



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Road Transport & Highways)

Project Implementation Unit

Plot No. 65, Kothari Layout, Venkatesh Nagar,
GULBARGA - 585 102 (Karnataka State)



BHARATMALA
ROAD TO PROSPERITY

Office : 08472 - 253756

Mob. : 8130006072

Web Site : www.nhai.org

E-mail : piugulbarga@nhai.org

E-mail : nhaipiugulbarga@gmail.com

Ref: NHAI/PIU/GLB/NH-9/Elect./2024-25/1574

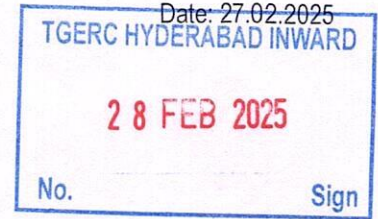
To

The Chief Engineer (IPC & RAC),

Northern Power Distribution Company of Telangana Limited ("TGSPDCL")

H. No. 2-5-31/2, Vidyuth Bhawan, Nakkalagutta

Hanumakonda - 506 001



Sub: Submission of suggestions by NHAI on the Revised ARR, FPT and CSS proposed for FY 2025-26 (petition filed by TGSPDCL and TGSPDCL for approval in O.P. Nos. 21 and 22 of 2025) – Request to Restore Power Connections for the Street Lighting provided on the National Highways under the Tariff Category "LT-VI(A): Street Lighting" – Reg.

Ref: Public Notices dated 07.02.2025, published in the Deccan Chronicle, New Indian Express, Andhra Prabha & Siasat Daily.

Respected Sir / Madam,

We write on behalf of the National Highways Authority of India ("NHAI") to submit our suggestions in O.P. Nos. 21 and 22 of 2025 ("Tariff Petitions") filed by Southern Power Distribution Company of Telangana Limited ("TGSPDCL") and Northern Power Distribution Company of Telangana Limited ("TGSPDCL") (collectively "Telangana Discoms") for approval of Revised ARR, FPT and CSS for FY 2025-26, in response to the Public Notices dated 07.02.2025. The detailed submissions on behalf of NHAI are enclosed to this letter for your kind consideration please.

Further, NHAI also wishes to submit that it will be making its submissions in person during the Public Hearing scheduled on 21.03.2025 (for TGSPDCL) from 10:30 hrs and for this purpose, representatives of NHAI would be present in the said Public Hearing.

Thank you for the opportunity.

Yours faithfully

(Mahesh B. Patil)

DGM(T) & Projector Director

PIU – Gulbarga, NHAI

Contact: 8130006072

Email: piugulbarga@nhai.org

End: Submissions/Objections to the Revised ARR, FPT and CSS filed by TGSPDCL & TGSPDCL for FY 2025-26 (No. of Pages-17) along with Annexures.

Copy Submitted to:

- ✓ **The Commission Secretary, Telangana Electricity Regulatory Commission, Vidyuth Niyantran Bhavan, G.T.S. Colony, Kalyan Nagar, Hyderabad – 500 045, secy@tserc.gov.in**
- The Regional Officer, NHAI Bengaluru for information please**

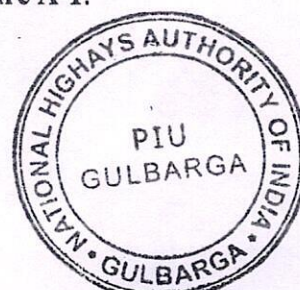
SUBMISSIONS AND OBJECTIONS BY NATIONAL HIGHWAYS AUTHORITY OF INDIA (NHAI) ON TARIFF PROPOSALS BY TELANGANA DISCOMS FOR FY 2025-26 (O.P. NOS. 21 & 22 OF 2025)

I. CONSPECTUS

1. The National Highways Authority of India ("NHAI") is filing the present submissions/ objections to O.P. Nos. 21 and 22 of 2025 filed by the Southern Power Distribution Company of Telangana Limited ("TGSPDCL") and Northern Power Distribution Company of Telangana Limited ("TGNPDCL") (collectively "Telangana Discoms") for determination of Revised Aggregate Revenue Requirement ("ARR") and Tariff Proposals for retail supply business for FY 2025-26 (collectively "Tariff Petitions") and Public Notice dated 07.02.2025 inviting objections / suggestions on the said tariff petitions.
2. NHAI is an autonomous agency of the Government of India, established under the Ministry of Road Transport and Highways and is inter-alia responsible for the development, maintenance, and management of the National Highways network in India.
3. NHAI had awarded the work of development and operations and maintenance of four laning of Maharashtra-Karnataka Border to Sangareddy section of NH-65 (Old NH-9), which passes through the State of Telangana. The work has been completed and the said stretch of the National Highway is operational. For the purpose of street lighting at different locations on the stretch of National Highway falling under the State of Telangana, NHAI has obtained the following power connections, under the power tariff category "LT-VI(A) Street Lighting":-

S.No.	Division	Sub-Division	Section	No. of services
1.	Sangareddy	Sangareddy	Sangareddy Town-2	1
2.	Sangareddy	Sangareddy	Sangareddy Rural	1
3.	Sangareddy	Sadasivpet	Sadasivpet	6
4.	Sangareddy	Sadasivpet	Munipally	2
5.	Sangareddy	Sadasivpet	Sadasivpet Rural	2
6.	Zaheerabad	Zaheerabad-Town	Zaheerabad- Town	3
7.	Zaheerabad	Zaheerabad- Town	Zaheerabad- Rural	2
8.	Zaheerabad	Zaheerabad- Town	Kohir	3
9.	Zaheerabad	Zaheerabad- Town	Mannapur	4

4. However, *vide* Letter dated 22.04.2022, TGSPDCL has changed the category for the above power connections from 'LT-VI (A) Street Lighting' to 'LT-II(B) Commercial' category and consequently issued assessment notices dated 16.06.2022, 20.06.2022 and 21.06.2022 directing for payment of back-billing charges amounting to Rs. 2,51,92,598 till June 2022 ("Assessment Notices"). Copies of certain Assessment Notices are annexed as **Annexure A-1**.



5. *Vide* letters dated 03.06.2022, 27.06.2022 and 05.11.2024, NHAI has requested TGSPDCL for maintaining the tariff category for Street Lighting for National Highways as 'LT-VI(A) Street Lighting'. However, TGSPDCL disconnected the electricity connections at the Toll Plaza location in Kamkole village, Sangareddy, Telangana. Considering the safety of the road users, the amounts demanded by TGSPDCL under the assessment notices were paid under protest. Copies of NHAI's letters dated 03.06.2022, 27.06.2022 and 05.11.2024 to TGSPDCL are annexed as **Annexure A-2**.

Filing of Tariff Petitions

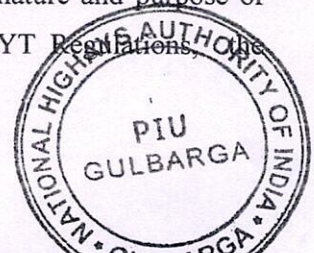
6. As per the proposed tariff schedule for FY 2025-26 submitted by Telangana Discoms under the Tariff Petitions, Street Lighting on National Highways have not been categorised under the "**LT-VI (A) Street Light**" category, and the category is restricted to Panchayats, Municipalities and Municipal Corporations.
7. For the purpose of the above Petitions, on 07.02.2025, Telangana Discoms issued a public notice, calling upon comments / objections from the consumers / stakeholders on the Tariff Petitions, by 28.02.2025.
8. Basis past practices and the assessment notices issued by TGSPDCL, it appears that Telangana Discoms will consider Street lighting on National Highways under 'LT-II (B) – Non-Domestic / Commercial' category. Accordingly, NHAI is submitting their comments / objections *qua* non-consideration of 'Street Lighting on National Highways' under the "**LT-VI (A) Street Light**" category in O.P. Nos. 21 and 22 of 2025, as under: -

II. SUBMISSIONS

A. Use of electricity by streetlights on National Highway does not qualify as commercial use

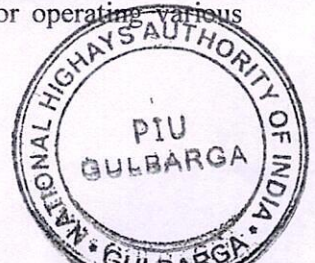
9. In terms of the Electricity Act and the enabling regulations, categorisation of consumers is primarily based on nature and purpose of the consumption of power by the consumer. It is submitted that Section 62(3) of the Electricity Act, 2003 ("**Act**") confers the Appropriate Commission with the power to classify and differentiate between consumers based on the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, **the nature of supply and the purpose for which the supply is required**.
10. Clause 94.1 of the Telangana State Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2023 ("**TSERC MYT Regulations**") confers the same power to this Hon'ble Commission. In terms of Clause 94.1, this Hon'ble Commission may categorize consumers on basis of different parameters such as load factor, consumption, voltage, nature and purpose of supply. Further, in terms of Clauses 94.2 and 94.3 of the TSERC MYT Regulations,

BM



distribution licensee is required to submit consumer category-wise and voltage-wise Cost of Service in its Petition for determination of retail supply tariff and this Hon'ble Commission is required to determine the Full Cost tariffs for retail sale based on such proposal of the distribution licensee.

11. In terms of Section 62(3) of the Act and Clause 94.1 of TSERC MYT Regulations, one of the tests of categorization / classification of a consumer in different / distinct tariff categories is based on the nature and purpose of usage of supply by such consumers.
12. As per Clause 94.3 of the TSERC MYT Regulations, Telangana Discoms submitted their proposal for category-wise retail tariff before this Hon'ble Commission for approval. In terms of the proposed retail tariff schedule submitted by Telangana Discoms, Street Lighting on National Highways have not been categorized under '**LT-VI (A) Street Light**' category nor in its definition or Applicability and it appears that Telangana Discoms will consider Street light on National Highways under '**LT-II(B) Non-domestic / Commercial**' category owing to no specific reference to the street lights provided for public on National Highways.
13. It is submitted that in terms of this Hon'ble Commission's Tariff Order dated 28.10.2024 on ARR for Retail Supply Business for 5th Control Period and Retail Supply Tariffs for FY 2024-25 ("**Retail Tariff Order dated 28.10.2024**"), 'LT-II Commercial Category' is applicable to the following:-
 - (a) A consumer who undertakes commercial activity;
 - (b) A consumer who undertakes non-domestic activity;
 - (c) A consumer who does not fall under any other LT category i.e., LT-I, LT-III to LT-IX categories.
 - (d) Consumers who avail supply of energy for lighting, fans, heating, air- conditioning and power appliances in Commercial or Non-Domestic premises such as shops, business houses, offices, hotels, clubs, restaurants, theatres, warehouses, godowns, storage units or of such similar nature;
 - (e) Educational institutions run by individuals, Non-Government Organizations or Private Trusts including student hostels of such educational institutions.
14. Further, the sub-category LT-II(B) is applicable to such non-domestic/commercial consumers having consumption above 50 units per month.
15. In terms of the above, it is evident that LT-II category is applicable to premises which:
 - (a) Use electricity at low voltage in non-domestic or commercial premises,
 - (b) Such usage of electricity is for commercial consumption meant for operating various appliances, and

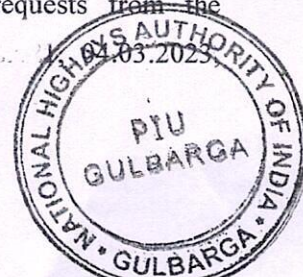


- (c) Usage of electricity for operation of various appliances is for purposes such as lighting, heating, cooling, entertainment /leisure, etc.

Hence, it is only if the premises is used for consumption of electricity for appliances, motor pump, heating elements, or commercial use, can it be said to fall under the 'LT-II Commercial' category. In other words, the genus, or the common thread running through all the entries in LT- II category, is that they are premises where electricity is consumed for a commercial purpose.

16. 'Commercial use' would mean the use of certain mercantile products, tools or intellectual property for financial gain. It is only if street lighting on National Highways are used for commercial purpose, i.e., to make financial gain, can its classification under LT-II Commercial category be justified. It is pertinent to note that object of providing lighting at National Highways is to ensure public safety and avoid accidents. Provision of lighting at places such as service roads, bus bays, major bridges, junctions, etc., on highways is evidently not for any commercial purpose, nor can such lighting be equated to consumption of electricity for operating various appliances used for commercial purposes such as cooling, cooking, washing etc. Accordingly, street lighting on National Highways cannot be categorised under the LT-II Commercial category.
17. In terms of the Order dated 27.05.2022 passed by Forum for Consumer Grievance Redressal in Representation No. 12 of 2024 titled *M/s Dilip Buildcon Mayur Layout Yamatval v. Executive Engineer MSEDCL, Yamatval Circle, I*, it was held that National Highway is a public street. For electricity used in lighting of public streets or thoroughfares, the only requirement is that it should be open for use by the general public and it is not necessary that such use should be free of charge. Accordingly, levy of toll would not mean that the National Highway is not open for use by the general public. The toll fee charged is only towards recovery of the costs incurred in the construction of such National Highways, and would not change the character of the lighting from public function to commercial. This position has been upheld by the Bombay High Court *vide* judgment dated 23.10.2023 in W.P. No. 7504 of 2022 titled *Maharashtra State Electricity Distribution Company Limited vs. DBL Mahagaon, Kinhi & Ors.* ("DBL Judgment") and the Hon'ble Supreme Court in *MSK Projects (I) (JV) Ltd. vs. State of Rajasthan*, (2011) 10 SCC 573. Copy of the *DBL Judgment* dated 23.10.2023 passed by Bombay High Court in W.P. No. 7504 of 2022) and *MSK Projects (I) (JV) Ltd. vs. State of Rajasthan*, (2011) 10 SCC 573 are annexed as **Annexure A-3 and Annexure A-4**, respectively.
18. It is further submitted that from time to time, the District Administrative Authorities and local Police specifically urge NHAI to install lightings at different junction points on highways with the view to avoid accidents and ensure public safety. However, its categorisation under LT-II Commercial category would discourage NHAI to consider any such requests from the administrative authorities and local police. Copies of letters dated 03.03.2025

R



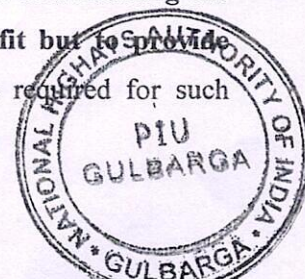
10.10.2024, and 18.02.2025 from District Collector, Sub-Divisional Police Officer and Superintendent of Police, Sangareddy District to NHAI are annexed as **Annexure A-5**.

19. In view of the foregoing, it is submitted that since street lighting on National Highways is not for any commercial use, it cannot fall under the 'LT-II(B) Commercial' Category. Any categorization of street lighting on National Highways under LT-II(B) category is arbitrary, unreasonable and contrary to the *DBL Judgement*.

B. Hon'ble Bombay High Court and APTEL have already held that street lighting on National Highways shall be categorised under LT-VI Street Light Category

Re: DBL Judgment

20. The question of categorization of street lighting on National Highways stands settled in terms of the *DBL Judgement*, the issue involved under the said judgment is similar to the issue involved in the instant case. In the *DBL Judgment*: -
- (a) DBL was the concessionaire incorporated solely for the purpose of executing the concession agreement with NHAI, and to discharge the obligations of the works provided therein i.e., four-laning of a road on hybrid annuity mode. DBL secured electricity connection for instalment of streetlights on the said road and it was granted under tariff LT-VI(A) category for the purpose of street lights on the national highway project.
- (b) However, MSSEDCL made reclassification from LT-VI(A) category to LT-II(B) category and thereby made upward revision of electricity bills and collected amounts from DBL on account of re-categorisation.
- (c) Aggrieved thereby, DBL approached the Consumer Grievance Redressal Forum, Amravati ("CGRF") challenging the reclassification. The said representation came to be allowed directing the MSSEDCL to retain the category of connection i.e. 'streetlight' category, and adjust the difference of amount collected from DBL by MSSEDCL on account of reclassification.
21. The Hon'ble Bombay High Court upheld the direction of the CGRF and *inter-alia* held that the usage of streetlights on National Highways is not for commercial reasons and is not meant to operate various appliances used for the purposes specified in LT-II, which was a pre-requisite to apply LT-II category i.e. the commercial category tariff. The mere fact that streetlights were installed on over bridges and under bridges or at bus bay and bus shelter locations, built up sections on the project highways, does not mean that the use of electricity was for commercial consumption.
22. Further, the Hon'ble Bombay High Court observed that NHAI comes under the Ministry of Roadways under the Government of India; **the Highway is for the purpose of benefiting the general public at large, and the purpose of streets is not to earn profit but to provide connectivity and facilities to citizens of India.** A huge investment was required for such



construction of National Highways, and therefore toll was being collected; however, it would not make the activity commercial. DBL was merely a concessionaire in respect of the project and its facilities, and did not exercise any proprietary, operational and commercial control over it. Relevant extracts of the *DBL Judgment* are as under:-

"21. It is pertinent to note that, the street light category tariff i.e. LT-VI is applicable for the electricity used for lighting of public streets thorough fares which are open for use by the general public at Low/Medium Voltage and at High Voltage. Street lights in residential complexes, commercial complexes, industrial premises etc. will be billed at the tariff of the respective applicable categories.

22. Whereas, LT-II i.e. the non-residential/commercial tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating cooling, cooking, washing/cleaning, entertainment/leisure and water pumping in, but not limited to, the premises enumerated under the said category.

23. Thus, it is apparent that the usage of electricity is relevant in the matter at the hand. It is not the case of the petitioner that the street lights are provided for the entire stretch of the highway. From the record, it can be seen that the street lights are provided at certain specific places like service roads, intersection of villages and towns. The photographs filed by the respondents along with the reply support the case of the respondent that the street lights are installed for use of local residents free of charge.

24. The petitioner has not pointed out anything to show that the usage is commercial which is meant for operating various appliances used for purposes of specified in LT-II, which is the pre-requisite to apply LT-II category i.e. the commercial category tariff.

25. The mere fact that street lights are installed on over bridges and under bridges or at bus bay and bus shelter locations, build up sections on the project highways, is not sufficient to arrive at a conclusion that the use of electricity is for commercial consumption. Similarly, the fact that the street lights are installed on certain highways is not sufficient to hold that it is for commercial consumption and not for the use of general public.

26. Moreover, the NHAI comes under the Ministry of Roadways under the Government of India. The highway is for the purpose of benefiting the general public at large and the purpose of streets is not to earn the profit but to provide connectivity and facilities to the citizens of India. A huge investment required for such construction of highways and therefore, the toll is being collected. However, it will not make the activity as commercial one.

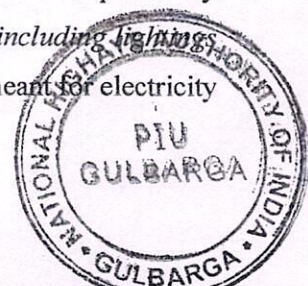
27. Thus, I find substance in the submission of the learned counsel for the respondent that the respondent is merely a concessionaire in respect of the project and its facilities and do not exercise any proprietary, operational and commercial control over the project facilities"

[Emphasis Supplied]

Re: Dilip Buildcon Judgment

23. The *DBL Judgment* was followed by the Hon'ble Appellate Tribunal for Electricity ("Hon'ble APTEL") in its Judgement dated 09.09.2024 in Appeal No. 230 of 2024 titled *M/s Dilip Buildcon Limited & Anr. vs. Maharashtra State Electricity Regulatory Commission & Anr* ("Dilip Buildcon Judgement"). The Appeal was filed against Tariff Order dated 31.03.2023 passed by Ld. MERC in Case No. 226 of 2022, to the extent that "Toll collection Plazas including lighting on Express/ National/ State Highways" was categorised under LT-II category meant for electricity

Handwritten signature



supplied for non-residential and commercial purposes, as opposed to LT-VI category meant for street lights for local bodies, municipal bodies and other places/premises meant for public interest/open to the public for use free of charge.

24. The Hon'ble APTEL *inter-alia* held that streetlights located on National Highways (other than those provided in and around the Toll Plazas and in places where commercial activities are carried on) should be treated under the "LT-VI Street Light" category and not under LT-II commercial category, as under:-

"IV. ARE 'LIGHTINGS ON EXPRESS / NATIONAL / STATE HIGHWAYS' A STAND ALONE CATEGORY?"

B. ANALYSIS

Section 62 of the Electricity Act relates to determination of tariff. Section 62(3) enables the Appropriate Commission to differentiate between consumers according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. Classification of consumers of electricity, on the basis of different parameters, is a power conferred on the Regulatory Commissions under Section 62(3) of the Electricity Act.

In the exercise of the powers conferred by clause (h), (i), (j), (l), (m), (o), (y), (zd), (ze), (zf), (zg), (zh) and (zp) of sub-section (2) of Section 181, read with the proviso to sub-section (1) of Section 36 and other provisions of the Electricity Act, the Maharashtra Electricity Regulatory Commission ("the MERC" for short) made the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019 ("the 2019 Regulations" for short).

[...]

Clause 91 of the 2019 Regulations relates to determination of Retail Supply Tariff. Clause 91.1 (like Section 62(3) of the Electricity Act) enables the Commission to categorize consumers on the basis of their load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

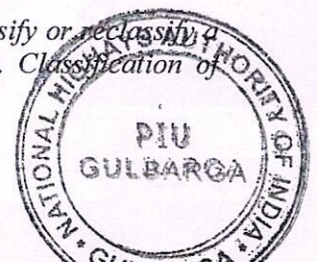
[...]

In the exercise of the powers conferred by Section 43(1) read with Section 181(2)(i) and other provisions of the Electricity Act, the MERC made the "Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulation 2021 (the "Supply Code" for short). Clause 1.5 thereof makes the Supply Code applicable to all Distribution Licensees and all Consumers in the State of Maharashtra. Regulation 2.2(l) classifies consumers into three broad categories (i) Low Tension Consumers (ii) High Tension Consumers and (iii) Extra High-Tension Consumers. Regulation 2.2(q) defines "Designated Consumers" to mean consumers using or engaged in the processes mentioned in the said clause, which includes Malls, Hotels, Banking etc. and which are connected at a supply voltage of 11 kV and above.

Regulation 14 of the Supply code relates to classification and reclassification of consumers into tariff categories and, thereunder, Distribution Licensees may classify or reclassify a consumer into various Commission's approved tariff categories based on the purpose of usage of supply by such consumers. Under the proviso thereto, the Distribution Licensee shall not create any tariff category other than those approved by the Commission i.e., the MERC.

The power conferred by Regulation 14 on a Distribution Licensee, to classify or reclassify a consumer, is subject to MERC having approved such tariff categories. Classification of

R



consumers into distinct tariff categories must also be based on the purpose of usage of supply by such consumers. **The test of classification/re-classification of a consumer, in different/distinct tariff categories, is the purpose for which supply of electricity is used by such a consumer.**

As stated in the tariff schedule, "category LT-II : LT-Non-Residential or Commercial" is applicable to premises which (i) use electricity at low/medium voltage in non-residential, non-industrial and or commercial premises, (ii) such usage of electricity is for commercial consumption meant for operating various appliances, and (iii) usage of electricity for operation of various appliances is for purposes such as (a) lighting, (b) heating (c) cooling (d) cooking (e) entertainment/leisure and (f) water pumping. It is, however, made clear that the tariff category is not limited to the premises referred to in clauses (a) to (k) thereunder. What is sought to be conveyed thereby is that, as so long as the aforesaid criteria is satisfied, other premises may also fall within "LT-II: LT-Non-Residential or Commercial" category.

The question which necessitates examination is whether (i) "Toll Collection plazas" and (ii) "lighting on Express/National/State Highways" satisfy the aforesaid test, and thereby fall within "LT-II : LT - Non Residential or Commercial" category. It is only if the premises is used for consumption of electricity for commercial use can it be said to satisfy the afore-said requirements. "Commercial use" would mean the use of certain mercantile products, tools or intellectual property for financial gain. It is only if "Toll Collection plazas" and "lighting on Express/National/State Highways" are used for commercial purposes, i.e. to make financial gain, can their classification under "LT-II : LT - Non-Residential or Commercial" category be justified.

[...]

By the use of the word "including", the scope of "toll collection plaza", inserted in L.T.II category, has been expanded to also include, within its ambit, "lightings on National Highways". **Consequently, it is only such lightings on National Highways which are associated with or form part of "toll collection plazas" which fall within LT-II category, and not lighting on the entire stretch of the National Highway as, otherwise, there was no justification in including "lightings on National Highways" along with "toll collection plaza", and "lightings on National Highways" could well have been inserted as a separate and distinct entry similar to exhibition centres, warehouses/ godowns, resorts, and canteens/ cafeterias.**

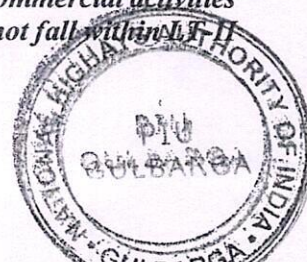
[...]

As noted hereinabove, the principle of ejusdem generis means that, where general words follow enumeration of persons or things by particular and specific words, the general words must be understood as applying to persons or things of the same general kind or those specifically enumerated. **The genus, or the common thread running through all the entries in L.T.II category, is that they are premises where electricity is consumed for a commercial purpose. All the specified words in Clause 7.22.10 are premises where commercial activities are carried on or, in other words, premises which are put to commercial use. Toll Collection Plazas are places/premises where toll is collected for the use of the Highway by different kinds of motor vehicles which can, possibly, be held to be a commercial activity. However "lighting on National Highway", if disassociated with "toll collection plazas", would not fit in with other entries in L.T.II category, as the entire stretch of the National Highway would not constitute premises where commercial activity is carried on.**

[...]

The submission of MSEDCL that all street lightings, on the entire stretch of the National Highways, would fall within LT-II category does not, therefore, merit acceptance. Street lighting on the National Highway, other than those where some form of commercial activities are carried on in proximity to the toll collection plazas, would therefore not fall within LT-II category.

Handwritten signature



[...]

V. DO STREETLIGHTS ON THE ENTIRE STRETCH OF THE NATIONAL HIGHWAY MEET THE CONDITIONS STIPULATED FOR LT II CATEGORY?

D. ANALYSIS:

The MERC, in its order in Case No. 12 of 2011 dated 17.08.2012, Case No. 322 of 2019 dated 30.03.2020 and in Case No. 226 of 2022 dated 30.03.2023, has classified commercial premises, used for commercial consumption, under LT-II category. While a toll collection plaza can, possibly, be held to be a commercial premises, since toll is collected there at towards user charges and, by use of the word "including", lighting on National Highway in proximity to the toll collection plaza (where commercial activities can be said to be carried on) would also constitute a commercial premises used for commercial purposes, it is difficult to hold that the entire stretch of the National Highway, where street lighting is provided, would also constitute a commercial premises where electricity is consumed for a commercial purpose.

As noted hereinabove, the agreement, between the first and the second appellants, does not require street lighting to be provided for the entire length of the National Highway, but only for a part thereof such as major junctions, road over bridges etc. Such lightings are required to be provided for the purposes of safety and to avoid accidents, and not for carrying on any commercial activity

...

The submission that it is only the roads built by local bodies which would not fall within LT-II category necessitates rejection, since no such restriction is placed by the parameters prescribed either for L.T. II or L.T.VI Category. The requirement of such roads being used free of charge is also not stipulated with respect to street lighting. Street lights on the National Highways, which are provided for safety purposes and to prevent accidents, do not consume electricity for commercial purposes nor can such lighting be equated to consumption of electricity for operating various appliances used for commercial purposes such as cooling, cooking, washing etc. **We are satisfied, therefore, that street lights on the National Highway, other than those in close proximity to the toll collection plazas and at places where commercial activity is being carried on, do not fulfil the conditions stipulated for premises falling within LT-II category.**

[...]

VI. JUDGEMENT OF THE BOMBAY HIGH COURT IN WRIT PETITION NO. 7504 OF 2022 DATED 23.10.20:

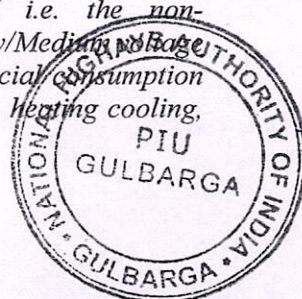
C. ANALYSIS

In Maharashtra State Electricity Distribution Company Limited vs DBL Mahagaon, Kinhi & others: (Judgement of the Bombay High Court in W.P. No. 7504 of 2022 dated 23.10.2023), the order under challenge was passed by the Consumer Grievance Redressal Forum, Amravati, in Representation No.16/2022 dated 27.05.2022 allowing the representation, and thereby directing the petitioner-MSEDCL to retain the category of connection in respect of the respondent to 'street light' category and adjust the difference of amount collected from the respondent on account of re-classification of category in their ensuing bills.

...

It is in this context that the Bombay High Court held that the street light category tariff i.e. LT-VI was applicable for the electricity used for lighting of public streets, thorough fares which were open for use by the general public at Low/Medium Voltage and at High Voltage; street lights in residential complexes, commercial complexes, industrial premises etc. are billed at the tariff of the respective applicable categories; whereas, LT-II i.e. the non-residential/commercial tariff category is applicable for electricity used at Low/Medium Voltage in non-residential, non-industrial and or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating cooling,

Handwritten signature



cooking, washing/cleaning, entertainment/leisure and water pumping in, but not limited to, the premises enumerated under the said category; it was apparent that usage of electricity was relevant; it was not the case of MSEDCL that street lights were provided for the entire stretch of the Highway; from the record, it could be seen that street lights were provided at certain specific places like service roads, intersection of villages and towns; the photographs filed by the respondent showed that street lights were installed for use of local residents free of charge; MSEDCL had not pointed out anything to show that the usage was commercial, and was meant for operating various appliances used for the purposes specified in LT-II, which was a pre-requisite to apply LT-II category i.e. the commercial category tariff; the mere fact that street lights were installed on over bridges and under bridges or at bus bay and bus shelter locations, built up sections on the project highways, was not sufficient to arrive at the conclusion that the use of electricity was for commercial consumption; and, similarly, the fact that street lights were installed on certain highways was not sufficient to hold that it was for commercial consumption and not for use of the general public.

The Bombay High Court further held that NHAI comes under the Ministry of Roadways under the Government of India; the Highway is for the purpose of benefiting the general public at large, and the purpose of streets is not to earn profit but to provide connectivity and facilities to citizens of India; a huge investment was required for such construction of highways, and therefore toll was being collected; however, it would not make the activity commercial; the respondent was merely a concessionaire in respect of the project and its facilities, and did not exercise any proprietary, operational and commercial control over the project facilities; the respondent, as a contractor, had handed over the project facilities to NHAI for operation of Toll Plaza, and the respondent was liable only towards maintenance of the project and not for collection of user fee from the users of the national highways; and it was, thus, difficult to accept that it was a commercial activity for which LT-II tariff will apply.

The afore-said judgement of the Bombay High Court has attained finality, as no appeal is said to have been preferred there-against. The law declared in the said judgment would, therefore, not only be binding on the parties thereto ie MSEDCL and MERC, but would constitute a precedent binding on this Tribunal.

[...]

XII. CONCLUSION

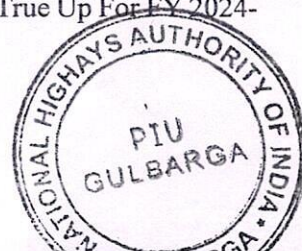
For the reasons afore-mentioned, we are of the view that MSEDCL was not justified in treating street lighting on the National Highway, other than those in and around the toll collection plazas and in places where commercial activities are carried on, as falling under LT-II category, and that such lighting on the National Highway would continue to be governed under the LT-VI category. The impugned order, to this limited extent, is clarified. The Appeal is allowed, and all the I.As therein stand disposed of."

[Emphasis Supplied]

Copy of the **Dilip Buildcon Judgement** dated 09.09.2024 passed by Hon'ble APTEL in Appeal No. 230 of 2024 is annexed as **Annexure A-6**.

25. It is submitted that the **Dilip Buildcon Judgement** has been given effect by the Ld. MERC in Order dated 31.12.2024 in Case No. 102 of 2023 ("MERC Review Order dated 31.12.2024), filed by MSEDCL seeking review of Tariff Order dated 31.03.2023 in Case No. 226 of 2022.
26. Further, in light of the **Dilip Buildcon Judgment**, in the subsequent tariff petition (Case No. 217 of 2024) filed for Final True Up for FY 2022-23 & FY 2023-24, Provisional True Up For FY 2024-

PR



25 and Multi Year Tariff For FY 2025-26 to FY 2029-30, MSEDCL has carried out the following change in the tariff categorisation: -

"6.20. Modification in Tariff Applicability

[...]

6.20.7. LT VI: LT- Street Light

6.20.7.1. Hon'ble Commission in its MTR Order in case no. 226 of 2022 has revised applicability of the above category as following:

"This category is also applicable for use of electricity / power supply at Low / Medium Voltage or at High Voltage for (but not limited to) the following purposes, irrespective of who owns, operates or maintains these facilities:

- a. Lighting in Public Gardens (i.e. which are open to the general public free of charge);*

.....

- d. Such other public places open to the general public free of charge."*

6.20.7.2. However, Hon'ble APTEL in case of M/s Dilip Buildcon Limited vs MERC and MSEDCL the matter of reclassification of Street Lighting at toll collection plazas under LT VI (Street Light) tariff instead of LT-II (Non-Residential or Commercial) has provided judgement that street light for toll plaza roads are to billed under LT VI category. Accordingly in order to provide effect to Hon'ble APTEL order the applicability clause is proposed to be modified as follows:

"This category is also applicable for use of electricity / power supply at Low / Medium Voltage or at High Voltage for (but not limited to) the following purposes, irrespective of who owns, operates or maintains these facilities:

- a. Lighting in Public Gardens (i.e. which are open to the general public free of charge);*

.....

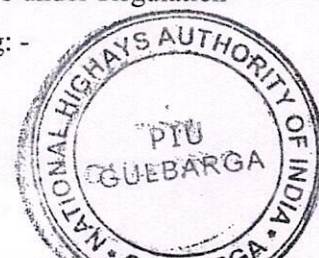
- d. Such other public places open to the general public free of charge.*

- e. Street lights on National Highway"*

[Emphasis Supplied]

27. Accordingly, in view of the **Dilip Buildcon Judgement** and the **DBL Judgement**, it is evident that commercial use of premises is the main test for LT-II categorisation. Accordingly, Street lighting on National Highways cannot be treated under 'LT-II(B) Commercial' category and ought to be treated under 'LT-VI(A) Street Light' category since it serves a public utility / municipal function.
28. It is submitted that the findings in **Dilip Buildcon Judgement** and the **DBL Judgement** are based on the principles enshrined under Section 62(3) of the Act, and the nature and purpose of usage of supply by a consumer. It is pertinent to note that regulatory tariff framework under the MERC MYT Regulations 2019 is analogous to the tariff framework under the TSERC MYT Regulations 2023. The powers relating to categorization of consumers (based on different parameters) under Regulation 91 of the MERC MYT Regulations 2019 are similar to the powers under Regulation 94 of the TSERC MYT Regulations 2023, which is evident from the following: -

BR



MERC (Multi Year Tariff) Regulations, 2019	TSERC (Multi Year Tariff) Regulations, 2023
<p>91. Determination of Retail Supply Tariff</p> <p>91.1. The Commission may categorize consumers on the basis of their load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.</p>	<p>94. Determination of Retail Supply Tariff</p> <p>94.1. The Commission may categorize consumers on the basis of their load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.</p>

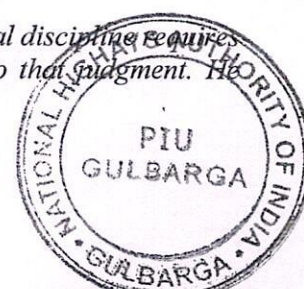
29. It is submitted that the MERC MYT Regulations as well as the TSERC MYT Regulations, do not provide for any specific categorisation of tariff categories and leaves it to Ld. MERC and this Hon'ble Commission, respectively to categorise consumers on the basis of the factors enumerated under Regulation 91 of the MERC MYT Regulations and Regulation 94 of the TSERC MYT Regulations.
30. In view of the above, the findings in the *Dilip Buildcon Judgement* and the *DBL judgment* are squarely applicable in the present case. The said findings are also binding and is a declaration of law in rem. This position is also upheld by Hon'ble APTEL in *Dilip Buildcon Judgement*, wherein it *inter-alia* held that the law declared in the *DBL Judgment* is not only binding on the parties thereto i.e., MSEDCL and MERC, but also constitutes a precedent binding on the Hon'ble APTEL.
31. It is a settled law that Orders and Judgements of the Hon'ble APTEL are binding on all State Electricity Regulatory Commissions. Further, the principle of hierarchical Judicial Discipline mandates that the orders passed by the superior court ought to be scrupulously followed by subordinate courts. Any departure therefrom will lead to indiscipline and anarchy. In this regard, reliance is placed on the following: -

- (i) *Bihar State Govt. Secondary School Teachers Assn. v. Bihar Education Service Association*, (2012) 13 SCC 33: -

"42. The hierarchy of the courts requires the High Courts also to accept the decision of this Court, and its interpretation of the orders issued by the executive. Any departure therefrom will lead only to indiscipline and anarchy. The High Courts cannot ignore Article 141 of the Constitution which clearly states that the law declared by this Court is binding on all courts within the territory of India. As observed by this Court in para 28 of State of W.B. v. Shivananda Pathak [(1998) 5 SCC 513 : 1998 SCC (L&S) 1402] : (SCC p. 524, para 28)

"28. If a judgment is overruled by the higher court, the judicial discipline requires that the Judge whose judgment is overruled must submit to that judgment. He

RM



cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment."

43. In the same vein we may state that when the judgment of a court is confirmed by the higher court, the judicial discipline requires that court to accept that judgment, and it should not in collateral proceedings write a judgment contrary to the confirmed judgment. We may as well note the observations of Krishna Iyer, J. in *Fuzlunbi v. K. Khader Vali* [(1980) 4 SCC 125 : 1980 SCC (Cri) 916] : (SCC p. 129, para 7)

7. ... no Judge in India, except a larger Bench of the Supreme Court without a departure from judicial discipline can whittle down, wish away or be unbound by the ratio [of the judgment of the Supreme Court]."

(ii) ***Union of India v. Kamlakshi Finance Corporation Ltd.* 1992 Supp (1) SCC 648: -**

"6... The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department — in itself an objectionable phrase — and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws."

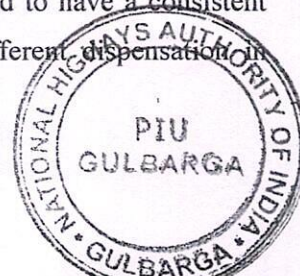
(iii) ***Bhopal Sugar Industries Ltd v. ITO*, AIR 1961 SC 182: -**

"8. ... If a subordinate tribunal refuses to carry out directions given to it by a superior tribunal in the exercise of its appellate powers, the result will be chaos in the administration of justice and we have indeed found it very difficult to appreciate the process of reasoning by which the learned Judicial Commissioner while roundly condemning the respondent for refusing to carry out the directions of the superior tribunal, yet held that no manifest injustice resulted from such refusal.

9. It must be remembered that the order of the Tribunal dated 22-4-1954, was not under challenge before the Judicial Commissioner. That order had become final and binding on the parties, and the respondent could not question it in any way. As a matter of fact the Commissioner of Income Tax had made an application for a reference, which application was subsequently withdrawn. The Judicial Commissioner was not sitting in appeal over the Tribunal and we do not think that in the circumstances of this case it was open to him to say that the order of the Tribunal was wrong and, therefore, there was no injustice in disregarding that order. As we have said earlier such a view is destructive of one of the basic principles of the administration of justice."

32. Further, State Electricity Regulatory Commissions (SERCs) are mandated to have a consistent approach on common/similar issues. Accordingly, there cannot be different dispensation in

Handwritten signature



different States by SERCs on the categorisation of streetlights on National Highways. Therefore, this Hon'ble Commission ought to categorise streetlights on National Highways under the 'LT-VI(A) Street Light' category.

C. Comparative Analysis with Other States

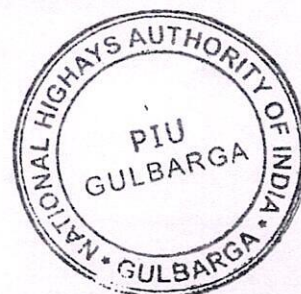
33. It is submitted that other SERCs have classified street lighting on express/national/state highways under the LT-VI Street Light category, as under: -

S. No.	State	Tariff Category for street lights on highways	Reference
1.	Punjab	SVIII: Public Lighting Supply	Order dated 14.06.2024 in Petition No. 64 of 2023.
2.	Rajasthan	Public Street Lighting (LT-3)	Order dated 26.07.2024 in Petition Nos. RERC 2206/2024, 2207/2024, 2208/2024 read with Tariff Schedule dated 13.08.2024.

D. Streetlights on National Highway fall under LT-VI Category

34. In terms of the Retail Tariff Order dated 28.10.2024, LT-VI category includes supply of energy for lighting on public roads, streets, thoroughfares **including** Parks, Markets, Cart-stands, Taxi stands, Bridges and also for PWS schemes in the Local Bodies viz., Panchayats/Municipalities/Municipal Corporations. Accordingly, it is evident that LT-VI Street Light category is applicable, among others, for lighting in public streets/ thorough fares which are open to the general public.
35. Further, LT-VI Street Light category is a distinct category specifically designed to cover street lighting for public use. The usage of the word "*including*" makes it evident that LT-VI Street light category is an inclusive category and would cover any street lighting which serves a public utility function. Accordingly, street lighting on National Highways ought to be categorized under the 'LT-VI Street Light' category, as it is intended for public safety.
36. It is pertinent to mention that Mission Bhagiratha, a safe drinking water project for every village in Telangana State, was initially not included under the LT-VI Category. However, Telangana Discoms in their Petition for determination Retail Supply Tariffs & Cross Subsidy Surcharge for FY 2023-24 proposed to categorise all Mission Bhagiratha services under LT-VI(B) or HT-IV(B) as applicable for respective voltage levels. This Hon'ble Commission vide Retail Supply Tariff Order dated 24.03.2024 approved the proposal of Telangana Discoms and modified the applicability of LT-VI(B) category and HT-IV(B) category to include Mission Bhagiratha scheme (a scheme intended for public safety), as under: -

RR



Existing 'Applicability' clause before inclusion of Mission Bhagirathi Schemes	Approved 'Applicability' clause including Mission Bhagirathi Schemes under LT-VI Street Lighting and PWS Schemes category as per Retail Supply Tariff Order dated 24.03.2024
<p>9.7. LT-VI: STREET LIGHTING AND PWS SCHEMES</p> <p>Applicability</p> <p>9.7.1. Applicable for supply of energy for lighting on public roads, streets, thoroughfares including Parks, Markets, Cart-stands, Taxi stands, Bridges and also for PWS schemes in the Local Bodies viz., Panchayats/ Municipalities/ Municipal Corporations. Metering is compulsory irrespective of tariff structure.</p> <p>[...]</p>	<p>9.7. LT-VI: STREET LIGHTING AND PWS SCHEMES</p> <p>Applicability</p> <p>9.7.1. Applicable for supply of energy for lighting on public roads, streets, thoroughfares including Parks, Markets, Cart-stands, Taxi stands, Bridges and also for PWS schemes and Mission Bhagiratha schemes in the Local Bodies viz., Panchayats / Municipalities / Municipal Corporations. Metering is compulsory irrespective of tariff structure.</p> <p>[...]</p>

37. It is submitted that same relief of inclusion of National Highways under 'LT-VI (A) Street Light' category, may be granted by this Hon'ble Commission while determining the Tariff and ARR in O.P Nos. 21 and 22 of 2025 for Telangana Discoms.

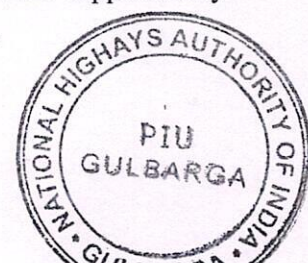
E. Financial Loss

38. It is submitted that if street lighting on National Highways continues to be categorized under the LT-II (B) Commercial category, it will result in significant financial hardship for the NHAI. The tariff differential between the LT-II (B) (with Rs. 11/- unit for above 500 units) and LT-VI (A) (with Rs. 7.10/-unit) categories is substantial, with a difference of approximately Rs. 3-4 per unit (approx. 35%-36%). This tariff differential will impose a heavy financial burden on NHAI since it is obliged to meet these increased costs for public safety measures. Accordingly, it is critical that streetlights on National Highways be categorised under LT-VI (A) Street Light category.

III. RELIEF

39. In view of the above submissions, it is humbly prayed that in terms of the mandate under Section 64(3) of the Act, Clause 94.1 of the TSERC MYT Regulations, and the judicial precedents cited above, this Hon'ble Commission while determining the Tariff and ARR in O.P Nos. 21 and 22 of 2025 for Telangana Discoms, may include street lighting on National Highways under 'LT-VI (A) Street Light' category. To this extent, necessary changes may be carried out in the 'Applicability' section of the 'LT-VI Street Lighting and PWS Schemes' category, as under: -

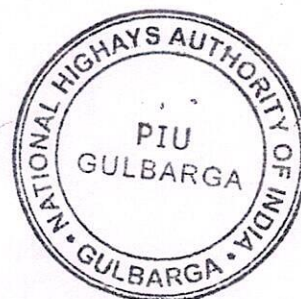
[Signature]



Existing 'Applicability' clause for LT-VI Street Lighting and PWS Schemes category as per Retail Tariff Order dated 28.10.2024	Proposed 'Applicability' clause for LT-VI Street Lighting and PWS Schemes category
<p>9.7. LT-VI: STREET LIGHTING AND PWS SCHEMES</p> <p>Applicability</p> <p>9.7.1. Applicable for supply of energy for lighting on public roads, streets, thoroughfares including Parks, Markets, Cart-stands, Taxi stands, Bridges and also for PWS schemes and Mission Bhagiratha schemes in the Local Bodies viz., Panchayats / Municipalities / Municipal Corporations. Metering is compulsory irrespective of tariff structure.</p> <p>[...]</p>	<p>9.7. LT-VI: STREET LIGHTING AND PWS SCHEMES</p> <p>Applicability</p> <p>9.7.1. Applicable for supply of energy for lighting on public roads, streets, National Highways, thoroughfares including Parks, Markets, Cart-stands, Taxi stands, Bridges and also for PWS schemes and Mission Bhagiratha schemes in the Local Bodies viz., Panchayats / Municipalities / Municipal Corporations. Metering is compulsory irrespective of tariff structure.</p> <p>[...]</p>

We submit the above for your kind consideration and request the Hon'ble Commission to pass such orders as the Hon'ble Commission may deem fit and proper in the facts and circumstances mentioned above.

Prakash



LIST OF ANNEXURES

S. No.	Description	Page Nos.
1.	Annexure A-1: Assessment Notices dated 20.06.2022 and 21.06.2022.	18-22
2.	Annexure A-2: NHAI's letters dated 03.06.2022, 27.06.2022 & 05.11.2024 to TGSPDCL	23-28
3.	Annexure A-3: Bombay High Court Judgment dated 23.10.2023 passed in W.P. No. 7504 of 2022 titled <i>Maharashtra State Electricity Distribution Co. Ltd. vs. DBL Mahagaon, Kinhi & Ors.</i> ("DBL Judgment")	29-39
4.	Annexure A-4: <i>MSK Projects (I) (JV) Ltd. vs. State of Rajasthan</i> , (2011) 10 SCC 573	40-58
5.	Annexure A-5: Letters dated 04.03.2023, 10.10.2024 and 18.02.2025 from District Collector, Sub-Divisional Police Officer and Superintendent of Police, Sangareddy District to NHAI	59-65
6.	Annexure A-6: Hon'ble APTEL's Judgement dated 09.09.2024 in Appeal No. 230 of 2024 titled <i>M/s Dilip Buildcon Ltd. & Anr. vs. Maharashtra State Electricity Regulatory Commission & Anr.</i> ("Dilip Buildcon Judgement")	66-118



New Document

Page 1 of 1

Assessment for BACK BILLING

Case No: DPE/SGRD/SD02/3779/22
 From
 Assistant Divisional Engineer
 Operation: SAQASIVPET
 TSSPDCL

To
 NHAI PROJECT DIRECTOR(Beneficiary)
 SY.NO 49, KAMKOLE, MUNIPALLY,

Lr.No. ADE/OP/SSPET/F.NO./D.NO.809/22 Dt:20/Jun/2022

Sub:Assessment Notice of SC No. 0761 00651 Category LT VI(A)-Street Lighting-Municipalities of KAMKOLE(Dist) for BACK BILLING

1. Inspection undertaken;

Your service connection bearing No. 0761 00651, Category LT VI(A)-Street Lighting-Municipalities , MUNIPALLY Village/ Section was inspected on 13-Jun-22 at 12:35 at hours by Sri.CH.NYMA with designation ADE .

2. Incriminating Points Observed:

At the time of inspection it is observed that supply is being utilizing for National Highway lighting project purpose but the service is in LT CAT-VIA. As per the tariff order it should be in Cat -II. Hence back billing is proposed in LT cat-II from LT Cat-VIA.

3. Nature of defect reported

The above observations clearly establish that the service connection is being run in wrong Category/Reading. Hence Back billing was done for your service owing to Wrong Category/M.F./Readings.

4.Value of assessed revenue loss:

In view of the above, the energy consumption during the period of wrong Category/wrong M.F. and the details of the assessment are indicated below.

Assessment Period: From 30-Oct-17 To 13-Jun-22
 Connected Load: 36880 watt
 Contracted Load: 40000 watt
 Units Assessed: 594896
 Units Recorded: 594896
 Units Back Billed: 594896
 Value of Demand Back billed: 36880 watt

The Revenue loss to the company has been assessed at Rs 2096979.0, for the Period from 30-Oct-17 to 13-Jun-22.

5. Payment of back billed amount:

5.1 If you are agreeable to the assessed amount, you may pay the amount in full within 15 days from the date of service of this order. Further proceedings to recover the assessed amount will be closed after production of a receipt towards payment of the provisionally assessed amount of Rs.2097097.0 in full, to AAO/ERO SADASIVPET (designated officer for payment of assessed amount), in addition to the Supervision charges including GST of Rs.118.0.

5.2 If you are not agreeable to the above assessment, you may make a appropriate Representation to DE/Operation SANGAREDDY / SE/Operation SANGAREDDY(Designated Officer for appeal)within 15 days from the date of service of this notice,who will dispose off your Representation after giving opportunity to you for being heard If you desire so. And mention the same in your representation.

5.3 In case there is no representation from you within 15 days from the date of service of this notice, the Electricity charges payable by you shall be included as arrears in your subsequent CC bill.

Designated Officer to issue Notice
 Name : C.K.RAJAMALLESHAM
 Designation : ADE/OP/SSPET

Copy Submitted To :
 DEE/OP/SANGAREDDY
 DEE/DPE/SANGAREDDY
 AE/OP/MUNIPALLY
 AAO/ERO/SSPET

ACKNOWLEDGEMENT SLIP

I, _____ with Sc.No. 0761 00651 and CaseNo:

DPE/SGRD/SD02/3779/22 has received the above P.A.O notice Lr.No.

ADE/OP/SSPET/F.NO./D.NO.809/22 Dt:20/Jun/2022.



Name

Relation with consumer

Mobile No

Signature with Date

New Document

Page 1 of 1

Assessment for BACK BILLING

CaseNo : DPE/SGRD/SD02/3780/22

From
Assistant Civilian Engineer
Operation: SADASIVPET
TSSPDCL

To
NHAI PROJECT DIRECTOR(Beneficiary())
SY.NO 89, BUDHERA, MUNICIPALITY

Lr.No. ADE/OP/SSPET/F.NO./D.NO.806/22 Dt:20/Jun/2022

Sub:Assessment Notice of SC No. 0754 01065 Category LT VI(A)-Street Lighting-Municipalities of BUDHERA(Dist) for BACK BILLING

1. Inspection undertaken:

Your service connection bearing No.0754 01065, Category LT VI(A)-Street Lighting-Municipalities of BUDHERA Village/ Section was inspected on 13-Jun-22 at 12:45 at hours by Sni.A.MOHAN with designation AAE

2. Incriminating Points Observed:

At the time of inspection it is observed that supply is being utilizing for National Highway lighting project purpose but the service is in LT CAT-VIA. As per the tariff order it should be in Cat -II. Hence back billing is proposed in LT cat-II from LT Cat-VIA.

3. Nature of defect reported

The above observations clearly establish that the service connection is being run in wrong Category/Reading. Hence Back billing was done for your service owing to Wrong Category/M.F./Readings.

4. Value of assessed revenue loss:

In view of the above, the energy consumption during the period of wrong Category/wrong M.F. and the details of the assessment are indicated below.

Assessment Period: From 30-Oct-17 To 13-Jun-22
Connected Load: 31220 watt
Contracted Load: 38000 watt
Units Assessed: 510604
Units Recorded: 510604
Units Back Billed: 510604
Value of Demand Back billed: 31220 watt

The Revenue loss to the company has been assessed at Rs 1801749.0, for the Period from 30-Oct-17 to 13-Jun-22.

5. Payment of back billed amount:

5.1 If you are agreeable to the assessed amount, you may pay the amount in full within 15 days from the date of service of this order. Further proceedings to recover the assessed amount will be closed after production of a receipt towards payment of the provisionally assessed amount of Rs 1801867.0 In full, to AAO/ERO SADASIVPET (designated officer for payment of assessed amount), in addition to the Supervision charges including GST of Rs.118.0.

5.2 If you are not agreeable to the above assessment, you may make a appropriate Representation to DE/Operation SANGAREDDY / SE/Operation SANGAREDDY(Designated Officer for appeal)within 15 days from the date of service of this notice,who will dispose off your Representation after giving opportunity to you for being heard if you desire so. And mention the same in your representation.

5.3 In case there is no representation from you within 15 days from the date of service of this notice, the Electricity charges payable by you shall be included as arrears in your subsequent CC bill.

Designated Officer to Issue Notice
Name : CH. RAJAMALLESHAM
Designation : ADE/OP/SSPET

Copy Submitted To :
DEE/OP/SANGAREDDY
DEE/UP/SANGAREDDY
AE/OP/MUNIPALLY
AAO/ERO/SSPET

ACKNOWLEDGEMENT SLIP

I, _____ with Sc.No. 0754 01065 and CaseNo:
DPE/SGRD/SD02/3780/22 has received the above P.A.O notice Lr.No.
ADE/OP/SSPET/F.NO./D.NO.806/22 Dt:20/Jun/2022.



Name

Relation with
consumer

Mobile No

Signature with Date

New Document

Page 1 of 1

Assessment for BACK BILLING

CaseNo : DPE/SGRD/SD02/3781/22

From
Assistant Divisional Engineer
Operation: SADASIVPET
TSSPDCL

To
NHAI PROJECTOR DIRECTOR(Beneficiary())
SY.NO 46, NANDIKANDI, TOWN,

Lr.No. ADE/OP/SSPET/F.NO./D.NO.807/22 Dt:20/Jun/2022

Sub:Assessment Notice of SC No. 0719 01031 Category LT VI(A)-Street Lighting-Municipalities of NANDIKANDI(Dist)
for BACK BILLING

1. Inspection undertaken:

Your service connection bearing No.0719 01031, Category LT VI(A)-Street Lighting-Municipalities, SADASIVPET Village/ Section was inspected on 13-Jun-22 at 13:10 at hours by Sri.A.MOHAN with designation AAE

2. Incriminating Points Observed:

At the time of inspection it is observed that supply is being utilizing for National Highway lighting project purpose but the service is in LT CAT-VIA. As per the tariff order it should be in Cat -II.
Hence back billing is proposed in LT cat-II from LT Cat-VIA.

3. Nature of defect reported

The above observations clearly establish that the service connection is being run in wrong Category/Reading. Hence Back billing was done for your service owing to Wrong Category/M.F./Readings.

4. Value of assessed revenue loss:

In view of the above, the energy consumption during the period of wrong Category/wrong M.F. and the details of the assessment are indicated below.

Assessment Period: From 23-Dec-17 To 13-Jun-22

Connected Load: 6200 watt
Contracted Load: 10000 watt
Units Assessed: 120340
Units Recorded: 120340
Units Back Billed: 120340
Value of Demand Back billed: 6200 watt

The Revenue loss to the company has been assessed at Rs 401528.0, for the Period from 23-Dec-17 to 13-Jun-22.

5. Payment of back billed amount:

5.1 If you are agreeable to the assessed amount, you may pay the amount in full within 15 days from the date of service of this order. Further proceedings to recover the assessed amount will be closed after production of a receipt towards payment of the provisionally assessed amount of Rs 401646.0 in full, to AAO/ERO SADASIVPET (designated officer for payment of assessed amount), in addition to the Supervision charges including GST of Rs.118.0.

5.2 If you are not agreeable to the above assessment, you may make a appropriate Representation to DE/Operation SANGAREDDY / SE/Operation SANGAREDDY(Designated Officer for appeal)within 15 days from the date of service of this notice,who will dispose off your Representation after giving opportunity to you for being heard if you desire so. And mention the same in your representation.

5.3 In case there is no representation from you within 15 days from the date of service of this notice, the Electricity charges payable by you shall be included as arrears in your subsequent CC bill.

Designated Officer to issue Notice
Name : CH. RAJANLLESHAM
Designation : ADE/OP/SSPET

Copy Submitted To :
DEE/OP/SANGAREDDY
DEE/DPE/SANGAREDDY
AAE/OP/SSPET-T
AAO/ERO/SSPET

ACKNOWLEDGEMENT SLIP

I, _____ with Sc.No. 0719 01031 and CaseNo:
DPE/SGRD/SD02/3781/22 has received the above P.A.O notice Lr.No.
ADE/OP/SSPET/F.NO./D.NO.807/22 Dt:20/Jun/2022.



Name

Relation with :
consumer

Mobile No

Signature with Date

New Document

Page 1 of 1

Assessment for BACK BILLING

CaseNo : DPE/SGRD/SD01/3232/22

From
Assistant Divisional Engineer
Operation:SADASIVPET
TSSPDCL

To
NHAI PROJECT DIRECTOR(Beneficiary)
SY.NO 88, MADDIKUNTA, RURAL,

Lr.No. ADE/OP/SSPET/F.NO./D.NO.810/22 Dt:20/Jun/2022

Sub:Assessment Notice of SC No. 0717 01066 Category LT VI(A)-Street Lighting-Municipalities of MADDIKUNTA(Dist)
for BACK BILLING

1. Inspection undertaken:

Your service connection bearing No. 0717 01066, Category LT VI(A)-Street Lighting-Municipalities, SADASIVPET RURAL Village/Section was inspected on 13-Jun-22 at 12:10 hours by Sri.B.GNANESH with designation AE.

2. Incriminating Points Observed:

At the time of inspection it is observed that supply is being utilizing for National Highway lighting project purpose but the service is in LT CAT-VIA. As per the tariff order it should be in Cat-II.
Hence back billing is proposed in LT cat-II from LT Cat-VIA.

3. Nature of defect reported

The above observations clearly establish that the service connection is being run in wrong Category/Reading. Hence Back billing was done for your service owing to Wrong Category/M.F./Readings.

4. Value of assessed revenue loss:

In view of the above, the energy consumption during the period of wrong Category/wrong M.F. and the details of the assessment are indicated below,

Assessment Period: From 25-Nov-17 To 13-Jun-22

Connected Load: 4060 watt
Contracted Load: 6000 watt
Units Assessed: 77652
Units Recorded: 77652
Units Back Billed: 77652
Value of Demand Back billed: 4060 watt

The Revenue loss to the company has been assessed at Rs 246531.0, for the Period from 25-Nov-17 to 13-Jun-22.

5. Payment of back billed amount:

5.1. If you are agreeable to the assessed amount, you may pay the amount in full within 15 days from the date of service of this order. Further proceedings to recover the assessed amount will be closed after production of a receipt towards payment of the provisionally assessed amount of Rs 246531.0 in full, to AAO/ERO SADASIVPET (designated officer for payment of assessed amount), in addition to the Supervision charges including GST of Rs.118.0.

5.2. If you are not agreeable to the above assessment, you may make a appropriate Representation to DE/Operation SANGAREDDY / SE/Operation SANGAREDDY (Designated Officer for appeal) within 15 days from the date of service of this notice, who will dispose off your Representation after giving opportunity to you for being heard if you desire to. And mention the same in your representation.

5.3. In case there is no representation from you within 15 days from the date of service of this notice, the Electricity charges payable by you shall be included as arrears in your subsequent CC bill.

Designated Officer to issue Notice
Name : CH. RAJAMALLESHAM
Designation : ADE/OP/SSPET

Copy Submitted To:
DEE/OP/SANGAREDDY
DEE/DPE/SANGAREDDY
AE/OP/SSPET-R
AAO/ERO/SSPET

ACKNOWLEDGEMENT SLIP

I, _____ with Sc.No. 0717 01066 and CaseNo:

DPE/SGRD/SD01/3232/22 has received the above P.A.O notice Lr.No.

ADE/OP/SSPET/F.NO./D.NO.810/22 Dt:20/Jun/2022.

☐ Paid

Name

Relation with
consumer

Mobile No

Signature with Date

New Document

Page 1 of 1

Assessment for BACK BILLING

Case NO : OPE/MD/601/1688/22

From
Assistant Divisional Engineer
Operation: ZAHEERABAD TOWN
TSSPGCL

To
M S N H A I (Beneficiary())
SY. NO 6/1, HUGGELLI, ZAHEERABAD,

LT No. ADE/OP/ZHB/OP No. 223/20 No 531/2622-33 Dt: 21/Jun/2022

Sub: Assessment Notice of SC No. 0098 01420 Category LT VI(A)-Street Lighting-Municipalities of HUGGELLI(Dist) for BACK BILLING

1. Inspection undertaken:

Your service connection bearing No. 0098 01420, Category LT VI(A)-Street Lighting-Municipalities, ZAHEERABAD RURAL Village/ Section was inspected on 17-Jun-22 at 10:50 at hours by Sri.K.NAGARAJU with designation AAE.

2. Incriminating Points Observed:

At the time of inspection it is observed that the supply is being utilizing for National Highway lighting project purpose but the service is in LT CAT-VIA. As per the tariff order it should be in Cat -II. Hence back billing is proposed in LT cat-II from LT Cat-VIA.

3. Nature of defect reported

The above observations clearly establish that the service connection is being run in wrong Category/Reading. Hence Back billing was done for your service owing to Wrong Category/M.F./Readings.

4. Value of assessed revenue loss:

In view of the above, the energy consumption during the period of wrong Category/wrong M.F. and the details of the assessment are indicated below.

Assessment Period: From 11-Jan-18 To 17-Jun-22
Connected Load: 3600 watt
Contracted Load: 5000 watt
Units Assessed: 62250
Units Recorded: 62250
Units Back Billed: 62250
Value of Demand Back billed: 3600 watt

The Revenue loss to the company has been assessed at Rs 192165.0, for the Period from 11-Jan-18 to 17-Jun-22.

5. Payment of back billed amount:

5.1 If you are agreeable to the assessed amount, you may pay the amount in full within 15 days from the date of service of this order. Further proceedings to recover the assessed amount will be closed after production of a receipt towards payment of the provisionally assessed amount of Rs 192283.0 In full, to AAO/ERO ZAHEERABAD (designated officer for payment of assessed amount), in addition to the Supervision charges including GST of Rs.118.0.

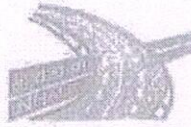
5.2 If you are not agreeable to the above assessment, you may make a appropriate Representation to DE/Operation ZAHEERABAD / SE/Operation SANGAREDDY (Designated Officer for appeal) within 15 days from the date of service of this notice, who will dispose off your Representation after giving opportunity to you for being heard if you desire so. And mention the same in your representation.

5.3 In case there is no representation from you within 15 days from the date of service of this notice, the Electricity charges payable by you shall be included as arrears in your subsequent CC bill.

Designated Officer to issue Notice
Name : M. MAHESH
Designation : ADE/OP/ZHB T

Copy Submitted To :
AAO/ERO/Zaheerabad
AE/OP/Zaheerabad

ANNEXURE - 4



सर्वोच्च राष्ट्रीय राजमार्ग प्राधिकरण
(सर्वोच्च राष्ट्रीय राजमार्ग प्राधिकरण)

National Highways Authority of India

(Ministry of Road Transport & Highways)

Project Implementation Unit

Plot No. 65, Kothari Layout, Venkatesh Nagar, GULBARGA - 585 102 (Karnataka State)

Office : 08472 - 253756
Telephone : 08472 - 253756
Web Site : www.nhai.org
Email : piugulbarga@nhai.org

No. NHAI/PIU-GULB/NH-65/2022-23/197

Date: 03.06.2022

To,
Superintendent Engineer,
TSSPDCL Division,
Sangareddy Circle

Sub: Four laning of Maharashtra/Karnataka Border to Sangareddy section of NH-65 from km.348+800 to Km. 493+000 in the States of Karnataka and Telangana under NHDP Phase-II on DBFOT/BOT basis - Electricity Tariff category as per the NHAI Circular - Reg.

Ref: 1) NHAI Circular No. NHAI/CMD/COMP.No.42676 dated 17.11.2020
2) TSSPDCL Lr. No. SE/op/srd/SOP/AO(Rev-CRS/D.NO. 49/22, Date: 22.04.2022
3) Concessionaire letter no. L&T DTL/NHAI-PD/2022-23/457/2182 dated 02.06.22

Dear Sir,

Four laning of the MH-KN Border to Sangareddy section of NH-65 work is awarded to M/s. L&T Deccan Tollways Ltd and Concessionaire has completed the work as per the scope of Concession Agreement. As per the scope of work, Street Lights have been installed on Project Highway for the use of Public/Road users falling under below Electrical department divisions. Applicable Tariff category for Electricity connection of street lightings "LT-VI(A) Street Lighting" with tariff equivalent for the Local Municipal bodies, Gram Panchayat etc. are applicable as streetlights are discharging nothing but a municipal function only. The prevailing tariff rates for electricity supply is as per the NHAI Circular cited above under reference number 1.

Sl No	Division	Sub Division	Section	No. of Services
1	Sangareddy	Sangareddy	Sangareddy Town-2	1
2	Sangareddy	Sangareddy	Sangareddy Rural	1
3	Sangareddy	Sadasivapet	Sadasivapet	6
4	Sangareddy	Sadasivapet	Municipally	2
5	Sangareddy	Sadasivapet	Sadasivapet Rural	2
6	Zaheerabad	Zaheerabad-Town	Zaheerabad-Town	3
7	Zaheerabad	Zaheerabad-Town	Zaheerabad-Rural	2
8	Zaheerabad	Zaheerabad-Town	Kohir	3
9	Zaheerabad	Zaheerabad-Town	Mannapur	4

Vide reference (3), Concessionaire has given representation to this office about the directions received through TSSPDCL letter cited above under reference number 2 intimating Tariff change from prevailing category of "LT-VI(A) Street lighting" to "LT-II(B) Commercial". In this context this is to be noted that Tariff category for the above mentioned service connections needs to be maintained under the Electricity Tariff category of "LT-VI(A) Street Lighting", i.e. tariff equivalent for the Local Municipal bodies, Gram Panchayat etc. as per the NHAI circular cited above under reference number 1.

In view of the NHAI circular, you are hereby requested to provide the necessary direction to the concern division of Electricity Department for maintaining the tariff category as per the NHAI circular for the street Lights available on National Highway as mentioned above.

Yours Faithfully,

KN Ajay Mani Kumar,
GM (T) & Project Director
PIU - Gulbarga

Encl: As above.

Copy to M/s L & T Deccan Tollways Limited, Sangareddy for information and with a direction to approach the concerned TSSPDCL officials.

Copy to M/s MSV International Inc. in association with M/s Sri Infotech., Sangareddy for information.

ANNEXURE - G.

भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
निर्माण, परिवहन और संचालन विभाग

National Highways Authority of India

(Ministry of Road Transport & Highways)

Project Implementation Unit

Plot No. 65, Madhav Layout, Venkatesh Nagar,

GLBARGA - 585 102 (Karnataka State)

Office : 08442 - 253256

Web Site : www.nhai.org

E-mail : pu@nhai.org

E-mail : nhai@pu@nhai.org

BHARATMALA
ROAD TO PROGRESS

No. NHAI/PIU-GLB/NH-65/2022-23/309

Date: 27.06.2022

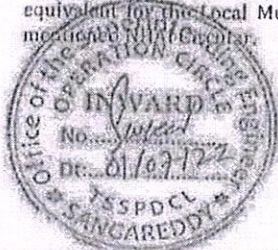
To,
The Superintendent Engineer,
Operation Sangareddy,
TSSPDCL Division,
Sangareddy Circle,
Telangana.

Sub: Four laning of MH-KNT Border - Sangareddy from Km.348.800 to Km.493.000 in the States of Karnataka and Andhra Pradesh of NH-9 under NHDP-III on DBFOT Basis in BOT (Toll) Model - Assessment Notice for BACK BILLINGS - Reg.

- Ref:
1. NHAI Circular No. NHAI/CMD/COMP.No.42676 dated 17.11.2020
 2. TSSPDCL letter No. SE/op/srd/SOP/AO(Rev-CRS/D.NO. 49/22 dated: 22.04.2022
 3. Concessionaire letter No. L&T DTI./NHAI-PD/2022-23/452/2182 dated: 02.06.2022
 4. This office Letter No. NHAI/PIU-GLB/NH-09/2022-23/197 dated: 03.06.2022
 5. TSSPDCL letter No. ADE/Op/SRD/F.No./LT/D.No.480/22 dated: 16.06.2022
 6. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.800/22 dated: 20.06.2022
 7. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.801/22 dated: 20.06.2022
 8. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.802/22 dated: 20.06.2022
 9. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.803/22 dated: 20.06.2022
 10. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.804/22 dated: 20.06.2022
 11. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.805/22 dated: 20.06.2022
 12. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.806/22 dated: 20.06.2022
 13. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.807/22 dated: 20.06.2022
 14. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.808/22 dated: 20.06.2022
 15. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.809/22 dated: 20.06.2022
 16. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.810/22 dated: 20.06.2022
 17. TSSPDCL letter No. ADE/Op/ZHB-T/F.No./23/D.No.534/2022-23 dated: 21.06.2022
 18. TSSPDCL letter No. ADE/Op/ZHB-T/F.No./23/D.No.535/2022-23 dated: 21.06.2022
 19. TSSPDCL letter No. ADE/Op/ZHB-T/F.No./23/D.No.530/2022-23 dated: 21.06.2022

This has a reference to the Notices cited at Sl.Nos (5) to (19) on the subject matter. In this context this is to be noted that Four laning of the MH-KNT Border to Sangareddy section of NH-65 work was awarded to M/s. L&T Deccan Tollways Ltd ("Concessionaire") and the Concessionaire has completed the work as per the scope of Concession Agreement including the Street Lights for the use of Public/Road users.

Vide reference (4), this office has requested for maintaining the tariff category for Electrical Connection of Street Lighting is "I.T-VI(A) Street Lighting" with tariff equivalent for to Local Municipal bodies, Gram Panchayat for the service connections for Street Lights as NH-65 Street Lights are discharging nothing but a municipal function only. It is also to state that the Service connections of Street Lighting for above mentioned Project Highway are in the name of National Highways Authority of India (NHAI) under the Tariff category of "LT-VI(A) Street Lighting" with tariff equivalent for the Local Municipal bodies, Gram Panchayat etc., which is in line with the above-mentioned NHAI Circular.



The details of Service Connections to NH Street Lights are given below for ready reference:

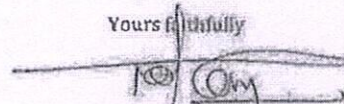
Sl. No.	Division	Sub Division	Section	No. of Services
1	Sangareddy	Sangareddy	Sangareddy Town-2	1
2	Sangareddy	Sangareddy	Sangareddy Rural	1
3	Sangareddy	Sadasivapet	Sadasivapet	6
4	Sangareddy	Sadasivapet	Municipally	2
5	Sangareddy	Sadasivapet	Sadasivapet Rural	2
6	Zaheerabad	Zaheerabad-Town	Zaheerabad-Town	3
7	Zaheerabad	Zaheerabad-Town	Zaheerabad-Rural	2
8	Zaheerabad	Zaheerabad-Town	Kohir	3
9	Zaheerabad	Zaheerabad-Town	Mannapur	4

Even post our request, Assessment Notices are issued from the Office of the Assistant Divisional Engineer (ADE), Sadasivapet for the proposed back billing for above mentioned service connections in Tariff category of "LT-II(B) Commercial" from tariff category of "LT-VI(A) Street Lighting" for the period from 27.12.2017 to 13.06.2022.

Therefore, this office once again brings this issue to your kind notice that the proposed change is not acceptable to us since it is not in the line with the above NHAI HQs Circular. Hence, we hereby represent and request your kind intervention for continuing with tariff category of "LT-VI(A) Street Lighting" and to issue necessary instructions to the concerned for withdrawal of all such notices issued so far.

Thanking you,

Yours Faithfully



K N Ajay Mani Kumar
GM (T) & Project Director,
PIU-Gulbarga.

Encl: As above.

Copy to the Divisional Engineer, Operations Sangareddy, TSSPDCL Division, Sangareddy Circle, Telangana for your information.

Copy to Shri. J.V. Subba Reddy, Team Leader, M/s MSV International Inc in association with Sri Infotech, Pothireddipalle, Sangareddy.

Copy to Shri. Rajesh Vichare, Project Head, M/s. L&T Deccan Tollways Limited, Kamkole, Sangareddy.



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(सड़क परिवहन और राजमार्ग मंत्रालय)

National Highways Authority of India

(Ministry of Road Transport & Highways)
Project Implementation Unit

Plot No. 65, Kothari Layout, Venkatesh Nagar,
GULBARGA - 585 102 (Karnataka State)



Office : 08472 - 253756

Web Site : www.nhai.org

E-mail : piugulbarga@nhai.org

E-mail : nhaipiugulbarga@gmail.com

BHARATMALA
ROAD TO PROSPERITY

No. NHAI/PIU/GLB/NH-9/Elect./2024-25/ 965

Date 5th November, 2024

To,
The Superintendent Engineer,
Operation Sangareddy,
TSSPDCL Division,
Sangareddy Circle,
Telangana.

Sub.:- NHAI-PIU-GLB- Four laning of MH-KNT Border -Sangareddy from Km.348.800 to Km.493.000 in the States of Karnataka and Andhra Pradesh of NH-9 under NHDP-III on DBFOT Basis in BOT (Toll) Model - Restoration of Electricity Connection under tariff category "LT-VI(A) Street Lighting" - Reg.

Ref.:-

1. NHAI Circular No. NHAI/CMD/COMP.No.42676; dated 17.11.2020
2. TSSPDCL letter No. SE/op/srd/SOP/AO (Rev-CRS/D.NO. 49/22); dated: 22.04.2022
3. Concessionaire letter No. L&T DTI/NHAI-PD/2022-23/452/2182; dated: 02.06.2022
4. NHAI letter No. NHAI/PIU-GLB/NH-09/2022-23/197; dated: 03.06.2022
5. TSSPDCL letter No. ADE/Op/SRD/F.No:LT/D.No.480/22; dated: 16.06.2022
6. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.800/22; dated: 20.06.2022
7. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.801/22; dated: 20.06.2022
8. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.802/22; dated: 20.06.2022
9. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.803/22; dated: 20.06.2022
10. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.804/22; dated: 20.06.2022
11. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.805/22; dated: 20.06.2022
12. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.806/22; dated: 20.06.2022
13. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.807/22; dated: 20.06.2022
14. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.808/22; dated: 20.06.2022
15. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.809/22; dated: 20.06.2022
16. TSSPDCL letter No. ADE/Op/SSPET/F.No./D.No.810/22; dated: 20.06.2022
17. TSSPDCL letter No. ADE/Op/ZHB-T/F.No./23/D.No.534/2022-23; dated: 21.06.2022
18. TSSPDCL letter No. ADE/Op/ZHB-T/F.No./23/D.No.535/2022-23; dated: 21.06.2022
19. TSSPDCL letter No. ADE/Op/ZHB-T/F.No./23/D.No.530/2022-23; dated: 21.06.2022
20. NHAI letter No. NHAI/PIU-GLB/NH-65/2022-23/309; dated: 27.06.2022
21. Concessionaire letter No. DTL/NHAI-PD/2024-25/17Z/3473; dated: 23.10.2024.

Sir,

- (1) Four laning of the Maharashtra-Karnataka Border to Sangareddy section of NH-65 (Old NH-9) work was awarded to M/s. Deccan Tollways Ltd. (formerly known as L&T Deccan Tollways Ltd., the "Concessionaire") and the Concessionaire has completed the work as per the scope of the Concession Agreement including the Street Lights for the use of Public / Road users.

- (2) The National Highways Authority of India (NHAI) has obtained power connections mentioned under Table-1, for providing public lighting facility to the Road Users under the power tariff category "**LT-VI(A) Street Lighting**" and street lighting being primarily for the benefit of the local users, consumer category should be with tariffs equivalent for the local Municipal bodies, Gram Panchayats etc. The same is in line with the NHAI circular cited above under Ref (1) enclosed herewith as **Annexure I** for the ready reference.
- (3) TSSPDCL issued the notices cited under S. Nos (5) to (19) & changed the tariff category from "**LT-VI(A) Street Lighting**" to "**LT-II(B) Commercial**" and also directed NHAI to settle the back billing charges. This act of TSSPDCL was objected by NHAI vide its office letters cited above under (4) & (20), wherein NHAI has categorically requested TSSPDCL for maintaining the tariff category for Street Lighting under "**LT-VI(A) Street Lighting**" with tariff applicable to any Local Municipal bodies or Gram Panchayats for the service connections for Street Lights, as the Street Lights provided by NHAI on NH-65 is kin to the same and is only discharging municipal function.
- (4) The details of Service Connections taken by NHAI for Street Lights are given below for ready reference:

Table 1:

S. No	Division	Sub Division	Section	No. of Services
1	Sangareddy	Sangareddy	Sangareddy Town-2	1
2	Sangareddy	Sangareddy	Sangareddy Rural	1
3	Sangareddy	Sadasivapet	Sadasivapet	6
4	Sangareddy	Sadasivapet	Municipally	2
5	Sangareddy	Sadasivapet	Sadasivapet Rural	2
6	Zaheerabad	Zaheerabad-Town	Zaheerabad-Town	3
7	Zaheerabad	Zaheerabad-Town	Zaheerabad-Rural	2
8	Zaheerabad	Zaheerabad-Town	Kohir	3
9	Zaheerabad	Zaheerabad-Town	Mannapur	4

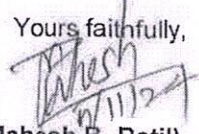
- (5) Further, TSSPDCL even disconnected the Electricity connection taken at the Fee Plaza in June 2022 which were already under **LT-II(B) Commercial** category, citing "linked services" so as to put pressure on NHAI & Concessionaire. Considering the safety of the Road Users being paramount and to avoid disconnection of power at the Fee Plaza, amount demanded by TSSPDCL (as per the **LT-II(B) Commercial**) was paid, as no other immediate option was available.
- (6) In this regard, we would like to draw your kind attention to the recent Order of Appellate Tribunal for Electricity (APTEL) dated September 9, 2024 in the case of Dilip Buildcon Limited (DBL) & NHAI Vs Maharashtra Electricity Regulatory Commission (MERC) and Maharashtra State Electricity Distribution Company Limited (MSEDCL) in the matter of Tariff Categorization w.r.t. streetlighting, which is enclosed herewith as **Annexure II** (please see last para in page 52). As per the ruling, the street lighting provided on National Highways other than those provided in and around the toll collection Plazas and in places where commercial activities are carried on, are to be treated under streetlighting category as **tariff category LT-VI** and not under the wrongly categorized tariff category LT-II.

- (7) Since the Appellate Tribunal for Electricity is a regulatory body, whose Orders are binding upon all the State Electricity Regulatory Commissions across India, it is requested that all the service connections mentioned in Table 1 above are restored to "LT-VI(A) Street Lighting" category with immediate effect and kindly arrange to refund all the additional differential amounts paid till date.

Submitted for needful action please.

Thanking you.

Yours faithfully,


(Mahesh B. Patil),
DGM (T) & Project Director,
NHAI, PIU- Gulbarga

Encl: 1. NHAI circular No – NHAI/CMD/COMP.No.42676, Dated 17.11.2020
2. Appellate order - APPEAL NO. 230 OF 2024 & IA NO. 2314 OF 2023 & IA NO. 363 OF 2024 of dated 9th September 2024.

Copy to:

1. The Regional Officer, Bangalore-RO, NHAI for kind information please.
2. The District Collector, Sangareddy, Telangana for kind information & requested to instruct the concern for restoration of Electricity Connection under tariff category "LT-VI(A) Street Lighting" please.
3. The Team Leader, Independent Engineer, M/s MSV International Inc in association with Sri Infotech, Tirumala Enclave, Pothireddipally, Sangareddy, Telangana for information.
4. The Project Head, M/s. DTL, for Info.



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

WRIT PETITION (WP) NO.7504 OF 2022

- 1) Maharashtra State Electricity
Distribution Company Limited -
Through its Executive Engineer
(Adm.), O&M. Circle, MSEDCL,
Darva Road, Lohara, Yavatmal.

.... Petitioner(s)

// VERSUS //

- 1) DBL Mahagaon, Kinhi
C/o. M/s. DBL Mahagaon Yavatmal
Highways Pvt. Ltd., through its
director, Plot No.05, Inside Govind
Narayan Singh Gate, Kolar Road,
Chunabhatti, Bhopal, 462016;

- 2) ~~Consumer Grievance Redressal Forum,
Amravati Zone, Amravati, "Vidyut
Bhavan", Shivaji Nagar, Amravati,
444603.~~

(Deleted as per
Court's Order dated
20.07.2023)

... Respondent(s)

Shri S.V. Purohit, Advocate for the Petitioner/s
Shri D.V. Chauhan, Advocate for the Respondent No.1

CORAM : ANIL S. KILOR, J.
DATED : 23.10.2023

JUDGMENT :

1. Heard.

nd.thawre

2/11

127wp75804-22(JUD).odt

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. The order dated 27.05.2022 passed in Representation No.16/2022 by the Consumer Grievance Redressal Forum, Amravati Region, Amravati, allowing the representation and thereby directing the petitioner/MSEDCL to retain the category of connection in respect of the respondent to 'street light' category and adjust the difference of amount collected from the respondent on account of reclassification of category in the ensuing bills of the applicant/respondent, is under challenge in this writ petition.

4. The brief facts of the present case, are as under:

The respondent is the concessionaire, incorporated solely for the purpose of executing the concession agreement with NHAI dated 09.06.2017 and obligations of the works provided therein i.e. four-laning of Butibori to Tuljapur road on hybrid annuity mode.

5. The respondent secured electricity connection for installment of street lights on the said road and it was granted under the tariff LT-VI(A) category for the purpose of street lights on the national

nd.thawre

highway project. The petitioner accordingly, issued bills in the said category from time to time and they were duly paid.

6. However, the petitioner/MSEDCL made reclassification from LT-VI(A) category to LT-II(B) category and thereby made upward revision of electricity bills.

7. Feeling aggrieved by such reclassification, the respondent submitted its grievance before the Internal Grievance Redressal Cell, Yavatmal on 14.03.2022. However, as no decision was given, the respondent approached to the Consumer Grievance Redressal Forum, Amravati Zone, Amravati (in short "the Consumer Forum"), raising challenge to the reclassification.

8. The said representation came to be allowed directing the petitioner/MSEDCL to retain the category of connection i.e. 'street light' category and adjust the difference of amount collected from the respondent by the petitioner on account of reclassification, vide order dated 27.05.2022, the same is the subject matter of challenge in this writ petition.

9. I have heard the learned counsel for the respective parties.

10. The learned counsel for the petitioner submits that the Consumer Forum committed error in ignoring the fact that the connection for the street lights on the national highway was provided to the private agency i.e. the respondent and the use of these highway lights are not for the people to carry out their daily works but mainly for vehicles passing through the highway which are paying the charges at the Toll Plaza. He therefore, submits that it is a commercial activity and therefore, it cannot be categorized in LT-VI(A) category i.e. 'street light'.

11. It is submitted that on spot inspection, the Additional Executive Engineer, Flying Squad, submitted the report for change of tariff category from LT-VI streetlight to LT-II commercial. The report was in accordance with the tariff order dated 03.04.2020. It is submitted that the activity of the respondent is purely commercial and therefore, the reclassification was rightly done.

12. On the other hand, the learned counsel for the respondent/consumer submits that the street lights installed on the

highways are the parts of the project facility as defined in EPC agreement. The project facility include provision of street light in clause 2.1 and schedule 'C' of the agreement. It is submitted that NHAI exercises proprietary and controlling right over the project facility including street lights. As such the respondent is merely a concessionaire in respect of the project and it's facilities. It is submitted that the respondent does not exercise any proprietary, operational and commercial control over the project facilities. It is submitted that the respondent, being contractor, has handed over the project facilities to the NHAI for operation of the Toll Plaza and is liable only towards maintenance of the project and not for collection of user fee from the users of the National Highway.

13. It is submitted that the street lights installed by the respondent render the function of municipal category, as there was no revenue generated from such usage of street lights, rather the connection is for services only for the general public use. He therefore, submits that considering the above referred fact, the Consumer Forum has rightly allowed the representation.

14. The learned counsel for the respondent further submits that the petitioner, without any reasonable cause, has revised the tariff without affording any opportunity of fair hearing. It is therefore, submitted that the decision of reclassification is erroneous and it was accordingly, rightly held by the Consumer Forum.

15. The learned counsel for the respondent has pointed out the various decision of the Consumer Forum as well as the Ombudsman, wherein a similar view was taken, as taken in this case by the Consumer Forum. He therefore, submits that once the specialized Tribunal has taken certain view, in such matter the Courts have to tread with extreme care and caution. It is submitted that a body that deals with a particular type of matters on an everyday basis would be expected to have greater command over the law applicable in the field and a Constitutional Court would not interfere with a view expressed on interpretation unless it appears to be grossly inappropriate and almost outlandish. In support of his submission, he has placed reliance on the judgment of *Ri Kynjai*

Serenity by the Lake and Others Vs. Principal Commissioner of Income Tax and Another¹.

16. In light of the rival submissions of the parties, I have perused the record and the impugned order.

17. After going through the impugned order, it is evident that the Chairman of the Consumer Forum has held in favour of the respondent and retained the category of connection as 'street light'. Whereas, the Member Secretary has recorded contrary view and held that the petitioner has rightly applied the commercial tariff to the respondent.

18. According to the Chairman of the Consumer Forum, the respondent has not provided street lights on entire stretch of the highway but certain specific places like service roads, intersection of villages & towns etc. which are for use of local residents free of charge. It is further observed that, the street lights provided on the high way passing through the villages/towns are for ease of local residents to carry out their day to day activities and to avoid

¹ 2023 SCC OnLine Megh 342

accidents and mis-happening and nothing to do with the collection of toll. It is also observed that the respondent is not entitled to collect the toll from the vehicles and the petitioner has given connection for street lights only and not for Toll Plaza and other amenities.

19. Thus, considering the actual usage and not considering the nature of activities, the Chairman of the Consumer Forum, arrived at a conclusion that since it is for the public benefits, tariff should be 'street light' tariff category.

20. Contrary to the same, the Member Secretary has observed that these highway lights are not for the people to carry out their daily works but mainly for the vehicles passing through the highway, as these vehicles are paying the charges at the Toll Plaza and since it is commercial activity, the tariff should be of commercial tariff category.

21. It is pertinent to note that, the street light category tariff i.e. LT-VI is applicable for the electricity used for lighting of public streets thorough fares which are open for use by the general public

9/11

127wp75804-22(JUD).odt

at Low/Medium Voltage and at High Voltage. Street lights in residential complexes, commercial complexes, industrial premises etc. will be billed at the tariff of the respective applicable categories.

22. Whereas, LT-II i.e. the non-residential/commercial tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating cooling, cooking, washing/cleaning, entertainment/leisure and water pumping in, but not limited to, the premises enumerated under the said category.

23. Thus, it is apparent that the usage of electricity is relevant in the matter at the hand. It is not the case of the petitioner that the street lights are provided for the entire stretch of the highway. From the record, it can be seen that the street lights are provided at certain specific places like service roads, intersection of villages and towns. The photographs filed by the respondents along with the reply support the case of the respondent that the street lights are installed for use of local residents free of charge.

10/11

127wp75804-22(JUD).odt

24. The petitioner has not pointed out anything to show that the usage is commercial which is meant for operating various appliances used for purposes of specified in LT-II, which is the pre-requisite to apply LT-II category i.e. the commercial category tariff.

25. The mere fact that street lights are installed on over bridges and under bridges or at bus bay and bus shelter locations, build up sections on the project highways, is not sufficient to arrive at a conclusion that the use of electricity is for commercial consumption. Similarly, the fact that the street lights are installed on certain highways is not sufficient to hold that it is for commercial consumption and not for the use of general public.

26. Moreover, the NHAI comes under the Ministry of Roadways under the Government of India. The highway is for the purpose of benefiting the general public at large and the purpose of streets is not to earn the profit but to provide connectivity and facilities to the citizens of India. A huge investment required for such construction of highways and therefore, the toll is being collected. However, it will not make the activity as commercial one.

27. Thus, I find substance in the submission of the learned counsel for the respondent that the respondent is merely a concessionaire in respect of the project and its facilities and do not exercise any proprietary, operational and commercial control over the project facilities.

28. It is also evident that the respondent, as a contractor, has handed over the project facilities to NHAI for operation of Toll Plaza and the respondent is liable only towards maintenance of the project and not for collection of user fee from the users of the national highways. Thus, in the peculiar facts and circumstances of this case, it is difficult to accept that it is the commercial activity to which the LT-II tariff will apply.

29. In the circumstances, I do not find any merits in the present matter, accordingly, the writ petition is **dismissed**.

Rule is discharged. No order as to costs.

[ANIL S. KILOR, J.]

MSK PROJECTS (I) (JV) LTD. v. STATE OF RAJASTHAN

573

SUPPLEMENTARY ORDER

a 67. We have delivered today the judgment in these cases (*supra* paras 1-66) and while answering the last substantial question of law, we have held that when a particular demand is raised on a licensee, the licensee can challenge the demand before the Tribunal and the Tribunal will have to go into the facts and materials on the basis of which the demand is raised and decide whether the demand is in accordance with the licence agreement and in particular the definition of adjusted gross revenue in the licence agreement and can also interpret the terms and conditions of the licence agreement.

b 68. It is stated by Mr C.S. Vaidyanathan, learned Senior Counsel for some of the licensees that demands have already been raised on them. He submitted that two months' time be granted to the licensees to raise their disputes before the Tribunal and in the meanwhile the demands should not be enforced.

c 69. If the demands have been raised, we grant two months' time to the licensees to raise the dispute before the Tribunal against the demands and during this period of two months, the demands will not be enforced.

d (2011) 10 Supreme Court Cases 573

(BEFORE P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.)

MSK PROJECTS INDIA (JV) LIMITED

.. Appellant;

Versus

e STATE OF RAJASTHAN AND ANOTHER

.. Respondents.

Civil Appeals No. 5416 of 2011[†] with No. 5417 of 2011,
decided on July 21, 2011

f **A. Contract and Specific Relief — Remedies for Breach of Contract — Damages — Measure/Quantification of damages — Measure of contractual damages — Expectation interest — Loss of expected profit, attributable to breach(es) of contract by the other party, reiterated, is recoverable — Contractual measure of damages distinguished from “reimbursement” or “compensation” — Contract Act, 1872, Ss. 73 and 74**

Held :

g In common parlance, “reimbursement” means and implies restoration of an equivalent for something paid or expended. Similarly, “compensation” means anything given to make the equivalent. However, a claim by a contractor for recovery of amount as damages as expected profit out of contract cannot be disallowed on ground that there was no proof that he suffered actual loss to the extent of amount claimed *on account of breach of contract*. (Para 38)

Damages can be claimed by a contractor where the Government is *proved to have committed breach by improperly rescinding the contract* and for estimating

h

[†] From the Judgment and Order dated 24-4-2007 of the High Court of Judicature of Rajasthan at Jaipur in Civil Misc. Appeal No. 1581 of 2006

574

SUPREME COURT CASES

(2011) 10 SCC

the amount of damages, the court should make a broad evaluation *instead of going into minute details*. Where in the works contract, the party entrusting the work committed *breach of contract, the contractor is entitled to claim the damages for loss of profit which he expected to earn by undertaking the works contract*. Claim of expected profits is *legally admissible on proof of the breach of contract* by the erring party. What would be the measure of profit would depend upon the facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract *is guilty of breach of contract* cannot be gainsaid. (Para 39)

Dwaraka Das v. State of M.P., (1999) 3 SCC 500; *A.T. Brij Paul Singh v. State of Gujarat*, (1984) 4 SCC 59, *followed*

BSNL v. Reliance Communication Ltd., (2011) 1 SCC 394 : (2011) 1 SCC (Civ) 192; *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705, *relied on*

State of Gujarat v. Shantilal Mangaldas, (1969) 1 SCC 509; *Tisco Ltd. v. Union of India*, (2001) 2 SCC 41; *GDA v. Balbir Singh*, (2004) 5 SCC 65; *HUDA v. Raj Singh Rana*, (2009) 17 SCC 199 : (2011) 2 SCC (Civ) 136, *referred to*

[Ed.: This aspect of the recoverability expected profits is considered the standard measure of contractual damages and has been called the "expectation interest" in the classic article "The Reliance Interest in Contract Damages" by Lon L. Fuller and W.R. Perdue, 46 Yale Law Journal (1936) 52-92.

Available free at <http://cisg.law.pace.edu/cisg/biblio/fuller.html#iv> last accessed on 19-11-2011)

It is valuable to consider Fuller and Perdue's definitions of the three kinds of interest to be protected by damages in the contractual context:

"It is convenient to distinguish three principal purposes which may be pursued in awarding contract damages. These purposes, and the situations in which they become appropriate, may be stated briefly as follows:

First, the plaintiff has in reliance on the promise of the defendant conferred some value on the defendant. The defendant fails to perform his promise. The court may force the defendant to disgorge the value he received from the plaintiff. The object here may be termed the prevention of gain by the defaulting promisor at the expense of the promisee; more briefly, the prevention of unjust enrichment. The interest protected may be called the *restitution interest*. For our present purposes it is quite immaterial how the suit in such a case be classified, whether as contractual or quasi-contractual, whether as a suit to enforce the contract or as a suit based upon a rescission of the contract. These questions relate to the superstructure of the law, not to the basic policies with which we are concerned."

The Law of Restitution has since gained explicit recognition in Common Law Jurisdictions as an independent cause of action, and these are very clearly purely restitutionary claims, and the fiction of "quasi-contract" is no longer necessary to sustain such claims. For further case law see Contract and Specific Relief, '12(n) Remedies/Relief Restitutionary Remedies', pp. 363 et seq. in Vol. 13, *Complete Digest of Supreme Court Cases*, 2nd Edn.

Fuller and Perdue continue:

"Secondly, the plaintiff has in reliance on the promise of the defendant changed his position. For example, the buyer under a contract for the sale of land has incurred expense in the investigation of the seller's title, or has neglected the opportunity to enter other contracts. We may award damages to the plaintiff for the purpose of undoing the harm which his reliance on the defendant's promise has caused him. Our object is to put him in as good a position as he was in before the promise was made. The interest protected in this case may be called the *reliance interest*."

MSK PROJECTS (I) (JV) LTD. v. STATE OF RAJASTHAN

575

Thirdly, without insisting on reliance by the promisee or enrichment of the promisor, we may seek to give the promisee the value of the expectancy which the promise created. We may in a suit for specific performance actually compel the defendant to render the promised performance to the plaintiff, or, in a suit for damages, we may make the defendant pay the money value of this performance. Here our object is to put the plaintiff in as good a position as he would have occupied had the defendant performed his promise. The interest protected in this case we may call the expectation interest.”]

B. Contract and Specific Relief — Remedies/Relief — Remedies for Breach of Contract — Damages — Measure/Quantification of damages — BOT (build, operate and transfer) contract for construction of bypass road — Grant of concession to contractor for collection of tolls thereon — Delay in issuance of notification by State barring use of old route diverting vehicles to use new route alone — Damages claimed for loss of expected profit occasioned thereby — Entitlement to

— Held, in pre-bid meetings parties decided compensation would be worked out on basis of investment made by contractor — As per Noti. dt. 10-2-1997 toll can only be collected to recover cost of construction and maintenance including interest thereon — Toll fee cannot be collected to recover the amount never spent by the contractor — In first phase, appellant spent about Rs 10.45 crores and recovered the same with certain profit but below expected profit — For second phase, amount of Rs 3.55 crores has not been spent by appellant

— Appellant was entitled to sum of Rs 26.34 lakhs with 10% interest as loss of expected profit in first phase, awarded by Arbitral Tribunal, caused by delay in issuing notification

— Matter remanded to Arbitral Tribunal to determine issues as to second phase of contract — Arbitration and Conciliation Act, 1996 — Ss. 2(1)(a), 7, 34 and 37(1)(a) — Tolls Act, 1851 — Noti. dt. 10-2-1997, Cl. IV(a) — Motor Vehicles — Rajasthan Motor Vehicles Taxation (Amendment) Act, 1994 (9 of 1995) — Contract Act, 1872, S. 73 (Paras 43 to 50 and 29 to 32)

C. Cess, Tolls and Miscellaneous Taxes — Toll fee/tax — Toll concession — Entitlement to recover toll fee — Toll fee cannot be collected to recover the amount never spent by the contractor — Notification in question provided that toll can only be collected to recover cost of construction and maintenance including interest thereon (Paras 43 to 50)

ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705; *HUDA v. Raj Singh Rana*, (2009) 17 SCC 199; (2011) 2 SCC (Civ) 136; *GDA v. Balbir Singh*, (2004) 5 SCC 65; *State of Gujarat v. Shantilal Mangaldas*, (1969) 1 SCC 509; *Tisco Ltd. v. Union of India*, (2001) 2 SCC 41; *Dwaraka Das v. State of M.P.*, (1999) 3 SCC 500; *A.T. Brij Paul Singh v. State of Gujarat*, (1984) 4 SCC 59; *BSNL v. Reliance Communication Ltd.*, (2011) 1 SCC 394; (2011) 1 SCC (Civ) 192, *relied on*

D. Arbitration and Conciliation Act, 1996 — Ss. 34 and 16 — Jurisdiction and power of arbitrator — Scope — Held, it is not permissible for arbitrator to travel beyond terms of reference — If award goes beyond reference or there is an error apparent on face of award it would be open to court to interfere with such award — However, in exceptional circumstances where a party pleads that demand of another party is beyond terms of contract and statutory provisions, arbitrator may examine terms of contract

576

SUPREME COURT CASES

(2011) 10 SCC

and statutory provisions — In absence of proper pleadings and objections, such a course may not be permissible — In present case matters which were beyond reference, and had thus been wrongly entered into, remanded to Arbitral Tribunal for reconsideration (Paras 15 to 21 and 29 to 32)

Grid Corpn. of Orissa Ltd. v. Balasore Technical School, (2000) 9 SCC 552; *DDA v. R.S. Sharma and Co.*, (2008) 13 SCC 80; *Associated Engg. Co. v. Govt. of A.P.*, (1991) 4 SCC 93; *Gobardhan Das v. Lachmi Ram*, AIR 1954 SC 689; *Thawardas Pherumal v. Union of India*, AIR 1955 SC 468; *Union of India v. Kishorilal Gupta & Bros.*, AIR 1959 SC 1362; *Alopi Parshad & Sons Ltd. v. Union of India*, AIR 1960 SC 588; *Jivarajbhai Ujamshi Sheth v. Chintamanrao Balaji*, AIR 1965 SC 214; *Renusagar Power Co. Ltd. v. General Electric Co.*, (1984) 4 SCC 679; *Kishore Kumar Khaitan v. Praveen Kumar Singh*, (2006) 3 SCC 312; *Cellular Operators Assn. of India v. Union of India*, (2003) 3 SCC 186; *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705; *Hindustan Zinc Ltd. v. Friends Coal Carbonisation*, (2006) 4 SCC 445, *relied on*
Williams v. Lourdasamy, (2008) 5 SCC 647, *considered*

E. Arbitration and Conciliation Act, 1996 — Ss. 34, 31, 16 and 37(1)(a) — Arbitral award — Interference with award — Power of court — New plea — Defence/Claim not raised before arbitrator, held, cannot be considered by court — Toll road concession agreement — Dispute relating to delay in issuance and implementation of notification by State barring use of old route — Arbitral award for loss sustained on account of, by contractor — Set aside by courts below on ground that there was no clause in agreement for State to issue such notification — Such defence/claim not raised before Arbitral Tribunal — Held, courts below fell into error in considering issue not raised by State before Arbitral Tribunal during arbitration proceedings (Paras 22, 23 and 48)

F. Arbitration and Conciliation Act, 1996 — S. 31(7) — Rate of Interest — Interest rate agreed upon — Power of courts to vary — Interest rate of 20% agreed upon by parties — Courts below reducing interest awarded by Arbitral Tribunal from 18% to 10% — Validity of — Held, under S. 3 of Interest Act, 1978 court is empowered to award interest at rate prevailing in banking transactions — Thus, impliedly, court has a power to vary rate of interest agreed to by the parties — Debt, Financial and Monetary Laws — Interest Act, 1978 — S. 3 — Civil Procedure Code, 1908, S. 34

(Paras 24 to 28)

G. Arbitration and Conciliation Act, 1996 — S. 31(7) — Interest — Powers of arbitrator — Pre-reference and post-reference period — Distinguished — Held, arbitrator is competent to award interest for period commencing with date of award to date of decree or date of realisation, whichever is earlier — Award of interest for period prior to arbitrator entering upon reference is a matter of substantive law, while grant of interest for post-award period is a matter of procedure (Para 24)

Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy, (2007) 2 SCC 720, *followed*

Thawardas Pherumal v. Union of India, AIR 1955 SC 468; *Union of India v. Bungo Steel Furniture (P) Ltd.*, AIR 1967 SC 1032; *Deptt. of Irrigation v. Abhaduta Jena*, (1988) 1 SCC 418; *Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd.*, (1989) 1 SCC 532; *Irrigation Deptt., Govt. of Orissa v. G.C. Roy*, (1992) 1 SCC 508; *Hindustan Construction Co. Ltd. v. State of J&K*, (1992) 4 SCC 217; *Dhenkanal Minor Irrigation Division v. N.C. Budharaj*, (2001) 2 SCC 721; *Bhagawati Oxygen Ltd. v. Hindustan Copper Ltd.*, (2005) 6 SCC 462; *Indian Hume Pipe Co. Ltd. v. State of*

MSK PROJECTS (I) (JV) LTD. v. STATE OF RAJASTHAN

577

Rajasthan, (2009) 10 SCC 187 : (2009) 4 SCC (Civ) 115; *HUDA v. Raj Singh Rana*, (2009) 17 SCC 199 : (2011) 2 SCC (Civ) 136, *relied on*

- a *GDA v. Balbir Singh*, (2004) 5 SCC 65; *Bihar State Housing Board v. Arun Dakshy*, (2005) 7 SCC 103; *HUDA v. Manoj Kumar*, (2005) 9 SCC 541; *HUDA v. Prem Kumar Agarwal*, (2008) 17 SCC 607, *referred to*

- b **H. Cess, Tolls and Miscellaneous Taxes — Toll fee/tax — Held, is compensatory in nature — It can be collected by State to reimburse to itself amount it has spent on construction of road/bridge, etc. — State is competent to levy/collect toll fee only for period stipulated under statute or till actual cost of project with interest, etc. is recovered — It cannot be a source of revenue for State — Tolls Act, 1851 — Noti. dt. 10-2-1997, Cl. IV(a) (Paras 34 to 37)**

State of U.P. v. Devi Dayal Singh, (2000) 3 SCC 5, *relied on*

- c **I. Government Contracts/Tenders — Particular contracts/clauses/terms — Toll concession contract — Scope of — BOT (build, operate and transfer) contract for construction of bypass road — Grant of concession to contractor for collection of tolls thereon — Alternative road widened and strengthened by contractor during construction of bypass road — Collection of toll fee therefrom — Entitlement to — Held, bid documents indicate particular patch had also been an integral part of the project — Concession agreement also provided that Government would levy and charge fee from all persons using project facilities — Project was not in parts but was a composite and integrated project which included this part of road also — Hence, appellant contractor entitled to collect toll fee on that part of the road (Paras 29 to 32)**

B-D/48309/CV

- e Advocates who appeared in this case :
K.K. Venugopal, Senior Advocate (Shirish Patel, Karan Patel, Ankur Saigal, Abhay Anand, Gaurav Singh and Ms Bina Gupta, Advocates) for the Appellant;
Dr. Manish Singhvi, Additional Advocate General (Vijay Verma and Milind Kumar, Advocates) for the Respondents.

Chronological list of cases cited

on page(s)

- | | | |
|---|---|----------------------|
| f | 1. (2011) 1 SCC 394 : (2011) 1 SCC (Civ) 192, <i>BSNL v. Reliance Communication Ltd.</i> | 587d-e |
| | 2. (2009) 17 SCC 199 : (2011) 2 SCC (Civ) 136, <i>HUDA v. Raj Singh Rana</i> | 584e, 584e-f, 586g-h |
| | 3. (2009) 10 SCC 187 : (2009) 4 SCC (Civ) 115, <i>Indian Hume Pipe Co. Ltd. v. State of Rajasthan</i> | 584a-b |
| | 4. (2008) 17 SCC 607, <i>HUDA v. Prem Kumar Agarwal</i> | 584e-f |
| | 5. (2008) 13 SCC 80, <i>DDA v. R.S. Sharma and Co.</i> | 581d-e |
| g | 6. (2008) 5 SCC 647, <i>Williams v. Lourdasamy</i> | 582b-c |
| | 7. (2007) 2 SCC 720, <i>Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy</i> | 584c-d, 585a-b |
| | 8. (2006) 4 SCC 445, <i>Hindustan Zinc Ltd. v. Friends Coal Carbonisation</i> | 582d |
| | 9. (2006) 3 SCC 312, <i>Kishore Kumar Khaitan v. Praveen Kumar Singh</i> | 582a-b |
| | 10. (2005) 9 SCC 541, <i>HUDA v. Manoj Kumar</i> | 584e-f |
| h | 11. (2005) 7 SCC 103, <i>Bihar State Housing Board v. Arun Dakshy</i> | 584e-f |
| | 12. (2005) 6 SCC 462, <i>Bhagawati Oxygen Ltd. v. Hindustan Copper Ltd.</i> | 584a-b |
| | 13. (2004) 5 SCC 65, <i>GDA v. Balbir Singh</i> | 584e-f, 586g-h |

578	SUPREME COURT CASES	(2011) 10 SCC
14.	(2003) 5 SCC 705, <i>ONGC Ltd. v. Saw Pipes Ltd.</i>	582d, 587e-f
15.	(2003) 3 SCC 186, <i>Cellular Operators Assn. of India v. Union of India</i>	582b-c
16.	(2001) 2 SCC 721, <i>Dhenkanal Minor Irrigation Division v. N.C. Budharaj</i>	584a-b a
17.	(2001) 2 SCC 41, <i>Tisco Ltd. v. Union of India</i>	586g-h
18.	(2000) 9 SCC 552, <i>Grid Corpn. of Orissa Ltd. v. Balasore Technical School</i>	581d-e
19.	(2000) 3 SCC 5, <i>State of U.P. v. Devi Dayal Singh</i>	586a
20.	(1999) 3 SCC 500, <i>Dwaraka Das v. State of M.P.</i>	586g-h
21.	(1992) 4 SCC 217, <i>Hindustan Construction Co. Ltd. v. State of J&K</i>	584a
22.	(1992) 1 SCC 508, <i>Irrigation Deptt., Govt. of Orissa v. G.C. Roy</i>	584a b
23.	(1991) 4 SCC 93, <i>Associated Engg. Co. v. Govt. of A.P.</i>	581d-e
24.	(1989) 1 SCC 532, <i>Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd.</i>	584a
25.	(1988) 1 SCC 418, <i>Deptt. of Irrigation v. Abhaduta Jena</i>	584a
26.	(1984) 4 SCC 679, <i>Renusagar Power Co. Ltd. v. General Electric Co.</i>	582a-b
27.	(1984) 4 SCC 59, <i>A.T. Brij Paul Singh v. State of Gujarat</i>	587a-b c
28.	(1969) 1 SCC 509, <i>State of Gujarat v. Shantilal Mangaldas</i>	586g-h
29.	AIR 1967 SC 1032, <i>Union of India v. Bungo Steel Furniture (P) Ltd.</i>	583h
30.	AIR 1965 SC 214, <i>Jivarajbhai Ujamshi Sheth v. Chintamanrao Balaji</i>	582a
31.	AIR 1960 SC 588, <i>Alopi Parshad & Sons Ltd. v. Union of India</i>	582a
32.	AIR 1959 SC 1362, <i>Union of India v. Kishorilal Gupta & Bros.</i>	582a
33.	AIR 1955 SC 468, <i>Thawardas Pherumal v. Union of India</i>	582a, 583h d
34.	AIR 1954 SC 689, <i>Gobardhan Das v. Lachhmi Ram</i>	582a

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J.— Both these appeals have been preferred by the rival parties against the judgment and order dated 24-4-2007 passed by the High Court of Rajasthan (Jaipur Bench) in Civil Miscellaneous Appeal No. 1581 of 2006 under Section 37(1)(a) of the Arbitration and Conciliation Act, 1996 (hereinafter called “the 1996 Act”) against the order dated 17-1-2006 passed by the District Judge, Jaipur City, Jaipur in Arbitration Case No. 89 of 2004 whereby the application filed by the State of Rajasthan under Section 34 of the 1996 Act for setting aside the arbitral award dated 1-12-2003 had been allowed. e

2. The facts and circumstances giving rise to these appeals are: the Public Works Department of the State of Rajasthan (hereinafter called “PWD”) decided in September 1997 to construct the Bharatpur bypass for the road from Bharatpur to Mathura, which passed through a busy market of the city of Bharatpur. For the aforesaid work, tenders were invited with a stipulation that the work would be executed on the basis of build, operate and transfer (BOT). The total extent of the road had been 10.850 km out of which 9.6 km was new construction and 1.25 km was improvement i.e. widening and strengthening of the existing portion of Bharatpur-Deeg Road. f g

3. After having pre-bid conference/meeting and completing the required formalities it was agreed between the tenderers and PWD that compensation would be worked out on the basis of investment made by the entrepreneur concerned. The tender submitted by MSK, appellant for Rs 1325 lakhs was accepted vide Letter dated 5-2-1998 and MSK, appellant was called upon to h

MSK PROJECTS (I) (JV) LTD. v. STATE OF RAJASTHAN (*Dr. Chauhan, J.*) 579

furnish security deposit which was done on 25-7-1998. Concession agreement dated 19-8-1998 was entered into between the parties authorising
a collection of toll fee by MSK, appellant. According to this agreement, the period of concession had been 111 months including the period of construction. The said period would end on 6-4-2008. It also contained the provisions for making repayment/collection of toll fee and in case of any difference/dispute to refer the matter to the arbitrator.

4. MSK, appellant completed the Bharatpur Bypass Project on 10-4-2000
b and also started collection of toll fee as provided under the agreement with effect from 28-4-2000. There had been some problem in collecting the toll fee because of agitation by local people. The State issued a Notification dated 1-9-2000 under the provisions of the Tolls Act, 1851 and the Rajasthan Motor Vehicles Taxation (Amendment) Act, 1994 (hereinafter called "the Notification dated 1-9-2000") preventing the entry of vehicles into Bharatpur
c City, stipulating its operation with effect from 1-10-2000.

5. MSK, appellant invoked the arbitration clause raising the dispute with respect to:

(a) Delay in issuance of notification prohibiting entry of commercial vehicles into Bharatpur Town and diverting traffic through the bypass;
and
d (b) Collection of toll from vehicles using Bharatpur-Deeg patch of the road.

6. The State/PWD failed to make appointment of the arbitrator. MSK, appellant preferred SB Civil Arbitration Application No. 31 of 2002 before the High Court and the High Court vide order dated 12-4-2002 appointed the arbitrator. The arbitrators so appointed in their meeting on 8-5-2002
e appointed the third arbitrator. A claim petition was filed before the Tribunal by MSK, appellant on 23-9-2002. The State submitted its reply to the claim petition on 7-12-2002.

7. The arbitral award was made in favour of MSK, appellant on 1-12-2003 according to which there had been delay on the part of the State of Rajasthan in issuing the notification and the State failed to implement the
f same and the contractor was entitled to collect toll fee even from the vehicles using Bharatpur-Deeg part of the road. The State of Rajasthan was directed to pay a sum of Rs 990.52 lakhs to MSK, appellant as loss due up to 31-12-2003 with 18% interest from 31-12-2003 onwards. The Tribunal further gave various other directions to the State in this regard.

8. Being aggrieved, the State of Rajasthan filed objections under Section
g 34 of the 1996 Act and while deciding the same, the District Judge vide order dated 17-1-2006 set aside the arbitral award on the grounds that there was no clause in the agreement to issue notification barring the entry of vehicles in the city of Bharatpur; and the Tribunal erred in taking the 1997 survey as basis for calculating the loss suffered by MSK, appellant. It held that MSK, appellant was not entitled to any monetary compensation under Clause 10 of
h the concession agreement, but only entitled to extension of concession period, and the rate of interest was reduced from 18% to 10%.

9. Being aggrieved, MSK, appellant preferred an appeal before the High Court wherein the High Court vide impugned judgment and order dated 24-4-2007 held that Bharatpur-Deeg section was part of the project and the contractor could collect the toll fee from the users of this part of the road also. Clause 10 of the concession agreement was not attracted in the facts of the case. There was no agreement for issuance of notification by the State barring the use of the old route and directing the vehicles to use the new route alone. Therefore, the question of grant of compensation on that account for the traffic loss could not arise. The District Judge was justified in reducing the rate of interest from 18% to 10% in view of the provisions of Section 31(7)(b) of the 1996 Act and economic realities, whereby the rate of interest had been reduced by the banks in India. Hence, these two appeals.

10. Mr K.K. Venugopal, learned Senior Counsel appearing for the private appellant, has submitted that it was implied in the agreement and there has been an understanding between the parties that the State Government would issue a notification barring the vehicles being driven through the markets of Bharatpur City. This was not even an issue before the Tribunal and thus, could not be agitated by the State at all. Thus, the courts below erred in setting aside the award of the Arbitral Tribunal to that extent, and secondly, that the rate of interest as reduced from 18% to 10% by the District Court as well as the High Court is in contravention of the terms of contract between the parties which fixed the rate of interest at 20%. Further opposing the appeal by the State of Rajasthan, Shri Venugopal has submitted that Bharatpur-Deeg patch was an integral part of the project as there was only one composite contract of the entire bypass and, therefore, the private appellant was entitled to collect the toll fee from the users of that part of the road also.

11. Per contra, Dr. Manish Singhvi, learned Additional Advocate General for the State of Rajasthan, has submitted that arbitration proceedings could not be proceeded in contravention to the terms of agreement and statutory provisions. There was no obligation on the part of the State authorities to issue the notification restraining the entry of vehicles to the market side of the city. The rate of interest has rightly been reduced considering the prevailing rate of interest in banking transactions during the relevant period of contract. In support of the appeal of the State, it has been submitted that there was a clear understanding between the parties that the private appellant shall not collect any toll fee on the Bharatpur-Deeg patch and to that extent the Tribunal and the courts below committed an error.

12. It has further been submitted by Dr. Singhvi that the total contract had been for a sum of Rs 13.25 crores including interest. The project was to be executed in two phases. The second phase for a sum of Rs 3.24 crores had never been executed by the private appellant. The contractor could collect the compensation only on the basis of investment made by it. The concept of toll fee is compensatory in nature wherein the State which has spent a huge amount on construction of roads/bridges, etc. has a right to get the said amount reimbursed, and therefore, in such a contract the concept of profit which prevails in other forms of contract cannot be the relevant component.

MSK PROJECTS (I) (JV) LTD. v. STATE OF RAJASTHAN (*Dr. Chauhan, J.*) 581

13. We have considered the rival submissions made on behalf of the parties and perused the record.

- a 14. In the appeal filed by the private contractor, MSK Projects, two issues are involved; namely, whether it was mandatory/necessary in view of the agreement/contract or on the basis of pre-bid understanding that the State had to issue the notification barring the vehicles through the markets of Bharatpur City; and secondly, whether the rate of interest could be reduced from 18% to 10% by the courts below. In the State appeal, the only issue
b required to be considered is whether the private appellant had a right to collect the toll fee on the patch between Bharatpur-Deeg.

15. The issue regarding the jurisdiction of the Arbitral Tribunal to decide an issue not referred to is no more *res integra*. It is a settled legal proposition that special tribunals like Arbitral Tribunals and Labour Courts get jurisdiction to proceed with the case only from the reference made to them.
c Thus, it is not permissible for such tribunals/authorities to travel beyond the terms of reference. Powers cannot be exercised by the Tribunal so as to enlarge materially the scope of reference itself. If the dispute is within the scope of the arbitration clause, it is no part of the province of the court to enter into the merits of the dispute on the issue not referred to it. If the award goes beyond the reference or there is an error apparent on the face of the
d award it would certainly be open to the court to interfere with such an award. (*Vide Grid Corpn. of Orissa Ltd. v. Balasore Technical School*¹ and *DDA v. R.S. Sharma and Co.*²)

16. In *Associated Engg. Co. v. Govt. of A.P.*³ this Court held that an umpire or arbitrator cannot widen his jurisdiction by deciding a question not referred to him by the parties. If he exceeded his jurisdiction by so doing, his
e award would be liable to be set aside. Thus, an arbitrator cannot be allowed to assume jurisdiction over a question which has not been referred to him, and similarly, he cannot widen his jurisdiction by holding contrary to the fact that the matter which he wants to decide is within the submission of the parties.

- f 17. If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. Extrinsic evidence is admissible in such cases because the dispute is not
g something which arises under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such a jurisdictional error needs to be proved by

h 1 (2000) 9 SCC 552 : AIR 1999 SC 2262
2 (2008) 13 SCC 80
3 (1991) 4 SCC 93 : AIR 1992 SC 232

582

SUPREME COURT CASES

(2011) 10 SCC

evidence extrinsic to the award. (See *Gobardhan Das v. Lachhmi Ram*⁴, *Thawardas Pherumal v. Union of India*⁵, *Union of India v. Kishorilal Gupta & Bros.*⁶, *Alopi Parshad & Sons Ltd. v. Union of India*⁷, *Jivarajbhai Ujamshi Sheth v. Chintamanrao Balaji*⁸ and *Renusagar Power Co. Ltd. v. General Electric Co.*⁹) a

18. In *Kishore Kumar Khaitan v. Praveen Kumar Singh*¹⁰ this Court held that when a court asks itself a wrong question or approaches the question in an improper manner, even if it comes to a finding of fact, the said finding of fact cannot be said to be one rendered with jurisdiction. The failure to render the necessary findings to support its order would also be a jurisdictional error liable to correction. (See also *Williams v. Lourdasamy*¹¹.) b

19. In *Cellular Operators Assn. of India v. Union of India*¹² this Court held as under: (SCC pp. 211 & 216, paras 26 & 50)

“26. As regards the issue of jurisdiction, it posed a wrong question and gave a wrong answer. c

* * *

50. The learned TDSAT, therefore, has posed absolutely a wrong question and thus its impugned decision suffers from a misdirection in law.”

20. This Court, in *ONGC Ltd. v. Saw Pipes Ltd.*¹³ and *Hindustan Zinc Ltd. v. Friends Coal Carbonisation*¹⁴, held that an arbitration award contrary to substantive provisions of law, or provisions of the 1996 Act or against the terms of the contract, or public policy, would be patently illegal, and if it affects the rights of the parties, it would be open for the court to interfere under Section 34(2) of the 1996 Act. d

21. Thus, in view of the above, the settled legal proposition emerges to the effect that the Arbitral Tribunal cannot travel beyond the terms of reference; however, in exceptional circumstances where a party pleads that the demand of another party is beyond the terms of contract and statutory provisions, the Tribunal may examine by the terms of contract as well as the statutory provisions. In the absence of proper pleadings and objections, such a course may not be permissible. e f

22. Be that as it may, in the instant case, a reference to the Tribunal had been made on the basis of statement of facts, claims by the private appellant,

4 AIR 1954 SC 689

5 AIR 1955 SC 468

6 AIR 1959 SC 1362

7 AIR 1960 SC 588

8 AIR 1965 SC 214

9 (1984) 4 SCC 679 : AIR 1985 SC 1156

10 (2006) 3 SCC 312

11 (2008) 5 SCC 647

12 (2003) 3 SCC 186

13 (2003) 5 SCC 705 : AIR 2003 SC 2629

14 (2006) 4 SCC 445

g

h

MSK PROJECTS (I) (JV) LTD. v. STATE OF RAJASTHAN (*Dr. Chauhan, J.*) 583

defence taken by the respondent State and rejoinder by the claimant. After completing the formalities of admission and denial by each party in respect of each other's documents and submission of draft proposed issues and respective oral evidence, the Tribunal on 4-1-2003 framed the following issues:

1. Whether the claimant as per agreement is entitled to recover its amount of claim of Rs 453.69 lakhs up to 31-12-2002 and onwards or not?
 2. Whether there was delay on the part of the State Government in issuing notification for restriction of traffic through Bharatpur Town, which has affected the toll tax or not? If so, how much delay and delay in full rate of safe implementation as on date, or not? By virtue of it, is the claimant entitled to recover its claim of Rs 292.17 lakhs up to 31-12-2002 and thereafter onward or not; or merely by extension of concession period as averred by the respondent?
 3. As a consequence of Issues 1 and 2, which party breached the contract?
 4. Whether the claimant is entitled to claim interest on its any due claim amount as per decision of Issues 1 and 2? If so, from what date and at what rate of simple/compound interest?
 5. Whether the claimant or respondent is entitled for cost of arbitration incurred and claimed by each party? If so, what amount and to which party?
 6. Any other relief, if any, demanded by any party during the proceedings.
23. The Tribunal considered the relevant agreement provisions as well as the land lease deed, total package documents, minutes of pre-bid meetings and the deed authorising collection of toll fee, etc., and proceeded with the arbitration proceedings. The State of Rajasthan had not taken the defence that it was not agreed between the parties to issue the notification barring the traffic through the markets of Bharatpur City. The only issue remained as to whether there was delay in issuance of notification and implementation thereof. In such a fact situation and considering the settled legal propositions, we are of the view that the District Judge as well as the High Court fell in error considering the issue which was not taken by the State before the Tribunal during the arbitration proceedings.
24. Furthermore, it is a settled legal proposition that the arbitrator is competent to award interest for the period commencing with the date of award to the date of decree or date of realisation, whichever is earlier. This is also quite logical for, while award of interest for the period prior to an arbitrator entering upon the reference is a matter of substantive law, the grant of interest for the post-award period is a matter of procedure. [Vide *Thawardas Pherumal⁵, Union of India v. Bungo Steel Furniture (P) Ltd.*¹⁵,

584

SUPREME COURT CASES

(2011) 10 SCC

*Deptt. of Irrigation v. Abhaduta Jena*¹⁶, *Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd.*¹⁷, *Irrigation Deptt., Govt. of Orissa v. G.C. Roy*¹⁸, *Hindustan Construction Co. Ltd. v. State of J&K*¹⁹, *Dhenkanal Minor Irrigation Division v. N.C. Budharaj*²⁰, *Bhagawati Oxygen Ltd. v. Hindustan Copper Ltd.*²¹ and *Indian Hume Pipe Co. Ltd. v. State of Rajasthan*²².]

25. So far as the rate of interest is concerned, it may be necessary to refer to the provisions of Section 3 of the Interest Act, 1978, the relevant part of which reads as under:

“3. Power of court to allow interest.—(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, *at a rate not exceeding the current rate of interest....*” (emphasis added)

Thus, it is evident that the aforesaid provisions empower the court to award interest at the rate prevailing in the banking transactions. Thus, impliedly, the court has a power to vary the rate of interest agreed by the parties.

26. This Court in *Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy*²³, while dealing with the similar issue held as under: (SCC p. 724, para 11)

“II. ... after economic reforms in our country the interest regime has changed and the rates have substantially reduced and, therefore, we are of the view that the interest awarded by the arbitrator at 18% for the pre-arbitration period, for the pendente lite period and future interest be reduced to 9%.”

27. In *HUDA v. Raj Singh Rana*²⁴ this Court considered various earlier judgments of this Court including *GDA v. Balbir Singh*²⁵, *Bihar State Housing Board v. Arun Dakshy*²⁶, *HUDA v. Manoj Kumar*²⁷, *HUDA v. Prem Kumar Agarwal*²⁸ and came to the conclusion: (*Raj Singh Rana case*²⁴, SCC p. 206, para 22)

“22. ... the rate of interest is to be fixed in the circumstances of each case and it should not be imposed at a uniform rate without looking into

16 (1988) 1 SCC 418 : AIR 1988 SC 1520

17 (1989) 1 SCC 532 : AIR 1989 SC 973

18 (1992) 1 SCC 508 : AIR 1992 SC 732

19 (1992) 4 SCC 217 : AIR 1992 SC 2192

20 (2001) 2 SCC 721 : AIR 2001 SC 626

21 (2005) 6 SCC 462 : AIR 2005 SC 2071

22 (2009) 10 SCC 187 : (2009) 4 SCC (Civ) 115

23 (2007) 2 SCC 720 : AIR 2007 SC 817

24 (2009) 17 SCC 199 : (2011) 2 SCC (Civ) 136 : AIR 2008 SC 3035

25 (2004) 5 SCC 65 : AIR 2004 SC 2141

26 (2005) 7 SCC 103

27 (2005) 9 SCC 541

28 (2008) 17 SCC 607 : JT (2008) 1 SC 590

MSK PROJECTS (I) (JV) LTD. v. STATE OF RAJASTHAN (*Dr. Chauhan, J.*) 585

the circumstances leading to a situation where compensation was required to be paid.”

a 28. Be that as it may, the High Court while dealing with the rate of interest has relied upon the judgment of this Court in *Krishna Bhagya Jala Nigam Ltd.*²³ and thus, there is no scope for us to interfere with the rate of interest fixed by the courts below.

b 29. The issue raised by the State before this Court in its appeal as to whether the Bharatpur-Deeg patch was an integral or composite part of the project and the private appellant could collect the toll fee on that part also stands concluded by the High Court after considering the entire evidence on record.

c 30. It is evident from the record as well as the judgments of the courts below that the bid documents contained data collected on the flow of traffic on 14-4-1994 and 15-4-1994 to find out the viability and requirement of the establishment of Bharatpur bypass and it included the traffic flow on the Bharatpur-Deeg section also which indicates that this particular patch had also been an integral part of the project. In the pre-bid conference the interveners wanted a clarification as to whether the persons using this particular patch of road between Bharatpur and Deeg could be liable to pay toll fee. It was clarified by the respondent State authorities that the users of this patch would be required to pay the toll fee.

e 31. Clause 5 of the concession agreement also provided that the Government would levy and charge the fee from all persons using the project facilities. The project was not in parts rather it was a composite and integrated project which included the Bharatpur-Deeg section also. Hence, it was not permissible for the respondent State to take the plea that persons using such section of the road were not liable to pay the toll fee. We do not find any force in the submission made by Dr. Manish Singhvi, learned counsel for the State that it was not a newly constructed road. However, he is not in a position to deny that the said portion of road had been widened and strengthened by the private appellant and could not be termed as service road which could be used free of charge in view of Clause 7 of the concession agreement as a service road has been defined as any road constructed temporarily for use of traffic for short period during construction of the main road. Such a facility had to be provided in order to maintain the free flow of traffic during the construction of the road.

g 32. Thus, in view of the above, the issue raised by the State that Bharatpur-Deeg section of the road was out of the project and the private appellant was not entitled to collect the toll fee on that part of the road, stands settled in favour of the private appellant.

h 33. Determination of the aforesaid three issues brings us to the entitlement of the private appellant.

586

SUPREME COURT CASES

(2011) 10 SCC

34. The Court is not oblivious to the fact that the State authorities cannot be permitted to use the collection of toll fee as augmenting the State revenues. In *State of U.P. v. Devi Dayal Singh*²⁹ this Court defined “toll” as a sum of money taken in respect of a benefit arising out of the temporary use of land. It implies some consideration moving to the public either in the form of a liberty, privilege or service. In other words, for the valid imposition of a toll, there must be a corresponding benefit. The Court further held: (SCC p. 10, para 9)

“9. Although the section has empowered the State Government to levy rates of tolls ‘as it thinks fit’, having regard to the *compensatory nature* of the levy, the rate of toll must bear a reasonable relationship to the providing of benefit. No doubt, by virtue of Section 8 of the Act, the tolls collected are part of the public revenue and may be absorbed in the general revenue of the State, nevertheless by definition a toll cannot be used for *otherwise augmenting the State’s revenue*.” (emphasis added)

35. In fact, the toll fee under the Tolls Act, 1851 is compensatory in nature wherein the Government can reimburse itself the amount which it had spent on construction of road/bridge, etc.

36. Clause IV(a) of the statutory Notification dated 10-2-1997 which entitled the Government to give the present road on toll is reproduced below:

“IV(a). The toll of any of the aforesaid facilities/constructions shall be levied *only for so long as the total cost of its construction and maintenance including interest thereupon, and the total expenditure in realisation of toll has not been realised in full* or for a period of 30 years.” (emphasis added)

It is evident that Clause IV(a) of the Notification dated 10-2-1997 envisages that toll can only be collected as long as the total cost of construction and maintenance including interest thereupon is recovered. A person is debarred by law and statutory inhibition as contained in Clause IV(a) of the notification from collection of toll beyond the recovery of the cost of construction.

37. Thus, from the abovereferred provisions, it is evident that toll fee is compensatory in nature and can be collected by the State to reimburse itself the amount it has spent on construction of the road/bridge, etc. The State is competent to levy/collect the toll fee only for the period stipulated under the statute or till the actual cost of the project with interest, etc. is recovered. However, it cannot be a source of revenue for the State.

38. In common parlance, “reimbursement” means and implies restoration of an equivalent for something paid or expended. Similarly, “compensation” means anything given to make the equivalent. (See *State of Gujarat v. Shantilal Mangaldas*³⁰, *TISCO Ltd. v. Union of India*³¹, *GDA*²⁵ and *HUDA v. Raj Singh Rana*²⁴.) However, in *Dwaraka Das v. State of M.P.*³² it was held

29 (2000) 3 SCC 5 : AIR 2000 SC 961

30 (1969) 1 SCC 509 : AIR 1969 SC 634

31 (2001) 2 SCC 41 : AIR 2000 SC 3706

32 (1999) 3 SCC 500 : AIR 1999 SC 1031

MSK PROJECTS (I) (JV) LTD. v. STATE OF RAJASTHAN (*Dr. Chauhan, J.*) 587

a that a claim by a contractor for recovery of amount as damages as expected profit out of contract cannot be disallowed on ground that there was no proof that he suffered actual loss to the extent of amount claimed *on account of breach of contract.*

b 39. In *A.T. Brij Paul Singh v. State of Gujarat*³³, while interpreting the provisions of Section 73 of the Contract Act, 1972, this Court held that damages can be claimed by a contractor where the Government is *proved to have committed breach by improperly rescinding the contract* and for estimating the amount of damages, the court should make a broad evaluation *instead of going into minute details.* It was specifically held that where in the works contract, the party entrusting the work committed *breach of contract, the contractor is entitled to claim the damages for loss of profit which he expected to earn by undertaking the works contract.* Claim of expected profits is *legally admissible on proof of the breach of contract* by the erring party. It was further observed that: (SCC pp. 64-65, para 10)

c “10. ... What would be the measure of profit would depend upon the facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract is *guilty of breach of contract* cannot be gainsaid.” (emphasis supplied)

d 40. In *BSNL v. Reliance Communication Ltd.*³⁴ this Court held as under: (SCC p. 428, para 53)

e “53. Lastly, it may be noted that liquidated damages serve the useful purpose of avoiding litigation and promoting commercial certainty and, therefore, the court should not be astute to categorise as penalties the clauses described as liquidated damages.”

f 41. This Court further stated in *ONGC Ltd. v. Saw Pipes Ltd.*¹³: (SCC p. 740, para 64)

g “64. ... This section is to be read with Section 74, which deals with penalty stipulated in the contract, inter alia (relevant for the present case) provides that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of breach is entitled, whether or not actual loss is proved to have been caused, thereby to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named. Section 74 emphasises that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not actual loss is proved to have been caused by such breach.”

h 42. Thus, the case requires consideration in the light of the aforesaid settled legal principles.

³³ (1984) 4 SCC 59 : AIR 1984 SC 1703

³⁴ (2011) 1 SCC 394 : (2011) 1 SCC (Civ) 192

588

SUPREME COURT CASES

(2011) 10 SCC

43. Undoubtedly, the total construction was for Rs 13.25 crores. It is evident from the bid documents filed by the private appellant that the work was to be executed in two phases and the relevant part thereof reads as under:

Phase I

Year	Const. cost (in lakhs)	Supervision charges @ 10%	Total (in lakhs)	Interest @ 20%	Total investment of Strs	Up to date investment (in lakhs)
1998-1999						
6/98	75	7.5	82.50	4.12	86.62	86.62
9/98	80	8.0	88.00	8.52	92.52	183.14
12/98	80	8.0	88.00	12.92	100.92	284.06
3/99	80	8.0	88.00	17.32	105.32	389.32
Total	315	31.5	346.50	42.88	389.38	389.88

1999-2000						
6/99	110	11.0	121	23.37	144.37	533.75
9/99	120	12.0	132.0	29.97	161.97	695.72
12/99	120	12.0	132.0	36.57	168.57	864.29
3/2000	125	12.50	137.50	43.44	180.94	1045.23
Total	475	47.50	522.50	133.35	655.85	1045.23
Grand Total	790	79.0	869.0	176.23	1045.23	1045.23

Phase II

2005-2006						
6/2005	150	15.0	165	8.25	173.25	173.25
9/2005	150	15.0	165	16.50	181.50	354.75
Total	300	30.0	330	24.75	354.75	354.75

44. The bid documents further reveal that Phase II work was of worth Rs 354.75 lakhs and it included repairing, maintenance and second layer of bitumen on the entire road. Admittedly, this part of the contract had never been executed by the private appellant. More so, the chart filed by the State of Rajasthan shows that the estimated cost of the work had been recovered by the private appellant as the schedule prepared for repayment tally with the amount collected by the private appellant as toll fee within the stipulated period.

MSK PROJECTS (I) (JV) LTD. v. STATE OF RAJASTHAN (*Dr. Chauhan, J.*) 589

a 45. In the first phase, the private appellant spent about Rs 10.45 crores and recovered the said amount with certain profit, though the actual figure i.e. the toll fee recovered has not been disclosed. So far as the second phase is concerned, admittedly, the amount of Rs 354.75 lakhs has not been spent by the private appellant. This issue has been agitated by the State of Rajasthan before this Court in its counter-affidavit wherein it is stated as under:

b “It is respectfully submitted that as per the terms of the agreement, the petitioner was required to complete the project in two phases. In the first phase investment of Rs 1045 lakhs and after 5 years in the second phase Rs 354.75 lakhs was to be made by the petitioner. However, the petitioner has not abided by the terms of the agreement and has not made any investment for the second phase and, therefore, it has breached the terms of the contract and, therefore, it is respectfully submitted that the contention of the petitioner that he is entitled to recover its investment, is
c erroneous and the petitioner is trying to give a wrong picture about the investment made and has not come to this Hon’ble Court with clean hands and, therefore, the present special leave petition is liable to be dismissed by the Hon’ble Court. The concession period has come to an end.”

d 46. The aforesaid allegations have not been denied by the private appellant while submitting its rejoinder. The relevant part of the rejoinder-affidavit reads:

e “... the present contention as raised was not part of the arbitration proceeding, before the Arbitral Tribunal. It is further submitted that this contention was never raised before the District Court and as well as before the Hon’ble High Court of Rajasthan. The point as raised is subsequent to completion of the project and work to be done after the period of 5 years....”

Thus, there is no specific denial of the allegations/averments taken by the State as required by the principle enshrined in Order 8 Rule 5 of the Code of Civil Procedure, 1908.

f 47. It is strange that a person who has not complied with the terms of contract and has acted in contravention of the terms of agreement claims that he was entitled to earn more profit. The private appellant cannot be permitted to claim damages/compensation in respect of the amount of Rs 13.25 crores, as he did not spend the said amount stipulated in the terms of agreement. The private appellant cannot claim the amount of Rs 7.13 crores for a period of
g three years for a small patch of 1.25 km out of the total length of the road to the extent of 10.85 km.

48. In fact, the Tribunal has dealt with the issue in correct perspective only to the extent of the period of delay by which the notification barring the heavy vehicles through the market of Bharatpur had been issued stating as under:

h “The traffic survey conducted by the claimant on 17-4-2000, 18-4-2000 and 19-4-2000 has not been accepted by the respondent. The Arbitral

590

SUPREME COURT CASES

(2011) 10 SCC

Tribunal also feels that this survey, which has been done by the claimant alone, cannot be relied upon for this purpose, because the respondent is not a party to this survey. The claim lodged by the claimant on its own survey as per Para 12.3(iii) from 12-4-2000 to 30-9-2000 is for Rs 31.18 lakhs. In this regard the Tribunal is of the opinion that the traffic survey of 1997 as per agreement in which both parties bear consent of each other therefore can safely be relied upon for purpose of assessment of such losses to the claimant, because the occurrence of loss as such to the claimant has not been denied by the respondent, which otherwise is an established fact as per documentary evidence on record. The Tribunal has assessed this part of loss on the traffic survey of 1997 for commercial vehicles only as Rs 26.34 lakhs from 12-4-2000 to 30-9-2000.”

As the notification had been issued, and it was not the responsibility of the State to establish a police chowki, etc. to implement the notification, there was no occasion for the Tribunal to proceed further. Therefore, any award in favour of the private appellant in that respect for non-issuance of notification beyond the date of the notification, cannot be held to be justified and the same is liable to be set aside.

49. The State authority had decided to establish a toll road as it was not having sufficient funds. In case the claim of the private appellant is allowed and as the State is not in a position to grant further facility to collect the toll fee at such a belated stage, the purpose of establishing the toll road itself stands frustrated. More so, the toll fee cannot be collected to recover the amount never spent by the contractor. It is evident from the discourse in pre-bid meetings of the parties that it had been decided that compensation would be worked out on the basis of investment made by contractor concerned. More so, the statutory Notification dated 10-2-1997 provided to recover the cost of construction and maintenance including interest thereon. Therefore, the question of non-execution of work of the second phase of the contract becomes very material and relevant to determine the real controversy. The State authorities for the reasons best known to them, did not make reference to the arbitration proceedings for non-execution of the work of the second phase of the contract. However, the relief claimed by the private appellant would prove to be a “windfall profit” without carrying out the obligation to execute the work just on technicalities. We have held in this very case, that the arbitrator cannot proceed beyond the terms of reference and, therefore, the question of considering the non-execution of work of the second phase of the work was neither permissible nor possible as it had arisen subsequent to the date of award in the arbitration proceedings.

50. Be that as it may, in order to do complete justice between the parties and protect the public exchequer, we feel that the matter requires adjudication and reconsideration on the following points by the Arbitral Tribunal:

(i) What amount could have been recovered by the private appellant for Bharatpur-Decg part of the road from the vehicles using the road?

JIGNESH v. STATE OF GUJARAT

591

(ii) What could be the effect on the contract as a whole for non-executing the work of the second phase?

- a In view of the fact that a long time has elapsed, we request the learned Tribunal to decide the case as early as possible after giving due opportunity to the parties concerned. The private appellant shall be entitled only for a sum of Rs 26.34 lakhs awarded by the Tribunal for delay in issuing the notification with 10% interest, if not paid already or it could be adjusted in the final accounts bills. With these observations, the appeals stand disposed of. No costs.
- b

(2011) 10 Supreme Court Cases 591

(BEFORE DR. DALVEER BHANDARI AND DIPAK MISRA, JJ.)

c JIGNESH ALIAS BANSI LAL NAVIN CHANDRA
DESAI

.. Appellant;

Versus

STATE OF GUJARAT

.. Respondent.

Criminal Appeal No. 1921 of 2011[†], decided on October 14, 2011

- d **Criminal Procedure Code, 1973 — Ss. 437 and 439 — Bail — Conditional bail — Appellant had undergone 2 years and 2 months' imprisonment — In facts and circumstances of case bail granted conditionally that he shall fully cooperate with trial, immediately surrender his passport and not directly or indirectly try to influence the trial — Constitution of India — Art. 21 — Delay in trial — Conditional bail granted**

J-D/48919/CR

e

ORDER

1. Leave granted. We have heard the learned counsel for the parties.
2. The appellant has already undergone actual sentence of about 2 years and 2 months. In the facts and circumstances of this case, we deem it appropriate to direct that the appellant be released on bail on the following conditions:
- f

(i) The appellant shall furnish personal bond of rupees one lakh with two sureties each in the like amount, to the satisfaction of the trial court.

(ii) He shall surrender his passport before the trial court immediately.

- g (iii) He shall not influence the trial of the case, directly or indirectly and shall fully cooperate with the trial.

3. With the aforementioned observation and directions, this appeal is disposed of.

h

[†] Arising out of SLP (Crl.) No. 1501 of 2011

GOVERNMENT OF TELANGANA
OFFICE OF DISTRICT COLLECTOR, SANGAREDDY DISTRICT

From:

Dr A. Sarath, IAS
Collector & District Magistrate
and Chairman, DRSC
Sangareddy District

To:

1. The Superintendent of Police, Sangareddy
2. The District Medical & Health Officer, Sangareddy
3. The Regional Officer, MoRTH, Hyderabad
4. The Project Director, NHAI, Sangareddy/
Kalaburaga (Gulbarga), Karnataka state
5. The Municipal Commissioner, Sangareddy/
Sadasivpet/ Zaheerabad/ Narayankhed/ Andole/
Ameenpur/ Bollaram/ Tellapur
6. The District Transport Officer, Sangareddy
7. The Executive Engineer, Panchayati Raj,
Sangareddy/ Andole
8. The Divisional Manager, TSRTC, Sangareddy
9. The Executive Engineer/R&B/ NH, Hyderabad

Lr No: DRSC/ EE(R&B)/ Sangareddy/2023/

Dt: 04 - 03 - 2023

Sir,

Sub: T R&B Dept – Motor Vehicle Act 1988 – Reconstitution of Road Safety Committee at District level – Action taken report on Minutes of Meeting – Reg

- Ref: 1. G.O Ms No: 20, T, R&B (Ser R&B) Dept, Dated: 25.04.2022
2. Govt T, R&B memo no 3531/Ser. R&B/2022 Dt:30.07.2022
3. DRSC meeting held on 16/02/2023
4. MoM no: 02/DRSC/Sangareddy/2023 dt: /03/2023

While enclosing the minutes of meeting of District Road Safety Committee meeting held on 16/02/2023, the officers concerned are requested to furnish action taken report immediately to Member Secretary (Executive Engineer/R&B, Sangareddy) by 15/03/2023 without fail.

Encl: MoM

Yours faithfully,

(u-5411/13)
for District Collector
Sangareddy

Copy along with copy of minutes of meeting to the Engineer – In Chief/R&B, SR&CRN, Errumanzil, Hyderabad for information

Copy along with copy of minutes of meeting to the Superintending Engineer/R&B, Sangareddy for information

For necessary action,
SF-2
04/03/23

**MINUTES OF THE DISTRICT ROAD SAFETY COMMITTEE MEETING HELD ON 16.02.2023
AT 11.00 AM AT INTEGRATED COLLECTORATE COMPLEX, SANGAREDDY**

No: 02/DRSC/Sangareddy/2023

Dtd: 03.03.2023

The District Road Safety Committee meeting was conducted under Chairmanship of the Additional Collector, Sangareddy on 16.02.2023 at 11.00AM as the District Collector and Chairman DSRC was engaged with other work. The following members and officers were present in the meeting.

- 1 The Additional Collector
- 2 The District Medical & Health Office, Sangareddy
- 3 The Project Director, NHAI, PIU, Sangareddy
- 4 The representative of Project Director, NHAI, PIU, Gulbarga
- 5 The District Transport Officer, Sangareddy
- 6 The Executive Engineer, Panchayati Raj, Sangareddy/ Andole
- 7 The Dy. Executive Engineer/R&B/ NH, Hyderabad
- 8 The Depot Manager, TSRTC, Sangareddy
- 9 The Municipal Commissioner, Sangareddy/Sadasivpet/Ameenpur/ Bollaram
- 10 The Dy Superintendent of Police, Sangareddy
- 11 The District R&B Officer, Sangareddy

At outset the Member Secretary, District Road Safety Committee, Sangareddy district has welcomed the Chairman, Members of the Committee and other officers who have attended the meeting.

The Chairman reviewed the action taken reports furnished by all stake holders and the committee discussed the preventive measures taken by departments on NH 65, NH161 and NH 765D.

The committee has opined that the following remedial measures can reduce accidents at different places on different roads in the district.

1. It is observed that accidents are occurring between Shivampet and Sangupet villages on NH161 and requested PD/ NHAI, Sangareddy to take measures to mitigate these accidents.
Action: PD/NHAI, Sangareddy
2. The Dy. Executive Engineer/R&B NH informed that as a part of traffic calming measures and to avoid traffic jam, works are carried out at Kandi, Lakdaram and ORR junction at Muthangi. It is brought to the notice of the committee that a culvert near ORR junction need to be widened for which the Dy. Executive Engineer/R&B NH informed that the work will be taken up within 3 weeks.
Action: EE/R&B, NH, Hyderabad
3. It is informed that traffic jam is being occurred frequently at U turns in Muthangi village. The EE/R&B, NH in coordination with Police should resolve the issue.
Action: EE/R&B, NH, Hyderabad
4. The committee has opined that certain heavy vehicles and trucks being parked on either side of NH 65 upto the entry time to Hyderabad city is resulting to traffic jam and accidents and hence it is opined to develop parking lot or truck lay-bye. It is informed that realigned stretches of NH 65 at Kavalampet and Kandi are available and are being encroached by private persons. Hence EE/R&B, NH is requested to get them relieved from encroachments and plan for development of truck lay-bye.
Action: EE/R&B, NH, Hyderabad

5. As there is opening of median or VUP at Singoor road junction, traffic is moving in opposite direction leading to accidents. The PD/NHAI, Sangareddy informed that it is being planned to provide an underpass or overpass to resolve the issue. The action taken may be intimated to the Committee.
6. Accidents are noticed at junction of NH65 & NH161 at Mamidipally due to opposite movement of traffic. The PD /NHAI, Sangareddy is requested to provide high mast light, Signages, blinkers and barriers for not allowing traffic in reverse direction until completion of trumpet.
7. Certain issues relating the movement of buses on NH 161 due to closing of certain junctions was raised by Depot Manager, TSRTC, Sangareddy. While enclosing the issues raised, the PD/NHAI, Sangareddy is requested to take all possible measures for easy movement of traffic and to avoid traffic in reverse direction.

Action: PD/NHAI, Sangareddy

8. The DSP, Sangareddy requested to provide proper lighting at Sangareddy junction and to get the damaged traffic lights repaired at IB junction. The Municipal Commissioner, Sangareddy was requested to attend on priority.

Action: MC, Sangareddy

9. The DTC, Sangareddy informed that the accident data is not being entered by police officers concerned in iRAD app developed by MoRTH. Only after their entering the details of accidents, proper details will be entered by stake holders viz., Transport, Roads/Highways and Health departments. Hence SP/Sangareddy is requested to instruct all police officers in district to enter every accident data in iRAD app.

Prior to next meeting, departments and officers concerned should submit the action taken report / compliance report to the committee.

uw-5 4/3/23
Member Secretary,

District Road Safety Committee &
District R&B Officer,
Sangareddy District.

Sd/-

Chairman,
District Road Safety Committee &
District Collector,
Sangareddy District.

Date: 10th October 2024

To

The Project Director
National Highways Authority of India
Project Implementation Unit – Gulbarga
Plot No. 65, Kothari Layout, Venkatesh Nagar
Gulbarga – 585 103, Karnataka

Kind Attn.: Shri. Mahesh Patil Project Director

Sir,

**Sub: Sangareddy Sub-Division:- Requirement of High Mast Lighting at
Kistaiahgudem on NH-65- Reg**

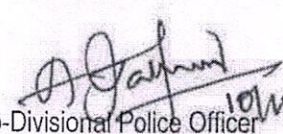
Anent to above cited subject, I am here with request for the installation of High Mast Lighting on NH-65 at Kistaiahgudem /Yellamma Temple Junction on NH-65. This stretch of the highway has witnessed numerous accidents and safety concerns due to inadequate lighting. By providing this the following are ensured

1. Will enhance the safety of commuters during night hours, reduced risk of accidents
2. Reduced risk of accidents/fatalities
3. Improved visibility for drivers
4. Increased security for locals.
5. Safety of devotees visiting the temple and students/parents of the school in the vicinity.

Therefore, I kindly request for the installation at the specified location to address the safety concern.

We look forward to your positive response

Thanking You


Sub-Divisional Police Officer

Sangareddy-Sub Division
Sangareddy District.

Telangana State

Sub-Divisional Police Officer
SANGAREDDY SUB-DIVISION

Copy To

1. The Superintendent of Police-Sangareddy for favour of information Sangareddy Dist. (T.S.)
2. The Project Head-Deccan Tollways Limited-Kamkole Toll Plaza- For Necessary Action
3. The Regional Officer NHAI, Beside Nagasandra Metro Station, Bengaluru, Karnataka-560073

No. 99/7/SD-ZHB/2024.

Office of the,
Sub-Divisional Police Officer,
Zaheerabad Sub-Division,
Date: 10-10-2024.

To

The Project Director
National Highways Authority of India
Project Implementation Unit – Gulbarga
Plot No. 65, Kothari Layout, Venkatesh Nagar
Gulbarga – 585 103, Karnataka

Kind Attn.: Shri. Mahesh Patil Project Director

Dear Sir,

Sub: Reg: Requirement of High Mast Light at Raipally & Algole X Roads on NH-65.

* * *

In line with the subject topic/content, the two mentioned places on the NH-65, desperately needs a High Mast given the considerable movement of vehicular traffic at these junctions. Many Accidents have occurred at these places as the traffic plying on the main carriageway and the major district roads (MDR) /Village roads are in conflict and the likelihood of reoccurrence of fatal accidents are high. While various factors contribute to these accidents, one reason attributable is due to lack of illumination or rather insufficient illumination. Hence you are requested to ensure a High Mast Light of high Lux Levels at the following 2 locations

1. Algole X Roads (Connecting Zaheerabad Town & Bidar)
2. Raipally Jn

Looking forward to a positive response from your end

Thanking You

10/10/2024
Sub-Divisional Police Officer
Zaheerabad-Sub Division
Sangareddy District.
Telangana State
Dist. Sangareddy. (T.S)

Copy To

1. The Superintendent of Police-Sangareddy for favour of information
2. The Project Head-Deccan Tollways Limited-Kamkole Toll Plaza- For Necessary Action
3. The Regional Officer NHAI, Beside Nagasandra Metro Station, Bengaluru, Karnataka-560073

GOVERNMENT OF TELANGANA
POLICE DEPARTMENT

64

From:
Ch.Rupesh, IPS.,
Superintendent of Police,
Sangareddy District.

To:
The Project Director,
National Highways Authority of India,
Project Implementation Unit - Gulbarga,
Plot No.65, Kothari Layout, Venkatesh Nagar,
Gulbarga, Karnataka - 585 103.

C.No.210/DTRB/SGR/2025, Date: 18-02-2025.

Sir,

Sub:- Sangareddy Dist.- Police Dept. - Urgent Implementation of Safety Measures on NH-65 from Karnataka/Telangana State Border to Sangareddy 'X' Road under Short-Term & Long-Term Initiatives of NHAI - Regarding.

Ref:- District Road Safety Meeting held on 28.12.2024.

Adverting to the subject and references cited above, in accordance with the discussions in the recent District Road Safety Meeting (DRSC) and based on accident statistics, I wish to bring the urgent need for additional safety measures on NH-65. While it is encouraging that safety measures are being implemented at 13 identified locations, I request the National Highways Authority of India (NHAI) to extend similar initiatives to other critical areas, as detailed in Annexure-1.

The following measures are crucial for reducing accidents and improving road safety:

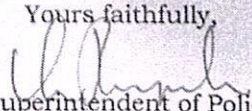
1. **Installation of 3-Stage High-Powered Blinkers** at various accident-prone locations to enhance visibility and alert drivers.
2. **Speed Reduction Measures at Approaches & Habitations** - Implementation of rumble strips of adequate thickness with proper spacing between each strip and set, along with road studs/cat eyes placed alternately for better night-time visibility.
3. **Improved Illumination in Habitation/Urban Areas** - Adequate lighting should be installed at identified locations to enhance visibility and safety for both pedestrians and motorists.

Additionally, it was noted in the DRSC meeting that underpasses have been approved at Nandhikandhi 'X' Road, Arur 'X' Road, Lingampally, and Digwal 'X' Road. However, these projects require immediate execution on a war-footing basis.

Furthermore, I would like to bring to your attention that, the Algal 'X' Road on NH-65 (Old NH-9), connecting Zaheerabad to Bidar, which has been identified as a major accident-prone black spot. This intersection sees heavy commercial truck movement, particularly carrying sugarcane and agricultural produce, resulting in frequent conflicts with highway traffic. In light of this, I strongly recommend the construction of an underpass at the earliest to enhance safety and prevent further accidents.

Hence, I request to prioritize and expedite these critical safety interventions to mitigate accidents and save lives. The details of the proposed measures are enclosed in Annexure-1 for perusal and necessary action.

Encl: (As above)

Yours faithfully,

Superintendent of Police
Sangareddy District

Annexure-I			
Accident Reduction Measures on NH-65			
S.No	Name of Jurisdictional Police Station	Name of the Accident Prone location	Safety measures Required
1	Kondapur	Yellama temple	Power Blinkers & Service road Required for 400 Mtr from Samyuktha School to Yellamma Temple Median Opening given that parents drop and pick their children from the said school & devotees visiting the temple (SRD to ZHB Direction)
2	Sadashivpet	Nagsanpally	Sign Boards, Rumble Strips, Solar Blinkers, Road Studs & Power Blinkers
3	Sadashivpet	Gollagudem	Sign Boards, Rumble Strips, Solar Blinkers, Road Studs, Power Blinkers & High Mast
4	Sadashivpet	Sadashivpet Exit	Sign Boards, Rumble Strips, Solar Blinkers, Road Studs & Power Blinkers
5	Sadashivpet	Nizampur X Road	Sign Boards, Rumble Strips, Solar Blinkers, Road Studs & Power Blinkers
6	Sadashivpet	Yenkapally X Road	Sign Boards, Rumble Strips, Solar Blinkers, Road Studs, Power Blinkers & High Mast
7	Sadashivpet	Madikunta X Road	Sign Boards, Rumble Strips, Solar Blinkers, Road Studs & Power Blinkers
8	Sadashivpet	MRF	Sign Boards, Rumble Strips, Solar Blinkers, Road Studs & Power Blinkers
9	Sadashivpet	Suraram X Road	Sign Boards, Rumble Strips, Solar Blinkers, Road Studs & Power Blinkers
10	Munipally	Lingampally	Power Blinker
11	Kohir	Kothur-D	Sign Boards, Rumble Strips, Solar Blinkers, Road Studs
12	Kohir	Venkatapur X Road	Service Road To be constructed from Venkatapur T Road to Chinthalgat Median Opening (SRD-ZHB Direction)
13	Kohir	Raipally X Road	Power Blinkers
14	Kohir	Madri	Given a Major Bridge over a rivulet, a new median opening needs to be created at a distance of 500 meters from the Madri Road towards Zaheerabad direction, with provision of storage lane, traffic blinkers and appropriate signages. By doing this, wrong direction travel can be eliminated which is presently happening from Madri to Raipally Median Opening. Also a High Mast to be considered.
15	Zaheerabad Rural	Huggeli Village	Sign Boards, Rumble Strips, Solar Blinkers, Road Studs & Power Blinkers
16	Chiragpally	Aruna School, Ranzole	Power Blinkers
17	Zaheerabad Town	Algol X road	Vehicular Under Pass (VUP) is required as this connects Zaheerabad Town to Bidar, and this locality can become a economic commercial hub over a period of time.
18	Zaheerabad Town	Indraprasta	Power Blinkers
19	Chiragpally	Buchenally	Sign Boards, Rumble Strips, Solar Blinkers, Road Studs & Power Blinkers
20	Chiragpally	Near Om Logistics, Satwar	Power Blinkers
21	Chiragpally	Gopanpally	Power Blinkers
22	Chiragpally	Opp kohinoor Dhaba, Satwar	Power Blinkers
23	Chiragpally	Satyam dhaba, Chiragpally	Power Blinkers

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL NO. 230 OF 2024 & IA NO. 2314 OF 2023 & IA NO. 363 OF 2024

Dated: 9th September, 2024

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Smt. Seema Gupta, Technical Member (Electricity)**

In the matter of:

1. **M/s DILIP BUILDCON LIMITED**
Through its Authorized Signatory Mr. Arvind Singhal,
Having its registered office at Plot No. 5,
Inside Govind Narayan Singh Gate,
Kolar Road, Chunbhatti, Bhopal, MP – 400005. ... Appellant No. 1
2. **NATIONAL HIGHWAY AUTHORITY OF INDIA
PIU, AURANGABAD**
*Through its authorised Signatory in terms of Policy
Guidelines/ Dispute Resolution/ 2004 Policy
Circular No. 2.1.70/ 2024 dated 25.01.2024,
Shri Ravindra S. Ingole, PIU, Aurangabad, NHAI*
Having its office at B-23, Near Kamgar Chowk,
N-4, CIDCO, New Aurangabad
Maharashtra, PIN – 431003. ... Appellant No. 2

VERSUS

1. **MAHARASHTRA ELECTRICITY REGULATORY
COMMISSION (MERC)**
Through its Secretary,
World Trade Centre, Centre No. 1,
13th Floor, Cuffe Parade,
Mumbai – 400005. ... Respondent No.1
2. **MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION COMPANY LTD (MSEDCL)**
Through its Executive Engineer (Admn.)
O & M, Rural Circle, Opposite Garware Stadium,
MIDC, Chikalthana, Aurangabad – 431210. ... Respondent No.2

Counsel on record for the Appellant(s) : Aakriti Dawar
Harish Malik for Appellants 1 & 2

Counsel on record for the Respondent(s) : Pratiti Rungta for Res. 1

Shashwat Kumar
Rahul Chouhan
Shikha Sood
Raghav Kapoor for Res.2

J U D G M E N T

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

I. INTRODUCTION:

The present appeal is filed both by M/s. Dilip Buildcon Limited (ie the Contractor) and the National Highway Authority of India requesting this Tribunal to set aside Clause 7.22.10 of the order passed by the MERC in Case No. 226 of 2022 dated 31.03.2023 to the extent "*Toll Collection plazas including lightings on Express / National / State Highways*" has been classified under category LT-II: LT Non-Residential or Commercial, instead of Category LT VI: Street Light.

The reliefs sought by the Appellants in this Appeal, whereby a limited challenge is mounted to the Impugned Order passed by the Maharashtra Electricity Regulatory Commission ("MERC" for short) in Case No. 226 of 2022 dated 31.03.2023, are to hold that: (i) LT II: Commercial/Non-Residential tariff category would apply only to "*Toll Collection plazas*" as per the Approved Tariff Schedule; (ii) street lighting on the Highway would be covered under LT VI: Street Light and not LT-II: Commercial/Non-Residential tariff category, as also held by the Bombay High Court that would squarely apply to the present case as well; (iii) the

words "...including lightings on Express / National / State Highways" have been added in Para 7.22.10 of the Impugned Order, under LT II: Commercial/Non-Residential tariff category, without assigning reasons and without furnishing any justification; and (iv) even otherwise, these words cannot have the effect of including all lighting on the entire Highway, but would be limited only to those lightings that are meant for the Toll Collection Plazas, but are located on the Highway.

II. RIVAL SUBMISSIONS:

Elaborate submissions, both oral and written, have been put forth by Sri. Saurav Aggarwal, Learned Counsel for the Appellant, Ms. Pratiti Rungta, Learned Counsel for the 1st Respondent-MERC, and Sri Shaswath Kumar, Learned Counsel for the 2nd Respondent-MSEDCL. It is convenient to examine the rival contentions, urged by Learned Counsel on either side, under different heads.

III. CONTRADICTIONS IN THE IMPUGNED ORDER REGARDING CATEGORISATION:

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellant, would highlight the contrast between Para 7.22.4.2 and Para 7.22.10 of the Impugned Order passed by the MERC in Case No. 226 of 2022 dated 31.03.2023, to submit that, though MSEDCL had proposed to include only lightings on Express / National / State Highways, which were not included under any other categories under L.T.II: Non-Residential/Commercial category, apart from Toll Collection plazas, MERC had brought all lightings on Express / National / State Highways, (and not just lightings on Express / National / State Highways not included

under any other category) under L.T.II: Non-Residential/Commercial category; and no reasons are forthcoming as to why the MERC chose to go beyond even what MSEDCL had sought.

Sri Saurav Aggarwal, Learned Counsel, would further submit that, in the Approved Tariff Schedule- under LT II category, there is mention of only '*Toll Collection Plazas*' without the inclusive words "...including lightings on Express / National / State Highways."; it is the Approved Tariff Schedule which ultimately applies; the mention of only '*Toll Collection Plazas*' in the Tariff Schedule would mean that the intention of MERC was only to add Toll Collection Plazas; the words "...including lightings on Express / National / State Highways" after '*Toll Collection Plaza*' were, thus, not intended to include all lightings on the Highways, as otherwise the entry in the Approved Tariff Schedule would have read so; as the above stated clarification at Para 7.22.10 is absent, the Approved Tariff Schedule, annexed to the Impugned Order, to the extent that "lightings on express/national/state highway" is omitted, it is only "*toll collection plazas*" at entry (e) which should be categorised under LT II: Commercial/Non-Residential tariff category, and not lightings on National Highways.

B. ANALYSIS:

As shall be detailed hereinafter, it is evident from the impugned order itself that the proposal submitted by MSEDCL, with respect to non-residential or commercial consumer category, was to include "*toll collection plazas including on Express/ National/ State Highways not included in any other categories*" under LT II category. What MSEDCL had sought was not inclusion of all lightings, on the entire stretch of the National Highways, in L,T II category but only such lighting which did not

form part of any other category i.e. any category other than LT-II non-residential or commercial consumer category. In effect, acceptance of the proposal of MERC would have resulted in street lighting, which hitherto were classified under LT VI category, being excluded from L.T.II category. Curiously the entry, as referred to in the impugned order passed by MERC, appears to have been erroneously understood by MSEDCL as bringing the entire lighting on the National Highways within the ambit of LT-II category. This understanding of MSEDCL, if accepted, would amount to the MERC having travelled even beyond the proposal submitted by MSEDCL. While it cannot be said that the MERC lacks power to do so, It cannot also be lost sight of that, in such an eventuality, the MERC was obliged to assign reasons as to why it chose to include street lights on the entire length on the National Highways, despite such a relief not even having been sought by MSEDCL. MERC has failed to assign reasons, for doing so, in the impugned order. But for the fact that lighting on Express/National/State Highway has been associated along with toll collection plazas, by use of the word "including", the appellants would have been justified in their submission that MSERC has granted MSEDCL a relief which they had themselves not sought.

Yet another contradiction is that in the tariff schedule, under LT-II: LT- non-residential or commercial, what is included is only "*toll collection plazas*" and not "*lighting on Express/National/State Highways*". As is clear from what has been stated in the Tariff Schedule itself, the tariff referred to in the tariff schedule supersedes the tariff so far in force, and is subject only to the provisions of the Regulations and the directions issued by the Commission from time to time. If the tariff stipulated in the tariff schedule were alone to be taken into consideration, then it is only "*toll collection plazas*" which fall within LT-II Commercial category, and not "*street*

lighting on the National Highways". These contradictions in the impugned order would render implementation, of the tariff stipulated for different categories, by MSEDCL extremely difficult.

It is unnecessary for us to delve into these contradictions any further, as we are satisfied, for reasons stated later in this order, that it is only lighting on National Highway at, and in close proximity to, the Toll collection plazas which have been brought within the ambit of L.T.II category.

IV. ARE 'LIGHTINGS ON EXPRESS / NATIONAL / STATE HIGHWAYS' A STAND ALONE CATEGORY?

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellant, would submit that insertion of "*Toll Collection Plazas including lightings on Express / National / State Highways*", in Para 7.22.10 of the impugned Tariff Order, is only an addition of the premises; the question is whether the entire Highway premises is included or only those relating to Toll Collection Plazas, since that is the place where toll fee is collected; the apparent attempt to misuse Para 7.22.10 is evident from the reply of MSEDCL which is interpreting this addition to mean as if the '*lightings on Express / National / State Highways*' is a stand-alone category; ideally, by applying the principles of *ejusdem generis*, the addition of the broad words, i.e., "*lightings on Express / National / State Highways*" after '*Toll Collection Plazas*' would be to include them in the specific meaning of '*Toll Collection Plaza*', and the same would qualify the said broad words; the *ejusdem generis* doctrine provides that the general words which follow the specified words will be restricted to the same class of the specified words; as held in **Maharashtra University of Health and others vs Satchikitsa**

Prasarak Mandal & Others, (2010) SCC 78, the doctrine of ejusdem generis is a facet of Noscitur a sociis, when general words are juxtaposed with specific words, general words cannot be read in isolation, and their colour and content should be derived from their context.

Sri Saurav Aggarwal, Learned Counsel, would further submit that use of “including”, followed by a list, would mean that the items mentioned are part of a larger group or category; the items in the list, following the word “including” cannot travel beyond the category mentioned prior to the word “including”; otherwise, no purpose would be served in using the word “including”; therefore, if all “lightings on Express / National / State Highways” were to be covered, there was no need to first refer to “Toll Collection Plazas”, and then include lightings on National Highways within it; instead it could straight away have been stated as “all lightings on Express / National / State Highways”; applying the rule of ejusdem generis, would require the words, “including lightings on Express / National / State Highways” in Para 7.22.10 of the impugned Tariff Order, to take colour from the word “Toll Collection Plazas”, and it would then include not only lightings at the Toll Collection Plazas, but also those lightings meant for the Toll Collection Plaza located on the highway; however, it still cannot mean the entire National Highway.

B. ANALYSIS:

Section 62 of the Electricity Act relates to determination of tariff. Section 62(3) enables the Appropriate Commission to differentiate between consumers according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is

required. Classification of consumers of electricity, on the basis of different parameters, is a power conferred on the Regulatory Commissions under Section 62(3) of the Electricity Act.

In the exercise of the powers conferred by clause (h), (i), (j), (l), (m), (o), (y), (zd), (ze), (zf), (zg), (zh) and (zp) of sub-section (2) of Section 181, read with the proviso to sub-section (1) of Section 36 and other provisions of the Electricity Act, the Maharashtra Electricity Regulatory Commission ("the MERC" for short) made the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019 ("the 2019 Regulations" for short). The 2019 Regulations extend to the whole of the State of Maharashtra, and are applicable to existing and future Generation Companies, Transmission Licensees, Distribution Licensees, Maharashtra State Load Despatch Centre (MSLDC), and their successors for determination of Aggregate Revenue Requirement, Tariff, and Fees and Charges of MSLDC in all matters covered under these Regulations from April 1, 2020 up to March 31, 2025.

Clause 91 of the 2019 Regulations relates to determination of Retail Supply Tariff. Clause 91.1 (like Section 62(3) of the Electricity Act) enables the Commission to categorize consumers on the basis of their load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required. Clause 91.3 stipulates that the retail supply tariff for different consumer categories shall be determined on the basis of the Average Cost of Supply, computed as the ratio of the Aggregate Revenue Requirement of the Distribution Licensee for the Year determined in accordance with Regulation 81. Clause 91.5 requires the Commission,

while determining the tariff, to also keep in view the cost of supply at different voltage levels and the need to minimise tariff shock to consumers.

In the exercise of the powers conferred by Section 43(1) read with Section 181(2)(t) and other provisions of the Electricity Act, the MERC made the "Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulation 2021 (the "Supply Code" for short). Clause 1.5 thereof makes the Supply Code applicable to all Distribution Licensees and all Consumers in the State of Maharashtra. Regulation 2.2(l) classifies consumers into three broad categories (i) Low Tension Consumers (ii) High Tension Consumers and (iii) Extra High-Tension Consumers. Regulation 2.2(q) defines "Designated Consumers" to mean consumers using or engaged in the processes mentioned in the said clause, which includes Malls, Hotels, Banking etc. and which are connected at a supply voltage of 11 kV and above.

Regulation 14 of the Supply code relates to classification and re-classification of consumers into tariff categories and, thereunder, Distribution Licensees may classify or reclassify a consumer into various Commission's approved tariff categories based on the purpose of usage of supply by such consumers. Under the proviso thereto, the Distribution Licensee shall not create any tariff category other than those approved by the Commission ie the MERC.

The power conferred by Regulation 14 on a Distribution Licensee, to classify or reclassify a consumer, is subject to MERC having approved such tariff categories. Classification of consumers into distinct tariff categories must also be based on the purpose of usage of supply by such

consumers. The test of classification/re-classification of a consumer, in different/distinct tariff categories, is the purpose for which supply of electricity is used by such a consumer.

Para 7 of the impugned order dated 31.03.2023 relates to tariff philosophy, tariff design and category-wise tariffs for FY 2023-24 and FY 2024-25. Para 7.1 details the overall approach for tariff design. Para 7.1.1 records that MERC had kept in view the objects of the Electricity Act, 2003, as set out in its Preamble, including protection of interests of consumers, supply of electricity to all areas and rationalisation of tariffs as also the principles of tariff determination set out in Sections 61 and 62 of the Electricity Act, 2003 and the 2019 Regulations prescribed in the tariff design. Para 7.1.3 states that a simpler and rationalised tariff structure helps easy understanding by consumers, and creation of many different categories gives discretionary power to Discoms while charging tariff. Para 7.1.5 states that, as a progressive step towards simpler and rationalized tariff structure, the Commission had, in the MYT Order, reduced the number of categories from the existing tariff structure; the Commission had, while retaining the existing tariff categories and slabs as notified under the MYT Order, reclassified certain categories of consumers, and clarifications, for applicability of tariff category for certain class of consumers, had been incorporated in the MTR Order upon considering the objections, comments and suggestions received through the public consultation process as also upon scrutiny of submissions made by MSEDCL in this respect; and the proposed categorisation and clarifications, regarding classification of certain consumers, were elaborated in paras 7.22 to para 7.24 of the impugned order.

After taking note of the order in Appeal No. 106 of 2008 wherein this Tribunal had recognized the Commission's power to design the tariff in its own wisdom, Para 7.1.7 of the impugned order records that, in the light of the said judgment, the Commission was proceeding with its intended approach of reducing the number of categories and slabs by merging similarly placed consumer categories while ensuring that the existing consumers in these categories are not significantly impacted.

The concepts of tariff categorization and applicability are addressed in Para 7.1.52. It is stated therein that merging or elimination of existing consumer categories, or classification or recategorization of certain class of consumers, would be done considering the End Use, Energy Consumption, Socio-Economic Profile, Consumption Pattern/ Loan Factor etc; these factors have been examined by the Commission while deciding on merging of categories; the Commission had significantly reduced tariff categories, upon merging/re-classification of certain class of consumers in Case 322 of 2019 ie the MYT Order; and a similar approach was being continued without creation of any new category or sub-class but, at the same time, addressing concerns of the consumers and MSEDCL through clarifications regarding applicability of tariff category and modifying the scope, coverage of classification of Tariff category as covered under the Tariff Schedule. What the MERC has conveyed, in Para 7.1.52 of the impugned order, is that, while no new categories have been created, the Commission has clarified regarding the tariff category applicable to a particular category of consumers; and to modify the scope and coverage of classification of a tariff category in terms of the tariff schedule.

Para 7.2.2 records the additional services and clarifications for tariff applicability. Para 7.22.1 records that MSEDCL had identified new usages

and had added them in the tariff applicability proposal. Para 7.22.4 are the proposals for L.T.II: non-residential or commercial consumers category and, thereunder, MSEDCL proposed, in Para 7.22.4.1, that the category of “Non-Residential, Commercial and Business premises, including Shopping Malls and Showrooms” be added to “Exhibition Centres, Ware Houses/Godowns, Resorts, Canteens/ Cafeterias, Tea shops, Logistics and Transportation services”. Para 7.22.4.2 records the proposal of MSEDCL to include “*Toll Collection plazas including lightings on Express / National / State Highways not included under any other categories*”, under this category ie under the category of L.T.II: non-residential or commercial consumers. Para 7.22.4.3 records the proposal of MSEDCL to include Mobile Shoppe’s under this category and Para 7.22.4.4 records that MSEDCL proposed to include Training Centres under the category of “Separate Sports Clubs/facilities, Health Clubs/facilities, Gymnasiums, Swimming Pools not included in others to be included in this category”.

Thereafter, from para 7.22.5 to 7.22.10, are the Commission’s analysis and views. In Para 7.22.5 the Commission notes the submission of MSEDCL regarding applicability and classification of various classes of consumption as per usage as proposed under the residential or non-residential/commercial category, and that the Commission confirmed such classification based on usage as proposed by MSEDCL. The Commission further observed that necessary modifications in the Tariff Schedule, to reflect this classification of usage under respective consumer category, had been incorporated. Para 7.22.10 records that, in order to have clarity in applicability of non-residential or commercial tariff, the Commission approved inclusion of the Exhibition Centres, Ware Houses/Godowns, Resorts, Canteens/ Cafeterias, Tea shops, Logistics and Transportation services, ***Toll Collection plazas including lightings on Express /***

National / State Highways, Mobile Shoppes, Sports Clubs/facilities, Health Clubs/facilities, Gymnasiums, Swimming Pools and Training Centres under this category.

The tariff schedule for FY 2023-24 and FY 2024-25 is detailed in Annexure-I to the impugned order. Thereunder MERC, in the exercise of its powers under Section 61 and 62 of the Electricity Act, determined, by order dated 31.03.2023, the tariff for supply of electricity by the Distribution Licensees ie MSEDCL to various categories of consumers as applicable from 01.04.2023. The tariff schedule for "LT-II: LT-Non-Residential/ or Commercial" is stated to be applicable for electricity used at low/medium voltage in non-residential/non-residential/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, entertainment, leisure and water pumping in, but not limited to, the following premises. Among categories (a) to (k), detailed thereunder, is category (e) "*Toll Collection plazas*". What is however missing in category (e) of the tariff schedule in "*LT-II: LT-Non-Residential/or Commercial*" are "*lightings on Express / National / State Highways*" which is the categorisation made under para 7.22.4.2 and 7.22.4.10 of the impugned order.

As stated in the tariff schedule, "*category LT-II : LT-Non-Residential or Commercial*" is applicable to premises which (i) use electricity at low/medium voltage in non-residential, non-industrial and or commercial premises, (ii) such usage of electricity is for commercial consumption meant for operating various appliances, and (iii) usage of electricity for operation of various appliances is for purposes such as (a) lighting, (b) heating (c) cooling (d) cooking (e) entertainment/leisure and (f) water

pumping. It is, however, made clear that the tariff category is not limited to the premises referred to in clauses (a) to (k) thereunder. What is sought to be conveyed thereby is that, as so long as the aforesaid criteria is satisfied, other premises may also fall within "*LT-II: LT-Non-Residential or Commercial*" category.

The question which necessitates examination is whether (i) "Toll Collection plazas" and (ii) "lighting on Express/National/State Highways" satisfy the aforesaid test, and thereby fall within "*LT-II : LT - Non-Residential or Commercial*" category. It is only if the premises is used for consumption of electricity for commercial use can it be said to satisfy the afore-said requirements. "Commercial use" would mean the use of certain mercantile products, tools or intellectual property for financial gain. It is only if "Toll Collection plazas" and "lighting on Express/National/State Highways" are used for commercial purposes, ie to make financial gain, can their classification under "*LT-II : LT - Non-Residential or Commercial*" category be justified.

In this context, it is useful to take note of the contents of the agreement entered into between the first and the second Appellants.

C. RELEVANT CLAUSES OF THE AGREEMENT:

An Engineering, Procurement and Construction Agreement was entered into between the Chairman, National Highways Authority of India and the first Appellant. Article 2 of the said Agreement relates to the scope of the Project. Article 2.1 provides that, under this Agreement, the scope of the Project shall mean and include (a) construction of the Project Highway on the site set forth in Schedule-A and as specified in Schedule-B together with provision of project facilities as specified in Schedule-C, and in conformity with the specifications and standards set forth in

Schedule-D; (b) maintenance of the Project Highway in accordance with the provisions of this Agreement, and in conformity with the requirements set forth in Schedule-E; and (c) performance and fulfilment of all other obligations of the contractor in accordance with the provisions of this Agreement. Article 3 of the Agreement relates to the obligations of the Contractor. Article 3.1.1 stipulates that, subject to and on the terms and conditions of this Agreement, the Contractor shall undertake survey, investigation, design, engineering, procurement, construction, and maintenance of the Project Highway and observe, fulfill, comply with and perform all its obligations set out in this Agreement.

The project facilities, referred to in Clause 2.1 of the Agreement, are detailed in Schedule-C and, there-under, the contractor is required to construct the Project Facilities in accordance with the provisions of this Agreement; and such Project Facilities shall include, among others, (a) toll plaza(s), and (h) street lighting. Clause 2 of Schedule-C contains the description of the project facilities. The description of "toll plazas" is given in Clause 2.1 of Schedule-C. Clause 2.8 relates to lighting and, there-under, the lighting facilities shall be provided as per Schedule "B" and Schedule "D" including but not limited to (a) high mast lighting and (b) street lighting for service road/ slip road. The total length of street lighting is stipulated as 20.506 kilometers, and the Note there-under stipulates that street lights should also to be provided at Road Over Bridge, Major Bridge, Toll Plaza, Bus bays, Track lay-bys locations, Minor junctions and built up area along the project road; and the lightings shall be as per Schedule-D and other relevant IRC codes.

It is clear from the afore-said provisions of the Agreement that, as against the total length of the highway, the Agreement requires only a part

thereof to be provided with street lights. The stipulation in the agreement, of the places where such lighting should be provided, also makes it clear that the object of providing lighting at such places is to ensure safety and avoid accidents. Provision of lighting at places such as major bridges, major bridges, junctions etc is evidently not for any commercial purpose.

As noted hereinabove, Para 7.22.10 of the impugned order not only brings within LT-II category "*toll collection plazas including lightings on Express/ National/ State Highways.*", but also several other premises. such as exhibition centres, warehouses/ godowns, resorts, canteens/ cafeterias etc. If the intention was to bring all street lightings on National Highways within LT-II category, MERC would have treated "*lightings on Express/ National/ State Highways*" as a separate entry under LT-II, similar to exhibition centres, warehouses/ godowns, resorts, canteens/ cafeterias, and would not have clubbed it with "*toll collection plazas*" by use of the conjunction "including".

D. USE OF THE WORD "INCLUDING": ITS SCOPE:

Black's Law Dictionary defines the word "include" to mean: "To contain as a part of something. The participle *including* typically indicates a partial list". Use of word "include" enlarges the scope of the definition (**Municipal Corpn. of Greater Bombay v. Indian Oil Corpn. Ltd., 1991 Supp (2) SCC 18 : AIR 1991 SC 686**), and when it is so used, the words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include (**ESI Corpn. v. High Land Coffee Works, (1991) 3 SCC 617; Oswal Fats & Oils Ltd. v. Commr. (Admn.), (2010) 4 SCC 728; CTO v. Rajasthan Taxchem Ltd., (2007) 3 SCC 124; Associated Indem Mechanical (P)**

Ltd. v. W.B. Small Industries Development Corpn. Ltd., (2007) 3 SCC 607).

The word “include” is generally used as a word of extension. (**Forest Range Officer v. P. Mohammed Ali, 1993 Supp (3) SCC 627**) It is an inclusive definition and expands the meaning (**Doypack Systems (P) Ltd. v. Union of India, (1988) 2 SCC 299**). When the word “includes” is used in a phrase or sentence, it makes the phrase/ sentence enumerative but not exhaustive. The term defined will retain its ordinary meaning, but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise (**Mamta Surgical Cotton Industries v. Commr. (Anti-Evasion), (2014) 4 SCC 87**).

The words “*toll collection plazas*” would, ordinarily, not be understood as encompassing within its scope “*lighting on National Highways*”. While the words “*toll collection plaza*” continues to retain its ordinary meaning, its scope is extended, by use of the word “including”, to bring within it “*lighting on National Highway*” also, which would otherwise not have comprised within its ordinary meaning. By the use of the word “including”, the scope of “*toll collection plaza*”, inserted in L.T.II category, has been expanded to also include, within its ambit, “*lightings on National Highways*”. Consequently, it is only such lightings on National Highways which are associated with or form part of “*toll collection plazas*” which fall within LT-II category, and not lighting on the entire stretch of the National Highway as, otherwise, there was no justification in including “*lightings on National Highways*” along with “*toll collection plaza*”, and “*lightings on National Highways*” could well have been inserted as a separate and distinct entry similar to exhibition centres, warehouses/ godowns, resorts, and canteens/ cafeterias.

E. DOCTRINE OF EJUSDEM GENERIS AND NOSCITUR A SOCIIS:

In **Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal**, (2010) 3 SCC 786, on which reliance is placed on behalf of appellant, the Supreme Court held that the Latin expression “**ejusdem generis**”, which means “of the same kind or nature”, is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of the restricted words; this is a principle which arises “from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context”; it may be regarded as an instance of ellipsis, or reliance on implication; this principle is presumed to apply unless there is some contrary indication; this *ejusdem generis* principle is a facet of the principle of ***noscitur a sociis***; the Latin maxim *noscitur a sociis* contemplates that a statutory term is recognised by its associated words; the Latin word “*sociis*” means “society”; therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation; and their colour and their contents are to be derived from their context.

The Rule ‘*Noscitur a sociis*’, according to Maxwell, means that where two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general. (***State of Bombay v. Hospital Mazdoor Sabha***, AIR 1960 SC 610; ***Lokmat Newspapers Pvt. Ltd. v. Shankar Prasad***, (1999) 6 SCC 275; ***Bharat Heavy Electricals Ltd. v. Globe Hi Fabs Ltd.***, (2015) 5 SCC

718; *Brindavan Bangles Stores v. Asst. Commissioner of Commercial Taxes*, (2000) 1 SCC 674). The term “*ejusdem generis*”, a facet of *Noscitur a Sociis*, means that the general words following certain specific words would take colour from the specific words. (*Commissioner of Trade Tax, U.P. v. M/s. Kartos International*, (Judgment in Civil Appeal Nos. 2983-2988 of 2011 dated 06.04.2011)). Some articles are taken separately, and some articles are grouped together. When they are found grouped together, each word in the entry draws colour from the other words therein. [*Paradeep Aggarbatti, Ludhiana v. State of Punjab*, (1997) 96 ELT 219; *M/s. Kartos International*, (Judgment in Civil Appeal Nos. 2983-2988 of 2011 dated 06.04.2011)].

The Latin words “*ejusdem generis*” (of the same kind or nature) are attached to a principle of construction whereby wide words, associated in the text with more limited words, are taken to be restricted by implication to matters of the same limited character. The doctrine of *ejusdem generis* applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; and (iv) there is no indication of a different intent. General words must ordinarily bear their natural and larger meaning, and need not be confined “*ejusdem generis*” to things previously enumerated unless the language of the statute spells out an intention to that effect. (*GMR Energy Limited v. Government of Karnataka*, 2010 LAWS (KAR) (3) 40; *M/s. Siddeshwari Cotton Mills (P) Ltd. v. Union of India*, (1989) 2 SCC 458 : AIR 1989 SC 1019).

The general expression has to be read to comprehend things of the same kind as those referred to by the preceding specific things

constituting a genus. (**Asstt. C.C.E. v. Ramdev Tobacco Company, (1991) 2 SCC 119 : AIR 1991 SC 506; Tribhuban Parkash Nayyar v. Union of India, (1969) 3 SCC 99 : AIR 1970 SC 540; GMR Energy Limited, 2010 LAWS (KAR) (3) 40**). The preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. (**GMR Energy Limited, 2010 LAWS (KAR) (3) 40; Statutory Interpretation Rupert Cross (p.116); Amar Chandra Chakraborty v. The Collector of Excise, Tripura, (1972) 2 SCC 442 : AIR 1972 SC 1863; UPSEB v. Hari Shankar, (1978) 4 SCC 16 : AIR 1979 SC 65**).

For the ejusdem generis principle to apply there must be sufficient indication of a category that can properly be described as a class or genus. (**Francis Bennion: Statutory Construction [pgs 830-831]**). 'Unless you can find a category' 'there is no room for the application of the ejusdem generis doctrine'. The only test is whether the specified things which precede the general words can be placed under some common category. This means that the specified things must possess some common and dominant feature. (**S.S. Magnhild v. McIntyre Bros. & Co. (1920) 3 KB 321**).

To invoke the ejusdem generis rule, there must be a distinct genus or category running through the bodies already named. The specific words must apply not to different objects of a widely differing character, but to something which can be called a class or kind of objects. (**Rajasthan State Electricity Board v. Mohan LaL, AIR 1967 SC 1857; Maxwell: 'Interpretation of Statutes'; United Town Electric Co., Ltd. v. Attorney-General for Newfoundland, (1939) 1 ALLER 423 (PC)**). The nature of the special words and the general words must be

considered before the rule is applied. (**Jagdish Chander Gupta v. Kajaria Traders (India) Ltd., AIR 1964 SC 1882**). It is a requisite that there must be a distinct genus, which must comprise more than one species, before this rule can be applied. (**State of Bombay v. Ali Gulshan, AIR 1955 SC 810**).

As noted hereinabove, the principle of *ejusdem generis* means that, where general words follow enumeration of persons or things by particular and specific words, the general words must be understood as applying to persons or things of the same general kind or those specifically enumerated. The genus, or the common thread running through all the entries in L.T.II category, is that they are premises where electricity is consumed for a commercial purpose. All the specified words in Clause 7.22.10 are premises where commercial activities are carried on or, in other words, premises which are put to commercial use. Toll Collection Plazas are places/premises where toll is collected for the use of the Highway by different kinds of motor vehicles which can, possibly, be held to be a commercial activity. However "lighting on National Highway", if disassociated with "toll collection plazas", would not fit in with other entries in L.T.II category, as the entire stretch of the National Highway would not constitute premises where commercial activity is carried on.

Collection of toll is a compensatory measure for construction of the road and other associated infrastructural facilities thereat, and not for the purpose of gain. It is, however, possible to contend (though such a contention is not free from doubt) that commercial activities are carried on at the toll collection plaza, since user charges are collected thereat. In any event, as the Appellants have chosen not to question inclusion of "toll

collection plazas" in L.T.II category, it is unnecessary for us to dwell on this aspect any further.

By use of the word "*including*" between "*toll collection plazas*" and "*lighting on National Highways*", MERC must be understood to have brought within the ambit of L.T. II category only such lighting on the National Highways which either form part of or are associated with toll collection plazas i.e. toll collection plazas and places adjacent thereto, where lighting is provided for commercial activities being carried on thereat, such as restaurants, shops etc located near the toll collection plazas. That does not, however, mean that street lighting provided at a fair distance from the toll collection plaza, where such lighting is provided not for carrying on any commercial activity, would also fall within LT-II category. The submission of MSEDCL that all street lightings, on the entire stretch of the National Highways, would fall within LT-II category does not, therefore, merit acceptance. Street lighting on the National Highway, other than those where some form of commercial activities are carried on in proximity to the toll collection plazas, would therefore not fall within LT-II category.

V. DO STREETLIGHTS ON THE ENTIRE STRETCH OF THE NATIONAL HIGHWAY MEET THE CONDITIONS STIPULATED FOR LT II CATEGORY?

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellant, would submit that the main body of what type of connections would be covered under LT II has remained the same over the past tariff orders:

MERC's Order dated 17.08.2012 in Case No. 12 of 2011	MERC's Order dated 30.03.2020 in Case No. 322 of 2019	MERC's Order dated 30.03.2023 in Case No. 226 of 2022
<p>(A) 0-20 kW</p> <p>Electricity used at Low/Medium Voltage in all non-residential, non-industrial premises and/or commercial premises for <u>commercial consumption</u> meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, washing/ cleaning, entertainment/ leisure, pumping in following (but not limited to) places:</p>	<p><u>Applicability:</u></p> <p>This tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, washing/ cleaning, entertainment/ leisure and water pumping in, but not limited to, the following premises:</p>	<p>A) 0-20kW</p> <p>This tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, entertainment/ leisure and water pumping in, but not limited to, the following premises:</p>

Learned Counsel would submit that, from the above extracted table, it is clear that the LT II: Commercial/Non-Residential tariff category is applicable in respect of the following : (i) Electricity used at Low/Medium voltage, (ii) in non-residential, non-industrial and/or commercial premises and other specified premises, and (iii) for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, entertainment/ leisure and water pumping;

Clause (e) has been added to the definition of LT II tariff category; it is only an addition of the premises; even if the entire Highway is included in LT II, it would only be an inclusion of the premises; it would not, by itself, mean that all lighting on the Highway would be under LT II connection; for any connection to be under LT II, even on a Highway (assuming that the entire Highway has been included in LT II by the Impugned Order), it has to be “for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, entertainment/ leisure and water pumping”; as per Schedule C of the Contract between DBL and NHAI, lighting (called as street lighting) is not to be provided for the entire length of the Highway, but the lighting is to be provided at specific points such as major junctions (such as village intersections, Vehicular Under-Passes (VUPs), Road over Bridge (ROB) – through High Mast lighting; and for minor junctions such as service roads for villages or colleges - through street lighting; and slip roads, truck lay-bys and bus bays – through street lighting.

Sri Saurav Aggarwal, Learned Counsel, would further submit that there is no requirement of having lighting throughout the Highway; per se the Highway does not require street lighting; the Highway can be operated without lighting; however, they are provided at specified points for safety purposes because the Highway is adjacent to a village or town or there is an inter-section with other roads etc; many of these lightings are not even used by the Highway users, but by others; lighting on the Highway does not, in any manner, contribute to the activity of operating the Highway and/or revenues being received; thus, the street lights on the Highway are not for use for commercial purposes; a comparison can be made with electricity consumed for lighting a hotel or restaurant or club or bank or showroom etc; without the lighting, such establishments cannot operate ;

this would apply to all premises enlisted in the LT II category; the consumer categories included under LT II are those wherein electricity usage is directly correlated with the facilitation of some commercial activity, resulting in profit generation for the consumer i.e., the sole purpose of using electricity is to generate profits; this is not so in the case of the National Highway; lightings on Highways are neither similarly placed with any of the consumer category enumerated under LT-II category, nor is there any overlap/similarity based on the nature of their usage (being the main criteria for re-classification of the appellant's street light connections); and there is no link between the lighting and commercial activity on the Highway.

B. SUBMISSIONS URGED ON BEHALF OF MERC:

Ms. Pratiti Rungta, Learned Counsel appearing on behalf of MERC, would submit that the tariff category LT-II has to be read in its entirety, and the terms included in item (e) cannot be ignored or rendered otiose or nugatory; further, with no challenge to the tariff category "*Toll Collection Plaza*", its explanation is being impugned which could render portions of the Tariff Category otiose; (Refer: ***State of T.N. Vs. K. Shobana, (2021) 4 SCC 686, Para 12; and Union of India Versus Hansoli Devi, (2002) 7 SCC 273, Para 9***); Paragraph 7.22.10, impugned to the extent of explanation to the Tariff Category LT II, and item (e) of the tariff schedule, has to be seen in the light of the wording in the Tariff Category; the term "Plaza" cannot be equated with Toll Collection booth alone, as sought to be espoused by the Appellant; the word "**Plaza**" incorporated in the tariff entry gives it a wider import; and the definition of the term "**Plaza**" as defined in the Merriam Webster Dictionary is as under:

"Plaza:

1a: a public square in a city or town

b: an open area usually located near urban buildings and often featuring walkways, trees and shrubs, places to sit, and sometimes shops

2: a place on a thoroughfare (such as a turnpike) at which all traffic must temporarily stop (as to pay tolls)

3: **an area adjacent to an expressway which has service facilities (such as a restaurant, gas station, and restrooms)**

4: **SHOPPING CENTER**

(relevant extract)

Ms. Pratiti Rungta, Learned Counsel, would further submit that the tariff entry "Toll Collection Plaza" is clear and unambiguous; the impugned Paragraph 7.22.10, in the new tariff order dated 31.03.2023, which stipulates inclusion of lightings on Express/National/State Highways, is merely an explanation of the tariff entry; as per the new tariff order dated 31.03.2023, LT-II Commercial Tariff will apply to all Toll Collection Plazas and also to lightings on Express/ National/ State Highways, which are specifically toll roads; also, all the lightings installed on service roads, inter-sections of villages or towns, to the extent the same form part of any Express/ National/ State Highway, will be charged LT-II Commercial Tariff; and Express/National/State Highways or any other roads built by local bodies which are not toll roads, and give its access to the general public free of charge, are not included in the Tariff Entry / Tariff Categorization, LT II - Commercial Tariff.

C. JUDGEMENTS RELIED ON BEHALF OF MERC:

In **Union of India v. Hansoli Devi, (2002) 7 SCC 273**, the Supreme Court held that, if the words of the statute are in themselves precise and

unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense; the words themselves alone do, in such case, best declare the intention of the lawgiver; it is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute, and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act; a provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings; it would be hard to find anywhere a sentence of any length which does not contain such a word; a provision is ambiguous only if it contains a word or phrase which, in that particular context, is capable of having more than one meaning; if, on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute; it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute; the legislature is deemed not to waste its words or to say anything in vain, and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons; similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless; but before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn

to the omission before the Bill had passed into a law; at times, the intention of the legislature is found to be clear but the lack of skill of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language; and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective.

In **STATE OF TAMIL NADU & ORS. V. K. SHOBANA, (2021) 4 SCC 686**, the Supreme Court held that, if an interpretation leads to a conclusion that the word used by the legislature is redundant, that should be avoided as the presumption is that the legislature has deliberately and consciously used the word for carrying out the purpose of the Act; the legal maxim *a verbis legis non est recedendum* which means, "from the words of law, there must be no departure" has to be kept in mind; there could be no assumption that a legislature committed a mistake when the language of the statute was plain and ambiguous; and no word in a statute has to be construed as a surplusage nor could any word be rendered ineffective or purposeless if the Court is required to carry out the legislative intent fully and completely.

D. ANALYSIS:

The MERC, in its order in Case No. 12 of 2011 dated 17.08.2012, Case No. 322 of 2019 dated 30.03.2020 and in Case No. 226 of 2022 dated 30.03.2023, has classified commercial premises, used for commercial consumption, under LT-II category. While a toll collection plaza can, possibly, be held to be a commercial premises, since toll is collected there at towards user charges and, by use of the word "including", lighting on National Highway in proximity to the toll collection plaza (where commercial activities can be said to be carried on) would

also constitute a commercial premises used for commercial purposes, it is difficult to hold that the entire stretch of the National Highway, where street lighting is provided, would also constitute a commercial premises where electricity is consumed for a commercial purpose.

As noted hereinabove, the agreement, between the first and the second appellants, does not require street lighting to be provided for the entire length of the National Highway, but only for a part thereof such as major junctions, road over bridges etc. Such lightings are required to be provided for the purposes of safety and to avoid accidents, and not for carrying on any commercial activity.

Para 7.22.10 of the impugned order brings within the ambit of L.T.II category ***"Toll Collection plazas including lightings on Express / National / State Highways"***. Reading the afore-extracted portion in its entirety would not bring within its fold the entire stretch of the National Highway. The words *"lighting on Express/National/State Highway"* is not an explanation to *"Toll collection plaza"*, for a toll collection plaza can, in no circumstances, be understood to mean *"lighting on Express/National/State Highway"*.

As is clear from Para 7.22.10 of the impugned order, the words *"toll collection plazas"* are connected, by the word *"including"*, with the words *"lighting on Express/ National/ State Highways"*. Lest lighting on National Highways, even if it be in close proximity thereto, be excluded from the ambit of *"toll collection plaza"*, Para 7.22.10 of the impugned order makes it clear that the toll collection plaza along with lighting on National Highways, would fall within LT-II tariff category. In other words, lighting on national highway in and around the toll collection plaza have also been categorised under LT-II tariff category.

Reliance placed on behalf of the MERC on the judgments of the Supreme Court in **K. Shobana** and **Hansoli Devi**, as referred to hereinabove, is misplaced as the said judgments relate to interpretation of statutes and require a literal construction to be placed in interpretation of statutory provisions. Para 7.22.10 is merely a part of the tariff order passed by the MERC in the exercise of its regulatory powers under Section 62 of the Electricity Act, and cannot be equated to the provisions of a statute. The said tariff order is subject to appeal under Section 111 of the Electricity Act, and it is open to this Tribunal, in the exercise of its appellate jurisdiction, to examine not only the scope and purport of the words used therein, ie *“toll collection plaza including lightings on Express/ National/ State Highways”*, but also to consider whether its inclusion under LT-II category is justified.

The word “plaza” cannot be read divorced from the preceding words *“toll collection”* used in Para 7.22.10 of the impugned order. Consequently, a plaza must be understood as a place where traffic is temporarily stopped for payment of tolls or, in other words, a place where toll is collected by temporarily stopping vehicular traffic. Even if an expanded meaning of *“plaza”* is applied to the said entry, it would only include lighting in premises located on the National Highway adjoining the toll collection plaza such as restaurants, ice-cream parlours, tea shops, guest houses etc in which places electricity is used for commercial purposes. A literal reading of the said entry would only bring within the ambit of L.T.II category, lighting on national highway in and around the toll collection plaza, and not lighting on National highway located at a fair distance therefrom. Lighting on inter-sections of villages and towns, though forming part of the National Highway, does not involve any commercial activity, since such lighting is provided to ensure safety, of

passers-by and all those living adjacent to such inter-sections, and to avoid accidents at such places.

The submission that it is only the roads built by local bodies which would not fall within LT-II category necessitates rejection, since no such restriction is placed by the parameters prescribed either for L.T. II or L.T.VI Category. The requirement of such roads being used free of charge is also not stipulated with respect to street lighting. Street lights on the National Highways, which are provided for safety purposes and to prevent accidents, do not consume electricity for commercial purposes nor can such lighting be equated to consumption of electricity for operating various appliances used for commercial purposes such as cooling, cooking, washing etc. We are satisfied, therefore, that street lights on the National Highway, other than those in close proximity to the toll collection plazas and at places where commercial activity is being carried on, do not fulfil the conditions stipulated for premises falling within LT-II category

VI. JUDGEMENT OF THE BOMBAY HIGH COURT IN WRIT PETITION NO. 7504 OF 2022 DATED 23.10.20:

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellant, would further submit that the Bombay High Court, vide its judgment in ***Maharashtra State Electricity Distribution Company Limited v. DBL Mahagaon, Kinhi*** (Judgement in Writ Petition (WP) No. 7504/2022 dated 23.10.2023), held that MSEDCL had not pointed out anything to show that usage of electricity for street lighting on the National Highway was commercial or was meant for operating various appliances used for the purposes specified in LT-II, which is the pre-requisite to apply LT-II category i.e. the commercial category tariff; and the purpose of

highways is for benefitting the general public at large, and not to earn profits but to provide connectivity and facilities to the citizens of India.

Sri Saurav Aggarwal, Learned Counsel, would further submit that the Bombay High Court, in W.P. 7504 of 2022, was faced with a similar question, albeit in an earlier Tariff Order of the year 2020; however, there is no difference between the categorisation of LT II: Commercial/Non-Residential category in the earlier Tariff Order of 2020 and the Impugned Tariff Order, except for addition of "Toll Collection Plazas" in the current Tariff Schedule, and the purported 'clarification' at Para 7.22.10; as the Bombay High Court, in W.P. 7504 of 2022, has already held that certain consumers definitively fall under the LT VI: Street Light tariff category, MERC cannot pass a Tariff Order contrary thereto; the Bombay High Court judgment is binding on this Tribunal, on the parties to the case, and is a declaration of law *in rem*; the basis of the Bombay High Court judgment has not been removed, which, even otherwise, cannot be done away with by an adjudicatory or a regulatory order; MERC has contended that the Regulatory Commission was not negating the principles of the Bombay High Court; and the Respondents have not responded to the reasons given by the Bombay High Court for concluding that all such street lights should not fall within LT II.

B. SUBMISSIONS URGED ON BEHALF OF MERC:

Ms. Pratiti Rungta, Learned Counsel appearing on behalf of MERC, would submit that the judgement dated 23.10.2023 of the Bombay High Court arises from an order dated 27.05.2022 passed by the CGRF in Representation No. 16 of 2022; therefore, that matter relates to the interpretation of the tariff category / classification reflected in the earlier tariff order dated 30.03.2020 in Case No. 322 of 2019; the said tariff

category / classification is in the earlier tariff order dated 30.03.2020; the judgement of the Bombay High Court interprets, inter alia, the tariff category LT II titled ***“LT II: LT – Non-Residential or Commercial”***; this category does not include the term ***“Toll Collection Plazas”*** which was added for the first time in the impugned new tariff order dated 31.03.2023 in Case No. 226 of 2022; the judgement of the Bombay High Court also considers the tariff category LT-VI titled ***“LT VI: LT – Street Light”***; the said tariff category/ classification in the earlier tariff order dated 30.03.2020; thus, the Bombay High Court was seized of a tariff order dated 30.03.2020, which did not include the term ***“Toll Collection Plazas”***; presently, the impugned tariff order dated 31.03.2023 in Case No. 226 of 2022 specifically includes the term ***“Toll Collection Plazas”*** in the tariff entry ***“LT II: LT – Non-Residential or Commercial”***, as item (e) inserted therein; the MERC, in its new tariff order dated 31.03.2023, has created a specific tariff categorisation in ***“LT II: LT- Non-Residential or Commercial Tariff “*** category; the Appellant has not challenged inclusion of ***“Toll Collection Plazas”*** in the LT-II tariff category, by MERC; further, in the said order, MERC has, in *Paragraph 7.22.10*, clearly stipulated that the Toll Collection Plazas would include lightings on Express/ National / State Highways; it is only inclusion of lightings on Express / National / State Highways, which has been impugned in the present Appeal; therefore, the judgement of the Bombay High Court is not relevant for interpretation of the new tariff order dated 31.03.2023, which is markedly different in terms of the description of the tariff category ***“LT II: LT - Non-Residential or Commercial”***.

Ms. Pratiti Rungta, Learned Counsel, would further submit that, from Paragraph 23 of the judgement of the Bombay High Court, it is evident that it relates to a factual matrix wherein street lights were not provided on

the entire stretch of the Highway; street lights were provided at certain specific places like service roads, inter-sections of villages and towns; street lights were installed for local residents free of charge, as recorded in the said judgement; paragraph 5 of the judgement refers to some further locations including on certain Highways; however, the present tariff entry LT-II (New tariff order dated 31.03.2023) does not include service roads, inter-section of villages and towns or other locations, but should be strictly construed as including lightings on Express/ National/ State Highways; another important factual distinction is that the Bombay High Court had recorded, in Paragraph 23 of the said judgement, that street lights are installed for use of local residents free of charge; in the present case, however, the factual position differs on the charges levied by the Appellants; the contents of the Appeal, at **Page 38, Para (III)**, reveal payment of charges; this factual position is repeated and reiterated in **Para (VII), Page 45 of the Memo of Appeal and Para (XV) on Pg. 50**; and, therefore, the judgement of the Bombay High Court (*supra*) is distinguishable on law as well as on facts.

C. ANALYSIS:

In **Maharashtra State Electricity Distribution Company Limited vs DBL Mahagaon, Kinhi & others**: (Judgement of the Bombay High Court in W.P. No. 7504 of 2022 dated 23.10.2023), the order under challenge was passed by the Consumer Grievance Redressal Forum, Amravati, in Representation No.16/2022 dated 27.05.2022 allowing the representation, and thereby directing the petitioner-MSEDCL to retain the category of connection in respect of the respondent to 'street light' category and adjust the difference of amount collected from the respondent on account of re-classification of category in their ensuing bills.

The respondent was the concessionaire, incorporated solely for the purpose of executing the concession agreement with NHAI, and to discharge the obligations of the works provided therein i.e. four-laning of a road on hybrid annuity mode. The respondent secured electricity connection for installment of street lights on the said road and it was granted under tariff LT-VI(A) category for the purpose of street lights on the national highway project.

However, the petitioner-MSEDCL made reclassification from LT-VI(A) category to LT-II(B) category and thereby made upward revision of electricity bills. Aggrieved thereby, the respondent approached the Consumer Grievance Redressal Forum, Amravati challenging the reclassification. The said representation came to be allowed directing the petitioner-MSEDCL to retain the category of connection i.e. 'street light' category, and adjust the difference of amount collected from the respondent by the petitioner on account of reclassification.

It was contended, on behalf of MSERCL, that the connection for the street lights on the national highway was provided to the private agency i.e. the respondent and the use of these highway lights were not for people to carry out their daily work, but mainly for vehicles passing through the highway which were paying the charges at the Toll Plaza; it was a commercial activity and could not be categorized in LT-VI(A) category i.e. 'street light'; the activity of the respondent was purely commercial, and reclassification was rightly done.

It was contended on behalf of the respondent-concessionaire that the street lights installed on the highways were part of the project facility as defined in the EPC agreement; the project facility included provision of street light in clause 2.1 and schedule 'C' of the agreement; NHAI

exercised proprietary and controlling right over the project facility including street lights; they were merely a concessionaire in respect of the project and its facilities; they were liable only for maintenance of the project, and not for collection of user fee from the users of the National Highway; the street lights installed by them render the function of municipal category, as there was no revenue generated from such usage of street lights; and rather the connection was for services only for general public use.

It is in this context that the Bombay High Court held that the street light category tariff i.e. LT-VI was applicable for the electricity used for lighting of public streets, thorough fares which were open for use by the general public at Low/Medium Voltage and at High Voltage; street lights in residential complexes, commercial complexes, industrial premises etc. are billed at the tariff of the respective applicable categories; whereas, LT-II i.e. the non-residential/commercial tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating cooling, cooking, washing/cleaning, entertainment/leisure and water pumping in, but not limited to, the premises enumerated under the said category; it was apparent that usage of electricity was relevant; it was not the case of MSEDCL that street lights were provided for the entire stretch of the Highway; from the record, it could be seen that street lights were provided at certain specific places like service roads, intersection of villages and towns; the photographs filed by the respondent showed that street lights were installed for use of local residents free of charge; MSEDCL had not pointed out anything to show that the usage was commercial, and was meant for operating various appliances used for the purposes specified in LT-II, which was a pre-requisite to apply LT-II

category i.e. the commercial category tariff; the mere fact that street lights were installed on over bridges and under bridges or at bus bay and bus shelter locations, built up sections on the project highways, was not sufficient to arrive at the conclusion that the use of electricity was for commercial consumption; and, similarly, the fact that street lights were installed on certain highways was not sufficient to hold that it was for commercial consumption and not for use of the general public.

The Bombay High Court further held that NHAI comes under the Ministry of Roadways under the Government of India; the Highway is for the purpose of benefiting the general public at large, and the purpose of streets is not to earn profit but to provide connectivity and facilities to citizens of India; a huge investment was required for such construction of highways, and therefore toll was being collected; however, it would not make the activity commercial; the respondent was merely a concessionaire in respect of the project and its facilities, and did not exercise any proprietary, operational and commercial control over the project facilities; the respondent, as a contractor, had handed over the project facilities to NHAI for operation of Toll Plaza, and the respondent was liable only towards maintenance of the project and not for collection of user fee from the users of the national highways; and it was, thus, difficult to accept that it was a commercial activity for which LT-II tariff will apply.

The afore-said judgement of the Bombay High Court has attained finality, as no appeal is said to have been preferred there-against. The law declared in the said judgment would, therefore, not only be binding on the parties thereto ie MSEDCL and MERC, but would constitute a precedent binding on this Tribunal.

D. RELEVANT PARAGRAPHS OF THE APPEAL:

Since reliance is placed on behalf of the MERC on certain paragraphs of the Appeal, filed by the Appellant, to contend that use of the National Highways is not free of charge, it is useful to take note of the contents of these paragraphs.

Para 9 of the Appeal are the grounds raised with legal provisions. Para 9(III), on which reliance is placed on behalf of MERC, states that parts of the National Highway, like slip roads, service roads, pedestrian under-passes, vehicular under-passes and intersections of villages and towns, are available for use without charge; most of the lighting installed are in the above-mentioned places; even the lighting on the main National Highway is on a road open for public use, albeit at a charge, which is payable only towards development and construction cost of the National Highways by the Government of India, and not for any other purpose.

In Para 9 (VII) of the Appeal, it is stated that the classification between a street lighting and lighting on national highway suffers from arbitrariness as there is no intelligible differentia between the two for classifying them differently, merely because there is a toll charge to enter some specific parts of the National Highway; and the impugned tariff order overlooks that the citizens have to pay various municipal and other taxes such as road taxes, for the street light facility.

Again at Para 9 (XV), it is stated by the Appellant that the National Highways are open to the general public and are built for the purpose of public welfare; NHAI is a statutory organization and the work carried out by it is for the convenience of the public at large, and not for any commercial purpose; the lighting put up under the connections are in fact

serving the purpose of municipalities; the user fee collected is for the purpose of compensating and recovering the money spent in the construction, building, maintenance and management of the National Highway, and not for any commercial/ profitable purpose; besides, toll fee is not collected by the Appellant; neither of the Appellants are carrying on any trade or commerce in general for the purpose of which it can be defined as a commercial establishment; the lightings are not installed on the entire stretch of the highway, but only in certain specific places like service roads and intersections of villages and towns etc. which are open for use by local residents free of charge; and the main purpose is to prevent and avoid accidents and mishaps to the general public at large.

It is clear, from the afore-said paragraphs of the Appeal, that, while toll is collected towards user fee, such collection is merely compensatory in nature and is meant for recovery of the money spent in the construction and management of the National Highway. It is not meant to be a profit generation exercise. While slip roads can possibly be held to be partly used by vehicular traffic to get on to, or get off from, the National Highway, lighting at village/town inter-sections, road over bridges and other similar locations, are meant only for the safety of people living adjacent thereto and to prevent accidents, and nothing more. Further, village inter-sections, used by villagers living nearby the highway, are not subject to payment of toll charges. In other words, such inter-sections are used by villagers and people living in towns without paying any user charge whatsoever. It is difficult, therefore, to hold that street lightings on the National Highway, at village/town intersections or on road over bridges etc, are street lights meant for a commercial purpose. Classifying them under LT-II category is, therefore, wholly unjustified.

It is true that the judgment of the Bombay High Court dated 23.10.2023 arose on a challenge mounted to the order passed by the Consumer Grievances Redressal Forum in Representation No. 16 of 2023 dated 27.05.2023. It is also true that what fell for consideration in the said judgment is the tariff reflected in the tariff order in Case No. 322 of 2019 dated 30.03.2020. Even though LT-II category did not then specifically include "toll collection plazas", the attempt to bring "toll collection plazas" within the ambit of LT-II category was rejected, in the said judgement, holding that no commercial activity was being carried on thereat, and street lights were installed at service roads and village and town intersections for the benefit of local residents free of charge.

The submission made on behalf of MERC, that the entry now made in LT-II category is with a view to remove the basis of the said judgment, is difficult to accept, since the regulatory order passed by the MERC does not have statutory sanction, and cannot be equated to legislation made by the competent legislature to remove the basis of judicial pronouncements of superior courts. The very fact that "lightings on national highways" has been associated with "toll collection plazas", by use of the word "including", would go to show that "lighting on national highways" was not intended to be treated as an independent entry. It is clear, therefore, that only lighting on national highways, in and around the toll collection plazas, would alone fall under LT-II category, and not street lights on the National Highway located at a fair distance therefrom.

VII. DO STREETLIGHTS ON THE NATIONAL HIGHWAY MEET THE CONDITIONS STIPULATED FOR LT VI CATEGORY?

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the

appellant, would submit that the main body of what type of connections would be covered under LT VI, across the past tariff orders, are as under:

MERC's Order dated 17.08.2012 in Case No. 12 of 2011	MERC's Order dated 30.03.2020 in Case No. 322 of 2019	MERC's Order dated 30.03.2023 in Case No. 226 of 2022
<u>Applicability:</u>	<u>Applicability:</u>	<u>Applicability:</u>
<p>Applicable for use of Electricity / Power Supply at Low / Medium Voltage exclusively for the purpose of Street Light Services.</p> <p>This Tariff shall also be applicable for use of Electricity / Power Supply at Low / Medium Voltage for following (but not limited to) purposes, <u>irrespective of whether such facilities are owned, operated and maintained by the local self-Government body;</u></p> <p>a) Lighting in Public Garden (should be open for general public free of charge and, will not cover gardens in private township or amusement parks);</p> <p>b) Traffic Signals & Traffic Islands;</p> <p>c) State Transport Bus Shelters;</p>	<p>This tariff category is applicable for the electricity used for lighting of public streets/ thoroughfares which are open for use by the general public, at Low/ Medium Voltage, and at High Voltage.</p> <p>Street-lights in residential complexes, commercial complexes, industrial premises, etc. will be billed at the tariff of the respective applicable categories.</p> <p>This category is also applicable for use of electricity/ power supply at Low/ Medium Voltage or at High Voltage for (but not limited to) the following purposes,</p>	<p>This tariff category is applicable for the electricity used for lighting of public streets/ thoroughfares which are open for use by the general public, at Low / Medium Voltage, and at High Voltage.</p> <p>Street-lights in residential complexes, commercial complexes, industrial premises, etc. will be billed at the tariff of the respective applicable categories.</p> <p>This category is also applicable for use of electricity / power supply at Low / Medium Voltage or at High Voltage for <u>(but not limited to) the following purposes.</u></p>

d) Public Sanitary Conveniences; and	<u>irrespective of who owns, operates or</u>	<u>irrespective of who owns, operates or</u>
e) Public Water Fountain & such other Public Places open for general public free of charge.	<u>maintains these facilities:</u>	<u>maintains these facilities:</u>
<p>This category shall be applicable for public lighting for those streets <u>which are open for use by the general public.</u> Streets under residential complexes, commercial complexes, industrial premises, etc. will be billed under the Tariff of respective categories.</p>	<p>a. Lighting in Public Gardens (i.e., which are open to the general public free of charge);</p> <p>b. Traffic Signals and Traffic Islands;</p> <p>c. Public Water Fountains; and</p> <p>d. Such other public places open to the general public free of charge.</p>	<p>a. Lighting in Public Gardens (i.e., which are open to the general public free of charge);</p> <p>b. Traffic Signals and Traffic Islands;</p> <p>c. Public Water Fountains; and</p> <p>d. Such other public places open to the general public free of charge.</p>

Learned Counsel would submit that the two changes that are apparent when compared to the 2012 Tariff order are: (i) the earlier requirement that the highway should be owned by a Panchayat or local self-Government body has been now given a go by; in LT VI category, it is provided that it applies "*irrespective of who owns, operates or maintains these facilities.*"; (ii) In the 2012 Tariff order, LT VI had the 'free' requirement if public lighting had to be brought under LT VI as follows: "*This category shall be applicable for public lighting for those streets which are open for use by the general public free*"; now, the word 'free' does not occur in respect of public lighting on the streets; the words 'free of charge' occur in respect of 'other public places'; as per the 2020 or 2023 tariff schedules, LT VI Street Light tariff category is applicable in respect of the following : (i) electricity used for lighting of public streets/

thoroughfares which are open for use by the general public; and (ii) such other public places open to the general public free of charge, irrespective of who owns, operates or maintains these facilities; in case of another NHAI Highway, operated by the first appellant, the CGRF has held that “National Highway is a Public Street.” (Refer: order of the CGRF, in *M/s Dilip Buildcon Mayur Layout Yamatval v. Executive Engineer MSEDCL, Yamatval Circle*, I (Order in Representation No. 12 to 24 of 2022 dated 27.05.2022); for electricity, used in lighting of public streets or thoroughfares, there is a specific entry where the only requirement is that it should be open for use by the general public; it is not necessary that such use should be free of charge; levy of toll would not mean that the highway is not open for use by the general public; and, as held by the Bombay High Court in ***Maharashtra State Electricity Distribution Company Limited v. DBL Mahagaon, Kinhi*** (Judgement in Writ Petition (WP) No. 7504/2022 dated 23.10.2023), the toll fee charged is only towards recovery of the costs incurred in the construction of such express/national/state highways, and would not change the character from LT VI to LT II. Reliance is also placed on **MSK PROJECTS (I) (JV) LTD. vs. STATE OF RAJASTHAN, (2011) 10 SCC 573** in this regard.

B. SUBMISSIONS URGED ON BEHALF OF MERC:

Ms. Pratiti Rungta, Learned Counsel appearing on behalf of MERC, would submit that the tariff order, in Case No. 226 of 2022 dated 31.03.2023, has another tariff category LT VI: LT - Street Light; this tariff entry relates to streets wherein public makes use of the facilities, as mentioned in the tariff entry/category LT-VI, free of charge; and with the specific inclusion of Toll Collection Plazas with the explanation as contained in Para 7.22.10 of the New Tariff Order, as including lighting on

Express / National/ State Highways, wherein an amount is admittedly charged to the public, the facilities of the Appellant cannot be included in tariff category LT VI : LT – Street Light.

C. ANALYSIS:

As noted hereinabove, Annexure-1 of the impugned order is the Tariff Schedule for FY 2023-24 and FY 2024-25 which the MERC, in the exercise of its powers under Section 61 and 62 of the Electricity Act, approved with effect from 01.04.2023. LT-VI tariff category, which relates to LT VI - Street Light, is applicable for electricity used for lighting of public streets/ thoroughfares which are open for use by the general public, at low/ medium voltage, and at high voltage. Street lights in residential complexes, commercial complexes, industrial premises etc. are to be billed at the tariff of the respective applicable categories. The L.T.VI category is also applicable for use of electricity/power supply at low/ medium voltage or at high voltage for (but not limited to) the following purposes, irrespective of who owns, operates or maintains these facilities: (a) lighting in public gardens (i.e. which are open to the general public free of charge); (b) traffic signals and traffic islands; (c) public water fountains; and (d) such other public places open to the general public free of charge.

It is evident from the Tariff Schedule that LT-VI Street Light category is applicable, among others, for lighting in public streets/ thorough fares which are open to the general public. An exception to this category are streetlights in residential complexes, commercial complexes, industrial premises etc. to which the tariff applicable to L.T.VI category is not applicable, and they are to be billed at the tariff applicable to the other categories in which they fall. The National Highway does not fall within any of the afore-said excepted categories as it is neither a residential

complex nor a commercial complex or even an industrial premises. National Highways are open for use by the public (albeit on payment of user charges). The requirement of usage being free of charge is applicable only to lighting in public gardens and such other places which are open to the general public free of charge. There is no requirement that lighting on public streets/ thoroughfares should be used free of charge, for it to be held to fall within LT-VI Street Light category. Consequently, streetlights on the National Highway would fall within LT-VI category.

The changes brought about from the tariff order passed by MERC in Case No. 12 of 2011 to Case No. 322 of 2019 and thereafter to Case No. 226 of 2022 is also of significance. LT-VI category, in terms of Case No. 12 of 2011, was applicable for use of electricity for the purpose of street lighting services irrespective of whether such facilities were owned, operated and maintained by the local self-governing body. The requirement of usage by the public free of charge was confined to lighting in public gardens, public water fountains, and other public places open for the general public free of charge. The said order further made it clear that LT-VI category was applicable for public lighting for those streets which were open for use by the general public. The requirement of such usage of streets, (where public lighting is provided), being free of charge was not stipulated in the said tariff order.

In the tariff order, passed in Case No. 322 of 2019, LT-VI category was applicable for electricity used for lighting of public streets/ thoroughfare which are open for use by the general public. The requirement of such usage being free of charge was also not stipulated in the said Tariff Order. It was also made clear therein that this category

would be applicable irrespective of who owned, operated or maintained these facilities. The requirement of usage free of charge was confined only to public gardens and such other public places open to the general public and not to street lighting. Even in the tariff order in Case No. 226 of 2022, LT-VI category is available for use of electricity for street lighting irrespective of who owns, operates or maintains this facility. Again, it is only lighting in public gardens and other public places open to the general public which is required to be free of charge for it to fall within LT-VI category.

The mere fact that a toll is collected towards usage charges of the National Highway would not oust streetlights on National Highways from LT-VI category, nor would it bring such street lighting within LT-II category, since no commercial activity is carried on in a substantial stretch of the National Highway. It is only where electricity is provided for consumption for commercial purposes such as in and around the toll plaza, or in places adjacent thereto on the National Highway, ie where electricity is consumed by hotels, shops, malls etc. for a commercial purpose, would it fall within LT-II category and not otherwise.

VIII. STREET LIGHTING ON SERVICE ROADS AND VILLAGE INTER-SECTIONS:

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellant, would submit that, even though use of express/national/state highways incurs a toll fee, locations such as service roads and village inter-sections do not incur any toll fee; service roads, constructed near the

main carriageway of the highways, are meant for the use of local residents/villagers, and no toll fee is charged for their usage; during the course of hearing of the present Appeal on 28.05.2024, MERC had conceded to the fact that, since service roads are not a part of the main carriageway of the Project Highway, street lighting installed on such roads must be charged under LT VI: Street Light tariff category; and, similarly, at village inter-sections, villagers do not pay toll.

B. ANALYSIS:

While service roads are used by those living nearby, they are also used by vehicular traffic either to get on to, or get off from, the National Highway. Street lighting at village/ town intersections is provided for safety of people living in villages/ towns adjacent to the National Highway, to enable them to cross over from one part of the National Highway to another, and to prevent accidents. Such use of the National Highway at the village/town intersections is free of cost, and no toll fee is required to be paid by the villagers concerned as they merely cross over from one part of the National Highway to another, and do not use the National Highway.

IX. WERE THE EARLIER CONNECTIONS, UNDER LT VI CATEGORY, GIVEN INADVERTENTLY?

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellant, would submit that the appellant had applied for 27 connections in LT VI category for the Highway, and MSEDCL had granted 26 connections in LT VI and one connection (for the Toll collection plaza) as LT II; this was between 14.09.2020 and 08.03.2021; a year later,

MSEDCL unilaterally changed the category from LT VI to LT II; in the reply filed before APTEL, in this Appeal, MSEDCL contends that “...after analysing the Application which stated that the electricity would be used for Streetlights, the Section Officer of MSEDCL inadvertently granted NHAI the connection in LT VI: LT streetlight category...”; no such plea was taken before the CGRF or the Ombudsman; moreover, when the appellant asked for 27 connections in LT VI, but was given 26 connections in LT VI and one in LT II, the plea that 26 connections were given inadvertently in LT VI is liable to be rejected; besides, in law, an unilateral mistake does not give the option to MSEDCL to avoid the contract under Section 22 of the Indian Contract Act, 1872, particularly when the other party has already acted upon it; MSEDCL has stated, in their Reply, that their intention was to change the tariff category based on the change in the purpose of usage of supply on the basis of Regulation 14 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (“**MERC Supply Code**”); re-classification should be based on the purpose of usage of electricity supply of the Appellant; the purpose of LT II is not satisfied by the lighting on the Highway, as also held in the Bombay High Court judgment; the inclusion of Toll Collection Plaza or even the entire Highway would not, by itself, mean that the lighting on it was for commercial consumption; thus, MSEDCL has not complied with the requirements set out under Regulation 14 of the MERC Supply Code; as per the Impugned Order, the rationale governing the need for clarification, under Para 7.22.10, emanates from Clauses 7.1.7 and 7.1.52; the intended approach of merging/elimination/classification/recategorization of certain class of consumers was by reducing the existing number of categories and slabs

by “merging similarly placed consumer categories while ensuring that the existing consumers in these categories are not significantly impacted...”; and thus, neither was there an intention to change the categorization under Regulation 14 of the MERC Supply Code, nor were the pre-requisites fulfilled.

B. ANALYSIS:

While we find considerable force in the submission, urged on behalf of the Appellants, that MSEDCL, having provided them with 27 connections of which 26 were in LT-VI and only one i.e. the toll collection plaza was in LT-II, cannot turn around and now contend that such connections were provided by mistake, it is unnecessary for us to delve into this aspect as we have now held that it is only street lighting provided in and around the toll plaza which would fall within LT-II category, and that street lighting on other parts of the National Highway including at village/town intersections, road over bridges etc, where no commercial activities are carried on, would only fall within LT-VI category, and cannot be brought under LT-II category.

X. ABSENCE OF REASONS IN THE IMPUGNED ORDER:

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellant, would submit that there is no reasoning from the Respondents’ side; the Impugned Order does not reflect why MERC has accepted MSEDCL’s proposal, nor has MSEDCL explained why it proposed such an addition; MERC has failed to show the precise rationale for the clarification issued under Clause 7.22.10, in as much as no reason has been provided; an order bereft of reasons cannot be sustained; and no

reason can be supplemented by way of affidavits.

B. ANALYSIS:

While an order passed by the Commission, in the exercise of its adjudicatory powers or in the discharge of its quasi-judicial functions, must contain reasons, the impugned tariff order is an order passed by the Commission under Section 62 of the Electricity Act in the exercise of its regulatory power. We do not, in the present case, propose to examine whether the same test, as is applicable to an adjudicatory order, should be applied even to a regulatory order. Suffice it to observe that, while it would be appropriate for the Commission to at least briefly state the reasons which weighed with it in classifying consumers into different categories, failure to do so may not, by itself, justify the impugned order being set aside.

XI. DOCTRINE OF STARE DECISIS:

A. SUBMISSIONS OF THE APPELLANTS:

Sri Saurav Aggarwal, Learned Counsel appearing on behalf of the appellants, would submit that, from out of the various State Electricity Regulatory Commissions that have classified lighting on express/national/state highways, MERC alone has classified them under commercial category; for instance, in the Schedule of Tariff of Punjab, lighting on national highways including those on toll plazas, are categorised under the "SVIII: Public Light Supply" tariff category; a similar categorization is provided by the Rajasthan SERC which has categorized the component under the "Public Street Light Service" tariff category; therefore, the 'clarification' under Para 7.22.10, violates the principle of *stare decisis* which has been brought within the domain of tariff fixation by

way of the judgment rendered in **Bharti Airtel Ltd. v. Maharashtra Electricity Regulatory Commission** (2020 SCC OnLine APTEL 30).

B. ANALYSIS:

Relying on **Union of India v. Azadi Bachao Andolan**, (2004) 10 SCC 1, **State of Gujarat v. Mirzapur Moti Kuresh**, (2005) 8 SCC 534, and **Maganlal Chaganlal v. Municipal Corporation of Greater Bombay**, (1974) 2 SCC 402, this Tribunal, in **Bharti Airtel Ltd. v. Maharashtra Electricity Regulatory Commission**, 2020 SCC OnLine APTEL 30, held that the State Commission has since the year 2008 taken a conscious view that the Mobile/Broadcasting Towers would be placed under the Industrial category without going into whether they would fall under the Government of Maharashtra Policy or not; the said position has held forth for a very long time namely more than 10 years, and there is no change whatsoever in the factual or legal position; the principle of stare decisis applies squarely; as held in **Indian Metal and Ferro Alloys Ltd. v. Collector of Central Excise**, 1991 Supp (1) SCC 125, a consistent practice followed should not be changed; in **Spencers' Retail Limited v. MERC**, (Appeal No. 146 of 2007 dated 19.12.2007) it has been held that regulatory certainty should be maintained; and when the State Commission has given a dispensation for all these years which has been fully accepted by the licensee, there being no change in the factual or legal position, there was no occasion for the State Commission to hold to the contrary.

The doctrine of stare decisis is expressed in the maxim stare decisis et non quieta movere, which means "to stand by decisions and not to disturb what is settled". The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that

a view which has held the field for a long time should not be disturbed only because another view is possible. (**Shankar Raju v. Union of India, (2011) 2 SCC 1329; Bharti Airtel Ltd. v. Maharashtra Electricity Regulatory Commission, 2020 SCC OnLine APTEL 30**). A decision of long standing, on the basis of which many persons will in the course of time have arranged their affairs, should not lightly be disturbed by a superior court not strictly bound itself by the decision. A different view would not only introduce an element of uncertainty and confusion, it would also have the effect of unsettling transaction which might have been entered into in faith of these decisions. (**Rajarai Pandey v. Sant Prasad Tiwari, (1973) 2 SCC 35; Bharti Airtel Ltd. v. Maharashtra Electricity Regulatory Commission, 2020 SCC OnLine APTEL 30**).

While the Appellant seeks application of the doctrine of *stare decisis* (i.e. the need to maintain consistency and avoid uncertainty in judicial pronouncements) to the impugned order, comparing it with the orders passed by other State Commissions such as Punjab and Rajasthan, it must be borne in mind that the power to determine tariff and to classify consumers of the electricity into different categories is conferred, with respect to consumers of electricity supplied by distribution licensees, only on the State Commissions under Section 62(3) of the Electricity Act. The fact that some other State Commissions have chosen not to treat street lights on National Highways under LT-II category would not disable MERC from including it in the said category, provided such inclusion is justified on the criteria stipulated for classifying consumers of electricity under LT-II category.

It is un-necessary for us to analyse this issue any further, since we have already held that, except for lighting on the National Highway in and

around the toll collection plazas and in areas where commercial activities are being carried on, street lights on other parts of the National Highways would not fall under LT-II category, and would continue to be governed under LT-VI category.

XII. CONCLUSION

For the reasons afore-mentioned, we are of the view that MSEDCL was not justified in treating street lighting on the National Highway, other than those in and around the toll collection plazas and in places where commercial activities are carried on, as falling under LT-II category, and that such lighting on the National Highway would continue to be governed under the LT-VI category. The impugned order, to this limited extent, is clarified. The Appeal is allowed, and all the I.As therein stand disposed of.

Pronounced in the open court on this the **9th day of September, 2024.**

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

tpd