BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 171 OF 2022

In the matter of Reclassification of tariff category and retrospective recovery

Champali Garden Pvt. Ltd …… …… …. …….. …. …. ……Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Pen (MSEDCL) …. ….. Respondent

Appearances:

Appellant : 1. Shivaji Sawant, Representative

Respondent : 1. Satish Dhope, Dy. Executive Engineer, Pen Circle
2. Rajesh Tarmale, Dy. Executive Engineer, Pen Circle

Coram : Vandana Krishna (Retd. IAS)

Date of hearing: 12th January 2023

Date of Order : 16th January 2023

ORDER

This Representation was filed on 21st November 2022 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 23rd September 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kalyan Zone (the Forum).

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2. The Forum, by its Order dated 23.09.2022 has rejected the grievance application in Case No. K/E/034 of 2022-23.

3. The Appellant filed this representation against the order of the Forum. The e-hearing was held on 12.01.2023 through Video Conference. Both the parties were heard at length. The Appellant's written submission and arguments in brief are stated as below: -

Preamble:-

(i) The Appellant is a HT Consumer (No. 032889022470) from 09.12.2008 having sanctioned load (SL) of 185 KW and Contract Demand (CD) of 165 KVA at Sr. No. 102/103 and others, Village-Washivali, Tal-Pen, Dist. Raigad. The activity of the Appellant is Floriculture greenhouse farming. The Appellant started development for floriculture activities in June 2004 and has established its market network in domestic and export markets. The Appellant is an HT consumer from 09.12.2008. The Appellant is regular in payment of electricity bills and is a bona-fide consumer.

(ii) The Superintendent Engineer (PC) of the Respondent by its letter dated 6.4.2022 addressed to the Appellant states that from the month of January 2022 the electricity tariff would be charged as per HT-V(B) category. The letter also states that the Appellant is supposed to pay the difference in tariff from HT-V-A tariff (Agriculture Pumpsets) to HT-V-B (Agriculture Others) starting from 1.8.2019 to July 2021 and demanded a payment of Rs. 24,21,865/- (Rupees Twenty Four Lakhs Twenty One Thousand Eight Hundred and Sixty Five Only) within 7 days.

(iii) The Appellant by its reply dated 6.6.2022 stated that this retrospective demand of tariff is bad in law and requested the authority to withdraw the letter dated 6.4.2022. Further, MSEDCL issued the bill for the month of May 2022 wherein they demanded the above said amount of Rs 24,21,865/- (Rupees Twenty-Four Lakhs Twenty-One Thousand Eight Hundred and Sixty-Five Only) by "debit bill adjustment", along with the regular bill of Rs. 1,00,327.17/-. Such an imposition and demand of tariff difference recovery of HT-VA Tariff (Agricultural Pumpsets) to HT-V-B (Agricultural Others) under the name "debit note adjustment" is against the principles as contemplated by the Electricity Act, 2003 (the Act). Hence, the present Grievance.

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Grounds of Challenge:

(iv) The category HT-V (Agriculture) was attributed to the Appellant by the Respondent in 2008 after following due procedure, diligence, site inspections, and the activity was regularly verified by the Respondent and flying squad officers. There was a flying squad visit on 17th January 2013, where no discrepancies or irregularities were found by the Respondent. The flying squad officers who visited the Appellant's site frequently were the same persons namely Mr. A. S. Meshram and Mr. S. N. Khaire who have knowledge of the nature of actual agricultural activity (Floriculture) carried out by the Appellant. Inspection Reports dated 01.08.2018 and 06.7.2021 are kept on record.

(v) In the June 2021 bill, the subsidy payable to the Appellant in respect of HT-V-A category was withheld. The Appellant has personally enquired with the billing department of the Respondents. However, no plausible explanation was offered at the Respondent's end.

(vi) The Testing Division of MSEDCL has regularly done their testing analysis on the site of the Appellant and submitted their reports dated 19.8.2018, 03.8.2019, & 11.11.2020. The officers of the Respondent never informed the Appellant about the change in tariff. The meter readings are taken by qualified staff who are trained in the domain of engineering in so far as taking PT/ CT readings are concerned. The Respondent has visited the premises regularly and such an issue was never pointed out over the years. Further, **the Appellant is also paying the revised bill/tariff from August 2021** without any default and in a timely manner.

(vii) The Appellant received the first demand notice dated 15th Nov. 2021 of Rs. 61,20,037/-, which was sent for the period of 1st Nov. 2016 to July 2021. Reply dated 23rd December 2021 was submitted in the form of a representation. On 17th January 2022, a hearing was conducted at the office of S.E., MSEDCL, Pen Circle. On 6th April 2022, a revised Demand Notice of Rs 24,21,865/- was sent for the period of 1st Aug 2019 to July 2021. Out of this, the Appellant has paid an amount of Rs.12,11,000/- under protest on 21.10.2022.

(viii) The Appellant is struggling to run its small floricultural farm as many livelihoods are dependent on the Appellant. For many years, the Appellant has been incurring losses due to weather conditions, cyclones, Covid-19 etc. If at the time of increase in tariff, it had

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been informed to the Appellant in advance, the Appellant would have shifted to alternate sources of electricity (solar etc.) and would have easily recovered the capital investments by now. Alternatively, the Appellant would have attempted recovery of the additional costs from its consumers.

(ix) It was the Respondent's decision to bill the Appellant under HT-V-A category and the same was reconfirmed during multiple inspections by the Respondent.

(x) The additional debit amount of Rs 24,21,865/- (Rupees Twenty-Four Lakhs Twenty-One Thousand Eight Hundred and Sixty-Five Only) is against the principles of natural justice, perverse and against the settled position of jurisprudence.

Principles of Law:

(xi) The Appellant referred the Section 56(2) of the Act which say in unequivocal terms that **no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for the electricity supplied.** The condition precedent for effecting recovery of the amount was not satisfied in the present case. The Appellant has been regularly paying the bills as raised by Respondent from time to time, and no payment was in arrears. Respondent had never shown the supplementary demand as continuously recoverable as arrears. Merely issuing a supplementary Bill does not satisfy the statutory condition embodied in sub-section (2) of Section 56 of the Act. The fact remains that the Respondent charged the amount just by taking recourse to abrupt re-classification of Tariff Category, **giving retrospective effect from August 2019**, which being hit by subsection (2) of Section 56 of the Act is liable to be quashed;

(xii) The Appellant referred a Full Bench Judgement dated 12.03.2019 of Bombay High Court in Writ Petition (WP) No.10764 of 2011 & Others. The relevant part is reproduced as below:

> "*Unless and until the preconditions set out in sub-section (2) of Section 56 are satisfied, there is no question of the electricity supply being cut off. Further,*

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the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, ***but the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed.*** *Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor,* ***still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable.*** *The Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided* ***the condition set out in sub-section (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.”……. .(Emphasis added).***

(xiii) The Supreme Court of India in its Judgement dated 18.02.2020 in Case of Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Another V/s. Rahamatullah Khan alias Rahamjulla (Civil Appeal No. 1672 of 2020) held:

“*Sub-section (2) of Section 56 by a non obstante clause provides, notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, shall be recoverable under Section 56, after the expiry of two years from the date when the sum became first due, unless such sum was shown continuously recoverable as arrears of charges for the electricity supplied, nor would the licensee company disconnect the electricity supply of the consumer*.”

All these conditions are in favour of the Appellant and do not permit retrospective recovery.

(xiv) The Appellant refers the Commission’s order dated 11.02.2003 in Case No. 24 of 2001. The relevant portion is quoted below:

“No retrospective recovery of arrear can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by

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the Auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively. With the setting up of the MERC, order of the Commission will have to be sought as any reclassification of consumers directly affects the Revenue collection etc. as projected in its Tariff Order. The same could be done either at the time of the tariff revision or through a special petition by the utility or through a petition filed by the affected consumer. ***In all these cases, recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective". (Emphasis added)***

(xv) The Appellant also referred the order dated 07.08.2014 of ATE in Case No. 131 of 2013, wherein it is stated that tariff change is permissible from the date of detection of error in tariff classification.

"According to the tariff schedule decided by the State Commission in the 2007 tariff order, the Appellant's unit engaged in the activities of filling and packing of oil falls under LT VII (A) – Commercial category. The Electricity Board had wrongly been billing the Appellant under LT IV – Industrial category. The State Commission has correctly decided that the Appellant would be charged under the LT VII (A) – Commercial category from the date of detection of the error i.e. 10.03.2008."

As per the above decision of the Commission and the ATE, no past recovery is permissible. **The change of tariff category be applied prospectively from the date of detection of the error which is March 2019.**

(xvi) The Appellant cited the Judgement of Hon'ble Bombay High Court dated 09.06.2020 in Writ Petition No.10536 of 2019 in case of Maharashtra State Electricity Distribution Co. Ltd. V/s. the Principal, College of Engineering Pune wherein retrospective recovery was disallowed.

(xvii) In view of the above, the Appellant prays that the Respondent be directed to cancel the supplementary bill of retrospective recovery of Rs.24,21,865/- for change of tariff

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category from HT-V(A) to HT V(B) –Agricultural Others along with waival of interest and DPC levied.

4. The Respondent filed its reply by its letter dated 12.12.2022. The e-hearing was held on 12.01.2023 through Video Conference where both the parties heard. The Respondent's submission and arguments in brief are as below: -

(i) The Appellant is a HT Consumer (No. 032889022470) from 09.12.2008 having SL of 185 KW and CD of 165 KVA at Sr. No. 102/103 and others, Village-Washivali, Tal-Pen, Dist.- Raigad.

(ii) The Appellant does Floriculture Farming of flowers like Roses, Chrysanthemum, Gerbera, Asparagus, Heliconia etc at controlled climatic conditions in green house with modern techniques. Special facilities and methodologies are developed by the Appellant for growing crops like Lilium, chrysanthemum year-round along with roses, gerberas and other cut fillers.

(iii) The Flying Squad, Pen of the Respondent carried out a detailed inspection of the Appellant on 26.07.2021 in the presence of the representative of the Appellant. It was observed that the Appellant was using power supply for Floriculture Farm, and Green House. However, the Consumer was wrongly billed under HT-V(A) "Agriculture Pumpsets" tariff category. As per MSEDCL Commercial Circular No. 275 dated 18.11.2016, the said consumer should be billed under HT-V(B) "Agriculture Others" tariff category.

(iv) On the basis of the said Report, the tariff category of the Appellant was changed from HT V(A) : HT – Agriculture Pumpsets to HT V(B) : HT – Agriculture Others from August 2021. The Respondent issued a supplementary bill of Rs.61,20,037/- on 15.11.2021 towards tariff difference with retrospective effect from November 2016 to July 2021.

(v) The Appellant by its letter dated 23.12.2021 requested to give an opportunity of hearing for its grievance and settlement after reconsidering the tariff recovery. Accordingly, a hearing was held on 17.01.2021 at Pen Circle Office of the Respondent. The hearing

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was attended by Shri Hamshire Rodriguez, Chief Executive Officer, and Shri Shivaji Sawant, General Manager of Champali Garden Pvt. Ltd. The submission of the Appellant was considered. It was also taken into consideration that the Flying Squad had inspected the site in the year 2018 and the requirement for change in tariff category was missed during the inspection. As a part of the settlement, the supplementary bill of Rs.61,20,037/- issued on 15.11.2021 for the period from November 2016 to July 2021 was revised for only 2 years, for the period from August 2019 to July 2021 for Rs.24,21,865/-, which was communicated to the Appellant vide this office letter No. SE/PC/HTB/850 dated 06.04.2022. **The case was settled with plain recovery of tariff difference.** The proceedings of the hearing are kept on record. The recovery of two years is in line with various orders of Hon'ble Electricity Ombudsman on the same subject matter.

(vi) As the Appellant did not pay the revised supplementary bill of Rs. 24,21,865/-, the same was debited in the electricity bill of the month of May 2022. There was some delay in debiting the supplementary bill in the monthly bill, as time was taken by the Appellant, and he assured payment. However, after settlement, he refused to pay the revised supplementary bill. Hence, the delay occurred due to the Appellant's appeal, and should not be continued as a lapse on the part of Respondent. The delay is due to procedural lapses.

(vii) The Appellant approached the Forum on 16.06.2022. The Forum, by its Order dated 23.09.2022 has rightly rejected the grievance application.

(viii) The Respondent referred the Regulation 4.4.1 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 which is reproduced as below:-

> *"The Distribution Licensee is authorized to recover charges for electricity supplied in accordance with such tariff as may be fixed from time to time by the Commission."*

(ix) The Respondent referred the following orders of Hon'ble Electricity Ombudsman (Mumbai) in support of its case.

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a. Order dated 22nd April 2022 in Representation No. 15,16,17,18 and 19 of 2022 in the matter of change in tariff category and retrospective recovery.
b. Order dated 7th July 2022 in Representation No 66 of 2022 in the matter of change in tariff category and retrospective recovery.

(x) The Respondent relied on the Judgment dated 12.03.2019 of Larger Bench of Bombay High Court in W.P. 10764 of 2011 along with other Writ Petitions on Section 56 (2) of the Act.

(xi) The Respondent cited the Judgment of the Supreme Court in Civil Appeal No. 7235 of 2009 in M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. The issue of bill after noticing tariff difference should not considered to be "deficiency in service". Power supply was continuously provided to the consumer for running its activity. So, it is a matter of "escaped assessment" and not a case of "deficiency in service". This is a case of under billing and the Appellant has to pay for the consumed electricity.

(xii) The Respondent prays that the Appeal filed by the Appellant be dismissed with cost.

Analysis and Ruling

5. Heard the parties. Perused the documents on record. The Appellant is a HT Consumer (No. 032889022470) from 09.12.2008 having SL of 185 KW and CD of 165 KVA at Village-Washivali, Tal-Pen, Dist.- Raigad. The activity of the Appellant is Floriculture / greenhouse farming.

6. The Flying Squad, Pen of the Respondent carried out a spot inspection of the Appellant on 26.07.2021 in the presence of the Appellant, and it was observed that the Appellant is using power supply for plantation of flowers and Green House. However, the Appellant was wrongly billed under HT-V(A) Agriculture Pumpsets tariff category instead of HT-V(B) Agriculture Others tariff category from 01.11.2016 onwards.

7. The Commission by its order dated 03.11.2016 in Case No. 48 of 2016 has created a new tariff Category for HT Agriculture – Others effective from 01.11.2016. The relevant portion of the said tariff order is quoted as below: -

"HT: HT – Agriculture

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HT V (A): HT – Agriculture Pump sets

This category shall be applicable for Electricity / Power Supply at High Tension for pumping of water exclusively for the purpose of Agriculture / cultivation of crops including HT Lift Irrigation Schemes (LIS) irrespective of ownership.

HT V (B): HT – Agriculture Others

This tariff category is applicable for use of electricity / power supply at High Voltage for:

a) Pre-cooling plants and cold storage units for Agricultural Products – processed or otherwise;

b) Poultries exclusively undertaking layer and broiler activities, including Hatcheries;

c) ***High-Technology Agriculture (i.e., Tissue Culture, Green House,*** *Mushroom cultivation activities****),*** *provided the power supply is exclusively utilized for purposes directly concerned with the crop cultivation process, and not for any engineering or industrial process;*

d) Floriculture*, Horticulture, Nurseries, Plantations, Aquaculture, Sericulture, Cattle Breeding Farms, etc;" ……. ……. **(Emphasis added)***

A. ***Commission's Multi Year Tariff order in Case No. 195 of 2017 dated 12.09.2018 and in Case No. 322 of 2019 dated 30.03.2020 have also categorised agricultural activities as per previous Tariff Order of 48 of 2016 as:-***

HT V: HT – Agriculture
HT V(A): HT – Agriculture Pumpsets
HT V (B): HT – Agriculture Others

Considering travel of various Tariff Orders of the Commission, the Tariff Category of the Appellant was/is **HT V(B): HT – Agriculture Others** from 1.11.2016 onwards.

8. The Appellant claimed relief as per Judgment in Writ Petition No. 10536 of 2019 dated 09.06.2020 of Hon'ble Bombay High Court in Case of MSEDCL V/s Principal, College of Engineering, Pune where retrospective recovery was not allowed. The ratio of this Judgement is not

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applicable in the instant case, as the Respondent had changed the tariff code multiple times without any application of the Principal, College of Engineering.

9. The Appellant has quoted the order of the Commission dated 11.02.2003 in Case No. 24 of 2001 and ATE Judgment dated 07.08.2014 in Appeal No. 131 of 2013. However, these are no more relevant in view of the Full Bench Judgment dated 12.03.2019 in W.P. No. 10764 of 2011 and other Writ Petitions of the Bombay High Court interpreting Section 56 (2) of the Act.

10. The Respondent referred to the Judgment of the Supreme Court in Civil Appeal No. 7235 of 2009 in M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. The ratio of this Judgment is not applicable in this case.

11. The Section 56 (2) of the Electricity Act, 2003 is reproduced below:

> *"(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."*

This Section 56 (2) of the Act has been interpreted by the Full Bench Judgment dated 12.03.2019 of the Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions. In accordance with this Judgment, the Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.

The Full Bench of Bombay High Court by its Judgment dated 12.03.2019 in Writ Petition No. 10764 of 2011 with other Writ Petitions has taken the following views regarding Section 56 (2) of the Act which is reproduced below: -

> *"76. In our opinion, in the latter Division Bench Judgment the issue was somewhat different. There the question arose as to what meaning has to be given to the expression "when such sum became first due" appearing in subsection (2) of Section 56.*

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77. *There, the Division Bench held and agreed with the Learned Single Judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench concurred in Rototex Polyester (supra) is that the electricity supply is continued. The recording of the supply is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month to month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount becomes first due. We do not see how, therefore, there was any conflict for Awadesh Pandey's case (supra) was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which was under challenge in Awadesh Pandey's case. That demand was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to Awadesh Pandey, there was no other course left before the Division Bench but to dismiss Awadesh Pandey's writ petition. The reason for that was obvious because the demand was reworked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of Awadesh Pandey. Once the facts in Awadesh Pandey's case were clear and there the demand was within the period of two years, that the writ petition came to be dismissed. In fact, when such amount became first due, was never the controversy. In Awadesh Pandey's case, on facts, it was found that after re-working of the demand and curtailing it to the period of two years preceding the supplementary bill raised in 2006, that the bar carved out by subsection (2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.*

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78. *Assuming that it was and as noted by the Learned Single Judge in the referring order, still, as we have clarified above, eventually this is an issue which has to be determined on the facts and circumstances of each case. The legal provision is clear and its applicability would depend upon the facts and circumstances of a given case. With respect, therefore, there was no need for a reference. The para 7 of the Division Bench's order in Awadesh Pandey's case and paras 14 and 17 of the latter Judgment in Rototex Polyester's case should not be read in isolation. Both the Judgments would have to be read as a whole. Ultimately, Judgments are not be read like statutes. The Judgments only interpret statutes, for statutes are already in place. Judges do not make law but interpret the law as it stands and enacted by the Parliament. Hence, if the Judgments of the two Division Benches are read in their entirety as a whole and in the backdrop of the factual position, then, there is no difficulty in the sense that the legal provision would be applied and the action justified or struck down only with reference to the facts unfolded before the Court of law. In the circumstances, what we have clarified in the foregoing paragraphs would apply and assuming that from the Judgment in Rototex Polyester's case an inference is possible that a supplementary bill can be raised after any number of years, without specifying the period of arrears and the details of the amount claimed and no bar or period of limitation can be read, though provided by subsection (2) of Section 56, our view as unfolded in the foregoing paragraphs would be the applicable interpretation of the legal provision in question. Unless and until the preconditions set out in subsection (2) of Section 56 are satisfied, there is no question of the electricity supply being cutoff. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable.*

As a result of the above discussion, the issues referred for our opinion are answered as under:

(A) ***The issue No. (i) Is answered in the negative. The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.***

(Emphasis added)

(B) *As regards issue No. (ii), in the light of the answer to issue No. (i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period*

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preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.

(C) The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment."

12. The Hon'ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla has held that:

"9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

(Emphasis added)

…… ……"

In view of the above discussions, the Judgments of the Supreme Court and of the Full Bench of Bombay High Court, the Respondent can recover tariff difference only for 24 months retrospectively. However, Section 56(2) does not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under it in the case of a mistake or bona-fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand**.**

13. The supplementary bill of Rs.61,20,037/- was issued on 15.11.2021 for the period from November 2016 to July 2021. The same was revised to 2 years for the period of August 2019 to July 2021 for Rs. 24,21,865/- as demanded by the Appellant, which was communicated to him on

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06.04.2022. The case was finalised with plain recovery of tariff difference. **The Respondent has already extended the benefit of Section 56 (2) of the Electricity Act, 2003, restricting the retrospective recovery to 24 months. However, the first claim was made in November 2021. Hence the period for assessment will be Nov. 2019 to Oct. 2021, instead of Aug. 2019 to Jul 2021. The Appellant has already paid bills with revised tariff from Aug. 2021 to October 2021 i.e. for 3 months out of the above 2 years period.**

14. In view of the above, the Respondent is directed as under: -

(a) to revise the supplementary bill for the period from Nov. 2019 to Oct. 2021 by waiving interest and delayed payment charges till the date of this order.

(b) to allow the Appellant to pay the revised bill in 8 equal monthly instalments. If the Appellant fails to pay any instalment, proportionate interest will be accrued, and the Respondent has liberty to take action as per law.

(c) Compliance to be submitted within two months from the date of issue of this order.

(d) Other prayers of the Appellant are rejected.

15. Forum's order is modified to the extent as above. The Representation is disposed of accordingly.

16. The secretariat of this office is directed to refund Rs.25000/- taken as deposit with the Respondent by adjusting in the Appellant's ensuing bill.

Sd/
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