
(2020) 06 MP CK 0044

In the Madhya Pradesh High Court

Case No : Writ Petition No. 938 Of 2019

Brilliant Estates Limited, Indore

APPELLANT

Vs

M.P. Pashchim Kshetra Vidyut Vitran Co. Ltd. And Others

RESPONDENT

Date of Decision : 19-06-2020

Acts Referred:

Electricity Act, 2003 — Section 82, 86, 182, 186

Citation : (2020) 06 MP CK 0044

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : R. S. Chhabra, Gurneet Chawla, Prasanna Prasad

Final Decision : Disposed Of

Judgement

1. The petitioner has filed the present writ petition challenging the decision dated 19/11/2018 and bill dated 28/12/2018 passed in letter No.7186 by the respondents.

2. Short facts of the case are that the respondent No.3 issued letter dated 19/11/2018 to the petitioner whereby the petitioner has been directed to submit an application for change of tariff from HV 3.3 (Shopping Mall) to HV 3.2 (Non-Industrial) and execution of supplementary agreement in pursuance thereof. The petitioner challenges the electricity bill for the month of December, 2018 dated 28/12/2018 issued by the Accounts Officer, M.P.K.V.V. Co. Ltd., Indore arbitrarily adding the difference of the bill amount of November and December, 2018 in the electricity bill raised to the petitioner for the month of December, 2018 to the tune of Rs.3,51,779/-, being aggrieved the petitioner has preferred the present writ petition.

3. Learned counsel for the petitioner submits that as per the tariff schedule framed by M.P. Electricity Regulatory Commission, the case of Group of Consumers of electricity, are covered under the tariff HV 3.3 (Shopping Mall) instead of tariff 3.2 (Non-Industrial). The tariff HV 3.2 (Non-Industrial) is

applicable to establishment like; Railway Station, Offices, Hotels, Institutions etc. (excluding group of Consumers) and the tariff HV 3.3 (Shopping Mall) is applicable to establishment of Shopping Malls having group of non-industrial consumers. Thus, tariff HV 3.2 (Non-Industrial) is not attracted in the case of petitioner keeping in view the fact that the entire electricity supply is metered through a 'Single Point of Supply' to 'Group of Consumers' at various premises having their separate ownership and the provision of billing is provided in the tariff itself. It is submitted that the charges of difference amount in electricity bill is arbitrary and illegal.

4. Respondents have filed their reply. In the said reply, respondents raised preliminary objection that the petitioner is having an alternative remedy by filing reference to the M.P. Electricity Regulatory Commission (MPERC). It is stated that MPERC is the statutory body constituted under Section 82 and functioning under Section 86 of the Electricity Act, 2003, thus, the contentions raised by the petitioner ought to have been raised before MPERC, though it is submitted with emphasis that the stand taken by the Officers of the respondents is perfectly justified on trite preposition of law and in back drop of the tariff order and it is submitted that the stand taken by the respondents is flawlessly defensible on trite preposition of law. He placed reliance on *Institution of Hotel Management and another vs. Union of India and others* (2017) 11 SCC 72, order passed by this in the matter of *M/s Prism Johnson Limited vs. M.P. Paschim Kshetra Vidyut Vitran Co. Ltd. and Ors.* passed in W.P. No.3834/2019 on 20/09/2019 and *Ritspin Synthetics Ltd. vs. State of M.P. and Ors.* 2018 (2) MPLJ 569. In light of the aforesaid, he submits that petition deserves to be dismissed.

5. Learned counsel for the petitioner filed the rejoinder and in the rejoinder it is stated that MPERC is nothing to do with the adjudication of any dispute that has arisen between the petitioner and M.P.P.K.V.V. Co. Ltd., Indore on the basis of dispute arising out of contracts. It is clear that the petitioner and respondent No.1 executed an agreement in the year 2010 which renewed every year. Reliance has been placed in the matter of *Whirlpool Corpn. vs. Registrar of Trade Marks* (1998) 8 SCC 1 wherein it is categorically held that the High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. Similar view has been taken by Hon'ble Apex Court in the matter of *Popcorn Entertainment vs. City Industrial Development Corpn.* (2007) 9 SCC 593.

6. Heard learned counsel for the parties and perused the record.

7. In the present case, the petitioner has challenged the letter dated 19/11/2018 and bill dated 28/12/2018 issued by the respondents directing the petitioner to submit an application for change of tariff from HV 3.3 (Shopping Mall) to HV 3.2 (Non-Industrial) and execution of supplementary agreement in pursuance thereof.

8. It is crystal clear that MPERC has been established by the State Government under Section 182 and its functionaries under Section 186 of the Electricity Act, 2003. As per Clause 1.24 of tariff order for the year 2017-18, it is the exclusive

jurisdiction of MPERC to decide the applicability of tariff and in the event of any grievance by the petitioner, then, he can approach MPERC.

9. Thus, in view of the rival submissions made by the parties, judgments cited and as per the Clause provided and also in the peculiar facts and circumstances of the case, this Court of the firm opinion that the petitioner is having an alternative remedy to decide its dispute before the MPERC, therefore, instead of entertaining this writ petition on merits, I deem it appropriate/proper to dispose of the petition with liberty to the petitioner to approach the MPERC. If the petitioner approaches the MPERC within a period of one month from the receipt of certified copy of the order, then, the MPERC shall decide the matter in accordance with law within a period of two months thereafter.

10. Accordingly, the petition stands disposed of finally. C.C. as per rules.