



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2762 OF 2024

- | | | |
|--|---|------------------------------|
| 1. Maharashtra State Electricity |] | |
| Distribution Company Limited |] | |
| Through Assessment |] | |
| Officer/Additional Executive Engineer, |] | |
| Flying Squad, Nashik. |] | |
| 2. Dy. Executive Engineer, MSEDCL |] | |
| Igatpuri Subdivision, Dist Nashik |] | <u>...Petitioners</u> |

Versus

- | | | |
|--|---|------------------------------|
| 1. Vivek Pandurang Chawan |] | |
| Gat No. 192/1, Venkatesh Nagar, |] | |
| Pimpri, Taluka Igatpuri, District Nashik |] | |
| 2. Appellate Authority/Electric Inspector, |] | |
| Department of Industries, Energy and |] | |
| Labour, Nashik |] | <u>...Respondents</u> |

AND

WRIT PETITION NO. 4658 OF 2023

AND

WRIT PETITION NO. 4683 OF 2023

AND

WRIT PETITION NO. 8228 OF 2023

AND

WRIT PETITION NO. 12220 OF 2023

AND

WRIT PETITION NO. 12221 OF 2023

AND

WRIT PETITION NO. 12222 OF 2023

AND

WRIT PETITION NO. 4656 OF 2023

Mr. Vikrant Khare, Mr. Ganesh Pandit ii/b M/s. Kshitija Wadkar and Associates for Petitioners.

Mr. Rohit D. Gorade, Mr. Sachin Padaye for Respondent No. 1 in all Petitioners.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : FEBRUARY 20, 2026

Oral Judgment :

1. **Rule.** Rule made returnable forthwith.
2. By this group of Petitions, the challenge is to the impugned order passed by the Appellate Tribunal which arose out of the final assessment by the Petitioner under Section 126 of the Electricity Act, 2003 [for short, "***the Electricity Act***"]. The Petitions raise identical issues. Common submissions were advanced and hence, the Petitions are being disposed of by this final judgment.
3. With consent, Writ Petition No. 2762 of 2024 was taken as lead Petition and the facts of the said petition are referred to.
4. In all these Petitions, the Respondent No. 1-Assessee is the owner of the bungalow/rowhouse and it was the case of the Petitioner that the Respondent No. 1 has changed the user of electricity connection from residential purpose to commercial purpose. On 28th February, 2020, the flying squad of Petitioners visited and inspected the vicinity of the Grand Garden Resort situated at District – Nashik and during the course of inspection, it was found that row houses were provided with single phase electricity connection and there was

unauthorized use of electricity for commercial purposes. Accordingly, provisional assessment bill was issued and though letters were issued, the Respondent No. 1 did not attend the hearings and hence, the final assessment bill came to be issued which applied commercial tariffs from the date of connection. The said order was challenged by way of Appeal before Respondent No. 2 and by the impugned order, the Respondent No. 2 has restricted levying of commercial tariff from the date of the Rent Agreement i.e. 20th August, 2019. Hence, the present Petition.

5. Learned counsel appearing for the Petitioner has taken this Court through the impugned order and would submit that the entire basis for restricting the period of levy of commercial tariff was on account of the alleged rent agreement of 20th August, 2019. He submits that the said agreement is unstamped, unregistered agreement printed on letterhead of Developer and cannot be considered as an authentic rent agreement. He would further submit that the photographs are produced on record to show that the bungalows/rowhouses were given for commercial purpose to the Developer. He submits that the date of website of Developer is of 2015 and the source code was produced before the authority. He submits that as the website has been published in the year 2015, it is evident that the commercial use was from the year 2015. He would further

submit that under the provisions of Section 126(5) of the Electricity Act, 2003, in event, the period during which unauthorized use of electricity cannot be ascertained, such period is required to be limited to period of 12 months from the date of immediately preceding the date of inspection.

6. *Per contra*, learned counsel appearing for Respondent No. 1 would support the impugned order and would submit that the authority has rightly taken into consideration the rent agreement produced on record. He submits that it is not within the remit of authority to consider whether rent agreement is valid and legal and the same is required to be accepted. He submits that in any event, if the provisions of Section 126 (5) are considered, the period for unauthorized use of electricity cannot date back to the date of connection and will be required to be restricted to period of 12 months immediately preceding the date of inspection which in this case was on 28th February, 2020 and hence, the commercial levy can only be from 28th January, 2019 and not prior thereto.

7. I have considered the submissions and perused the record.

8. There is no dispute that by virtue of MERC order, in Case No. 195 of 2017, the commercial tariff is required to be levied in respect of use as hotels/guest house which amounts to use for commercial consumption. It is not disputed that the premises were put to

commercial use as guest house/hotel and the only issue which arises for consideration in the present case is the period during which the unauthorized use of electricity is required to be charged as per commercial tariff. The inspection by the flying squad of the Petitioner was on 28th February, 2020. Though learned counsel appearing for Petitioner would seek to rely upon the date of publication of website of the Developer, the date of publication of website cannot lead to a conclusive finding as regards date of use of premises as guesthouse/hotel. The said date refers only to date of publication of website. Similarly, the photographs placed on record do not reflect any address or any date to come to conclusion that from the date of connection of electricity, the premises were used for commercial purposes which leads us to provision of Section 126(5) of the Electricity Act, 2003, which reads as under :

“126. Assessment. -

(1)

(2)

(3)

(4)

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.”

9. The rent agreement which has been produced on record of 20th

August, 2019 is not sufficient to infer that commercial use had commenced from 20th August, 2019. It would therefore, be appropriate to apply the provisions of Section 126(5) which has not been considered by the impugned order. By the impugned order, the authority without considering the submissions as regards the rent agreement being unregistered and unstamped has accepted the date of 20th August, 2019 as the date of commercial use of property which is unsustainable. In my view, the provisions of Section 126(5) squarely applies to the facts of the present case. The material on record is not sufficient to ascertain the period during which the unauthorized use of electricity has taken place and hence, period is required to be limited to twelve months immediately preceding the date of inspection.

10. In light of same, the Petitioner is entitled to levy the commercial rate for period from 28th January, 2019 and raise the modified bills accordingly. The assessment bill to be raised after taking into consideration the 50 percent amount which has been deposited with the Petitioner.

11. Petition is allowed. Rule is made absolute in the above terms.

12. In view of above, nothing survives for consideration in pending applications, if any, and the same stand disposed of.

[SHARMILA U. DESHMUKH, J.]