

(2012) 08 GUJ CK 0066

In the Gujarat High Court

Case No : Special Civil Application No. 16688 of 2011

Paschim Gujarat VIJ Co. Ltd.

APPELLANT

Vs

Tasvir Colour Lab and Others

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Gujarat Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2011 — Clause 3.39(iii)

Citation : (2012) 08 GUJ CK 0066

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : S.N. Sinha for Petitioners, for the Appellant; B.M. Vaishnav for Respondent(s) : 1, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K.M. Thaker

1. The petitioner has prayed for below mentioned relief:

9(B) The Hon'ble Court may be pleased to allow this petition by passing writ of mandamus, certiorari or appropriate writ, order or direction by way of quashing and setting aside the impugned order dated 21.6.2011 passed in case no.36/2011 by the Ld Ombudsman, Gujarat State, Ahmedabad.

The facts involved in and leading to submission of present petition are:

2.1 Somewhere in January 2006, the respondent in present petition had applied for electrical connection for industrial purpose. The petitioner company considered the respondent's application and granted supply connection under Tariff Entry LTP-I. The petitioner company has claimed that while granting and releasing the electricity supply connection to the respondent under said LTP-I Tariff, it was informed to the respondent that if and when the load drops below 10 KVA, then the tariff would be changed from industrial (i.e. LTP-I) to commercial rate. It is claimed that subsequently, on internal audit, it was found

that the load in the respondent's industrial unit had dropped below 10 KVA and that, therefore, notice for tariff change, i.e. from industrial to commercial rate (which is higher than the rate for Tariff Entry LTP-I) was issued which was followed by supplementary bill in the sum of Rs. 1,96,337.17. The respondent, feeling aggrieved by the said notice and demand, challenged the notice/demand before the Forum constituted under the Act. The Forum confirmed the demand made by the petitioner. Therefore, the respondent carried the matter before Electricity Ombudsman. The Electricity Ombudsman accepted and allowed the appeal.

2. Mr. Sinha, learned advocate has appeared for the petitioner electricity company. He has submitted that the impugned order passed by the Electricity Ombudsman is incorrect and erroneous and contrary to the prescribed tariff, the supply conditions and the material on record. He submitted that since the load in the respondent's unit dropped below prescribed limit, the petitioner was justified in raising the demand which came to be confirmed by the Forum constituted under the Act, however, the Electricity Ombudsman has erred in considering the provisions under the Tariff and Supply Conditions. Therefore, the impugned order deserves to be set aside. Learned Counsel has relied on the decision by the Apex Court in case of Badri Kedar Paper Pvt. Ltd. Vs. U.P. Electricity Regulatory Commn. and Others, . Learned Counsel also submitted that the impugned order is contrary to clause (iii) of clause 3.39 under Gujarat Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulation, 2011.

2.1. Mr. Vaishnav, learned advocate has appeared for the respondent. Respondent has resisted the petition by filing reply-affidavit. The respondent has stated below mentioned details and factual aspects in para 3(i) to (vi) of its reply-affidavit. The said paragraphs read thus:

(i) The petitioner respectfully submits that in fact, the licensee itself is of the view that the applicability of LTP-I tariff to the petitioner is quit proper and this has been highlighted by the Executive Engineer of the licensee under his letter no. 1476 dated 03/03/2011 written to the Superintending Engineer in which, it is also proposed to waive the recovery of the bill.

(ii) The petitioner respectfully submits that the LTP-I tariff was originally allowed by the licensee after due verification of the site of the petitioner, examining the details of the connected load, nature of the purpose of use of electricity and all other relevant aspects required to be followed and complied with as per the relevant rules and regulations. Regulation 3.5.1 of the Electricity Supply Code (for short "the Code") categorically provides for giving a 30 day's notice to the consumer by the licensee before the change of tariff is made applicable. In case of the petitioner, no such notice is given and no any opportunity of hearing is given to the petitioner. In view of this, it was not open to the licensee to make the change of tariff suddenly and that too without following the procedure established by law and in violation of the provisions of the Code and the

principles of natural justice.

(iii) The petitioner respectfully submits that the tariff order issued by the Commission under the Act clearly states that the LTP-I tariff applies to the motive power load not exceeding 125 HP. Since the load of the installation of the petitioner was 12 H.P. he was naturally allowed the LTP-I tariff after due verification of the site. In view of this, the applicability of LTP-I tariff and its continuance is in consonance with the said tariff order, which is statutory in nature. In view of this, the bill issued by the licensee is bad in law.

(iv) The petitioner respectfully submits that the bill is issued on 02/12/2010 for the period from June-2006 to October-2010 means for a period of more than 4 years. In accordance with the provisions of sub-section (1) of section 56 of the Act, any dues outstanding against the consumer are not recoverable after a period of two years from the date when such dues became first due, if such dues are continuously not shown as arrears during the said period of two years in the regular bills issued to the consumer from time to time. In case of the petitioner, the said dues became first due in June-2006 and therefore the licensee was required to show the same continuously in the regular bills from June-2006 but no such dues are shown outstanding in the regular bills but the same is shown in the regular bill of January-2011 only and hence the bill issued for a period of four years is bad in law.

(v) The petitioner respectfully submits that as per the knowledge of the petitioner, in case of two consumers having the colour laboratory similar to that of the petitioner and situated at Amreli within the jurisdiction of one and the same Amreli Division of the licensee, the applicability of LTP-I tariff is being continued till date and not only this but also in case of all such consumers registered under the licensee having the similar colour laboratories, the applicability of LTP-I tariff is being continued till date. Therefore this sort of situation has created discrimination amongst the consumers of the same licensee. In view of this also, the bill issued for change of tariff is bad in law.

(vi) The petitioner respectfully submits that the Ombudsman, while deciding the case of the petitioner, has rightly directed for applying LTP-I tariff as it was applied since beginning and while doing so, all relevant aspects and law position is considered by the Ombudsman, off course in short and not elaborately but only on this count, it cannot be said that the order of the Ombudsman is non-reasoned one as challenged by the licensee in the petition. In view of the above, the order of the Ombudsman is required to be upheld by this Honourable Court.

3. During the hearing, the Learned Counsel for petitioner essentially assailed the order of Ombudsman on strength of clause 3.39 (iii) of the above referred Regulation of 2011 framed by GERC. So far as the said provision is concerned, it reads thus:

Issue of Order

3.37 The Ombudsman shall decide the matter on the submissions of the parties, after providing them an opportunity of being heard. The Ombudsman shall pass a speaking order with detailed reasoning either in Gujarati or English. While making an order, the Ombudsman shall be guided by the evidence adduced by the parties, the principles of applicable laws including Rules and Regulations issued under the relevant laws, guidelines, directions and instructions of a general nature, issued by the Commission from time to time, prudent industry practices and such other factors which in its opinion are necessary in the interest of justice.

3.38 The Ombudsman shall pass an order as early as possible but in any case, within 60 days, from the date of receipt of the Representation. Where there is delay in disposal of a Representation within the said period, the Ombudsman shall record reasons of such delay.

3.39 The order passed by the Ombudsman shall set out:

- i. issues arising from the proceedings before it;
- ii. issue-wise decision;
- iii. reasons for passing the order;
- iv. directions, if any, to the Distribution Licensee or Complainant or any other order, deemed appropriate in the facts and circumstances of the case.

3.1. When the impugned order dated 21.6.2011 passed by the Electricity Ombudsman is examined in light of the above-quoted provision, it becomes clear that the petitioner's contention is misconceived and unjustified and that, therefore, it cannot be sustained. In order to consider and appreciate the contention, it is relevant and appropriate to examine the impugned order dated 21.6.2011. On examination of the order, it transpires that in paragraph 2 (i.e. paras 2.1 to 2.4) and in paragraph Nos.3.1 to 3.9, the Ombudsman has recorded the submissions of the appellant, i.e. present respondent in paragraphs 4.1 to 4.8, the Ombudsman recorded the submissions by the opponent, i.e. present petitioner and from paragraphs 5.1 to 5.9, the Ombudsman has recorded the reasons and conclusions. Therefore, by any stretch of imagination, it cannot be said that the Ombudsman has not passed order by following the provisions contained under clause 3.39 (iii) or the provisions contained under clauses 3.37 to 3.39 of the above-quoted Regulation of 2011. Therefore, the said contention must fail.

3.2. The Learned Counsel for the petitioner has relied only on the provision contained under sub-clause (iii) of clause 3.39 which requires that the Ombudsman must record reasons for passing the order. The Learned Counsel has claimed and submitted that the Ombudsman has not recorded reasons. So as to examine the said claim and contention by the petitioner, it is necessary to take into account the details and reasons recorded by Ombudsman in paragraphs 5.1 to 5.10 which read thus:

5.1 As per GERC Schedule of tariff for supply of electricity at low and medium voltage, the tariff LFD-II will apply to the services for the lights, fans and small electrical appliances such as refrigerators, cookers, heaters, and small motors having individual capacity of not exceeding 2 BHP in respect of commercial premises such as shops, workshops, hotels, show-rooms, offices etc. Aggregate load above 6 KW including small Motive Power load up to 10 KW is connected through three phase supply on single meter arrangement.

5.2 As per GERC schedule of tariff for supply of electricity at low and medium voltage, LTP-I tariff shall be applicable for Motive Power services where aggregate Motive Power load is not exceeding 125 BHP.

5.3 There are 2 No. of chemical process units with built in motors and heaters. The each unit specification indicates 5.8 KVA load with 10 Ampere current drawn a 415V AC. Total connected load is 11.6 KVA. Individual motor capacity is not shown in specification. As per Test Report, it is 12 HP, 2840 RPM with 5 KVAR capacitor.

5.4 Vide Chief Engineer's letter No. 1153 dated 18.02.2011, and Superintending Engineer's letter No. 1249 dated 07.02.2011, Respondent is instructed to visit site. As per site verification report dated 28.02.2011 and letter No. AD-I/Rev/AC/Audit/1476 dated 03.03.2011, LTP-I tariff category is confirmed.

5.5 As per Para 4.2, LFD-II category connection was connected prior to release of this connection. The Appellant had surrendered the LFD-II connection and asked new connection to avail benefit of LTP-I tariff.

5.6 The total load is 11.6 KVA (at 415V). Total connected load can be above 10 KW if power is drawn at nearby unity power factor. But individual motor capacity is not shown in specification due to compact unit.

5.7 There is separate LFD-II connection as per Para 2.1 (ii) for lights and fans etc., with Consumer No. 83103/03159/9.

5.8 As per Section 3.5.1 of GERC Notification No. 11 of 2005, Notice for change of tariff is not issued by the Respondent.

5.9 On the basis of Para 5.3, 5.4 and 5.7, the applicable tariff to connection No.83102/05375/0 is LTP-I.

5.10 I order accordingly.

3.3. The above-quoted observations from the impugned order give out that the Ombudsman has recorded reasons in support of his conclusion. It is another matter that the conclusions reached and recorded by the Ombudsman may not be in consonance with or justifiable in view of provisions contained under applicable tariff order or supply conditions and it cannot be confused with absence of reasons, when apparently the order contains discussion and reasons leading to the conclusion. The Regulations of 2011 require that the order by Ombudsman should reflect reasons, i.e. process of reasoning so as to reach the

conclusion. In present case, the Ombudsman has discussed the facts the rival contentions as well as reasons to justify its conclusion and that, therefore, the contention raised by the petitioner in light of provision contained under clause 3.39 (iii) also must fail.

3.4. Now so far as the final conclusion by the Ombudsman is concerned, in light of the facts of the case, it does not appear to be erroneous or unsustainable, as alleged by the petitioner. The Ombudsman has recorded that in view of provision contained under clause 3.5.1 of Notification No.11/2005 issued by GERC, notice for change of tariff is required to be issued whereas, in present case, such notice has been undisputedly not issued in present case. The petitioner has, even as per its own case, changed the category of respondent's connection from LTP-I to LFD-II, i.e. from industrial to commercial and undisputedly any notice before effecting such change was not issued by the petitioner, though it is a requirement in view of notification issued by GERC. It is pertinent that the Learned Counsel for petitioner has neither assailed or even disputed the said observation by the Ombudsman and has also not disputed its correctness. It is not even claimed by the petitioner that any requirement such as mentioned by the Ombudsman is not described by GERC notification or that it had issued necessary notice in compliance of the condition. It is not in dispute that the petitioner changed the category of respondent's supply connection and for billing purpose and on that basis raised the supplementary bill. When it is not in dispute that the GERC notification prescribes such condition and when it is also not in dispute that the requirement of issuing notice was not complied, then the reason and conclusion of the Ombudsman cannot be faulted.

3.5. Besides this, it is also noticed that the Ombudsman has also taken into account the fact that for the purpose of use of electricity for purpose of lighting and fans, the respondent has been granted separate connection under Consumer No.83103/03159/9. The Ombudsman has also noticed that so far as the other connection, i.e. for industrial purpose (Consumer No. 83102/05375/0) is concerned, the total load is 11.6 KVA, i.e. above 10 KW and as per the test report, the individual motor capacity is found to be of 12 HP, 2840 RPM with 5 KVAR capacitor. Having regard to the said facts (which are recorded by the Ombudsman in paragraphs 5.3 to 5.7 of the said order dated 21.6.2011) and after considering its effect, the Ombudsman has recorded that in view of the basis recorded in paragraphs 5.3, 5.4 and 5.7, the applicable tariff would be LTP-I.

3.6. The Learned Counsel for the petitioner has not assailed the said conclusion and he has not been able to bring out anything from the material on record to successfully assail the said conclusion. Actually, any material contrary to the said observations and findings of fact recorded by the Ombudsman is not placed on record by the petitioner. There is nothing on record and the Learned Counsel for the petitioner has not been able to show anything from material on record that the said observations and findings of fact recorded by the Ombudsman are

incorrect. Therefore, it is not possible to hold that the impugned order is incorrect or contrary to the tariff order or contrary to conditions of supply. The reliance placed by the Learned Counsel for the petitioner on the decision of the Apex Court in case of Badri Kedar Paper Pvt. Ltd. (supra) is of no assistance to the petitioner in present case since the facts of the cited case are materially different from the facts in present case and also for the reason that the Hon''ble Apex Court considered the validity of electricity company''s action of withdrawing a circular issued by it granting certain concession/benefit. The Hon''ble Apex Court observed that the power to alter/modify tariff lies with the commission. In present case, it is the licensee who has tried to change the category of consumer''s connection from industrial to commercial and thereupon tried to apply another entry (different from the one which was made applicable) of the same tariff order. Thus, in the facts of the case, the judgment does not assist the petitioner. In the result and in view of the foregoing discussion and as an upshot of the above-mentioned reasons, the petition fails and is not accepted. Accordingly, the petition stands rejected.