

(2024) 04 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No.7884 Of 2010, Civil Application No.782 Of 2015

Bharat Sanchar Nigam Ltd And Others

APPELLANT

Vs

Maharashtra State Electricity Distribution Co. Ltd And Others

RESPONDENT

Date of Decision : 16-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 19(6)(ii), 226
Maharashtra Electricity Regulatory Commission (Electricity Supply Code And Other Conditions Of Supply) Regulations, 2005 — Regulation 13
Electricity Act, 2003 — Section 42(5), 42(6), 61, 62, 62(3)
Income Tax Act, 1961 — Section 72(A), 72(7A)(aa)
Industrial Disputes Act, 1947 — Section 2(j)

Citation : (2024) 04 BOM CK 0045

Hon'ble Judges : A.S. Chandurka, J;Jitendra Jain, J

Bench : Division Bench

Advocate : Shyam C. Arora, Diptendu Bose, Bhavana Nirban, Neeta Masurkar, Rahul Sinha, Soham Bhalerao, DSK, A. R. Deolekar

Final Decision : Dismissed

Judgement

Jitendra Jain, J

1. By this petition under Article 226 of the Constitution of India, the Petitioner, a Telecom Services Provider Company has sought for the following reliefs:-

"a) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, other or direction under Article 226 of the Constitution of India directing Respondent No. I its servants, officers and agents;

i) To supply electricity and charge the Petitioner tariff in respect of its HT connections under the HT Industrial category w.e.f. 1st June 2008 and for all times thereafter until appropriate Tariff Orders are passed by MERC charging the categorization of the Petitioner;

ii) To withdraw and/or cancel the bills in respect of HT connections enumerated in

Exhibit 'C' hereto and to issue fresh bills to the Petitioner in respect of the lower tariffs under the industrial categories;

iii) To refund to the Petitioner or adjust the future electricity bills issued by Respondent No.1 upon the Petitioner the aggregate amount of Rs.62,13,14,817/- (Rupees Sixty Two Crore Thirteen Lacs Fourteen Thousand Eight Hundred Seventeen only) (as per particulars of claim in Exhibit 'N' in respect of the excess amount charged to the Petitioner for HT connections from 1" June 2008 till July 2010.

iv) To withdraw and/or cancel Respondent No.1's commercial circular dated 26th June 2009 bearing Ref. No. PR3/TARIFF/21959;

(b) Pending the hearing and final disposal of this writ petition, this Hon'ble Court be pleased to restrain Respondent No.1, their servants, agents, officers or successors by an order writ and injunction from issuing any further orders/circulars contrary to MERC's Tariff Orders and from charging the Petitioner any rate for HT Connections other than the HT Industrial Tariff Rate 3 as per HT-1: HT-Industrial category.

(c) Pending the hearing and final disposal of this writ petition, this Hon'ble Court be pleased to order and direct Respondent No. 1, its servants, agents, officers or successors to charge Petitioner Industrial tariff as per HT-1: HT-Industrial category;

(d) For ad-interim reliefs in terms of prayer (b) and (c) above;

(e) For costs of the Petition; and

(f) For such further and other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. The sole issue involved in the present petition is as to whether the Petitioner for the period 2008-2010 is liable to pay tariff under HT-I or HT-II commercial ?

3. Narrative of the events:-

(i) The Petitioner is a Government Company formed under The Indian Companies Act, 2013 to provide telecommunication services in India. The Respondent No.1 is a Distribution Licensee, authorised to provide electricity in the State of Maharashtra.

(ii) On 18th May 2007, Maharashtra Electricity Regulatory Commission (MERC) disposed of Case No.65 of 2006 for determination of Annual Revenue Requirement of Respondent No.1-MSEDCL for the financial period 2007-2008 to 2009-2010 and for tariff for the financial year 2007-2008, in exercise of its powers vested under Sections 61 and 62 of the Electricity Act, 2003 (for short "2003 Act"). In the said order, the issue relating to HT-Industrial Consumer categorisation is discussed. MERC observed that in the previous Tariff Order, HTP-I and HTP-II were combined into HTP-I category and further sub-classification

was done in accordance with Section 62(3) of the 2003 Act by classifying industrial consumers as continuous and non-continuous industries based on the nature of the industry as certified by the Industry Department of the State. The Commission also stated that in the said previous order it has observed that continuous industries would be charged the base tariff applicable for continuous industries, irrespective of whether they are connected to express feeder or non-express feeder. Against the said order, Respondent No.1-MSEDCL submitted that it was facing difficulties in implementing this tariff structure and, therefore, proposed that it would continue to bill industries on express feeders as "continuous" and consumers subjected to load shedding as "non-continuous". MERC in its review order observed that a certified continuous process industry availing uninterrupted power supply and paying addition supply charge cannot be mixed with non-express feeder subjected to load shedding. The MERC further clarified that authority designated by the State is the appropriate forum to certify whether an industry is continuous or a non-continuous process industry. This was leading to unnecessary hardship to the HT industrial consumers and, therefore, the MERC simplified the tariff categories and only HT industries connected on express feeders and demanding continuous supply will be treated as HT continuous industry, while other HT industrial consumers would be deemed as HT non-continuous industry.

(iii) On 10th May 2008, Respondent No.1-MSEDCL issued a commercial Circular No.80 giving reference of the MERC order in Case No.72 of 2007, which pertains to tariff for the financial year 2008-09. The said circular states that revised tariffs that are applicable to various categories of consumers will come into force w.e.f. 1st June 2008 and will remain in force till 31st March 2009. The said circular further states that in case of any delay in applying revised tariff then suitable adjustment shall be made subsequently. In paragraph 7 of the said Circular No.80, it is stated that the MERC has created new category HT-II commercial to cater to all commercial category consumers availing supply at HT voltages and currently classified under existing HT-I industrial or LT-IX (multiplexes and shopping malls). The new category would include hospitals getting supply at HT voltages irrespective of, whether they are charitable trust or Government owned and operated, etc. It is further clarified in the said circular that the consumers will be classified under the new category based on the usage of electricity and those availing supply on HT voltages. In the said circular, a table is annexed giving details of various consumer categories, demand charges and energy charges which includes HT-II commercial also.

(iv) On 20th June 2008, MERC passed an order in Case No.72 of 2007 for approval of annual performance review for the financial year 2007-2008 and determination of tariff and retail sale of electricity for the financial year 2008-2009. The commission created a new category, namely, HT-II commercial to cater to the commercial category consumers availing supply at HT voltages and currently classified under the existing HT-I industrial or LT-IX (multiplexes and shopping mall). The said order further clarifies that HT-II commercial

category consumers will include hospitals getting supply at HT voltages, irrespective of whether they are charitable trust, Government owned and operated, etc. The tariff for HT-II commercial category consumers was determined higher than the tariff applicable for HT-I industrial in line with the philosophy adopted for LT commercial consumer. The commission further observes that such categorization already exists in other license areas in the State and is hence being extended to Respondent No.1-MSEDCL license area also. The commission further observed that the actual revenue earned by Respondent No.1-MSEDCL would be higher than that considered by the commission on account of tariff changes, such as introduction of demand charges for LT commercial category as well as creation of the new HT-II commercial category.

(v) On 7th July 2008, Respondent No.5-MSEDCL pursuant to the order dated 31st May 2008 by MERC issued a Circular for implementation of revision of tariff. The said revised tariff would be applicable from 1st June 2008 till 31st March 2009. Clause 8 of the Circular deals with HT-II Commercial Category. It reiterates that MERC has created HT-II commercial, a new category to cater to all commercial category consumers availing supply at HT voltages. It further illustrates the types of consumers of electricity in the said category namely Educational Institutions, Hospitals, etc. It also further clarifies that the said category includes consumer taking electricity supply at High Voltage for commercial purposes including Hotels, Shopping Malls, Film Studios, Cinemas and Theatres including Multiplexes. The tariff for such HT-II commercial category consumers is determined higher than the tariff applicable for HT-I industrial, in line with the philosophy adopted for LT commercial consumers. It states that this new category would also include consumers of the erstwhile LT-IX (multiplexes and shopping malls) category. It further requested Field Officers to carefully modify the categories for the consumers who are now covered under HT-II Commercial Category.

(vi) On 4th June 2009, the Petitioner filed its objections with MERC pursuant to the Respondent No.1's public notice dated 13th May 2009 in Case No.116 of 2008 relating to determination of tariff for financial year 2009-2010. The Petitioner contended that they are to be treated as industry and, therefore, HT-I is applicable and not HT-II commercial. The Petitioner further submitted that they should be classified as IT and IT enabled services and not under HT-II commercial. The Petitioner submitted that their activity is not a commercial activity and, therefore, the classification sought by Respondent No.1 in their application qua the mobile tower company is incorrect. The Petitioner relied upon the decisions under the Industrial Disputes Act, 1947 and the definitions under the Income Tax Act, 1961 in support thereof. The Petitioner also annexed the Memorandum and Article of Association and Telecom Policy 1999 to the said objection.

(vii) The Respondent No.1 replied to the aforesaid objections vide letter dated

6th June 2009 and submitted that the categorisation is approved by MERC vide its order dated 20th June 2009. We failed to understand how in 6th June 2009 letter a reference is made to events of 20th June 2009. On 26th June 2009, Respondent No.1 addressed a letter to its engineers copy of which was marked to various authorities of Respondent No.1. The said letter records that categorisation of Mobile Tower Companies was discussed in detail and after considering the tariff order, various instructions issued by MSEDCL, IT policy and actual purpose of use, it was decided that commercial tariff should be applied to all the mobile operators and telephone exchanges and all the earlier directives issued in this regard pertaining to applicability of industrial tariff being covered under IT and IT enabled service shall stand withdrawn and the commercial tariff shall be retrospectively applied from June 2008 and all the arrears shall be recovered in installments without levy of interest or DPC.

(viii) On 17th August 2009, MERC passed an order in Case No.116 of 2008, for tariff determination for the financial year 2009-2010. The relevant paragraph of the said order which is annexed to the petition at page 275 reads as under:-

As regards MSEDCL's proposal to classify certain telecom towers, etc., under commercial category, irrespective of whether they were covered under the IT & ITES Policy of the Government of Maharashtra, no rationale has been submitted by MSEDCL for this specific proposal. The Commission had consciously included IT and IT enabled Services (IT & ITES) under industrial category (HT and LT as applicable) in the Tariff Order for the erstwhile MSEB in 2004. Since then, the IT & ITES category continues to be charged under industrial tariffs. In the existing Tariff Schedule of MSEDCL as well as the approved Tariff Schedule for the distribution licensees in Mumbai issued in June 2009, the Commission has included IT & ITES category under industrial category. Hence, the Commission does not agree with MSEDCL's proposal in this regard and rules that IT & ITES will be charged at industrial rates (HT and LT rates, as applicable), without getting into the details of whether mobile towers and commercial broadcasting towers and all other similar activities are covered under the Government of Maharashtra Policy on IT & ITES.

(ix) On 25th August 2009, the Petitioner addressed a letter to Respondent No.1 in reply to the arrears and after referring to its object clause, contended that they fall under IT and IT enabled services. The Petitioner relied on the order of MERC dated 17th August 2009 in Case No.116 of 2008 and prayed that they be classified under IT/IT able services.

(x) On 12th October 2009, Respondent No.1 informed MERC about the implementation of revised tariff w.e.f. 1st August 2009. The Respondent No.1 gave explanation with respect to the revised billing.

(xi) On 3rd November 2009, Respondent No.1 issued a commercial Circular No.102 to implement the revised tariff after considering the order of the MERC in Case No.116 of 2008. As per the said revised tariff, the energy charge for HT-II

commercial was Rs.7.15 kWh and for HT-I industry was between Rs.4.60 to Rs.5.70 kWh.

(xii) On 14th October 2009, the Petitioner addressed a letter to Respondent No.1 and informed Respondent No.1 that they have paid the arrears. The Petitioner also recorded about them being informed by Respondent No.1 that Respondent No.1 has approached MERC to clarify issues regarding applicability of tariff to telecom installation from retrospective dates and same shall be taken after receipt of the decision from MERC.

4. It is on the above backdrop that the present petition is filed for the reliefs reproduced hereinabove.

Submission of the Petitioner:-

5. The Petitioner submitted that Respondent No.1 has wrongly changed the classification of the Petitioner from HT-I industrial to HT-II commercial and thereby raised a huge demand. The Petitioner further submitted that since they did not have the certificate of registration as IT/IT enabled industry under the State IT Policy of 2003, benefit of industrial tariff has not been extended to them, although they are IT and IT enabled company as per the object clause of the Petitioner and the actual activity of the Petitioner. The Petitioner further submitted that as per the decision of the Supreme Court in the case of General Manager Telecom Vs. Shrinivas Rao 1997 (8) SCC 767, they are to be treated as industry and, therefore, the correct classification would be HT-I industry and not HT-II commercial. The Petitioner further submitted that prior to 31st May 2008, they were charged tariff as applicable to industry and it is only post May 2008 that a new classification is sought to be introduced in which the Petitioner is sought to be covered as HT-II commercial. The Petitioner submitted that based on the tariff order passed in Case No.72 of 2007, the commercial tariff would be applicable to Hotels, Shopping Malls, etc. and not to the Petitioner. The Petitioner further submitted that post August 2012, the companies rendering telecommunication services were directed to be brought under HT-II commercial tariff irrespective of whether they are registered under State IT Policy or not. The Petitioner also sought to resist the illegal demand on the basis of hardship since they would not be able to recover the additional charges to be paid from their consumer. The Petitioner, therefore, prayed that the payment towards illegal demand raised should be quashed and be refunded to the Petitioner since the correct classification would not be HT-II commercial but HT-I industrial or IT enable industry.

Submission of the Respondent No.1:-

6. The Respondent No.1 at the outset, objected to the present petition on the ground of alternative remedy and submitted that the Petitioner ought to have avail the alternate remedy available under Sections 42(5) and 42(6) of the Electricity Act, 2003 and, therefore, on this ground itself, the petition is required to be dismissed. On merits, Respondent No.1 submitted that since the Petitioner

admittedly did not have the certification of IT industry, they were justified in classifying the Petitioner under the commercial tariff. The Respondent No.1 further submitted that MERC in Case No.19 of 2012 classified telephone exchange and mobile tower under commercial category, which order was challenged by mobile tower companies and the Appellate Tribunal reversed the said order, against which the Petitioner has filed an appeal to the Supreme Court which is pending but the said issue is for the period post 2012 and not for the period under consideration i.e. 2008 to 2010. The Respondent No.1 further submitted that based on the principle of unjust enrichment, the Petitioner cannot claim the refund since the payment is not made under protest and there is no evidence that the Petitioner has not recovered the said amount from its consumers. The Respondent No.1 further submitted that definition under the other acts cannot be made applicable for determining an issue under the Electricity Act and, therefore, although Petitioner may have been classified as industry for the purpose of Industrial Disputes Act or the activities of the Petitioner may fall under IT/IT enabled industry under the Income Tax Act, 1961, insofar as the Electricity Act is concerned, recourse cannot be held to other statutes. The Respondent No.1, therefore, submitted that the petition is required to be dismissed.

7. We have heard learned counsel for the Petitioner and Respondent No.1 and with their assistance have perused the documents annexed to the petition. We have also perused the written submissions filed on behalf of the Petitioner and the Respondents. We have based our decision on the basis of the arguments advanced before us.

Analysis and conclusions:-

8. The first objection raised by Respondent No.1 is with regard to availability of alternative remedy to the Petitioner under Sections 42(5) and 42(6) of the Electricity Act, 2003. The Petitioner submitted that the issue raised in the present petition is not covered within the meaning of the term "grievance", so as to seek alternative remedy by approaching an Ombudsman. We are not examining this issue as to whether the issue raised in the present petition falls within the definition of grievance under Sections 42(5) and 42(6) of the Electricity Act, 2003 for the reasons mentioned hereinafter.

9. The present petition was admitted on 23rd November 2010 and no such objection of alternative remedy was raised by Respondent No.1 at the time of the admission. The Petition is pending since last 14 years before this Court and has now been taken up for final hearing. In our view, if the petition has been admitted and is pending for 14 years in this Court, it would not be appropriate for this Court to relegate the Petitioner to alternative remedy. Therefore in our view, the plea of alternative remedy raised after a period of 14 years by Respondent No.1 is required to be rejected. In this connection, we draw support from the decisions of the Supreme Court in the case of Durga Enterprises (P) Ltd. & Anr. vs. Principal Secretary, Govt. of U.P. & Ors. (2004) 13 SCC 665 , National

10. Insofar as, the contention of the Petitioner that as per State IT and ITES Policy, 2003 of the Government of Maharashtra, their activities fall under the State IT Policy and consequentially would be entitled for supply of power at "industrial rates" is concerned, the Petitioner in the petition in paragraph nos. 7 and 8 has admitted that they have not obtained certificate from the Directorate of Industries to this effect. In our view, if the contention of the Petitioner is that rates applicable to industries is to be applied to them on the ground that their activities fall within 2003 IT Policy and which rate is subject to obtaining certificate from the Director of Industries and admittedly having not obtained so, the Petitioner cannot contend that in spite of they having not obtained the certificate they should be charged rates applicable to industries. Therefore on this count, based on the admission and submission made by the Petitioner, the Petitioner cannot claim the benefit of rates applicable to industries. We may also observe that no such certificate has been shown to us even during the course of arguments. We, therefore would not adjudicate upon whether the activities of the Petitioner fall under State IT and ITES Policy of 2003 but suffice to observe that since according to the Petitioner the requirement of certificate is not satisfied, its submissions on this count is to be rejected.

11. The Petitioner has thereafter further contended that they fall within the definition of "industry" as understood under the Industrial Disputes Act, 1947 and therefore, rates applicable to HD-I should be made applicable. The Petitioner has also relied upon the definition of "industrial undertaking" as per Section 72 (7A)(aa) of the Income Tax Act, 1961. In our view, it is settled position that the definition of the words in other enactments cannot be applied blindly to interpret same phrase in another enactment. One has to understand the meaning of a word in the context in which it is used in a particular enactment. The contextual meaning of the same word may defer from enactment to enactment. The object of the Industrial Disputes Act is different from the fixation of tariff under the Electricity Act, 2003. Similarly the definition of "industrial undertaking" under Section 72(A) of the Income Tax Act is in the context of that very Section of the Income Tax Act and same cannot be applied to interpret the phrase "industry" for the purpose of Electricity Act. This proposition is by now well settled by various decisions of the Supreme Court:-

- (i) P. C. Cheriyan vs. Barfi Devi (1980) 2 SCC 461.
- (ii) Maheshwari Fish Seed Farm vs. T. N. Electricity (2004) 4 SCC 705,
- (iii) MSCO. (P) Ltd. vs. Union of India (1985) 1 SCC 51,
- (iv) Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. 1990 (Supp) SCC 785,
- (v) Commissioner of Sales Tax, Madhya Pradesh (1967) 19 STC 469 and

(vi) CIT vs. Venkateswara Hatcheries (P) Ltd. (1999) 3 SCC 632

12. The phrase "industry" and "commercial" is not defined under the E.A., 2003. The phrase "industry" should be given a common parlance meaning which would mean an entity engaged in manufacture, production or processing of goods. Industry in the wide sense of the term would comprise 3 different aspects: (i) raw materials, which are an integral part of the industrial process; (ii) the process of manufacture or production; and (iii) the distribution of the product manufactured.

The phrase "commercial" would encompass buying and selling of goods, rendering of services, etc. The said term concerns itself with profit motive. The classification under "commercial" category is based on supply of HT voltages. In HT-II commercial category what is included is hotel, shopping mall, film studio, etc. who avail high voltage for commercial purpose. Admittedly, there is no dispute that the Petitioner has availed high voltage for commercial purpose. If the contention of the Petitioner that because of Industrial Disputes Act they should be treated as "industry" then MERC order approving classification for hotels, etc. as "commercial" would become meaningless although hotels, hospitals, etc. fall under industry for the purpose of Industrial Disputes Act.

13. In our view, HT-I industry post 2008 would be applicable only to those entities which are in the manufacturing sector since with respect to other entities a new category is created which is HT-II commercial. Therefore, in our view, the Petitioner is not justified in contending that they are covered HT-I industrial and not HT-II commercial.

14. In the case of MSEB Vs. Arvind P. Joshi 1997 (2) Mh.L.J. 59, an issue arose before this Court as to whether running of hotel can be said to be covered by "industry" or "commercial purposes". The Respondent therein relied on the definition under the Industrial Disputes Act to contend the hotel is an industry. This Court rejected the said contention by observing in paragraphs 7 to 12 of the said decision which reads as under:-

"7. LD-1 is the tariff applicable for supply of electricity to residential places, religious places like temples, churches, mosques and educational institutions for the use of light, fans, refrigerators, heaters, small cookers, radios, TV sets, battery charging equipments, X'ray machines, small motors upto 1 BHP attached to appliances including the domestic water pump. LD-2 is the tariff applicable for power supply to the non-domestic, commercial and business premises and to hospitals, hostels for the various uses as mentioned under tariff LD-1. LD-2 tariff is also applicable to combined lighting and power services for cinemas and vidco parlours. The third category i.e. LTP-G is applicable where supply is to general motive power excluding agricultural pumping, loads and Rural water supply schemes. It would be thus seen that there are three categories of tariffs for LT supply framed by the Board in exercise of its powers are under Electricity (Supply) Act. As required under law the Board while fixing the uniform tariffs had

regard to the nature of supply and the purpose for which it is required amongst other relevant factors. The predominant consideration while fixing the tariffs by the Board definitely appears to be nature of supply and the purposes for which it is required. Supply of electrical energy to residential places, religious places and educational institutions covered under LD-1 is at lower rate while power supply to the non-domestic, commercial and business premises, hospitals, hostels, etc. is at higher rate under LD-2. General motive power supply is covered under LTP-G which is lower tariff than LD-2. All the expressions viz., residential places, religious places, educational institutions, non-domestic, commercial and business premises, hospitals, hotels are well understood in common parlance and have to be given the meaning accordingly. An expression occurring in one statute cannot be construed in the light of definition of such expression in another statute. When an expression is defined in a particular statute, such definition is meant for that statute. The definition of an expression in particular statute cannot be used or borrowed to find out the meaning of the same expression in other statute or statutory instruments. In *Macbeth vs. Chislett*, (1910) A.C. 220 (223) it has been held that:

"In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts. It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone."

8. The said principle was considered by the Apex Court in *MSCO Pvt. Ltd. vs. Union of India*, 1985 (19) ELT 15 (S.C.) and, the Supreme Court held thus:

"4. The expression, 'industry' has many meanings. It means 'skill', 'ingenuity', 'dexterity', 'diligence', 'systematic work or labour', 'habitual employment in the productive arts', 'manufacturing establishment etc. But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject. Craigs on Statute Law (6th Edn.) says thus at page 164:

"In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts. "It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone "Macbeth vs. Chislett, (1910) AC 220, 223."

5. When the word to be construed is used in a taxing statute or a notification

issued thereunder it should be understood in its commercial sense. It is well known that under the law levying customs duties sometimes exemptions are given from the levy of the whole or a part of customs duty when the goods in question are sold either in the form in which they are received or in a manufactured or semi-manufactured state to a manufacturing establishment for purposes of using them in manufacturing finished or semi-finished goods in order to lessen the cost of machinery or equipment employed in or raw materials used by such manufacturing establishment. The object of granting such exemption is to give encouragement to factorics or establishments which carry on manufacturing business. The appellant, however, relies upon the meaning assigned to the word 'industry' in the Industrial Disputes Act, 1947 in support of its case. The expression 'industry' is no doubt given a very wide definition in section 2(j) of the Industrial Disputes Act, 1947. It reads thus:

'2(j) 'Industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.'

The above definition is given in the context of the subject matter with which the Industrial Disputes Act, 1947 is concerned. The pith and substance of that Act is to make provision for settlement of disputes between employers and employees in institutions, establishments, industrial or business houses or factories of various kinds. It is true that in the *Bangalore Water Supply and Sewerage Board, etc. vs. R. Rajappa*, (1978) 3 SCR 207 this Court has held that hospitals would also come within the definition of the expression 'industry' given in the Industrial Disputes Act, 1947 which is as wide as the legislature could have possibly made it. But that definition cannot be used for interpreting the word 'industry' in a notification granting exemption from customs duty under the Customs Act, 1962. A perusal of the provisions of the Constitution shows that the expression 'industry' does not ordinarily possess such wide meaning. In Article 19(6)(ii) the word 'industry' does not include 'trade', 'business' or 'service' which are specifically referred to therein. Then we have the expression 'industry' in Entries 7 and 52, List I, Entry 24 of List II and Entry 33 of List III of the Seventh Schedule to the Constitution. The said expression in these entries does not include trade or commerce or distribution of goods which are found elsewhere in the said Lists. What is of significance is that in List II 'hospitals and dispensaries' are specifically referred to in Entry 6 and they cannot, therefore, possibly fall under Entry 24 thereof which refers to 'industries'. As observed by this Court in *Ch. Tika Ramji vs. The State of Uttar Pradesh*, 1956 SCR 393 at page 420, 'industry' in the wide sense of the term would be capable of comprising three different aspects: (1) raw materials which are an integral part of the industrial process, (2) the process of manufacture or production, and (3) the distribution of the products of the industry. But raw materials are dealt with by Entry 27 of List II, the process of manufacture or production by Entry 24 of List II except where the industry is a controlled industry when it would fall under Entry 52 of List I and the products of the industry would fall under Entry 27 of List II except where

they are products of controlled industry when they would fall under Entry 33 of List III. An analysis of these provisions shows that 'industry' ordinarily means the process of manufacture or production. We have referred to the above provisions of the Constitution only to show how that expression is understood ordinarily. It may also be relevant to mention here that the new definition (Amendment) Act, 1982 (46 of 1982) specifically excludes 'hospitals or dispensaries' from the category of 'industry', in the Industrial Disputes Act, 1947 cannot be depended upon while construing other statutes or statutory instruments and it should be confined to the Industrial Disputes Act, 1947. We are of the view that in the notification under which the exemption is claimed by the petitioner, the word 'industry' means only the place where the process of manufacture or production of goods is carried on and it cannot in any event include 'hospitals, dispensaries or nursing homes'.

9. It is indeed surprising that the appellate court relied upon the definition of 'industry' under the Industrial Disputes Act, 'industrial establishment under the Income Tax Act, and, 'commercial establishment' under the Bombay Shops and Establishments Act in holding that the hotel Raviraj run by the consumer was an 'industry' and electrical supply to the consumer could only be charged treating consumer as an industry under tariff LTP-G and not under tariff LD-2 fixed for non-domestic, commercial and business premises. A hotel may be industry and is an industry under the Industrial Disputes Act, but it has no relevance whatsoever for the purposes of tariff fixed for the supply of electrical energy to the consumer since while fixing the tariffs one of the important factors considered is the nature of supply and purposes for which it is required. The electricity supply to the consumer is non-domestic and for commercial and business premises and nature and use of such supply does not cease to be so because for the purposes of different Acts it may be an industry or an industrial establishment or may not be commercial establishment. Merely because under the Industrial Disputes Act, it happens to be an 'industry' or an 'industrial establishment' for the purposes of Income Tax Act or is excluded from the definition of 'commercial establishment' under the Bombay Shops and Establishments Act, 1948, the supply of power to commercial premises and use of the electrical supply by a hotel for commercial purposes cannot be excluded from the tariff issued by the Board for charging the electrical supply to the commercial and business premises. The definition of 'industry' under the Industrial Disputes Act, 'industrial undertaking' under the Income Tax Act, and, the 'commercial establishment under the Bombay Shops and Establishments Act is confined to such expressions for the said statutes only and by no stretch of imagination can it be held that since hotel is an industry under the Industrial Disputes Act, the Board could only charge the tariff fixed for industrial use.

10. The word 'commercial' in Oxford Dictionary is defined as, 'engaged in, or concerned with, commerce, 2 having profit as a primary aim rather than artistic etc. value.....'.

11. In Webster English Dictionary, the word commercial is explained, Of or belonging to trade or commerce; mercantile. 2 Made in large quantities for the market. 3 Having financial gain or popular appeal as an object.....’

12. In ordinary parlance and as is understood in the sense in which the people conversant with the hotel would understand that hotel is run for financial gain and is a business activity and profit is its primary aim. In my view the consumer is liable to pay the charges under the item LD-2 of tariff, the tariff which is applicable for power supply to non-domestic, commercial and business premises for the use of light, fan, refrigerators, heaters, cookers, radios, TV sets, etc. The consumer in fact applied for supply of electricity for the commercial purposes for the use of electricity for aforesaid purposes and he was sanctioned electricity for that purpose and, therefore, he was liable to pay charges under the tariff accordingly. The mistake was committed by the Board in raising the bills to the consumer charging rates under item LTP-G to which consumer was not entitled and since the mistake was detected, later on the supplementary bills were raised. The trial Court, therefore, was justified in passing the decree in favour of the Board permitting it to recover Rs. 37,527.39 P. with interest @ 12% p.a. from the date of bills till full realisation and the appeal court seriously erred in reversing the said judgment and decree passed by the trial Court. From the discussion made hereinabove, I answer that for the use of energy by the Respondent-consumer in his hotel was for the purpose of commercial use and to commercial and business premises under the tariff issued by the Board under the provisions of Electricity (Supply) Act, 1948, and, consumer is liable to pay the charges for electrical supply accordingly.”

15. In our view, merely because prior to 2008, the Petitioner was being charged tariffs at the rates as applicable to industries, it would not mean that post 2008 also same should be classified under HT-I moreso, because from 2008 a new category has been introduced by Respondent No.1 and which is approved by MERC and the said category is HT-II commercial. The MERC in its order dated 20th June 2008 in Case No.72 of 2007 with regard to tariff for the financial year 2008-09 has approved the introduction of a new category viz. HT-II commercial to cater to all commercial category consumers availing supply at HT voltages and classified prior to the said order under HT-I industrial or LT-IX. This order, therefore, clarifies that certain category of users which were earlier charged tariffs under HT-I industrial are now sought to be removed from the said category and put under HT-II commercial based on the usage. The said MERC order clarifies that the new category would include hospitals etc. irrespective of whether they are Charitable, Trust, Government owned and/or operated etc. This further clarifies that what is material is not ownership or the activities of an entity receiving the electricity supply, but the nature of the usage of the entity receiving the electricity. Therefore, the contention of the Petitioner that it is Government Company and its activities are more in the nature of public duty would not take the case of the Petitioner any further moreso because the Petitioner has admitted that they are profit making in the pleadings before us.

This is so because if the hospitals owned by the Government and Trusts falls under HT-II commercial category than there is no reason why the Petitioner would not be covered under HT-II commercial based on its usage of electricity. The example of hospital given in the said order is only by way of illustration and it does not mean that other categories of entity are not covered under HT-II commercial. The MERC gives a reasoning as to why a new category is created and which is that the tariff for HT-II commercial category consumers was determined higher than the tariff applicable for HT-I industrial in line with the philosophy adopted for LT commercial consumer and such categorisation already exists in other licensed area in the State. The MERC also considers that the deficit of Respondent No.2 would be covered by introduction of HT-II commercial category.

16. Regulation No.13 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 specifies that the Distribution Licensee may classify or reclassify a consumer into various Commission approved tariff categories based on the purpose of usage of supply by such consumer. In the instant case, the MERC has approved introduction of new category HT-II commercial and therefore, Respondent No.1 is justified in charging the Petitioner under the said new category based on the purpose of usage of supply by the Petitioner. What is required to be approved by the Respondent No.1 from MERC is "tariff" under each category. Thereafter which consumer falls under which category is left exclusively to the Respondent No.1.

17. The Petitioner has relied upon the order passed by MERC determining the tariffs of Respondent No.1 for the financial year 2012- 13 in support of its submission that they should be categorised as HT-I industrial and not HT-II commercial. The disputed period before us is June 2008 to July 2010, and therefore, the reliance placed on the order passed in Appeal for the financial year 2012-13 by Appellate Tribunal for Electricity (Appellate Jurisdiction) cannot come to the rescue of the Petitioner. In our view, determination of tariffs approved by the MERC is yearwise, and therefore, one cannot rely upon the determination order for other years to interpret the facts of the year under consideration. This is so, because the facts of each year are different and separate and would have to be tested on the basis of that year itself. Therefore on this count, the Petitioner cannot rely upon the proceedings of tariff fixation for the financial year 2012-2013 and the orders passed therein.

Furthermore, the Appellate Tribunal order dated 7th November 2012 only sets aside the order of Respondent No.1 on issue of change in classification from HT-I to HT-II commercial on the ground that telecom companies were not heard. The said order expressly states that they are not dealing with merits. We may observe that the Petitioner in written submission has referred to tariff order in Case No.19 of 2012 dated 16th August 2012 but same is not placed on our record.

18. In the letter dated 26th June 2009, by Respondent No.1 to its engineers, the

subject relates to charging of tariff to telecom companies, it records that many letters and representations have been received from these mobile operators with regard to charging of industrial tariff. This indicates that the telecom companies were aware about the tariff being charged under higher rate under HT-II commercial and, therefore, they had approached Respondent No.1 on this issue. The HT-II commercial was approved in the year 2008 by MERC. Therefore, in the light of these facts and the telecom companies being aware about higher tariff rates, in our view, the Petitioner cannot contend that Respondent No.1 seeks to recover the differential retrospectively, since the controversy as to whether the industrial tariff or commercial tariff should be made applicable to the telecom companies was already a subject matter of discussion between the parties.

19. We now propose to deal with the decisions relied upon by the Petitioner.

(i) The first decision relied upon is in the case of Bangalore Water Supply and Sewerage Board vs. Rajappa and Ors. AIR 1978 SC 548. This decision is rendered in the context of Industrial Disputes Act and the definition of industry has defined in Section 2(j) of the said Act. We have already observed above that since the context of the said decision is different than the context with which we are concerned. The said decision is not applicable to the Petitioner's case.

(ii) Bharat Sanchar Nigam Ltd. & Anr. vs. Union of India & Ors. (2006) 3 SCC 1. This decision interprets as to whether activity of telephone service are goods or services for the purpose of sales tax. We fail to understand as to how this judgment can be of any relevance for interpreting the Electricity Act and in any case the context in which this decision is rendered is different than what we are posed with and therefore, this decision is not applicable.

(iii) Union of India & Anr. vs. Azadi Bachao Andolan & Anr. (2004) 10 SCC 1 . This decision deals with Indo Mauritius Double Taxation Avoidance Convention of 1983 and the effect of Circulars issued under the said Act. This decision would not be applicable in the facts of our case moreso, since under the Electricity Act tariffs are determined every year and approved by the Commission and the licensee has the power to classify under a particular category the consumer based on the usage. Therefore, even though prior to 2008, a particular entity is charged under HT-I industry in the light of introduction of a new category HT-II commercial posts 2008 and approved by MERC, this decision would not be applicable.

(iv) The next decision relied upon is in the case of Shanker Raju vs. Union of India (2011) 2 SCC 132. This decision is rendered in the context of Service laws which deals with a totally different jurisprudence and has no application to the facts of our case.

20. In the light of above, in our view, for the period June 2008 to July 2010, the Respondent No.1 is justified in charging tariffs to the Petitioner under HT-II commercial. In view of above, the Writ Petition is dismissed. In the light of dismissal of the Writ Petition, the Civil Application does not survive and is accordingly disposed of. Rule is discharged. No order as to costs.