
**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of application under Section 86(1)(e) of the Electricity Act, 2003, Section 94(2) of the Electricity Act, 2003, Section 19 of the Electricity Act, 2003, MPERC (Conduct of Business) Regulations and read with Clause 7.25, 7.17 of Supply Code 2013 and Article 13 of the Agreement dated 10.5.2018 for HT Connection for 250 KVA and Agreement dated 13.11.2018 for HT connection for 950 KVA seeking directions to the Respondent No. 2 to discontinue the illegal and arbitrary levy of tariff charges applicable to HV 3.2 category upon the Petitioner and refund of excess payment made and for revocation of License of the MPPKVCL for non compliance of the tariff orders dated 31.3.2017 and dated 3.5.2018 respectively passed by the Hon'ble Commission and non compliance of the provisions of the Supply Code ,2013 and acting in breach of the Agreement.

ORDER

Date of Order: 26/09/2022

M/s. DMIC Pithampur Jal Prabhandhan Ltd, Indore : Petitioner

Versus

**M. P. Paschim Kshetra VidyutVitaran Co. Ltd.,
Indore (West Discom) : Respondent**

Shri Ayush Dev Bajpai, Advocate and Shri Sunil Kumar Pal, Executive Engineer appeared on behalf of the Petitioner.

Shri Prasanna Prasad, Advocate appeared on behalf of Respondent.

1. The Subject petition is filed by the petitioner in pursuance to order of Hon'ble High Court Indore bench dated 09.07.22 in Writ petition No. 11280 of 22 filed by it, whereby Hon'ble Court observed that as per clause 1.32 of Retail supply tariff order FY2022-23, it is exclusive jurisdiction of State Commission to decide the applicability of tariff and category. In the instant petition, following prayer is made by the petitioner: -

- i. To set aside the change in tariff category of the Petitioner and recall the additional demand raised by the respondent according to the changed tariff category of HV3.2 in the monthly bills issued to the petitioner.*
- ii. direct the Respondent to act in accordance with the Agreement and the applicable law.*
- iii. direct the Respondent to enhance the Load of 250 KVA to the existing HT Connection under Agreement dated 10.5.2018 to enable the Petitioner to comply with the growing demand.*
- iv. direct the Respondents to refund the excess amount paid by the*

- Petitioner under the Changed Tariff from March 2022 till date.*
- v. *revoke the License of the Respondents breaching and acting in defiance of the orders of the Commission and against the interest of public at large.*

Interim Relief

- vi. *stay the applicability of the changed Tariff i.e from HV 5.1 to HV 3.2 and direct the respondents to raise the bills under the original Tariff of HV 5.1 till the final disposal of the present petition*

2. The submission made by the petitioner in subject petition is summarized below :
- i. The Petitioner is subsidiary of MPIDC Bhopal, and undertaking of Govt of M.P.. It is responsible for the supply of water to the Industries in Pithampur, SEZ area, Smart Industrial Park and other utilities within the area. The Petitioner supplies water at no profit and loss rates. It is stated that water supply is an ambitious project of Govt of MP to bring more investment to state and to increase employment opportunities.
 - ii. The Petitioner for the purpose of treating the raw water, had availed HT connections at 33kV for 250kVA and 950kVA executing agreements dated 10.05.18 and 13.11.2018, respectively for supply of electricity for raw water pump house sat Village Simrol, Tehsil Mhow Dist Indore.
 - iii. It is stated in petition that the Respondent Discom, after satisfying itself had fixed the Tariff category for the Petitioner under HV 5.1 as per applicable Retail Supply Tariff Orders and accordingly two separate Agreements were executed.
 - iv. It is stated that according to clause **7.25** of the Supply Code 2013, the contracted tariff category of the consumer cannot be changed by the respondent DISCOM without prior sanction from the Commission, but respondent unilaterally and arbitrarily changed the tariff category of the applicant from HV 5.1 to HV 3.2 without granting an opportunity of hearing to the applicant.
 - v. It is stated that aforesaid agreements were executed by the respondent according to the provisions of **clause 7.17** of the MP Electricity Supply code, 2013 with the consumer for Supply of the Electricity under the respective category.
 - vi. The Respondents had been raising the respective monthly electricity bills according to the aforesaid tariff category of HV5.1 from the year 2018 to January 2022.
 - vii. Vide letter dated 13.01.2021, the Respondent had informed the petitioner that

there was some objection raised in regard to applicability of the Tariff Category in internal audit by Accountant General of MP. In response, petitioner has submitted their representations vide letters dated 20.01.21, 21.09.21, 04.03.22 and 26.04.22 stating all the details of status of petitioner.

- viii. It is stated that the Respondent Discom have, without granting any opportunity of hearing and without considering the representation of the Petitioner had changed the category of the Petitioner without following due process of law and raised a bill in revised category H.V 3.2 from March 2022.
- ix. It is stated that the Respondent Discom not only changed the tariff category on their own but also revised the bills in the changed category from 2018 i.e. retrospectively and had also raised arrears retrospectively from the year 2018 to 2022 and is still raising the bill with arrears,
- x. The Respondent discom has also informed the petitioner for disconnections if arrears are not paid.
- xi. The petitioner has also applied for additional load of 250 kVA on existing HT connection. However, Respondent Discom has rejected the application on pretext of the arrears.
- xii. Petitioner has submitted that due to above he was left with no other option but to approach to Hon'ble High Court for the arbitrariness shown by the Respondent Discom which is a government company against the Government owned company by not following the procedure and for threatening the Petitioner of disconnection.
- xiii. The Petitioner vide WP 11280/2022 had preferred a Writ against the disconnection. The Hon'ble High Court vide order dated 12.5.2022 had issued notice to the Respondents and had stayed the disconnection on payment of 50% of the bill amount and has disposed off the Petition with the direction to approach MPERC. Hence the petition is filed.

3. At the motion hearing held on 26/07/2022, after hearing the petitioner, the Commission admitted the petition and directed to issue notice to Respondent in the matter.

4. At the hearing held on 30.08.2022, both the parties concluded their arguments. As requested, three days' time was allowed to Respondent for filing written submission. The case

was then reserved for Order.

5. Respondent in its response has submitted that the petitioner is mainly raising two core issues amongst various grounds raised in the text of the petition inter alia that since there was an agreement between the petitioner and the respondent, therefore, change of category is bad in law and also, any such change cannot be done without prior permission of MPERC as it is changing the tariff. The Respondent has made following submission in the matter : -

“All these contentions are inaccurate on trite preposition of law, the answering Respondent craves leave to invite kind attention of this Hon’ble Court on clause no. 1.26 of the tariff order which provides for change in the tariff structure, it is submitted that the change in the category does not amount to change in the tariff structure. The contention of the petitioner is absolutely misconceived and based on inaccurate and incomplete reading of the tariff order and the statutory provisions governing the field. For ready reference, clause no. 1.26 is reproduced herein below:-

“1.26 No change in the tariff or the tariff structure including minimum charges for any category of consumer are permitted except with prior written permission of the Commission. Any order without any written permission of the Commission will be treated as null and void and also shall be liable for action under relevant provisions of the Electricity Act, 2003.”

Thus, a bare reading of the proviso as quoted above would demonstrate that the stand taken by the answering respondent does not in any way violate the tariff order and the contentions raised by the petitioner are absolutely devoid of substance.

The answering Respondent also craves leave to invite kind attention of this Hon’ble Court on clause no. 1.30 of the tariff order which read as under:-

“1.30 All conditions prescribed herein shall be applicable notwithstanding if any contrary provisions, exist in the agreement entered into by the consumer with the licensee”.

Thus, a bare reading of the said statutory provisions would indicate that even if there was something in agreement which was contrary to correct interpretation of the said tariff order, the tariff order would prevail and in these circumstances, the petitioner can not take shelter of the agreement, if the same was contrary to the correct interpretation and effect of the tariff order and therefore, also the stand of the answering respondent is perfectly justified on trite preposition of law.

6. The Respondent further submitted that the demand for electricity charges raised against the petitioner is not barred by any statutory provision. In the matter, Respondent has made

following submission:

In the text of petition, the petitioner has raised heavy reliance on Section 56(2) of Electricity Act 2003 , however, the said statutory provision has been analysed by various judicial pronouncement and the demand raised by various electricity supply company against the electricity consumers even after a stipulated period have been upheld and as in the present case also, on scrutiny of the record, the audit wing / cell has found that the petitioner has been availing electricity supply under a wrong category and therefore, the demand has been raised which is perfectly within the parameters as being laid down by various judicial pronouncement and such judicial pronouncement has been referred and relied upon in the later part of the reply and thus, the present petition is devoid of merit and deserves to be dismissed.”

7. Subsequently, petitioner has filed rejoinder and reiterated the submission as was made in petition.

Commission’s Observations and Findings:

8. The petitioner has preferred this petition in pursuance to order of Hon’ble High Court Indore bench dated 09.07.22 in Writ petition No. 11280 of 22 filed by it, whereby Hon’ble Court observed that as per clause 1.32 of Retail supply tariff order FY2022-23, it is exclusive jurisdiction of State Commission to decide the applicability of tariff and category.

9. The Commission perused the submission made by the petitioner and observed that the petitioner is responsible for supply of water to the Industries in Pithampur, SEZ area, smart Industrial Park and other utilities within the area. The Petitioner has been granted HT connections for the supply of electricity for raw water pump house under HV5.1/ HV 5 tariff category which was subsequently, changed to HV3.2by respondent in pursuance to audit objection.

10. The Commission observed that dispute between the petitioner and Respondent pertains to applicability of tariff category for petitioner’s HT connections. The issue before the Commission is to interpret whether tariff category HV 5.1 /HV5 (Irrigation, Public Water Works) or tariff category HV 3.2 (Non -Industrial) of Retail supply tariff orders would be applicable for petitioner’s HT connections.

11. The Commission admitted the petition in accordance with clause 1.32 of Retail supply tariff order FY2022-23, which provides that in case any dispute arises regarding interpretation of this tariff order and/or applicability of this tariff, the decision of the Commission shall be

final and binding.

12. As per the Petitioner's submission, the dispute arose due to demand notice issued by the Respondent retrospectively under tariff category HV3.2 (Non –Industrial) subsequent to objection raised in internal audit by the Accountant General of Madhya Pradesh owing to the fact that consumer is utilising its HT connections in supplying water to industries for industrial purpose which does not fall under applicability of HV5/5.1 which is meant for "Irrigation, and Public Water Works" and therefore petitioner should be billed under HV3.2 (Non – industrial) instead of HV5.1/HV5 of Retail supply tariff orders. The Commission has defined following applicability under tariff category HV5.1/HV5 for "Irrigation, Public Water Works", of Retail Supply Tariff Order for FY2022-23.

Applicability of HV 5 (Irrigation, Public Water Works)

This Tariff Category shall apply to supply of power to lift irrigation schemes, group irrigation, Public Utility Water Supply schemes, sewage treatment plants /sewage pumping plants and for energy used in lighting pump house. This Tariff category shall also applicable to River link projects implemented by government or its agency provided that the supply of power is utilized for purposes covered under this category only.

Note: Private water supply scheme, water supply schemes run by institutions for their own use/employees/townships etc. will not fall in this category but billed under the appropriate tariff category to which such institution belongs. In case water supply is being used for two or more different purposes then the highest tariff shall be applicable.

13. In its submission, the petitioner has contended that the Respondent has changed the petitioner's tariff category from HV5.1 to HV3.2 and issued demand notice retrospectively subsequent to recommendation of internal audit by the Accountant General of Madhya Pradesh and without granting any opportunity of hearing to petitioner and contrary to provisions of clause 7.25 of Supply Code 2013 which provides that "any amendment for the purpose of change of name, shifting of premises, change in connected load or change of tariff category shall be done if both the consumer and the licensee agree to these amendments and the same shall be incorporated in the agreement by execution of a supplementary agreement. The supplementary agreement has no agreement period".

14. It is contended by the Respondent that any agreement which was executed contrary to the terms and conditions of the tariff schedule will not be applicable considering clause 1.30 of

general terms and conditions of tariff order. The prevailing provisions under clause 1.30 of general terms and conditions of Retail supply tariff order for FY22-23 for High Tension Tariff provides that all conditions prescribed herein shall be applicable notwithstanding if any contrary provisions, exist in the agreement entered into by the consumer with the licensee.

15. The Respondent in his submissions has rebutted the contentions of the petitioner by stating that in the text of petition, the petitioner has raised reliance on Section 56(2) of Electricity Act 2003, however, the said statutory provision has been analysed by various judicial pronouncements and the demand raised by various electricity supply company against the electricity consumers even after a stipulated period have been upheld and as in the present case also, on scrutiny of the record, the audit has found that the petitioner has been availing electricity supply under a wrong category and therefore, the demand has been raised which is within the parameters as being laid down by various judicial pronouncement and such judicial pronouncement has been referred and relied upon in the later part of the reply and thus, the present petition is devoid of merit and deserves to be dismissed.

16. In this petition, the Commission looked into the issues related to applicability of the tariff on the connections of the Petitioner and petitioner's contention that Respondent cannot raise a recovery by change in category, retrospectively. As per the submissions made by the Petitioner and the Respondent, the Commission observed that the petitioner is primarily responsible for the supply of water to the Industries in Pithampur, SEZ area, Smart Industrial Park and other utilities within the area which is mixed use of industrial as well as non-industrial in nature. The very purpose of above water supply is industrial/Non-industrial uses which is contrary to applicability provided under HV5.1/HV 5 meant for irrigation and public water works and public utility water supply purpose as defined below:-

“This Tariff Category shall apply to supply of power to lift irrigation schemes, group irrigation, Public Utility Water Supply schemes, sewage treatment plants /sewage pumping plants and for energy used in lighting pump house. This Tariff category shall also applicable to River link projects implemented by government or its agency provided that the supply of power is utilized for purposes covered under this category only.

Note: Private water supply scheme, water supply schemes run by institutions for their own use/employees/townships etc. will not fall in this category but billed under the appropriate tariff category to which such institution belongs. In case water supply is being used for two or more different purposes then the highest

tariff shall be applicable.”

From the above, it is clear that water supply arrangements for industries and other utilities in SEZ/Smart Industrial Park areas are not covered under HV 5.1 / HV 5 category which is applicable only for some specific purposes. It is pertinent to mention here that the Commission, while specifying above applicability, has clearly defined in aforesaid “**Note**” that water supply schemes run by institutions for their own use/employees/townships etc. will not fall under HV 5 and shall be billed under appropriate tariff category to which such institution belongs and in case water supply is being used for two or more different purposes then the highest tariff shall be applicable.

17. Further, in regard to petitioner’s contention that Respondent cannot raise a recovery by change in category, retrospectively, the Commission has examined the statutory provisions provided under Section 56 (2) of the Electricity Act 2003 and observed that demand raised is well founded and not hit by section 56(2) of the Electricity Act 2003 in light of the following landmark judgement of Hon’ble Supreme Court of India.

Assistant Engineer, Ajmer Vidyut Vitran Co. Ltd. V/s. Rahmatulla Khan (2020) 4 SCC650

The relevant portion is at paragraph no. 9.1-9.2 and the same is reproduced as under:-

- 9.1.** *Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not, however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.*
- 9.2.** *As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.*

In Mahabir Kishore and Ors v. State of Madhya Pradesh. [(1989) 4 SCC 1], this Court held that:

- “22.** *Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake becomes known to the party only when a court makes a declaration as to the invalidity of the law. Though a party*

could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law.”

18. In light of the above, the Commission observed that tariff category HV 5.1/HV 5 (Irrigation, Public Water Works) shall not be applicable in this case and billing should be done under HV 3.2(Non-industrial) category as per the Retail Supply Tariff Orders. With these findings the Petition is dismissed and stands disposed of.

(Gopal Srivastava)
Member (Law)

(Mukul Dhariwal)
Member

(S. P. S. Parihar)
Chairman