12.4. The applicant is directed to pay Rs. 1,00,000/- (Rupees one lakh only) as the cost to the landlord. It is recorded that while quantifying the cost, the factors recorded in Paras 11.7, 11.8 and 11.9 above are kept in view. This amount shall be paid within a period of three months from today.

13. After this judgment is pronounced, request is made on behalf of the tenant to stay this judgment for some time. Considering the totality, this Court finds that, no further indulgence needs to be extended to the tenant now. So far the suit premises is concerned, the same is unused since years, not only that even the rent is not paid for seven years and even the tax of the Municipal Corporation is not paid for seven years and any further delay would only result in sealing of the suit property. So far the payment of cost is concerned, time is already granted of three months. Under these circumstances, this request is rejected.

(NRP) *Revision dismissed.*

* * *

SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice C. L. Soni

PETRONET L.N.G. LTD. & ANR. v. DAKSHIN GUJARAT VIJ CO. LTD. & ORS.*

Bombay Electricity Act, 1958 (40 of 1958) — Schedule-I, Item Nos. 5, 7 & Part II — Electricity duty — Natural justice — Order by authority that activities by Petronet L.N.G. company utilising electricity consumption not an industrial undertaking but a service undertaking which attracts higher duty — Held to decide such dispute authority required to hold inquiry in consonance with principles of natural justice — Considering that petitioner-Company not given opportunity of hearing the Court quashing order by respondent No. 2 and supplementary bill — The Court remitting matter to authority to decide dispute afresh.

મુંબઈ વીજ અધિનિયમ, ૧૯૫૮ — અનુસૂચિ ૧, આઈટમ નં. ૫, ૭ અને ભાગ બીજો — વીજ કર — કુદરતી ન્યાય — સત્તાધિકારીએ હુકમ કર્યો કે, પેટ્રોનેટ એલ.એન.જી. કંપની વીજ પૂરવઠો વાપરે છે તેની પ્રવૃત્તિઓ જોતાં તે ઔદ્યોગિક એકમ નથી પણ તે સેવા આપતું એકમ છે, કે જેને ઉચા કર લાગુ પાડયા — ઠરાવવામાં આવ્યું કે, આવા વિવાદમાં નિર્ણય લેવા માટે સત્તાધિકારીએ કુદરતી ન્યાયના સિદ્ધાંતો મુજબ તપાસ કરવી જોઈએ — જણાવ્યું કે અરજદાર કંપનીને સાંભળવાની તક આપેલ નહિ, અદાલતે સામાવાળા નં ૨નો હુકમ અને વધારાનું બીલ રદ કર્યા — અદાલતે સત્તાધિકારીને નવેસરથી વિવાદનો નિર્ણય લેવા અરજી પરત કરી.

As per provision made in Part-II of Schedule-I of the Act, the respondent No. 2 acting as the authority concerned was required to hold inquiry, as deemed fit. However, such inquiry should be in consonance with the principles of natural justice. Therefore, it was incumbent upon respondent No. 2 to inform

*Decided on 1-7-2014. Special Civil Application No. 20670 of 2005.

the petitioner that the dispute in connection with consumption of the electricity by the petitioner was taken up for decision and the petitioner was required to be given opportunity of presenting its case for decision of such dispute. Such legal procedure mandated in Part-II of Schedule-I of the Act was not followed by the respondent No. 2. It is required to be noted that in the affidavit-in-reply filed on behalf of the respondent No. 2, the activities of the petitioner are stated to be akin to the activities defined under "service undertaking". In view of such stand taken in the affidavit-in-reply and since the order dated 8-6-2005 passed by respondent No. 2 is not decision in accordance with the provision made in Part-II of Schedule-I of the Act, the order dated 8-6-2005 is required to be quashed and set aside and the matter is required to be remitted to the respondent No. 2 for taking a decision afresh on the dispute as to the nature of undertaking of the petitioner unit as also to decide as to under which item of the Schedule-I of the Act, the consumption of the energy by the petitioner-Company would fall by treating such dispute arises under Part-II, Schedule-I of the Act after giving full opportunity to the petitioner to represent its case in connection with such dispute and also to the respondent No. 1. (Para 12)

K. S. Nanavati, Sr. Advocate, for Nanavati Associates, for Petitioner Nos. 1 and 2.

R. V. Acharya, for Respondent Nos. 1 and 3.

P. P. Banaji, A.G.P., for Respondent No. 2.

Rule Served for Respondent Nos. 1 and 3.

C. L. SONI, J. In this petition filed under Art. 226 of the Constitution of India, the petitioner has made following prayers in Para No. 20 :

"A. Your Lordships be pleased to issue a writ of or in the nature of *mandamus* quashing and setting aside the impugned notices dated 13-4-2005 and 18-6-2005 and supplementary bill dated 27-9-2005 and impugned order dated 13-12-2004 at Annexure-A classifying the petitioner company under residuary Item No. 7 of Schedules I and II of the said Act;

B. Your Lordships be pleased to direct the respondent-Board to refund the amount of Rs. 1,35,00,000/- paid pursuant to the impugned order dated 13-12-2004 and be further pleased to refund the excess amount charged on the basis of the purported classification;

C. Pending admission, hearing and final disposal of this petition, your Lordships be pleased to restrain the respondents from recovering the amount of supplementary bill dated 27-9-2005 and issuing bills/supplementary bills on the basis of the impugned notices and/or taking coercive steps including that of disconnecting the power supply, against the petitioner company on such terms and conditions as deemed just and proper in the facts and circumstances of the case;

D. *Ex-parte ad-interim* relief in terms of prayer 'B' above be granted."

2. It is the case of the petitioner-Company that it was incorporated in the year 1998 as joint venture company for setting up L.N.G. Regasification Terminal. It completed the commissioning of its plant in April 2004. For industrial activity undertaken by the company at its L.N.G. terminal, it executed agreement with the respondent for H.T. power supply of 2500 KVA under HTP-1 tariff treating it as an industrial undertaking. As per the said agreement, the respondent-Company started applying HTP-1 tariff, treating it as an industrial undertaking and started levying 20% electricity duty as per the Schedule-I, Item No. 5 of the Bombay Electricity Act, 1958 ('the Act' for short) effective from November, 2003. The petitioner-Company was also liable to pay electricity duty insofar as electricity generated through its three generating sets are concerned as per Schedule-II. It is further case of the petitioner that though the activities of the petitioner-Company are industrial activities falling under Item-5 of Schedule-I, the respondent-Company issued a letter in June, 2004, *inter alia*, demanding energy bill for supply of 2500 KVA of power on the basis of HTP-II(A) tariff with retrospective effect from November, 2003. However, subsequently the said demand was kept in abeyance on petitioner representing that its activities could not be termed as falling under tariff HTP-II(A). However, so far as C.P.P. consumption was concerned, the petitioner-Company received notice/order dated 13-12-2004, *inter alia*, demanding 70 paise per unit effective from November, 2003 on the ground that the activities undertaken by the petitioner-Company would fall under the residuary Item No. 7 of Schedule-II. The respondents thus retrospectively charged the petitioner company at the rate of 40% for the energy supplied by it and at the rate of 70 paise per unit for the energy generated through C.P.P. purportedly on the ground that the activity undertaken by the petitioner-Company is of only storage and not falling under the definition of 'industrial undertaking'. It is stated in the petition that the petitioner has paid an *ad hoc* amount of Rs. 1,35,00,000/- towards the supplementary bill issued by the Board for the energy generated through C.P.P. from November, 2003 and December, 2004, and thereafter, the petitioner has been paying electricity duty of Rs. 0-7 paisa per unit for electricity generated through C.P.P. However, since the classification is made without affording an opportunity of hearing and without any rational basis, the petitioner has challenged the demand notices and supplementary bill.

3. The petition is opposed by filing affidavit-in-reply on behalf of respondent No. 2 as also on behalf of the respondent No. 1 stating that the activities of the petitioner do not fall under any of the Item Nos. 1 to 6 of Schedule-I. It is stated in the affidavit of the respondent No. 2 that on scrutiny of the report, since it was observed that electricity duty should

be levied at 45% from the date of connection to 31-5-2005 and at 35% with effect from 1-4-2005 onwards as per the Item No. 7 of Part-I of Schedule-I, show-cause notice dated 13-4-2005 was issued asking the petitioner company to clarify necessary facts within 15 days from the date of notice. However, no response was received from the petitioner, and therefore, instructions were issued to the electricity company to recover the differential amount of electricity duty between 20% to 45% from the date of connection to 31-5-2005 and at 35% from 1-4-2005. It is further stated that the activities explained by the petitioner in the petition are akin to the activities defined under the service undertaking, and therefore, the petitioner is at the most entitled to rate applicable to service undertaking.

4. I have heard learned Advocates for the parties.

5. Learned Senior Advocate Mr. K. S. Nanavati for Nanavati Associates, Advocates for the petitioner submitted that the petitioner-Company has been supplied electricity under the agreement dated 7-11-2003 executed between the petitioner and the company as an industrial undertaking and the tariff applicable under said agreement to the petitioner is of HTP-I. Mr. Nanavati submitted that suddenly the classification of the unit of the petitioner company was changed with retrospective effect and the petitioner was issued notice by the respondent No. 2 for recovery of electricity duty at the rate of 45% from the date of connection. Mr. Nanavati submitted that, since the classification for the undertaking of the petitioner could not have been unilaterally changed without hearing the petitioner. The respondent No. 2 was required to decide the dispute as regards the unit of the petitioner-Company as contemplated in Part-II of the Schedule of the Act. Mr. Nanavati submitted that instead of referring and deciding such dispute after giving full opportunity to the petitioner-Company, the respondent No. 2 passed order dated 8-6-2005, asking the respondent No. 3 to recover electricity duty at 45% instead of 20% from the date of connection up to 31-3-2005 and at the rate of 35% from 1-4-2005 onwards. Mr. Nanavati submitted that even as per the affidavit-in-reply filed on behalf of the respondent, the respondents are not sure as regards classifying the undertaking of the petitioner-Company because it is stated in the affidavit that the activities of the petitioner-Company could be said to be akin to the activities defined under "service undertaking". Mr. Nanavati submitted that in fact as held by this Court in *Letters Patent Appeal No. 1076 of 2011*, the activities undertaken by the petitioner-Company could be said to be falling within industrial undertaking. However, the respondent No. 2 without any basis, has concluded that the activity of the petitioner-Company would attract the electricity duty at the rate of 45%. Mr. Nanavati, thus, urged to quash and set aside the order dated 8-6-2005 passed by the respondent No. 2-Collector of Electricity Duty, Gandhinagar and remit

the matter back to respondent No. 2 to take a decision afresh after hearing the petitioner. As far as supplementary bill issued to the petitioner for energy generated through C.P.P. is concerned, no grievance is made.

6. Learned A.G.P. Mr. P. P. Banaji appearing for the respondent No. 2 submitted that during routine inspection carried out by the office of the Electricity Duty Inspector, when it was noticed that electricity consumption utilised was not for industrial undertaking, but just for storage of L.N.G., the petitioner was issued show-cause notice to give clarification as to why electricity duty at the rate of 45% instead of 20% of consumption charges should not be levied. Mr. Banaji submitted that, since no clarification was provided by the petitioner, the respondent No. 2 passed order dated 8-6-2005 for levy of electricity duty at the rate of 45% from the date of connection for the unit of the petitioner till 31-3-2005, and thereafter, at the rate of 35% from 1-4-2005 onward and directed the respondent No. 3 to effect the recovery at the aforesaid rate from petitioner. Mr. Banaji submitted that considering the activities of the petitioner company and in view of provision for levy of electricity duty made in Schedule-I, Item No. 7 of the Act, the respondent No. 2 has committed no illegality in passing the order dated 8-6-2005 for levy of the electricity duty at the rate of 45% and 35% respectively as stated above.

7. Learned Advocate Ms. R. V. Acharya submitted that though the petitioner was initially charged at the rate of 20% of the consumption charges, however, when it was found on routine inspection from the office of the Electricity Duty Inspector that the petitioner-Company, in fact, was not industrial undertaking, but just indulging into storage of L.N.G. at its terminal, the petitioner was called upon by the respondent No. 2 to explain and to give clarification as to why the petitioner should not be levied electricity duty at the rates stated in the notice issued by the respondent No. 2 dated 13-4-2005. Ms. Acharya submitted that the petitioner having not responded to such notice and considering the activities of the petitioner, since provisions made in Item No. 7 in Part-I of the Schedule-I of the Act were attracted, the petitioner was rightly charged with duty at the rate of 45% and 35% respectively for different periods as stated in the order dated 8-6-2005 passed by the respondent No. 2. She thus urged not to interfere with the said order as well as the demand notice issued by the respondent No. 1 and respondent No. 3 based on the above said order.

8. Having heard learned Advocates for the parties, it appears that for the H.T. connection of the petitioner unit, the petitioner was charged electricity duty at the rate of 20% of consumption charges by considering the undertaking of the petitioner as industrial undertaking. However, as stated in the show-cause notice dated 13-4-2005, issued by the respondent No. 2

to the petitioner, that since, it was noticed that the electricity consumption was utilised by the petitioner for the purpose of cooling the Liquefied Natural Gas for reducing the volume at the L.N.G. terminal and the L.N.G. is converted back into gas by hitting, the said activities were considered similar to storage of L.N.G. for which levy of electricity duty at the rate of 20% was not found proper.

9. Though, the petitioner did not responded to such notice, but it could certainly be said that dispute had arisen on the issue as to the nature of undertaking and as to under which item of the Schedule, the consumption of energy by the petitioner would fall. As per Part-II of Schedule-I of the Act, where any such dispute arises, it is required to be referred for decision to such authority as the State Government may by notification in the Official Gazette specify. Such authority is to then record its decision after inquiry as it deems fit. Provision for appeal is also made against such decision. The State Government is also given powers to call for and examine the record of any proceedings of the authority for the purpose of satisfying itself as to the legality or propriety of the decision or order passed by the authority.

10. In view of the above provision, the dispute in connection with the consumption of energy by the petitioner was required to be referred to the authority concerned. The Court is informed that the respondent No. 2 is the concerned authority.

11. Though, the order dated 8-6-2005 is passed by the respondent No. 2 who is stated to be the concerned authority to decide the dispute, however, it appears that the said order was passed not as a decision on dispute as contemplated in Part-II of Schedule-I of the Act nor even the petitioner was given opportunity of hearing. It appears that since the petitioner did not reply to the notice dated 13-4-2005, the respondent No. 2 proceeded to pass order dated 8-6-2005, directing the respondent No. 3 to recover the electricity duty at the rate of 45% and 35% respectively of the consumption charges for the period stated in the order. The copy of this order was sent to the petitioner.

12. As per provision made in Part-II of Schedule-I of the Act, the respondent No. 2 acting as the authority concerned was required to hold inquiry, as deemed fit. However, such inquiry should be in consonance with the principles of natural justice. Therefore, it was incumbent upon respondent No. 2 to inform the petitioner that the dispute in connection with consumption of the electricity by the petitioner was taken up for decision and the petitioner was required to be given opportunity of presenting its case for decision of such dispute. Such legal procedure mandated in Part-II of Schedule-I of the Act was not followed by the respondent No. 2. It

is required to be noted that in the affidavit-in-reply filed on behalf of the respondent No. 2, the activities of the petitioner are stated to be akin to the activities defined under "service undertaking". In view of such stand taken in the affidavit-in-reply and since the order dated 8-6-2005 passed by respondent No. 2 is not decision in accordance with the provision made in Part-II of Schedule-I of the Act, the order dated 8-6-2005 is required to be quashed and set aside, and consequently, the supplementary bill dated 27-9-2005 issued by the respondent No. 3 and the demand notice issued by the respondent No. 1-Board for recovery of the amount of supplementary bill are also required to be quashed and set aside and the matter is required to be remitted to the respondent No. 2 for taking a decision afresh on the dispute as to the nature of undertaking of the petitioner unit as also to decide as to under which item of the Schedule-I of the Act, the consumption of the energy by the petitioner-Company would fall by treating such dispute arises under Part-II, Schedule-I of the Act after giving full opportunity to the petitioner to represent its case in connection with such dispute and also to the respondent No. 1.

13. Since the matter is remitted to the respondent No. 2 to decide the dispute afresh, the Court has not examined the contention of the petitioner on merits that the activities of the petitioner are of industrial undertaking. The Court has also not considered the judgments relied on by learned Senior Advocate Mr. Nanavati on the above issue. All the contentions taken in this petition as regards the nature of undertaking and the applicability of the rate of duty under Part-I of Schedule-I are open to be canvassed before respondent No. 2.

14. For the reasons stated above, the petition is partly allowed. The order dated 8-6-2005 passed by the respondent No. 2 as well as the supplementary bill dated 27-9-2005 issued by the respondent No. 3 as also the demand notice issued by the respondent No. 1-Company for recovery of the amount of the supplementary bill are quashed and set aside. The matter is remitted to the respondent No. 2 to treat the same as dispute arises under Part-II of Schedule-I and to decide as to the nature of the undertaking of the petitioner as also as to under which item of Part-I of Schedule-I, the consumption of the energy by the petitioner would fall. Such dispute shall be decided by the respondent No. 2 after giving full opportunity to the petitioner as well as to respondent No. 1. However, if the petitioner or the respondent No. 1 desires to produce any material/documents before the respondent No. 2, they may do so within period of four weeks from today. The respondent No. 2 shall then decide the dispute within a period of six weeks.

15. Rule made absolute to the extent stated above.

16. The copy of this order shall be made available to learned A.G.P. Mr. Banaji for its onward communication to respondent No. 2.

(NRP) *Petition partly allowed.*

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CIVIL REVISION APPLICATION

Before the Hon'ble Mr. Justice N. V. Anjaria

LILAVATIBEN KANJIBHAI PATEL THROUGH P.O.A. KANJIBHAI T. PATEL v. MANSUKHLAL AMRUTLAL JOSHI*

Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 (57 of 1947) — Sec. 13(1)(l) — Alternative accomodation — Allotment of service quarters to tenant, held, a sufficient ground for eviction under Sec. 13(1)(l) — It is irrelevant that tenant has surrendered quarters back — Further, in a pending suit for eviction any number of grounds arising subsequently, can be added — Revision allowed and decree of eviction by trial Court restored.

મુંબઈ ભાડા નિયમન અધિનિયમ, ૧૯૪૭ — કલમ ૧૩(૧)(એલ) — વૈકલ્પિક રહેણાંક — ભાડુઆતને નોકરીમાં મકાન રહેવા આપવામાં આવ્યું, ઠરાવવામાં આવ્યું કે, કલમ ૧૩(૧)(એલ) હેઠળ મકાન ખાલી કરાવવા પૂરતુ કારણ છે — તે અસંગત છે કે ભાડુઆતે મકાન સમર્પિત કરેલ છે — વધુમાં, મકાન ખાલી કરાવવાના દાવામાં પાછળથી ઉભા થયેલ કારણો ઉમેરી શકાય — પુનઃસમિક્ષાની અરજી મંજૂર કરવામાં આવી અને નીચલી અદાલતનું ખાલી કરાવવા માટેનું હુકમનામું પુનઃસ્થાપિત કરવામાં આવ્યું.

The facts on record were suggestive that as the conduct on part of the tenant in not going to reside in the allotted quarters was self-willed, his handing over possession was also voluntary. (Para 7.1)

A ground under Sec. 13(1)(l) stands established once it is shown that the tenant has acquired suitable residence. As already noted, it is not necessary that at the time of passing of decree in the suit, he must be continued to be in possession. It is the event of a tenant acquiring suitable alternative accommodation creates a liability in law for him to be evicted from the rented premises, correspondingly giving right to the landlord to obtain possession. Whether the acquisition of alternative accommodation is temporary or that the same was not permanently acquired is also not a valid defence to resist decree for eviction once the factum of acquisition is established on evidence. (Para 8)

The Government quarters allotted to the defendant-tenant was an accommodation available to him where he could have gone to stay. What is important is that the alternative accommodation is acquired by the tenant of his own right and that the same was available to be occupied by him. Intention of the tenant not to go to reside to the alternative suitable residence acquired is irrelevant. What matters

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*Decided on 8-5-2014. Civil Revision Application No. 276 of 2006, challenging judgment and decree dated 7-7-2006 passed by President Officer, Fast Track Court No. 2, Jamnagar in Regular Civil Appeal No. 68 of 2003.