, CCO & M Division, Bhandara, District:- Bhandara.

WITH
CIVIL APPLICATION (CAW) NO.2600 OF 2025
IN
WRIT PETITION NO.8595 OF 2022 (D)

PETITIONER (Original Non-applicant) :- Maharashtra State Electricity Distribution Company Limited – Through its Executive Engineer, CCO & M Division, Administrative Building, VIDYUT BHAVAN, Bhandara.

..VERSUS..

- RESPONDENTS** :- 1) M/s Jhajharia Nirman Private Limited
(Original Applicant) (Now LIMITED since December, 2013), A Company incorporated under the Provisions of the Companies Act 1956 – Through its authorized Signatory and Power of Attorney Holder Mr. Pratik S/o Naresh Agrawal – Having its Local Office at Plot No. 197, Mouza Sonuli, Tahasil & District Bhandara;
- 2) Electricity Ombudsman, Nagpur – At Plot Nos. 27 to 30, R002, Universal Meadows, New Sneha Nagar, Wardha Road, Nagpur -440 015.

In Writ Petition No.5997/2022

Mr. H.R. Gadhia, Advocate for Petitioner.

Mr. S.V. Purohit, Advocate for Respondent.

In CAW No.2600/2025

Mr. S.V. Purohit, Advocate for Petitioner.

Mr. H.R. Gadhia, Advocate for Respondents.

CORAM : ROHIT W. JOSHI, J.

DATE : 19/12/2025

ORAL JUDGMENT :

1. The present petition takes exception to order dated 10.05.2022, passed by the learned Electricity Ombudsman, Nagpur, in Representation No.15 of 2022.

2. This order was also challenged by the respondent/MSEDCL vide Writ Petition No.8595 of 2022 on

the ground that although the Electricity Ombudsman upheld the right of MSEDCL to recover tariff difference, it restricted the right only for a period of two years from June, 2019 to May, 2021, thereby disallowing the claim for the tariff difference for the period from January 2019 to May 2019. The said petition was allowed *ex-parte* vide order dated 09.07.2025. The petitioner in Writ Petition No.5997 of 2022 has filed application for recalling the order dated 09.07.2025 passed in Writ Petition No.8595 of 2022.

3. Since Writ Petition No.5997 of 2022 and Civil Application (CAW) No.2600 of 2025 raise similar challenges, the petition and application are decided together. The petitioner in Writ Petition No.5997 of 2022 is referred as 'petitioner' in the judgment and the respondent is referred as 'MSEDCL'.

4. Heard finally with consent of learned counsel for the respective parties.

5. The petitioner is a registered contractor of South Eastern Central Railway (for short "SECR"). The petitioner has made an application for electricity connection for execution of a construction

contract awarded to it by SECR. Application for electricity connection was made on 30.05.2018. Perusal of the application will demonstrate that the petitioner while filling up the form, stated that the connection was required for industrial purpose. The application further states that the electricity supply was required for establishing a batching plant.

6. Accordingly, electricity connection was granted by the respondent/MSEDCL to the petitioner. Flying squad of the respondent inspected the premises of the petitioner somewhere on 22.06.2021 and found that the electricity connection was being used for construction activity, which according to the respondent is a commercial activity and not an industrial activity. Accordingly, the respondent issued a demand in the sum of Rs.24,58,000/- to the petitioner. The petitioner challenged the said bill by filing a grievance application under Clause 7 of the MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020. The said application was registered as CGRF (Nagpur) Case No.02 of 2022. Vide order dated 02.02.2022, the complaint filed by the petitioner was dismissed on the ground that the CGRF did not have jurisdiction to entertain the complaint. The petitioner thereafter approached the learned Electricity

Ombudsman by filing representation No.15 of 2022, which was decided vide order dated 10.05.2022, holding that the respondent/MSEDCL was entitled to recover the tariff difference only for a period of 24 months, i.e., from the June 2019 to May 2021, without interest and Delayed Payment Charges. The petitioner has challenged the said order in the present petition.

7. The contention of Mr. Gadhia, the learned Advocate for the petitioner is that the case of the petitioner is not of non-payment of electricity charges. Mr. Gadhia, learned Advocate for the petitioner contends that construction activity was classified as, 'commercial purpose' for the first time vide Commercial Circular No.323 dated 03.04.2020 issued by MSEDCL. He contends that the said circular cannot have retrospective operation and therefore the demand raised by the respondent/MSEDCL and the order passed by the learned Electricity Ombudsman are liable to be quashed. In the alternative, it is contended that the present case is not a case of failure or neglect on the part of the petitioner in making payment of electricity charges. He contends that the petitioner under a bonafide impression, made an application seeking electricity connection for industrial purpose and merely because the activity was subsequently found to be commercial in

nature, the respondent/MSEDCL cannot recover additional charges from the petitioner particularly when the petitioner was always making payment of electricity charges regularly.

8. He has placed reliance on (i) judgment dated 09.06.2020 passed by this Court (Civil Appellate Jurisdiction at Bombay) in Writ Petition No.10536 of 2019, (ii) judgment dated 23.07.2020 whereby the review application preferred by the respondent/MSEDCL was rejected and (iii) order dated 11.07.2022, passed by the Hon'ble Supreme Court refusing to grant Special Leave to Appeal against the said judgment. The learned Advocate also placed reliance on the judgment dated 19.07.2022, passed by this Court (Nagpur Bench) in Writ Petition No.2027 of 2017, in support of his contention that in the facts of the present case, where the petitioner was regularly making payment of electricity charges, the respondent cannot be allowed to raise a supplementary or additional demand merely on the ground that the user is a commercial user and not an industrial user.

9. *Per contra*, Shri Purohit, learned Advocate for the respondent placed reliance on the judgments of the Hon'ble Supreme Court in the matters of *K.C. Ninan ..vs.. Kerala State Electricity Board and others*¹, *Ajmer Vidyut Vitran Nigam Ltd. ..vs..*

¹ (2023) 14 SCC 431

*Rahamatullah Khan*², and *Prem Cottex ..vs.. Uttar Haryana Bijli Vitran Nigam Limited and others*³.

10. The learned Advocate contends that merely because the consumer is regularly making payment of electricity charges under a given category and subsequently, it is found that the user falls under a different category, will not foreclose the right of the distributing licensee to raise a supplementary or additional demand on account of mistake or error in earlier billing.

11. Mr. Purohit, learned Advocate for the respondent also contends that as per the routine practice, when an application for electricity connection is received to the MSEDCL, the supply is granted on the basis of contents of the application. The fact-finding as regards the correctness or otherwise of the application is not done before the connection is granted. He contends that in the present case, the application form filled in by the petitioner mentioned the purpose of supply as industrial i.e. for setting up a batching plant, which is an industrial activity. He therefore contends that based on the application, electricity supply was granted and subsequently, upon inspection, when it was found that it is being used for construction activity, which is a commercial activity, additional/

² (2020) 4 SCC 1

³ (2021) 20 SCC 200

supplementary demand was raised.

12. Mr. Gadhia, learned Advocate for the petitioner, countered the aforesaid contentions by placing reliance on Regulation 5.1 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005. He contends that before granting electricity connection, it is the duty of the distribution licensee to inspect the premise and verify the contents of the application. He further contends that although in the application form, the purpose mentioned as industrial (i.e. establishment of batching plant), a letter issued by the concerned officer from SECR was also annexed with the application, which shows that the connection was sought for construction activity. He therefore states that there is no willful or deliberate misrepresentation on the part of the petitioner as contemplated.

13. As regards the principal contention that the construction activity undertaken by the petitioner was classified as a commercial purpose for the first time vide Circular dated 03.04.2020 and that the said Circular cannot have retrospective operation, Mr. Purohit, learned Advocate has tendered across the bar a copy of Commercial Circular No.302 dated 31.03.2018, along with the approved tariff

schedule, effective from 01.04.2018, relevant clause whereof reads as under :-

LT: LT – Non-Residential or Commercial LTII(A): 0 – 20 kW

(Clause K) :-

“k. Construction of all types of structures/infrastructure such as buildings, bridges, fly-overs, dams, Power Stations, roads, Aerodromes, tunnels for laying of pipelines for all purposes, and which is not covered under the Temporary tariff category”

14. It is clear that construction activity was classified as a non-residential or commercial activity from 01.04.2018 itself. The electricity connection was granted to the petitioner after 01.04.2018 and as such, it will be governed by Commercial Circular No.302. The contention of the learned Advocate for the petitioner that the distribution licensee cannot retrospectively recover charges based on a subsequent Circular is therefore liable to be rejected.

15. As regards contention of Mr. Gadhia, learned Advocate that when a consumer pays electricity charges regularly without any default or neglect, the distribution licensee cannot raise a demand on the ground that the consumer was billed under a wrong category cannot be accepted in view of judgment of the Hon’ble Supreme Court in the case of *Rahamatullah Khan* (Supra). The Hon’ble Supreme Court has categorically held that Section 56(2) of the

Electricity Act, 2003, does not preclude the distribution licensee from raising any additional or supplementary demand after period of limitation in case of any mistake or bonafide error. The Hon'ble Supreme Court further held that limitation of two years under Section 56(2) applies only in case of disconnection on the ground of arrears and that the said provisions does not prohibit a distribution licensee from recovering arrears of period beyond two years by taking recourse to other measures.

16. Mr. Gadhia, learned Advocate draws attention to the judgment dated 19.07.2022 in Writ Petition No.2027 of 2017 to distinguish the judgment in the matter of *Rahamatullah Khan* (Supra). The aforesaid judgment of this Court was dealing with a case of original demand and not an additional or supplementary demand. In case at hand, the original demand was raised on the basis of the category of petitioner being industrial and thereafter supplementary / additional demand is raised after the flying squad detected that the activity which was undertaken by the petitioner/consumer fell under commercial category and not industrial category. The present case is thus not a case of original demand but a supplementary or additional demand. The judgment in Writ Petition No.2027 of 2017 is therefore not helpful to the

petitioner. It is clear that, in case of any bonafide mistake or error, a distribution licensee can raise a supplementary or additional demand and that such demand can also be for a period exceeding 24 months. The only restriction will be that forcible disconnection as contemplated under Section 56 cannot be done on account of failure to clear the demand for a period of more than 24 months. It must be stated that the judgment in the matter of *Rahamatullah Khan* (Supra) is followed by the Hon'ble Supreme Court in *Prem Cottex* (Supra). It will also be profitable to refer to judgment of the Hon'ble Supreme Court in the matter of *K.C. Ninan* (Supra), wherein it is again held that limitation period prescribed under Section 56(2) is only for the purpose of disconnection of electricity supply on account of failure to pay the electricity charges. It is categorically held that the right to recover electricity charges continues to exist even beyond period of two years by taking recourse to other measures. In view of the aforesaid categorical pronouncement of the Hon'ble Supreme Court, there cannot be any two opinions with respect to right of distribution licensee to recover the arrears of electricity charges for period beyond two years. The only restriction that is imposed is that, for arrears beyond two years electricity supply cannot be disconnected. In view of the aforesaid

legal position, the contention of Mr. Gadhia, that the demand ought to have been restricted for a period of two years is also liable to be rejected.

17. In view of the reasons recorded above, Writ Petition No. 5997 of 2022 and Civil application (CAW) Nos.2600 of 2025 are **dismissed**.

(ROHIT W. JOSHI, J.)

C.L. Dhakate