

**Sub:** In the matter of petition filed under Clause 11.14, 11.17, 11.18 and 11.19 of the M.P. Electricity Supply Code, 2013 read with Regulation 3 sub-clause (I) read with Schedule 1 Clause 14 sub-clause (E) of the MP (Fees, Fines and Charges) Regulations, 2005 for removal of difficulties and for invoking extra-ordinary powers of the Commission;

**(P.No. 68/2020)**

**Order**

(Hearing through Video conferencing)

Date of order: **24.08.2021**

Association of All Industries, Mandideep :

**Petitioner**

V/s

- |       |  |   |                    |
|-------|--|---|--------------------|
| (i)   | Energy Dept. GoMP, Bhopal;   | : | <b>Respondents</b> |
| (ii)  | MP Madhya Kshetra Vidhyut Vitran Co. Ltd, Bhopal (Central Discom); |   |                    |
| (iii) | MP Paschim Kshetra Vidhyut Vitran Co. Ltd, Indore (West Discom) ;  |   |                    |
| (iv)  | MP Poorv Kshetra Vidhyut Vitran Co. Ltd, Jabalpur (East Discom) ;  |   |                    |
| (v)   | MP Power Management Co. Ltd., Jabalpur                             |   |                    |

Shri Alkesh Agarwal, Advocate appeared on behalf of the petitioner.

1. The petitioner has filed the subject petition under Clause 11.14, 11.17 , 11.18 and 11.19 of MP Electricity Supply Code 2013 for removal of difficulties and for invoking extra ordinary power of the Commission and has prayed as under -

*Declare that consumer providing IT/IT enabled services falls within definition of "Industries" for the purpose of Retail Supply Tariff Order for FY2019-20.*

2. During the hearing held on 19.01.2021, the Commission heard the petitioner's arguments on admission of the petition and was granted the time to file written submission on the limited issue of maintainability of the petition. The case was reserved for orders with regard to maintainability of the petition.
3. Subsequently, the petitioner has made additional written submission on limited issue on maintainability, whereby it, inter alia, submitted at para 3(i) with premise that the term "IT/ITES units" are an integral part of the term "Industry" finds substance in the fact that the generally accepted definition of the term "Industry" includes the Information Technology business and it would be rudimentary on the part of the Respondents or anyone else to claim otherwise. The petitioner, at para 3 (n) (i) , (ii) and (iii) has made following submission :

- i. *“That this Commission is authorised and entitled to determine, implement, alter, and propose tariff; which tariff safeguards the interest of the consumer and is just and reasonable.*
- ii. *That the Tariff must satisfy requirements and strictures of state of Madhya Pradesh, that the State of MP has already declared policy whereby IT/ITES services provider/units are considered as industry for the purposes of Industrial Disputes Act, Government policy. Thus, the question of IT industrial units not falling under the definition of the retail tariff policy does not arise.*
- iii. *That as the Commission already has authority to determine and amend tariff thus the logical corollary to that would be that the Commission also has authority to interpret tariff determined by it. That if the tribunal is authorised to interpret the tariff determined by it, thus it would be within its Commission’s sole jurisdiction to determine whether consumers having IT/ITES units fall within the definition of industry for the purpose of implantation.”*

**The Commission’s Observations:**

4. The Commission has perused the submission made by the petitioner on the limited issue of maintainability of the petition. The petitioner pleaded that as per Govt. of Madhya Pradesh declared policy, IT/ITES service providers/units are considered as industry and accordingly in the tariff order for FY 2019-20, the IT/ITES service/units should be covered under the classified category of industry, whereas in the tariff order such units are covered in the non-industrial category.
5. As regards tariff determination is concerned, power has been given to the Commission under Sections 61 and 62 of the Electricity Act 2003. Section 61 empowers the Commission to specify the terms and conditions for determination of tariff following some guiding principles elaborated under sub-sections (a) to (i) which do not include State Govt. policies and section 62(3) of the Electricity Act 2003, empowers the Commission to decide the consumer category. Section 62(3) reads as follows:

*“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 the purpose for which the supply is required.”*

It is evident from the above that power for deciding tariff category and its applicability for any class of consumer has been entrusted to the Commission by law.

6. Further, the Commission determines Retail Supply Tariff and issues Order every year in accordance with the provisions under sections 61 and 62 of the Electricity Act 2003, and the regulations made thereunder. At the time of determining tariff, the Commission seeks suggestions/comments from the stakeholders and holds public hearing.

Therefore, at the time of determining Retail Supply Tariff for FY 2019-20, the petitioner had an opportunity to represent before the Commission on the aforesaid issue. The tariff order for FY 2019-20 was issued by the Commission on August 8, 2019, and if the petitioner had any grievances against the tariff order, he was free to file a review petition within 60 days of issue of the order as per Commission's regulation MPERC (Conduct of Business) (Revision-I) Regulations, 2016. However, the petitioner did not approach the Commission within the stipulated time. Period and applicability of Retail Supply Tariff Order for FY 2019-20 is already over for which changes in categorization of IT/ITES services has been requested by the petitioner in this petition. The request of the petitioner is time barred and cannot be considered at this stage by the Commission. However the petitioner is at liberty to approach the Commission at a time when the process for determination of tariff for the next financial year i.e. FY 2022-23 starts for which the Commission shall issue public notice at an appropriate time. In view of the above, the subject petition is not found maintainable. Hence, dismissed and stands disposed of.

**(Shashi Bhushan Pathak)**  
**Member (Law)**

**(Mukul Dhariwal)**  
**Member**

**(S.P.S. Parihar)**  
**Chairman**