IN HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case No. : 4309/2014

In the matter between:-

THE DEMOCRATIC ALLIANCE Applicant

And

THE MATJHABENG LOCAL MUNICIPALITY 1st Respondent
THE MUNICIPALITY MANAGER:
MATJHABENG LOCAL MUNICIPALITY 2nd Respondent

JUDGMENT BY: MOCUMIE, J

HEARD ON: 12 FEBRUARY 2015

DELIVERED ON: 19 MARCH 2015

MOCUMIE, J

[1] This is an application for a declaratory order. Applicant, The Democratic Alliance, seeks an order declaring certain decisions of first and second respondent (respondents) as unlawful, invalid and void *ab initio*. The consequential relief sought is as per the Notice of Motion as follows:

'1.The first and/or second respondents' ostensible decision of June alternatively July 2014,increasing the tariffs by which the first respondent sells electricity units to the inhabitants of its jurisdictional area at a rate and a tariff which was not approved by the Municipal Council of the first respondent, be declared unlawful and void *ab initio.*

2. The first and second respondents be ordered to give effect to the council of the first respondent's resolution taken on or about 30 March[1] 2014,and whereby the then existing tariffs had to be increased by 7,39% across the board.

The application is opposed by respondents.

[2] The municipality is a licensed electricity distributor. It buys electricity in bulk from ESKOM. It then resells the electricity to the public, at an increased rate. The latter must be approved by the National Energy Regulator of South Africa (NERSA). The provision of electricity by the municipality is also provided for in terms of the relevant provisions of the Electricity Regulation Act 4 of 2006 read with certain provisions of the Local Government: Municipal Finance Management Act, 56 of 2003(MFMA) and the Local Government: Municipal Systems Act 32 of 2000(the Systems Act).These two legislations essentially turn on aspects of proper budgeting, prior to any new fiscal year and also impact upon the provision of electricity by the municipality.

[3] The municipality must also, in terms of s74 of the Systems Act, adopt and implement a tariff policy on the levying of fees for municipal services provided for by the municipality or by way of service delivery agreements.

[1] 30 March 2014 must certainly read 30 May 2014 as there is no reference to March throughout the papers before me except in this one instance.

[4] A municipality has strict principles and deeming obligations dealing with annual budgeting. A draft budget is to be prepared and published, no later than a specified time prior to the end of the fiscal year. The municipality's fiscal year ends on 30 June. In terms of section 16 and 24 of the MFMA, the draft budget must also be considered for approval-and finally approved no later than 30 days before the new fiscal starts.

[5] Prior to the approval, and part and parcel of the consideration effort, the municipality, must admit to the general public what tariff increases it intends implementing. These increases are for all municipal services-which includes water-and electricity supply. This allows for transparency, fairness and openness as far as local government budget is concerned and also affords those affected by tariff increases, a proper opportunity to be heard.

[6] After the draft budget has been tabled, public participation facilitated and the draft budget properly debated, a municipal council is entitled to finally approve the budget for the next fiscal year including approval of rate increases for the supply of electricity.

[7] It is common cause between the parties that on 27 March 2014 a second ordinary meeting of the municipal council was convened. The draft annual budget of 2014/2015 financial year was on the agenda appended to the papers as FA1.Under the executive summary it is noted under Part A(b) that there will be an across the board tariff increase of 7,39%

in electricity tariffs for 2014/2015 financial year. Under the heading 'Recommendations' it is stated: 'That a step up tariff must be introduced on water and electricity in order to balance the general tariffs…'

[8] On 30 May 2014 the third ordinary council meeting of the municipal council was convened. The draft annual budget of 2014/2015 financial year was on the agenda appended to the papers as FA3.The tariff increase referred to in the second ordinary meeting is still referred to as such without any changes. The draft budget was then approved. The minutes of such meeting are appended as FA4 to the papers.

[9] The only issue in dispute between the parties is whether the increased tariff as set out hereunder was sanctioned by the municipal council. Flowing from this issue is whether such a decision could be delegated to any other institution or person by the municipal council, outside the determined process provided for in s16 read with s24 of the MFMA.

[10] In its founding affidavit, applicant submits that subsequent to the council meeting of 30 May 2014, and without intervention of the municipal council, respondents introduced electricity tariff increases in respect of residential properties with effect from 1 July 2014 as follows:

'13.1.1 A winter tariff in respect of usage of less than 350 units-of R1, 55 per unit.

13.1.2 A winter tariff in respect of usage in excess of 350 units –of R1, 65 per unit.

13.1.3 A summer tariff in respect of usage less than 350 units-of R1, 35 per unit.

13.1.4 A summer tariff in respect of usage in excess of 350 units –of R1, 49 per unit.'

[11] This increase, applicant submits, was not approved and sanctioned by the municipal council on 27 March 2014 or on 30 May 2014, but ostensibly announced by the municipal manager at a meeting of June alternatively July 2014. The plaintiff submit further that the increase is unlawful because the tariff structure stated was not reflected in the draft annual budget presented for the 2014/2015 financial year. It was not disclosed by the municipality to the public. Neither was it reflected in any public participation representation document prepared and distributed by the municipality amongst stakeholders and members of the community. Nor was it reflected in the budget which was approved by the municipal council on 30 May 2014.It was simply not approved by the municipal council in terms of the provisions of s24 (2) (c) (ii) of the MFMA. The main contention of applicant is in essence that respondents implemented the step-up tariff without approval of the municipal council hence the unlawfulness of the action. In the worst case scenario, as I understand applicant's contention correctly, the step-up tariff should not have been implemented in the 2014/2015 financial year, but sometime in the future.

[12] In the answering affidavit, respondents deny that the electricity tariff increases in dispute were not approved by the municipal council. The respondents submit that to the contrary, regard

being had to the minutes of the meeting of 30May 2014, ML10 page V, the municipal council resolved:' [t]he minutes of the 2nd ordinary council meeting held on 27 March 2014 be approved. '.
Respondents submit further that from the minutes of the third ordinary council meeting the municipal council had before it reviewed draft IDP and draft annual budget for the 2014/2015 financial year as well as related policies for approval, it was then resolved 'that council approves the medium term revenue and expenditure framework 2014/2015-16-17 financial year with the operating budget of R1 954 071 637 [R1 609 153 696 (anticipated revenue) plus anticipated bad debts] of R344 917 941 and the capital budget of R198 246 000 be approved.The split capital of R198 246 000 be approved.The split capital is as follows:

MID	R156 246 000
Internally generated funds	R 42 000 000
Total capital funding	R198 246 000

following budget related policies
Matjhabeng Municipality Indigent Policy,
Investment Policy'

[13] The issue between the parties as highlighted in para 9 of this judgment must be understood in this context, which is also not in dispute between the parties. On 20 March 2013, the National Electricity Regulatory (NERSA) issued guidelines on electricity price increase for 2014/2015 as per ML1 appended to the paper. In terms of ML1, NERSA approved a guideline increase for electricity tariffs for municipalities. NERSA's guidelines also provided a detailed methodology of the electricity tariff increases and the applicable tables with their increases. In the application to NERSA, ML 6, respondents indicated to NERSA that 'Matjhabeng shall develop, approve and at

least annually review an indigent [tariff increase policy] for the municipal area. This policy shall set out clearly Matjhabeng's cost recovery policy in respect of the tariff which it levies on registered indigent, and the implications of such policy for the tariffs which it imposes on other users and consumers in the municipal area.

Removing basic charges and transferring these charges to unit costs for all domestic related tariffs will have an effect '

[14] From the above it is undoubtedly clear that (a) the tariff incline/ step-up with a bias towards the indigent within the jurisdiction of first respondent was specifically sought by respondents in the application to NERSA; (b) such request was approved by NERSA (c) the incline/step-up tariff increase first respondent introduced in July 2014 formed part of the agenda of the second ordinary meeting which agenda was approved and adopted in the third ordinary meeting of 30 May 2014; (d) respondents, particularly first respondent as a licensed electricity distributor was within its powers to implement the incline/step-up tariff as approved by NERSA.

[15] Invariably, once respondents complied with NERSA's electricity tariff guidelines, they were not bound by any law to approach NERSA again for the increased tariff rates which were implemented from 1 July 2014.Applicant could point to none apart from reference to the MFMA and relevant legislations which I have already found were complied with in the process preceding the approval of the budget. The announcement second respondent made in July was nothing out of the ordinary. Due process which ought to be followed in terms of the MFMA that applicant is strenuously complaining

was not followed, had already been followed. Applicant's interpretation of the decisions of 27 March and 30 May 2014 is unfounded and without a basis to say the least. It read the two decisions out of context and without regard to the relevant policies, including the indigent-biased policy, appended to the agenda and discussed during the meetings.

[16] For the reasons set out in this judgment and the conclusion I have come to, it is unnecessary to consider whether the municipal council could delegate powers within its exclusively domain under the provisions of the MFMA and related legislations, to any institution or person, including respondents.

[17] For completeness, I consider the point in limine raised by respondents settled, as counsel for respondents opted to abandon it during argument for the sake of a speedy resolution of this matter.

[18] In the result, the following order is granted.

ORDER

The application is dismissed with costs.

B. C. MOCUMIE, J