



*Shabnoor*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.9266 OF 2016**

SHABNOOR  
AYUB  
PATHAN

Maharashtra State Electricity  
Distribution Company Limited ... Petitioner

**V/s.**

Shri Ram Retreads ... Respondent

Digitally signed by  
SHABNOOR AYUB  
PATHAN  
Date: 2026.06.08  
16:16:22 +0530

**WITH**

**WRIT PETITION (ST) NO.6443 OF 2016**

Maharashtra State Electricity  
Distribution Company Limited ... Petitioner

**V/s.**

Flagship Infrastructure (P) Ltd. & Anr. ... Respondents

**WITH**

**WRIT PETITION NO.5066 OF 2016**

Maharashtra State Electricity  
Distribution Company Limited ... Petitioner

**V/s.**

Hindustan Tyre Retreading Works & Anr. ... Respondents

**WITH**

**WRIT PETITION NO.10592 OF 2016**

Maharashtra State Electricity  
Distribution Company Limited ... Petitioner

**V/s.**

S. M. Tyres & Treads ... Respondents

**WITH**

**WRIT PETITION NO.9028 OF 2017**

Maharashtra State Electricity  
Distribution Company Limited ... Petitioner

**V/s.**



Flagship Infrastructure (P) Ltd. & Anr. ... Respondents

**WITH  
WRIT PETITION NO.9029 OF 2017**

Maharashtra State Electricity  
Distribution Company Limited ... Petitioner

**V/s.**

Flagship Infrastructure (P) Ltd. & Anr. ... Respondents

Mr. Rahul Sinha a.w Mr. Soham Bhatarao i/b DSK  
Legal, for the Petitioner in WP/9266/2016,  
WP(ST)/6443/2016,WP/10592/2016,WP/9028/2017,  
WP/9029/2017.

Mr. Nirav Shah a/w R. Kadam i/b Little & Co., for the  
Petitioner in WP/5066/2016.

Mr. Pankaj J. Das, for Respondent No.1 in  
Wps.9266/2016, 5066/2016, 10592/2016.

Mr. Ashutosh M. Kulkarni i/b S. S. Diwan, for  
Respondents in WP(st)/6443/2016, WP/9028/2017,  
and WP/9029/2017.

**CORAM : AMIT BORKAR, J.**

**DATED : JUNE 8, 2026**

**ORAL JUDGMENT :**

1. As all the present petitions emanate from substantially identical facts and give rise to a common question of law, they are being decided by this common judgment. For the purpose of convenience and to avoid repetition, the facts as obtaining in Writ Petition No. 9266 of 2016 are taken as the lead case and are referred to hereinafter.

2. The petitioners contend that the respondent is a consumer of electrical energy and was, with effect from 13 October 1997,



classified under the LT-V-B (Industrial) tariff category. It is their case that an inspection of the respondent's premises was carried out by the Flying Squad on 21 May 2015, during which it was noticed that the electricity supplied under the said connection was being utilized for tyre retreading activities. According to the petitioners, under the Tariff Order dated 16 August 2012, tyre retreading activity falls within the LT-II (Commercial) tariff category. On the basis of the said inspection and the nature of usage detected, the petitioners issued a supplementary bill dated 3 June 2015 demanding an amount of Rs.3,58,160/-, representing the differential tariff for the period extending from August 2012 to May 2015.

**3.** As the respondent failed to remit the amount demanded under the supplementary bill, the petitioners issued a disconnection notice dated 11 August 2015. Being aggrieved by the supplementary demand and the consequential threat of disconnection, the respondent approached the Internal Grievance Redressal Cell (IGRC) seeking annulment of the supplementary bill and the demand raised thereunder.

**4.** Upon affording an opportunity of hearing to the parties, the IGRC rejected the grievance raised by the respondent. Dissatisfied with the said decision, the respondent invoked the jurisdiction of the Consumer Grievance Redressal Forum (CGRF). By an order dated 4 December 2015, the CGRF allowed the grievance and held that the recovery sought by the petitioners was retrospective in character and that the revised tariff classification could be made operative only from the date of inspection, namely 21 May 2015.



Questioning the legality and correctness of the said order, the petitioners have instituted the present writ petition.

5. The learned Advocate appearing on behalf of the petitioners in all the petitions jointly invited attention to the findings recorded by the IGRC and submitted that there is no dispute regarding the fact that the respondent was carrying on tyre retreading activity by utilizing the electricity connection in question. It was urged that, while issuing the regular bills, the petitioners were not aware of the actual nature of the activity being conducted at the premises and that such usage came to light only upon inspection by the Flying Squad. It was therefore submitted that, upon discovery of the true nature of consumption, the respondent was rightly reclassified from the LT-V-B (Industrial) category to the LT-II (Commercial) category and the supplementary demand was raised to recover the tariff differential legitimately payable.

6. The learned Advocate further submitted that, prior to the inspection, the respondent had never been billed under the LT-II (Commercial) tariff category and, therefore, the supplementary bill merely represented recovery of charges which had remained unbilled owing to an incorrect classification of the consumer. According to the petitioners, such recovery is not prohibited by Section 56(2) of the Electricity Act, 2003. It was contended that the limitation contemplated under Section 56(2) pertains only to the exercise of the power of disconnection and that the period of two years prescribed therein is required to be computed from the date on which the amount becomes due pursuant to a lawful demand. It was therefore argued that, once the actual user of



electricity for tyre retreading activities is undisputed, the date of inspection cannot be regarded as the determinative date for assessing the respondent's liability to pay tariff applicable to the appropriate category.

7. Per contra, the learned Advocate appearing for the respondents in all the petitions jointly submitted that any error in classifying the consumers under a particular tariff category was entirely attributable to the petitioners themselves. According to him, the petitioners had consistently raised bills under the LT-V-B (Industrial) category over a considerable period and, having done so, could not subsequently seek to recover charges retrospectively by applying the LT-II (Commercial) tariff category. It was contended that, at the highest, the petitioners would be entitled to levy charges under the revised tariff classification only with effect from the date on which the inspection was conducted. He therefore submitted that the impugned orders do not suffer from any jurisdictional error or perversity warranting interference in the exercise of writ jurisdiction.

8. Having heard the learned counsel appearing for the respective parties at considerable length and having carefully examined the material placed on record, this Court finds that the factual foundation of the controversy is, in substance, not the subject matter of any serious dispute. The consumers concerned were admittedly engaged in tyre retreading activities at their respective premises. It is also not in dispute that electricity supplied through the concerned connections was being utilized for carrying on such activity. The record does not indicate that the said



activity commenced only upon the date of inspection. On the contrary, the circumstances placed before the Court indicate that the activity was being carried on even prior thereto and had continued for a period of time. What appears to have happened is that the petitioner became aware of the exact nature of such activity only when the inspection was undertaken by its Flying Squad. Consequently, the tariff category under which the consumers were being billed came to be re-examined and thereafter reclassified.

9. The real controversy, therefore, does not concern the nature of the activity carried on by the consumers. Neither does it concern the factum of consumption of electricity for tyre retreading purposes. Those aspects stand substantially admitted. The dispute is much narrower. The question is whether the liability to pay charges under the commercial tariff category arises only from the date on which the inspecting officers detected the actual user of electricity, or whether such liability must relate back to the point of time when the activity itself became chargeable under the tariff regime governing such use. In other words, the issue is whether the knowledge acquired by the licensee upon inspection determines the tariff liability, or whether the actual nature of consumption remains the governing factor for such determination. It is this legal question which requires consideration.

10. The entitlement of the petitioner to seek recovery of the differential tariff cannot be examined in isolation from the statutory tariff governing the supply and consumption of electricity. The source of such entitlement is the Tariff Order dated



16 August 2012. Under the said Tariff Order, tyre retreading activity stood specifically classified under the LT-II (Commercial) category. Once such classification came into operation through a valid tariff determination, every consumer undertaking the said activity became liable to pay charges in accordance with the tariff prescribed therefor. The liability did not depend upon a separate inspection, verification or detection by the licensee. The liability flowed from the tariff order itself, which possessed binding force and governed all consumers similarly situated.

**11.** It is necessary to bear in mind that tariff determination is not merely an arrangement between the licensee and the consumer. It is a statutory exercise having legal consequences. The applicable tariff is determined by reference to the actual use of electricity and not by reference to the understanding, assumption or mistake of either party. Therefore, once tyre retreading activity became liable to be billed under the LT-II (Commercial) category, the corresponding obligation to pay charges under that category came into existence by operation of law. The subsequent inspection merely brought to light a factual position which already existed. It did not create a new liability. Nor did it alter the nature of the activity being carried on. The inspection only revealed the character of consumption which was already attracting the applicable tariff under the Tariff Order of 16 August 2012.

**12.** If the contention of the consumers is accepted, the consequence would be that the applicability of a tariff order would become dependent upon the date of discovery by the licensee rather than the actual use of electricity. Such an interpretation



would, in effect, permit the tariff provisions to remain inoperative until detection. Such a consequence would neither be consistent with the scheme of tariff regulation nor with the principle that similarly situated consumers must bear charges in accordance with the same tariff structure.

**13.** In the aforesaid backdrop, this Court finds itself unable to subscribe to the reasoning adopted by the Consumer Grievance Redressal Forum as well as by the authorities which proceeded on the footing that the recovery sought by the petitioner was retrospective in nature. The expression "retrospective recovery" can appropriately apply where a liability is sought to be imposed for a period during which no such liability existed under law. The present case stands on a different footing. Here, the applicable tariff already existed and governed the activity in question. The liability was not being created after the event. The liability was already in existence by reason of the tariff order. What occurred subsequently was merely the discovery of the actual category under which the consumer ought to have been billed.

**14.** The distinction is of significance. A delayed detection of facts cannot be equated with retrospective creation of liability. If the consumer was in fact utilizing electricity for a commercial activity which was chargeable under a particular tariff category, the legal consequence attached to such usage follows from the tariff order itself. The inability of the licensee to notice the true nature of consumption at an earlier point of time may explain why incorrect bills came to be issued, but such omission cannot extinguish the legal entitlement flowing from the applicable tariff.



15. The focus, therefore, must necessarily remain on the actual use of electricity. The tariff category is determined by the purpose for which electricity is consumed. The date on which the licensee acquires knowledge of that purpose is merely evidentiary in character. It may establish when the discrepancy was discovered, but it does not determine when the liability arose. The liability arises from the use itself. Once that use is admitted and is shown to fall within the commercial category prescribed under the tariff order, the mere fact that the licensee discovered such use at a later stage cannot deprive it of recovering the charges legally payable thereunder.

16. In certain petitions forming part of this batch, the consumers carried the matter further before the Electricity Ombudsman. The Ombudsman accepted the contention advanced on behalf of the consumers and concurred with the view that recovery under the LT-II (Commercial) category could be effected only from the date of inspection. This Court has carefully examined the reasoning adopted therein. However, with utmost respect, the same does not appear to accord with the legal consequences flowing from the applicable tariff order and the admitted factual position on record.

17. The approach adopted by the CGRF as well as the Ombudsman proceeds on the assumption that detection of the activity and commencement of liability are one and the same thing. In the opinion of this Court, such an assumption cannot be sustained. Detection merely establishes knowledge. Liability arises from the underlying facts and the law governing those facts. The respondents have nowhere contended that tyre retreading activity



commenced only on the date of inspection. No material has been brought on record suggesting that the activity was newly introduced on that date. On the contrary, the admitted position indicates that the activity was already being carried on. Once that position is accepted, there remains no rational basis to postpone the tariff liability till the date of inspection alone.

**18.** The determination of liability, therefore, could not have been founded merely upon the date on which the Flying Squad visited the premises. Such an approach gives undue importance to the date of discovery while ignoring the actual nature of consumption which forms the true basis of tariff classification. In matters relating to tariff applicability, the controlling factor is the character of use. The date of inspection may have relevance for evidentiary purposes, but it cannot become the sole foundation for determining the commencement of liability when the underlying activity is admitted to have existed much earlier.

**19.** In view of the foregoing discussion and upon an overall consideration of the factual and legal aspects involved in the present matters, this Court is satisfied that the impugned orders cannot be sustained. The authorities below proceeded on a premise which, in the opinion of this Court, does not correctly reflect the legal effect of the Tariff Order dated 16 August 2012 and the admitted nature of electricity consumption by the respondents.

**20.** Consequently, the following order is passed:

(i) The impugned orders passed by the Consumer Grievance



Redressal Forum and, wherever applicable, the orders passed by the Electricity Ombudsman, are quashed and set aside.

(ii) It is declared that the petitioners shall be entitled, subject to compliance with the applicable statutory requirements and due procedure prescribed by law, to recover the differential tariff charges on the basis of the LT-II (Commercial) category from the date on which the Tariff Order became applicable to the activity in question, as reflected in the supplementary bills issued in the respective cases. Such recovery shall be undertaken in accordance with law and after giving effect to all consequential adjustments, if any, as may be permissible.

**21.** With this, all writ petition stand disposed of.

**22.** No costs.

**(AMIT BORKAR, J.)**