

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7206 OF 2018

**Maharashtra State Electricity
Distribution Company Limited**
Through its Superintending Engineer,
Admn., Building 1st Floor,
Tarabhai Park, Kolhapur-416 003.

..Petitioners

V/s.

M/.Pranavditya Spinning Mills Ltd.
Village Alte, PB. No.2,
Hatkangale, Kolhapur-416 109

..Respondent

Mr.Rahul Sinha i/b DSK Legal for the Petitioners.

Mr.Anil D'Souza for the Respondent.

CORAM : C.V. BHADANG, J.

JUDGMENT RESERVED ON : 09/01/2020

JUDGMENT PRONOUNCED ON : 17/03/2020

JUDGMENT :

1. Taken up for final hearing by consent of parties.
2. The challenge in this petition is to the order dated 25th January 2018 passed by the Consumer Grievance Redressal Forum ('CGRF' for short) directing the petitioner to pay interest at the rate

of 7% per annum on Rs.52,51,835/-, by adjusting the same in future Electricity Bills. The said amount represents the difference in the Tariff. It is undisputed that the principle amount of Rs.52,51,835/- has already been adjusted against the electricity bill for the month of September 2017. The dispute is only as regards the payment of interest.

3. The facts giving rise to the dispute are as under:-

On 31st January 1992 an electricity connection was released in favour of the respondent for industrial purpose under Tariff HT-1-C, for a contract demand of 1950 KVA with connected load of 2147 KW. On 06th October 2012 the respondent applied for change of the Tariff from continuous to non-continuous category i.e. from HT-1-C to HT-1-N category. The Competent Authority of the petitioner vide letter dated 25th March 2013 allowed the said change. The change of the category was effected from April 2013.

4. On 19th August 2016 the Maharashtra Electricity Regulatory Commission ('MERC' for short) vide order passed in Review Petition No.94 of 2015 held that applications for change of such category, shall be dealt with as per the provisions of the MERC

(Standard of Performance) Regulations, 2005 ('SoP Regulations' for short) and not as per the orders earlier passed.

5. On 20th September 2016 the respondent claimed the refund of the differential amount of the charges. As the same was not favorably considered, the respondent approached the Internal Grievance Redressal Cell ('IGRC' for short). The IGRC vide order dated 03rd April 2017 rejected the claim. Feeling aggrieved the respondent approached the CGRF. It appears that during the pendency of the same the petitioner refunded the principle amount of the difference by adjusting the same in the electricity bill for the month of September 2017. It appears that, in such circumstances, the claim before the CGRF was amended for the purpose of claiming interest, which has been allowed by the impugned order as aforesaid. Hence, this petition.

6. I have heard the learned counsel for the parties. Perused record.

7. The learned counsel for the petitioner, has made the following submissions:-

(i) That the CGRF erred in placing reliance on the order dated 19th September 2016 passed in case No.72 of 2015 by MERC. It is submitted that the MERC failed to see that the said case was filed for implementation of the order dated 02nd December 2014, passed by the Electricity Ombudsman ('EO' for short), in which the EO had not directed payment of any interest.

(ii) It is submitted that the CGRF failed to appreciate that vide order dated 19th September 2016 the MERC had allowed interest to the consumers from 02nd December 2014 i.e. from the order passed by the EO in representation No.66 to 100 of 2014.

(iii) That the CGRF failed to see that the MERC vide its order dated 19th August 2016 in Review Petition No.94 of 2015 had not directed any payment of interest.

(iv) It is submitted that vide order dated 19th August 2016 in Review Petition No.94 of 2015, the MERC has finally decided the issue of change in Tariff category

from continuous to non-continuous, directing that such applications shall be dealt with as per the provisions of SoP Regulations.

8. On behalf of the petitioner reliance is placed on the decision of this Court in the case of ***Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) V/s. M/s.Ruhatiya Spinners Pvt. Ltd. and Another¹***. It is submitted that in similar circumstances this Court had disallowed interest on such differential amount of the tariff.

9. On the contrary the learned counsel for the respondent has supported the impugned order. It is submitted that by order dated 19th September 2016 in case No.72 of 2015 the MERC had found that the petitioner instead of implementing the order dated 02nd December 2014 passed by the EO had challenged the same before this Court in Writ Petition No.4697 of 2015 which was withdrawn in view of the pendency of the Review Petition No.94 of 2015 before the MERC. It is submitted that since thereafter, the MERC has decided the Review Petition on 19th August 2016. It is submitted that the MERC has directed the petitioner to comply with

1 Writ Petition No.5437 of 2013 decided on 10th September 2014 (Nagpur Bench)

the order of the EO within a month including payment of the applicable interest for the delay. It is submitted that the CGRF is justified in placing reliance on the order dated 19th September 2016 passed in case No.72 of 2015, as well as, on Regulation No.15.6.3 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 ('2005 Regulations' for short). It is submitted that the decision in the case of *M/s. Ruhatiya Spinners Pvt. Ltd (Supra)* is distinguishable as in that case it was found that the interest could not be granted under Section 62(6) of the Electricity Act 2003. It is pointed out that in the present case the interest is not granted under the said provision. It is submitted that in a given case interest can also be granted on equitable grounds and reasons. On behalf of the respondents reliance is placed on the decision of the Appellate Tribunal for electricity in case of *Ispat Industries Limited V/s. Maharashtra Electricity Regulatory Commission & Anr.*² and the decision of this Court in the case of *Maharashtra State Electricity Distribution Company Limited V/s. Shilpa Steel & Power Ltd and Ors.*³

2 Appeal No.70 and 110 of 2008 decided on 05th August 2010.

3 Writ Petition No.3997 of 2016 decided on 18th July 2017. (Nagpur Bench)

10. It is submitted that as per the order passed by MERC in case No.12 of 2017 on 03rd January 2018, the petitioner was under an obligation to withdraw all such challenges raised to the orders regarding change of tariff. It is submitted that thus the present challenge at the instance of the petitioner is not maintainable both on principles as well as on merits. Reliance is placed on the decision of the Supreme Court, in the case of ***Shalini Shyam Shetty V/s. Rajendra Shankar Patil***⁴, in order to submit that no case for interference in the supervisory jurisdiction of this Court is made out.

11. I have considered the circumstances and the submissions made.

12. At the outset I propose to deal with the contention on behalf of the respondent that the petitioner is under an obligation to withdraw this petition in view of the order dated 03rd January 2018 passed by the MERC in case No.12 of 2017. The contention in my considered view cannot be accepted. The direction of the MERC was relating to the challenge where the dispute was as to from which date the change of tariff has to be effected. It is now finally settled that the change of tariff has to be in accordance with the

4 (2010) 8 SCC 329

Regulation No.9.2 of the SoP Regulations 2005 i.e. before the expiry of the second billing cycle after the date of the receipt of the application. The present petition does not involve any such dispute. The issue is only as regard the payment of interest. Thus the contention raised on behalf of the respondent cannot be accepted that the petitioner was under obligation to withdraw the petition. I would now propose to consider the challenge on merits.

13. In the previous tariff order of the year 2008 the MERC had stipulated that the choice for change of the category shall be exercised by the consumer “within 1st month after issuance of the tariff order, for the relevant tariff period”. Although according to the petitioner the tariff order of the year 2012 (which is applicable in the present case) did not make any similar stipulation, the MERC was of the opinion that all previous clarifications would apply. However, it is undisputed that the MERC has now clarified that the change of the tariff category shall be effected in accordance with Regulation No.9.2 of the SoP Regulations which reads thus :-

“9.2 Any change of name or change of tariff category shall not effected by the distribution licensee before the expiry of the second billing cycle after the date of the receipt of the application.”

14. In the present case, the petitioner sent the application of the respondent for change of tariff category to its Head Office at Mumbai and the Competent Authority vide its letter dated 25th March 2013 has allowed the change of the category as prayed by the respondent. It is also not in dispute that the change of category is effected from April 2013. It is also not in dispute that the principle amount of the difference in the tariff, has been adjusted in the electricity bill for the month of September 2017. Thus, the issue is only about the payment of interest.

15. The impugned order passed by the CGRF is based on the order dated 19th September 2016 passed by the MERC in case No.72 of 2015 in which the MERC has held thus :-

Commission's analysis and Ruling.

“The petitioners applied for a change in the tariff to be applicable for Non-continuous supply in September-October 2012. MSEDCL effected the change but only several months later, after approval by its Head Office. The dispute before EO Mumbai was regarding the date of applicability of the new Tariff category. In this order dated 2nd December 2014. The E.O. directed MSEDCL to change the tariff category of the appellants from continuous (HT-1-C) to Non-continuous (HT-1-N) with effect from December 2012 and refund the differential

amount collected from the Appellants by adjusting in their bills within a period of 2 months from the receipt of this order.”

Instead of implementing the EO’s order within the stipulated time. MSEDCL challenged it in WP [No.4967@2015](#) in the Bombay High Court. The High Court disposed of the matter on 07th September 2015 citing the pendency of MSEDCL’s Review Petition in Case No.94 of 2015 before the Commission, with liberty to approach it afresh thereafter. The Commission has since issued its Order in Case 94 of 2015 on 19th August 2016.

The Commission directs MSEDCL to comply with the E.O. Mumbai’s Order within a month including payment of applicable interest for the delay.

(emphasis supplied)

16. The CGRF has also relied upon Regulation No.15.6 of the 2005 Regulations, which reads thus :-

“15.6 Advance Payment

15.6.1 The Distribution Licensee shall provide consumers the facility to make advance payment of charges for electricity supplied.

15.6.2 On payment of the advance amount in accordance with Regulation 15.6.1 above, the Distribution License shall issue a receipt to the consumer for the amount held as advance.

15.6.3 The Distribution Licensee shall pay interest on the amount deposited by a consumer at a rate equivalent to the bank rate of the Reserve Bank of India.” (Emphasis Supplied)

17. The contention on behalf of the petitioner is that the CGRF was not justified in placing reliance on the order passed by the MERC in case No.72 of 2015. The contention in my considered view cannot be accepted. It is necessary to note that the EO had passed an order on 02nd December 2014 directing the petitioner as under:-

“Change the tariff category of the Appellants from Continuous (HT-1-C) to Non-continuous (HT-1-N) with effect from December 2012 and refund the differential amount collected from the Appellants by adjusting in their bills within the period of two months from the receipt of this order.”

18. *M/s.Ganesh Foundry Pvt. Ltd. & Others* (the petitioners before the MERC) had approached the MERC in case No.72 of 2015 for implementation of the aforesaid order passed by the EO and in that application the MERC not only directed the petitioner to adjust the differential amount collected in the subsequent bills, but also directed the petitioner to do so including payment of applicable

interest for the delay. The contention is that the EO in his order had not directed payment of interest. The contention in my considered view cannot be accepted for more reasons than one. The present petition does not challenge the order dated 19th September 2016 passed by the MERC in case No.72 of 2015. It is not even the case made out that there was any such challenge raised to the order of the MERC at any time. Thus it is not possible to accept the contention in this petition, that the MERC was in error in directing payment of interest although there was no such order passed by the EO. Secondly, the CGRF has also placed reliance on Regulation No.15.6.3 as aforesaid by holding that such difference of the tariff amount would amount to advance payment.

19. In the case of *Ispat Industries Limited (Supra)* before the Appellate Tribunal for Electricity, the question was about payment of interest on the “regulatory liability charges” collected by the distribution company, from bulk consumers, between March 2004 to October 2006, by virtue of an order dated 10th March 2004. The said charges were discontinued from 01st October 2006. It appears that the “regulatory liability charges” were for the purpose of enabling the petitioner MSEDCL to tide over the financial crisis faced by it due to its heavy distribution losses and were treated as

loan given by the subsidizing consumers. It is in these circumstances, that the Appellate Tribunal held that the amount would carry interest, when it comes to refunding the amount by the petitioner, to such bulk consumers.

20. This Court in the case of *Shilpa Steel & Power Limited & Ors. (Supra)* has held that if the generating company recovers an excess amount from the consumers it will be repayable along with interest equivalent to the bank rate (see paragraph 10 of the judgment) which would be clearly applicable in this case. That apart no exception can be taken to the reliance placed by the CGRF on Regulation No.15.6.3 of the 2005 Regulations in treating such arrears by way of an advance payment in which the distribution licensee is required to pay interest on the amount deposited by consumer at a rate equivalent to the bank rate of Reserve Bank of India.

21. On behalf of the petitioner strong reliance is placed on the decision of this Court in the case of *M/s.Ruhatiya Spinners Pvt. Ltd. (Supra)* However, a perusal of paragraph 7 in which this Court has dealt with Section 62(6) of the Electricity Act, would show that in that case it was not disputed that no such price or charge

exceeding the tariff, determined under Section 62 was sought to be recovered. It was in the wake of such an undisputed position that this Court found that the award of interest was not in accordance with Section 62(6) of the Electricity Act.

22. In my considered view the interest can be awarded either on the basis of a specific statutory, enabling provision and in a given case also on equitable grounds. In the present case the order passed by the CGRF is based on the order passed by the MERC on 19th September 2016 in case No.72 of 2015 (which is not shown to be challenged by the petitioner) and Regulation 15.6.3 of the 2005 Regulations.

23. I find that the view taken by the CGRF is a plausible view and the order does not suffer from any infirmity, so as to require interference, in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The petition is without any merit and is accordingly dismissed. Rule is discharged, with no order as to costs.

C.V. BHADANG, J.