

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 311 OF 2013 & IA No. 404 of 2013

Dated: 27th May, 2014

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

IN THE MATTER OF

Madhya Gujarat Vij Company Limited,
Sardar Patel Vidyut Bhavan,
Race Course Circle,
Vadodara – 390 007

.... **Appellant**

VERSUS

1. Yash Co-operative Housing Service Society Limited,
Navpad Developers, C/o Jetendra,
Yash Complex, Near Metro Society,
Gotri Road, Vadodara.

..... **Respondent Petitioner**

2. Gujarat Electricity Regulatory Commission,
8th Floor, GIFT ONE,
Road 5 C, Zone 5,
GIFT City,
Gandhinagar – 382 355

.... **Respondent**

Counsel for the Appellant(s) ... Mr. M.G. Ramachandran
Mr. Anand K. Ganesan
Ms. Swapna Seshadri

Counsel for the Respondent(s) ... Mr. Basu Deo Bhomia for R-1
Ms. Suparna Srivastava for R-2

JUDGMENT

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The Appellant- Madhya Gujarat Vij Company Limited, which is one of the Distribution Licensees in the State of Gujarat, has challenged the impugned order, dated 8.8.2013, passed by the Gujarat Electricity Regulatory Commission (in short, the '**State Commission**') in Petition No. 1305 of 2013, by filing the instant Appeal under Section 111 of the Electricity Act, 2003, whereby the State Commission has directed the Appellant-Distribution Licensee to apply the correct tariff category to the two connections as residential category (RGP) in the premises of the Respondent No.1 - Yash Co-operative Housing Service Society Limited (in short, the '**Housing Society**'), who was the Petitioner before the State Commission, from the date of the tariff order, dated 6.9.2011, passed by the State Commission and rectify the billing accordingly. The State Commission has also set aside the supplementary bills issued by the Appellant to Respondent No.1-Housing Society and the payment, if any, made by the Respondent No.1 has been ordered to be refunded to it.

2. The main grievance of the Appellant in this Appeal, as argued before this Tribunal is:

- (a) that the issue relates to the classification of consumer categories and any dispute arising in relation thereto is a consumer dispute, which is necessarily to be adjudicated by the machinery of consumer's grievance set up under Section 42(5) of the Electricity Act, 2003 (in short, '**the 2003 Act**') read with the provisions of Electricity Supply Code and Related Matters Regulations (in short, '**the Supply Code**') framed by the State Commission. Therefore, the State Commission has no jurisdiction to adjudicate upon a dispute arising out of a supplementary bill issued based on classification of Respondent No.1 under a particular consumer category. Another grievance

of the Appellant is that the subject of the dispute was earlier decided by the Consumer Grievance Redressal Forum and Electricity Ombudsman. Once Electricity Ombudsman decides the matter, no appeal lies before the State Commission.

- (b) that in the Joint Inspection Report filed before the State Commission with respect to the arrangement of electricity connection, in the premises of Respondent No.1, there is a specific mention that the use in the premises is both residential and commercial and yet the State Commission has ignored the same while passing the impugned order and treating the entire use as residential only. The State Commission, by the impugned order, has come to the conclusion that electricity connection is used by the Respondent No.1 exclusively only for residential purpose and based on such finding, the State Commission has directed that the Respondent No.1 be billed under residential category (RGP) and not mixed load/commercial category (LTMD).
- (c) that the Respondent No.1 had first approached the Consumer Grievance Redressal Forum under Section 42(5) of the 2003 Act and its representation was rejected by the order dated 28.12.2011. Subsequently, the Respondent No.1 approached the Ombudsman under Section 42(6) of the 2003 Act and this representation was also rejected by the Ombudsman by order dated 21.3.2012 with certain direction to the Appellant. Thereafter, the Respondent No.1 approached the State Commission and the State Commission has entertained the petition by holding that the grievance before the Consumer Grievance Redressal Forum and the Ombudsman was prior to 6.9.2011 (the date of main tariff order) whereas, the grievance was after 6.9.2011.
- (d) that the affidavit of Respondent No.1, regarding fire hydrant, has been filed after conclusion of hearing before the State

Commission without supplying copy of the affidavit to the Appellant. The said affidavit is contrary to the stand earlier taken by the Respondent No.1 regarding connectivity of the fire hydrant and yet the Commission relied upon the said affidavit to treat the use as purely residential in nature under RGP category instead of LTMD category as per the State Commission's tariff order dated 6.9.2011 in case number 1099 of 2011.

3. The relevant facts for the purpose of deciding this Appeal are as under:

- (i) that the Appellant is a Distribution Licensee in the State of Gujarat, discharging the functions of distribution and retail supply of electricity in the identified areas in the State.
- (ii) that the Respondent No. 1 is a co-operative group housing society in the city of Vadodara, Gujarat, who is a consumer of the Appellant, having a total contract demand of 135 KW with consumer numbers 15431/01715/2 and 15431/01725/0 in the name of M/s Navapad Developers.
- (iii) that the Respondent No. 2, State Commission is the Electricity Regulatory Commission for the State of Gujarat exercising powers and discharging functions under the provisions of the Electricity Act, 2003.
- (iv) that the Respondent No.1 is a consumer of the Appellant having two 3-phase LT electrical connections. These connections are meant for services like common use of light, lifts, water pumps and fire hydrant pumps for residential blocks and comprise of two types of loads:
 - (a) load for lighting, fan etc. falling under the LFD-1 category,

- (b) motive power load for running lifts, pumps, etc. falling under the LTP-1 category.
- (v) Both the electricity connections were released on 22.1.1999 and since then (i.e. upto the passing of tariff order, dated 6.9.2011) have been used for common services like lighting as well as motive power load. Though, there ought to have been two different meters connecting the said loads, as per tariff categorized in the relevant tariff order prevailing at that time, there has been a single meter connection to the premises of Respondent No.2 and throughout this period billing has been done taking LFD-1 as the applicable category for residential premises.
- (vi) that at a later stage, the Respondent No.1 - Housing Society, has realized that tariff for LTP-1 category, which was specified in the tariff order by the State Commission for motive power utilization may work out lower than that LFD-1, on which it has been billed by the Appellant and, accordingly, Respondent No.1 has taken up the issue with the Appellant for revising its bills by applying LTP-1 category tariff to the motive power utilized by it at its premises. On refusal of the Appellant for carrying out such revision, Respondent No.1 has taken the matter before the Consumer Grievance Redressal Forum (CGRF) set up under the Supply Code. The Consumer Forum, vide order dated 28.12.2011, has found that for applicability of different tariffs for different loads, separate meter and connection for use of electricity are required. Since, the Respondent No.1 has no separate connection for lifts, etc., its case cannot be considered for a separate tariff. The Forum has noted regarding applicability of tariff, both tariffs have been merged since 1.9.2011 for which the Appellant must give guidelines to Respondent No.1.

- (vii) that before the Ombudsman also, the same point has been reiterated on behalf of the Respondent No.1. Thus, the matter regarding revision of tariff by applying separate tariff category, as claimed by the Respondent No.1, for the period prior to tariff order dated 6.9.2011, has attained finality.
- (viii) that in this background, it is important to disclose that on 27.12.2008, the Respondent No.1 submitted an application to the Appellant claiming refund of 50% of development charges allegedly paid by the Respondent No. 1. In addition to the above, the Respondent No. 1 also sought confirmation of the applicability of LFD-1 tariff.
- (ix) that in response to the above, the Appellant informed the Respondent No. 1 that, as per the records of the Appellant, the Respondent No. 1 had paid no development charges. The Appellant further called upon the Respondent No. 1 for providing a list of the connected load to verify the applicable tariff to the Respondent No. 1. The Respondent No. 1, on 14.7.2009, submitted to the Appellant the list of connected load including lighting and motive power load. In the said communication, the Respondent No. 1 indicated that the capacity of the individual motors was more than 2 BHP and the aggregate motive power load was more than 10 KW for each connection. The Respondent No. 1 further requested the Appellant to place the entire motive power load under the LTP-1 Tariff category as against the LFD-1 category which was then being made applicable.
- (x) that in the meantime, the Respondent No. 1 approached the consumers grievance redressal forum under Section 42 (5) of the Electricity Act, 2003 for redressal of the alleged grievance. In the said complaint, the prayers sought by the Respondent No. 1 were (a) refund of 50% of the development charges claimed to have been paid by the Respondent No. 1; and (b) a

direction to the Appellant to apply the current tariff as claimed by the Respondent No. 1 and refund of excess amount if any along with interest.

- (xi) That with effect from 1.9.2011, the mixed load-residential and commercial purposes were LTMD, which was the tariff category applicable after merging of the LTP-1 category. The LTMD category was applicable for use for mixed purposes. The Respondent No. 1 has also been seeking the application of the appropriate tariff, which was LTP -1. In the circumstances, the Appellant applied the LTMD tariff (mixed load) and, accordingly, revised the bills of the Respondent No. 1.
- (xii) that the issues with regard to electricity connections, provided to individual consumers, procedure for change in categorization, the nature of electricity used in the consumer premises from time to time etc are disputes which are exclusively within the sole jurisdiction of the consumer grievances redressal forum and the Ombudsman under Section 42(5) and (6) of the Electricity Act, 2003 and do not come within the jurisdiction of the State Commission.
- (xiii) that the Respondent No. 1 filed a petition being Petition No. 1305 of 2012 before the State Commission against the Appellant inter-alia seeking the setting aside of the bills raised by the Appellant by application of the tariff categorization and also for refund of alleged excess amounts recovered along with interest.
- (xiv) that the State Commission admitted the Petition filed by the Respondent No. 1 without considering the objection of the Appellant on the issue of jurisdiction of the State Commission.
- (xv) that during the course of the proceedings of the impugned petition, being Petition No. 1305 of 2012, the State Commission

passed interim orders dated 29.5.2013, 26.6.2013, 12.7.2013 and 31.7.2013 and, ultimately, the aforesaid petition has been disposed-off by the impugned order, dated 8.8.2013, by the State Commission holding that the residential tariff category should be applied to the Respondent No. 1 and that the use by the Respondent No. 1 is purely residential. The use for commercial purposes is through a separate diesel generator, which is claimed by the Respondent No.1/Petitioner that it was not taken from the electricity connection from the Appellant. The State Commission has also held that the Appellant has not properly guided the Respondent No. 1 when the Appellant accepted the request of the Respondent No. 1 for verification and change in categorization.

4. We have heard Mr. M.G. Ramachandran & Mr. Anand K. Ganesan, the learned counsel for the Appellant and Mr. Basu Deo Bhomia & Ms. Suparna Srivastava, the learned counsel for the Respondent No. 1 – Housing Society and Respondent No. 2 – the State Commission respectively. We have gone through the written submissions filed on behalf of the Appellant as well as the Respondent - State Commission.

5. The following issues arise for our consideration:

- (A) whether the State Commission has the jurisdiction to entertain consumers disputes under the provisions of the Electricity Act, 2003?
- (B) whether the State Commission had jurisdiction to adjudicate upon the disputes arising out of a supplementary bill issued, based on classification of Respondent No.1 under a particular consumer category?
- (C) whether the State Commission, being State Electricity Regulator, has power to ensure that any particular category of consumers has been rightly considered under the approved tariff category to which it belongs and is charged the tariff approved by the Commission for the said category?

- (D) whether the State Commission was justified in acting upon an affidavit filed by the Respondent No.1 after conclusion of the arguments and after the case was reserved for judgment?
- (E) whether the Respondent No.1 is actually using the electricity connection solely for residential purpose or any part of it is used for commercial purpose or for serving commercial consumers?

ISSUE-WISE OUR CONSIDERATIONS ARE AS FOLLOWS:

6. ISSUE NOS. A, B & C

Since all these issues relate to the jurisdiction of the State Commission, we are taking and deciding them together.

6.1 Before we proceed to decide the aforementioned issues, the disclosure of some interim orders, during the proceedings of impugned petition before the State Commission is necessary, which are as follows:

- (a) that during the first hearing of the petition on 29.5.2013, the State Commission was also fully aware of the nature of proceedings before it and then the Appellant, through its counsel, has clearly stated (in para 2.1 of oral order, dated 29.5.2013) that “as regards the admission of the present matter, he has no objection to the same”. Thus, the Appellant, during the proceeding before the State Commission has just unequivocally submitted to the jurisdiction of the State Commission for adjudication of the controversy raised before it which involves regulation of the functions of the distribution utility. Thus, the petition was admitted after no objection from the Appellant accordingly.
- (b) that the State Commission, on being approached by the Respondent No.1 by filing the petition, as is evident from the interim order dated 26.6.2013, during the proceedings of the impugned petition was fully aware about the Electricity Supply Code and the provision of the 2003 Act.

- (i) The relevant para 3.1 of the interim order, dated 26.6.2013, is reproduced as under:

"3.1 As regards the issue of order dated 21.3.2012 of the Electricity Ombudsman case No. 8 of 2012 is concerned, it is final and same is not challengeable before the Commission. As regards the appropriate tariff under which the petitioner is governed is either the LFD-1 or RGP-1 tariff or LTMD tariff is concerned, it is the duty of the distribution licensee to apply appropriate tariff to the consumer, irrespective of the demand of the consumer for a particular tariff and charge tariff accordingly."

- (ii) The relevant para 3.2 of the impugned order, dated 8.8.2013, is reproduced as under:

"3.2 We feel that in light of the aforesaid circumstances, the present petition is maintainable before the Commission. In case the petitioner has any grievance with regard to an order passed by the Ombudsman, the petitioner has a remedy to approach the Hon'ble Gujarat High Court under Article 227 of the Constitution of India, 1950. Without prejudice to the aforementioned submissions, the petitioner had two connections, one each for Block A and Block B, for common amenities like light, lift, water pump and fire hydrant pump. At this stage, it is pertinent to note that the petitioner did not have separate connections for each amenity like light, lift, water pump and fire hydrant pump. Therefore, the LTMD tariff was being applied to the connections."

- (c) that it appears there-from that the State Commission has decided to adjudicate on the issue of tariff category applicable to Respondent No.1 after passing of the main tariff order dated 6.9.2011, merging with the tariff categories for Respondent No.1
- (d) that in paragraph 3 of the interim order dated 12.7.2013, passed during the proceeding of the petition, the learned State Commission has observed that the said petition vide oral order, dated 29.5.2013, already been admitted under Clause 3.5 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2005 and the State Commission has jurisdiction to decide the correct applicable tariff for the Respondent's connections. After hearing the submissions of both the parties, the State Commission has observed in para 3.1 of the interim

order, dated 12.7.2013, that there is dispute regarding the category/class (i.e. residential and commercial) of the consumer. Therefore, before deciding the correct applicable tariff, it is necessary to find out whether the consumer is using the connections only for residential purpose or the loads connected to these connections also serve some of the non-residential consumers also. The State Commission directed both the parties to jointly inspect the loads connected at the premises of the petitioner, and after site verification, to file a joint report. Liberty was given to both the parties to settle the tariff category matter at that time after the inspection, if they mutually agree on the applicable tariff to the class or category of connections.

- (e) that daily order, dated 31.7.2013, during the proceeding of the petition was passed by the State Commission, which is as under:

"1. The matter was kept for hearing on 23.7.2013. The petitioner and the respondent have made their submission and completed their arguments in the matter.

2. The matter is, now, kept reserved for the order/judgment. However, the petitioner and the respondent are directed to file their written submissions, if any, within three days' time from the date of this order."

- (f) that from a Joint Inspection Report (Annexure-J to the Appeal Paper Book), dated 12.7.2013, it appears, that there are two connections having mixed load, installed for the occupants of two blocks – Block-A and Block-B of M/s YCHSSL for common amenities like common light, lift, electric pumps for water and fire hydrant pump. Both the connections are for more than 40 kW loads, providing facilities to the two blocks consisting of residential and commercial premises. This complex is having 51 NRG P connections and 45 RGP connections. The details of connected load for the two connections – 60kW and 75 kW are presented in the Minutes of Meeting attached therewith.

- (g) that in the Joint Inspection Report, dated 12.7.2013, submitted by the Appellant before the State Commission, the connection details for the premises of the Respondent No.1 have been given as comprising of mix load of lighting and motive power. It has been stated in the aforesaid report that LTMD tariff has been applied as per the provision of the tariff order. After examining the report and considering the pleadings and arguments of the parties, the State Commission has, in para 5 of the impugned order, dated 8.8.2013, observed as under:

"5. Upon query from the Commission, the petitioner submitted that all the loads listed in the said report were used exclusively for the residential units. After going through the list of connected load, the Commission observes that in the two blocks in the commercial complex, there are some commercial units in addition to the residential units. However, the lifts, common lighting and water pumps are used exclusively for residential units. The Commission inquired regarding utilization of fire hydrant pump. The petitioner vide affidavit dated 31.7.2013 submitted that the petitioner society has its own fire fighting system with water as the fire extinguisher. The system contains fire hydrant pump as well as a DG (Diesel Generator) set maintained and operated by society. No fire has taken place in the entire complex till date. However, in case of a fire in any part of Yash Complex, irrespective of commercial/residential unit, the power supply will be switched off and the fire hydrants will be operated by DG set. This system is already in existence and the procedure for the same would be followed."

- (h) Thus, the State commission, in the impugned order, has observed that the connections for common facilities (i.e. the motive load) are to be used for residential units only and the fire hydrant pump is also to run on DG set in case of fire. As per the tariff order, dated 6.9.2011, the merged category under which the connections to the premises of Respondent No.1 are to fall is RGP and not LTMD as has been wrongly applied by the Appellant.
- (i) that the State Commission, also in paras 6.4, 6.6 and 7 of the impugned order, dated 8.8.2013, has observed as under:

"6.4 It was argued that all the loads except the fire hydrant pump are used exclusively for the residential units. Regarding the fire hydrant pump, the petitioner, vide his affidavit dated 26.7.2013, confirmed that the said pump is operated by DG set and not the regular electricity supply. On this point, we

decide that all the connected loads on the two supplies are for residential purpose only."

.....

"6.6 Since the connections are used purely for residential purpose as indicated in the earlier paragraphs, there seems to be no justification for the respondent to charge LTMD tariff, which is to be used for industrial/commercial connection. As none of the common facilities are used for commercial purposes, the tariff category applied by MGVCL is incorrect and unacceptable. As such the petitioner may make a separate connection of the fire hydrant system to the DG (Diesel Generator) as per his affidavit dated 26.04.2013. it is the duty of the respondent to educate the consumer on the applicable category of tariff as opposed to the consumer being overcharged or classified correctly. The respondent, MGVCL, has not properly guided the petitioner leading to the framing of supplementary bills. Hence the Commission directs the respondent to apply the correct tariff category to the aforementioned two connections as RGP from the date of the tariff order and rectify the billings accordingly. The supplementary bills issued are set aside and the payment, if any, made by the petitioner is to be refunded.

7. We order accordingly."

Here we may note that in para 6.6 of the impugned order, affidavit's date is incorrectly mentioned as 26.4.2013, it should be 26.7.2013.

7. Before we deal with the issues raised before us, we deem it proper to note that Yash Cooperative Housing Service Society Limited moved a petition being Petition No. 1305 of 2013, before the State Commission, seeking the following reliefs:

- (i) to withdraw the supplementary bill;
- (ii) to apply tariff correctly from the beginning and to revise the bills issued so far;
- (iii) to refund the excess amount recovered along with the interest as applicable for delayed payment charges; and
- (iv) compensation for not adhering to SOP.

8. The following submissions have been made by the learned counsel for the Appellant:

- (a) that the dispute of a consumer is not maintainable before the State Commission under Section 86(1)(f) of the 2003 Act, the State Commission can adjudicate upon the disputes between generating companies and licensees and the State Commission has no power to entertain consumer grievances or complaints for which a separate mechanism namely; Forum for Redressal of Grievances of the Consumers and on further being aggrieved, any consumer may make representation before the Ombudsman.
- (b) that since, in the instant matter, the Respondent No.1 – Housing Society, has already approached both the authorities, therefore, it was not open to the State Commission to entertain the same grievances.
- (c) that the Hon'ble Supreme Court, in the case of Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd. (2007) 8 SCC 381, held that by virtue of Section 42(5) of the 2003 Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. When an individual has a grievance, he can approach the forum created under Section 42(5) & 42(6) of the 2003 Act. Under Section 86(1)(f) of the 2003 Act, the State Commission, has adjudicatory function, which does not encompass within its domain complaints of individual consumers. The Hon'ble Supreme Court, in the reported case, remanded the matter to the proper forum created under Section 42(5) of the 2003 Act.
- (d) that this Appellate Tribunal, in the matter of Chhattisgarh State Electricity Board v. Raghuvir Ferro Alloys Ltd., Appeal No. 125

of 2006 decided on 28.11.2006, has also held that the State Commission has no jurisdiction to entertain consumers disputes.

- (e) that the Regulation of the State Commission cannot be read in a manner so as to overrule the provisions of the 2003 Act.
- (f) that during the hearing before the State Commission, the State Commission suggested that the Appellant has amended the tariff order and, therefore, it is only the State Commission, which can set aside the action of the Appellant in amending the tariff order.
- (g) that there is no dispute that the tariff order of the State Commission provides for residential category in RGP and mixed load/commercial category in LTMD.
- (h) that in fact, prior to 6.9.2011, the residential category was LFD-1 and mixed load/commercial category was LTP-1. The Respondent No.1 sought change in categorization from LFD-1 to LTP-1 on account of its electricity usage, for which purpose, the proceedings before the Consumer Redressal Forum and the Ombudsman were initiated by the Respondent No.1 and the State Commission cannot exercise jurisdiction, merely because the period in issue is subsequent and the nomenclature of the category is different.
- (i) that the State Commission has erred in relying on the Electricity Supply Code Regulations to contend that the same does not provide for the disputes to be referred to the Consumer Forum and only the State Commission has jurisdiction to deal with complaint of the Respondent No.1.
- (j) that in Regulation 3.5.1 of the Electricity Supply Code dealing with reclassification of consumer provides that if a consumer has been classified in a particular category erroneously, or the

purpose of supply, as mentioned in the distribution service Agreement, has changed or the consumption of power has exceeded the limit of that category or any order of reduction or enhancement of Contract Demand has been obtained, the Distribution Licensee may reclassify him under appropriate category after issuing notice (with minimum notice period of 30 days) to him to execute a fresh Agreement on the basis of the altered classification or modified Contract Demand. If the Consumer does not take steps within the time indicated in the notice to execute a fresh Agreement, the Distribution Licensee may, subject to the provisions of the Acts, Rules and Regulations for the time being in force, after issuing a clear 21 days show cause notice and after considering his explanation, if any, disconnect the supply of power. The Distribution Licensee shall dispose of all such applications for change of tariff class by a Consumer within maximum period of seven days after receipt of such application or communicate the reasons for not changing the tariff class. In case of any dispute, the matter shall be referred to the Forum for redressal of consumer grievances.

- (k) that the State Commission has sought to rely on Regulation 3.4.1 of the Electricity Supply Code to contend that the Appellant has changed the consumer classification itself, by amending the tariff order without approval of the State Commission. This stand of the State Commission is misconceived.
- (l) Regulation 3.4.1 of the Electricity Supply Code, is reproduced below:

"3.4.1 Distribution Licensee may classify and reclassify consumers into various Tariff Categories from time to time as may be approved by the GERC and announce the different Tariffs for different classes of Consumers with the approval of GERC. No additional category other than those approved by GERC shall be created by the Distribution Licensee."

- (m) that both the tariff categories, RGP (Residential) and LTMD (mixed load/commercial), are as created by the State Commission in the tariff order, and they are not created by the Appellant without approval of the State Commission.
- (n) that the State Commission has erred in proceeding on the basis that Regulation 3.5 has not been followed. It was not the case of Respondent No.1 that Regulation 3.4.1 of the Electricity Supply Code has not been followed and this argument on behalf of the State Commission is now being taken as an afterthought.
- (o) that the Hon'ble Supreme Court, in M/s H.P. State Electricity Board v. M/s Gujarat Ambuja Cements Ltd. and others, in Civil Appeal No. 2005 of 2011 vide judgment dated 22.2.2011 has held that the State Commission has no jurisdiction to hear challenge to the order of the Ombudsman and further observed that the High Court should have to decide the matter on merits in the writ petition itself.
- (p) that the State Commission, by the impugned order, has simply looked into the error committed by the Appellant in not treating the Respondent No.1 in the tariff category under which it falls and simply corrected the same to ensure the implementation of its tariff order in letter and spirit.

9. **Per contra**, the learned counsel for the Respondents has taken the following plea:

- (a) that if any distribution licensee unilaterally and without the approval of the State Commission considers the said consumers under a different category and recovers tariff for the said different category, it is tantamount to non-compliance of the tariff order by the distribution utility, for which the State Commission has the necessary jurisdiction to intervene and direct the distribution utility to comply with the tariff order by adhering to the consumer categories as approved under the

tariff order and recover tariff as approved for that category. Adjudication of consumer disputes arising out of classification and re-classification of consumer categories is thus different and distinct from ensuring compliance of the tariff order, and the State Commission has rightly entertained the petition of the Respondent No.1 and passed the legal order.

- (b) the impugned order has not suffered from any jurisdictional error as it was the duty of the State Commission to ensure that the distribution utility is complying with the tariff order in letter and spirit and is charging as per the category of consumers, as determined in the tariff order.
- (c) that if any distribution licensee is found violating the tariff order or not complying with it in letter and spirit and is trying to misinterpret it while applying to certain category of consumers, then it is a statutory duty of the State Commission to look into the matter and ensure that the consumers are charged tariff for the category as created and approved by the State Commission. The State Commission, being State Electricity Regulator, is fully competent to look into the fact that the particular class of consumers or particular category of consumers is not over-charged under any so called new nomenclature or by making quite new categories without the approval of the State Commission, otherwise, the provision of Electricity Act, 2003, State Commission's Regulations and National Tariff Policy including Supply Code, would be put to misuse by some errant distribution licensees. Even the Ombudsman, as stated above, has clearly observed that the distribution company has not properly guided the Housing Society.
- (d) It is true that the individual grievances are beyond the jurisdiction of the State Commission and the State Commission has no jurisdiction to hear the challenge to the Ombudsman's

order. Both the Hon'ble Supreme Court's judgments, cited by the learned counsel for the Appellant, are quite distinguishable from the facts, situation and circumstances of the matter in hand.

9.1 We find in the submission raised on behalf of the Respondent on this issue related to jurisdiction of the State Commission and we agree to the same. The submissions raised by the Appellant on this issue are quite distinguishable and the rulings of the Hon'ble Supreme Court cited, are also in no help of the Appellant in the instant matter.

10. **ISSUE NOS. D & E**

10.1 Since both the issues are interconnected, we are taking and deciding them together.

10.2 The following submissions have been made by the learned counsel for the Appellant:

- (a) that the State Commission, in the impugned order, has wrongly come to the finding that the electricity connection is being used solely for residential purposes and not for servicing any commercial consumers. The finding arrived at by the State Commission is only based on an affidavit filed by the Respondent No.1 after the hearing was concluded in the matter and without even copy to the Appellant. It was claimed in the affidavit that hydrant pump is not using the electricity from the Respondent No.1.
- (b) that the Respondent No.1 clearly admitted on 23.7.2013 during the hearing before the State Commission that both, residential and commercial consumers were serviced by the hydrant pump, which was using electricity from the Appellant.
- (c) that the affidavit is not "evidence" within the meaning of Section 3 of the Evidence Act, 1872, and the affidavit can be used as

“evidence” only if, for sufficient reasons, the court passes an order under Order 19 of the Code of Civil Procedure, 1908, and the affidavit filed after the final hearing in the matter could not be relied upon by the State Commission.

- (d) that the conduct of Respondent No.1 has also not been bonafide. The Respondent No.1 initially asked for change from residential category (LFD-1) to commercial/motive category LTP-1, on the basis that the connection is used for both domestic and commercial purposes. This was on the assumption that the commercial tariff is cheaper. However, when the Respondent No.1 found that the residential tariff is cheaper, he has changed his stand that there is no commercial use.
- (e) that after 6.9.2011, the date of main tariff order, LTMD is a commercial category, which was applied to the Respondent No.1. The Respondent No.1, however, stated that the residential tariff, RGP is to be applied, which is equivalent to LFD-1.
- (f) that the contention, now taken by the State Commission that LTMD is only the LTP-III category earlier prevalent is incorrect. The tariff order, dated 6.9.2011, provides that LTMD is a residuary category and includes LFD-II, LTP-I, LTP-II and LTP-III having contract demand of 40 KW.
- (g) that the State Commission is now, seeking to contend that unless the earlier tariff category was LTP-III, LTMD cannot be applied, which is contrary to the impugned order also.

11. The learned counsel for the Respondents have vindicated and defended the reasoning mentioned in the impugned order.

11.1 We find that the Appellant's contention that the Respondent No.1 filed an affidavit before the State Commission after conclusion of the hearing and after the matter was reserved for judgment, is of no consequence. While keeping the matter reserved for judgment, the State Commission gave liberty to the parties to file their respective written submissions in the matter, within three days from that date.

11.2 We further observe that the State Commission has not passed the impugned order, merely on the basis of the content of the affidavit but has also scrutinized the main tariff order, the categories created and approved by it. So far as, the Appellant's contention regarding contents of the Joint Inspection Report is concerned, the State Commission collated the same with the other material evidence available on record and passed the impugned order without committing any illegality or perversity.

11.3 We agree to all the findings recorded by the State Commission while passing the impugned order. The State Commission has rightly recorded the finding that since both the connections of the Respondent No.1 – Housing Society are used purely for residential purposes, there seems to be no justification for the distribution licensee to charge LTMD tariff which is to be used for industrial/commercial connections. As none of the common facilities are provided for commercial purposes, the tariff category applied by the Appellant is incorrect and not acceptable. The State Commission, in the impugned order, has given freedom to the Respondent No.1 to make a separate connection of the fire hydrant system to DG (Diesel Generator) as per its affidavit.

11.4 All the findings of the State Commission, recorded in the impugned order, are just, legal, proper and based on correct appreciation of evidence and the other material available on record and we approve the same. There is no infirmity or perversity or illegality in the impugned order of the State Commission as no utility can be left free to create category as per its wishes and desires and over-charge from any particular category of

consumers without there being any proper legal justification and that too in defiance of the tariff order of the State Commission

11.5 Thus, we agree to all the findings/conclusions recorded by the State Commission in the impugned order. All the issues are, therefore, decided against the Appellant as we find no force in the Appellant's contentions on the issues. The Appeal is liable to be dismissed and the impugned order is liable to be affirmed.

12. **SUMMARY OF OUR FINDINGS:**

12.1 The State Commission has no jurisdiction to entertain the individual consumer disputes under the provisions of Electricity Act, 2003. As observed by the Hon'ble Supreme Court in Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd. (2007) 8 SCC 381 and in M/s H.P. State Electricity Board v. M/s Gujarat Ambuja Cements Ltd. and others, in Civil Appeal No. 2005 of 2011, vide judgment, dated 22.2.2011, the State Commission, being State Electricity Regulator, is under statutory obligation to ensure that any particular category of consumers has been rightly considered under the approved tariff category to which it belongs and is charged the tariff approved by the State Commission for the said category because the State Commission is under statutory duty or obligation to ensure the complete and full compliance of its tariff order in letter and spirit by the distribution utility and to direct the distribution licensee to comply with the tariff order by adhering to consumer categories as approved under the tariff order and recover tariff as approved for that category. Thus, the adjudication of consumer disputes arising out of classification and reclassification of consumer categories is quite different and distinct from ensuring compliance of the tariff order in letter and spirit. The State Commission, being State Electricity Regulator, is fully competent and empowered to look into the fact that the particular class of consumers or category of consumers is not over-charged under any so called new nomenclature or by making quite new categories without the approval of the State Commission, otherwise, the provision of Electricity

Act, 2003, State Commission's Regulations, Supply Code and National Tariff Policy, would be put to misuse by some errant distribution licensees.

12.2 The State Commission, in the facts and circumstances of the case in hand, was fully justified in considering the affidavit filed by the Respondent after conclusion of arguments but before pronouncement of judgment and in comparing the contents of the affidavit with other evidence or material made available on record.

12.3 The State Commission has correctly and legally arriving at the finding or the conclusion that the Respondent No.1 is actually using the electricity connection solely for residential purpose and the Appellant has illegally and wrongly applied the tariff category to the two connections of the Respondent No.1 – Housing Society.

13. In view of the above discussions, this Appeal is dismissed as it has no merits and the impugned order dated 8.8.2013 is hereby affirmed. No order as to costs.

PRONOUNCED IN THE OPEN COURT ON THIS 27TH DAY OF MAY, 2014.

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

√ REPORTABLE / NON-REPORTABLE

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