

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 83 of 2006

Dated: **November 21 , 2006**

The Lake Palace Hotels and Motels Private Limited,
City Palace, Udaipur, Rajasthan

Through its Administrator (Legal Affairs),

Mr. A.C. Jain

....

Appellant

Versus

1. Ajmer Vidyut Vitran Nigam Ltd. (AVVNL)
(Ajmer Discom), Ajmer, Rajasthan
2. The Assistant Engineer, (Power House I),
Ajmer Vidyut Vitran Nigam Ltd.,
Gulab Bagh, Udaipur, Rajasthan
3. Rajasthan Electricity Regulatory Commission,
Jaipur, Rajasthan
Through its Secretary, Vidyut Bhawan,
Jyoti Nagar, Jaipur, Rajasthan ... Respondents

**Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member**

Counsel for the Appellant : Mr. Mohinder J.S. Rupal, Mr. V. Mehta
& Ms. Rashmi Rai

Counsel for the Respondents : Mr. Manu Mridul
Mr. Anant Kumar Vatsya

Mr. R.C. Sharma (Rep.)
Mr. S.D. Ajudai for AVVNL (Rep.)

JUDGMENT

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson

This appeal is directed against the order of the Rajasthan
Electricity Regulatory Commission, Jaipur (for short 'RERC') dated March

21, 2006 in Petition No. RERC/30/2004, whereby the Commission has held that the establishment of the appellant, cannot be treated as an industry and falls under the non-domestic category for the purposes of levy of tariff.

2. It is not necessary to state the facts in view of the nature of the controversy raised by the appellant. The appellant refers to the Notification dated March 4, 1989 of the Government of Rajasthan, whereby tourism was declared as an Industry in the State of Rajasthan w.e.f. the date of issuance of the Notification. The Notification reads as follows:-

“GOVERNMENT OF RAJASTHAN
INDUSTRIES (GR.I) DEPARTMENT

No. F. 12(4) IInd/85, Jaipur dated 4.3.1989

NOTIFICATION

The Governor of Rajasthan is pleased to declare tourism as an Industry in the State of Rajasthan with effect from the date of issue of the Notification.

A further notification regarding conditions of eligibility, quantum of assistances, etc. to be provided to the tourism industry units will be issued separately.”

3. The last paragraph of the Notification was deleted by a subsequent Notification issued by the Government of Rajasthan dated November 7, 2002. The appellant claims on the basis of the Notification dated March 4, 1989 that its establishment consisting of a Heritage Hotel, ought to have been treated as an Industry and charged tariff accordingly. This

submission has been reiterated before us by the learned counsel for the appellant. It has also been urged on behalf of the appellant that the Commission in discharge of its functions is to be guided by the aforesaid policy of the State Government. The learned counsel submitted that the Commission ignored the policy of the Government in violation of Section 108 of the Electricity Act, 2003 and consequently failed to consider that the appellant could not be charged tariff at commercial rate under non-domestic category.

4. We have considered the submission of the learned counsel for the appellant. In order to appreciate the submission, it is necessary to set out Section 108 of the Electricity Act, 2003. Section 108 reads as under:

108: Direction by the State Government: (1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.

5. As is apparent from the aforesaid provision, the State Government is specifically required to transmit its policy to the State Regulatory Commission in writing and is also required to express its satisfaction that the policy is in public interest. Both the ingredients for application of the aforesaid provision are missing. Neither the State Government transmitted the policy to the Regulatory Commission nor it recorded its satisfaction that the policy is in public interest. In the circumstances,

therefore, the appellant cannot take the support of the policy. It cannot be denied that in case the appellant and the like establishments are charged tariff at the rate applicable to Industrial establishments, they shall be paying tariff at substantially lower rates than the tariff meant for commercial establishments. For this benefit, other consumers will have to pay for the differential cost of electricity consumed by the appellant and the ARRS will have to be modified accordingly. In case the burden of tariff on well to do sector is shifted to other consumers, it would surely not be in public interest and will amount to travesty of justice. No other point was raised before us by the learned counsel for the appellant.

6. In the circumstances, we do not find any merit in the appeal. Accordingly the same is dismissed.

(Justice Anil Dev Singh)
Chairperson

(Mr. A.A. Khan)
Technical Member

Dated: **the November 21 , 2006**