

(2020) 08 MP CK 0302
In the Madhya Pradesh High Court
Case No : Writ Petition No.8046 Of 2020

Satish Mittal & Others

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 27-08-2020

Acts Referred:

Electricity Act, 2003 — Section 61, 62, 86, 86(1)(a)

Citation : (2020) 08 MP CK 0302

Hon'ble Judges : S. C. Sharma, J

Bench : Single Bench

Advocate : Dr. Manohar Dalal, Lokendra Joshi, Purushaindra Kaurav, Pushyamitra Bhargava

Final Decision : Allowed

Judgement

1. The petitioners before this Court are consumers of High Tension Electricity and are engaged in running Steel Rolling Mill. They have filed this present petition claiming following reliefs :-

(a) That Fixed Charges, Energy Charges and Tariff Monthly Minimum (TMM) be quashed during the lock down period from 25.03.2020 to 17.05.2020.

(b) Such other relief / reliefs this Hon'ble Court deems fit.

2. The petitioners' contention is that on account of pandemic COVID - 19, the State of Madhya Pradesh, keeping in view the directions issued by Central Government, has enforced complete lockdown from 25. 03.2020 to 17.05.2020, and therefore, they should not be charged electricity fixed charges, energy charges and other ancillary charges.

3. This Court has heard Dr. Manohar Dalal, learned counsel for the petitioner and Shri Purushaindra Kaurav, learned Senior Advocate along with Shri Pushyamitra Bhargav, learned Additional Advocate General for respondents No.2, 3, 4 and 5.

4. The respondents have opposed the petition on the ground that the State of

Madhya Pradesh does not have powers for waiver of fixed charges, energy charges and tariff monthly minimum in respect of lockdown period and there is an alternative remedy of adjudication of dispute relating to tariff i.e., before the Madhya Pradesh Electricity Regulatory Commission. The matter was heard on the preliminary objections raised by the respondents at length.

5. Section 86 of Electricity Act, 2003 relates to function of the State Commission. Section 86(1)(a) specifically provides that the State Commission (in this case the MPERC) shall determine the tariff for supply of retail electricity within the State.

"86. (Functions of State Commission): - (1) The State Commission shall discharge the following functions, namely:- (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State.."

6. From perusal of Section 62 read with Section 61 of the Electricity Act, it may be observed that only the Regulatory Commission (MPERC) is empowered to determine the tariff for retail sale of electricity. The relevant provision of the Act is reproduced as under:

"61. Tariff Regulations - The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely: ~

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles.

62. Determination of tariff - (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for -

(a) supply of electricity by a generating company to a distribution license

(b) transmission of electricity;

(c) Wheeling of electricity;

(d) retail sale of electricity;

(2) The Appropriate Commission may required a license or a generating company to furnish Separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption

of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and purpose for which the supply is required.

7. From a careful reading of the aforesaid provisions, it is evident that as per the scheme of the Electricity Act (2003), 'Tariff for supply - of electricity in the State is determined by an independent regulatory body viz. Madhya Pradesh Electricity Regulatory Commission (MPERC). Since it is only the MPERC which is empowered to determine the tariff for retail sale of electricity, any decision to make any change thereafter to the tariff so determined can only be done by MPERC and not the Distribution Company. The petitioners have not approached the MPERC for determination of waiver of the Fixed Charges, Energy Charges and Tariff Monthly Minimum (TMM) during the lockdown period from 25.03.2020 to 17.05.2020 on account of financial difficulties, and therefore, the petitioners should ventilate their grievances before the MPERC for appropriate relief, if any, and this petition deserves to be dismissed on account of alternative remedy being available.

8. By exercising the power conferred under Section 61 of the Electricity Act, the MPERC notified the MPERC (Terms and Conditions for determination of Tariff for Supply and Wheeling of Electricity and Methods and Principles for Fixation of Charges) Regulations, 2015. From a careful reading of the provisions of the aforesaid Regulations it becomes evident that all the charges including fixed charges, tariff minimum charges, load factor-based concessions and power factor incentive / penalties are required to be determined by the MPERC. It is pertinent to note that Regulation 14 of the aforesaid Regulations of 2015 specifically provides that the Distribution Licensee cannot charge any tariff other than the tariff approved by the Regulatory Commission, failing which penal consequences shall be attracted. Further, a perusal of Regulation 39 read with Regulation 42 also makes it clear that determination of tariff for supply of electricity to consumers is the sole domain of MPERC and not of the Distribution Licensee. In view of the aforesaid, the State is not empowered to provide any relaxations to the petitioners other than approved by the MPERC.

9. In exercise of the power conferred by the Act and Regulations, every year the Commission (MPERC) issues a Tariff Order approving the various charges to be recovered from a consumer. The latest applicable Tariff Order 2019-20 has been effective from 17.08.2019.

10. Clause 1.25 of the aforesaid terms and conditions provide that in case of any dispute regarding interpretation of the tariff order and / or applicability of the tariff, the decision of the Commission shall be final binding. Clause 1.26 of the aforesaid terms and conditions provide that no change is permitted in tariff structure except with the MPERC. Further, Clause 1.28 under the same head of the Tariff Order specifically provides that fixed charges are payable irrespective of any energy is consumed or not. Fixed charges levied by the Distribution Company are on the basis of contract demand of consumer. Clause 1.29 under the same head of the Tariff Order stipulates that in case of any difficulty in giving

effect to any of the provisions of the order, the Commission may, by general or specific order, direct the licensee to undertake necessary action. Therefore, from the aforesaid provisions, it becomes amply clear that MPERC is the appropriate authority in determining any disputes with respect to applicability of tariff and is the competent authority to issue directions to the Distribution Licensee in this regard.

11. This Court in a judgment delivered in W.P. No. 938/2019 Brilliant Estates Limited, Indore v. M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd. & Others has observed that as per Clause 10. II. 12. 13. 8) 1.24 of Tariff Order for the year 2017-18, it is the exclusive jurisdiction of the MPERC to decide the applicability of tariff and in the event of any grievance by the petitioner, then, he can certainly approach the MPERC. This Court has dismissed the aforesaid petition filed by the consumer on the ground that the petitioner therein was serving an alternative before the MPERC.

12. It is also pertinent to note that a Petition bearing No. 43/2020 has been filed by the Association of All Industries, Mandideep before the MPERC seeking similar relief as sought by the petitioner, and the same is under consideration. It is pertinent to note that the terms and condition provided in the Regulations and the Tariff Order are statutory in nature and not the contractual. Accordingly, these are binding on the parties thereto in view of law laid down by the Hon'ble Apex Court in case of Hyderabad Vanaspati Limited v/s A.P State Electricity Board and Others reported in (1998) 4 SCC 470. Thus, no waiver of any charges can be granted ignoring the statutory provisions.

13. In the case of Shree Sidhballi Steels Limited v/s State of Uttar Pradesh & Others reported in (2011) 3 SCC 193, the Hon'ble Apex Court observed that the Distribution Licensee has no power to amend and / or modify the tariff determined by the Regulatory Commission and no relief claimed by the petitioner can be granted as alternative remedy is available.

14. In the considered opinion of this Court, the petitioner does have a remedy to approach the Madhya Pradesh Electricity Regulatory Commission, and therefore, the admission is declined with a liberty to approach the Commission.

Certified copy, as per rules.