

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

WRIT PETITION NO. 8712 OF 2018

Maharashtra State Electricity
Distribution Co. Ltd.

..Petitioner

V/s.

Dr.Shri.Girsih Dadasaheb Dadwad & Anr.

..Respondents

Mr.Nirav Shah i/b Little & Co. for the Petitioner.

Mr.Prasad P. Kulkarni for Respondent No.1.

CORAM : C.V. BHADANG, J.

ORDER RESERVED ON : 20th JANUARY 2020

ORDER PRONOUNCED ON : 10th FEBRUARY 2020

P.C.

1. The challenge in this petition is to the order date 2nd February 2018 passed by the Consumer Grievance Redressal Forum ('CGRF' for short) in Application No.29 of 2017-18.

2. The brief facts necessary for the disposal of the petition may be stated thus:-

In the year 2003 the first respondent was sanctioned a contract demand of 80 KV for his Sun Scan Center (Hospital) under LT-II (C) category which is a commercial category of consumers. It

appears that a new tariff category was introduced as LT-X from the year 2012, which was further bifurcated as LT-X(A) and LT-X(B) from the year 2015.

3. On 07th July 2016 the respondent No.1 applied for change of category as LT-X(B) which was since been changed, from the date of application.

4. On 19 December 2017 the first respondent raised a grievance before the Internal Grievance Redressal Cell (IGRC for short) being representation no 143 of 2017. It was contended that although the tariff category is changed from the date of application by the first respondent the petitioner is liable to pay the difference in the tariff from the year 2012. It was pointed out that such difference has been paid to two consumers namely Dr Vinchurkar and Mercury hospital.

5. On behalf of the petitioner it was contended that the tariff category has been changed as required by the first respondent. However in so far as the difference is concerned there are oral instructions to pay such difference from the date of the application.

6. The IGRC by an order dated 9th October 2017 refused to grant the difference from the year 2012 and granted it from the date of the application. Feeling aggrieved the first respondent approached the CGRF. The CGRF by the impugned order has directed the petitioner to apply LT-X category from August 2012 to May 2015 and LT-X (B) category from June 2015 to July 2016 and to refund the excess amount collected from August 2012 to July 2016 along with interest at the bank rate under section 62(6) of the Electricity Act 2003. Feeling aggrieved the petitioner is before this court.

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

It is submitted by the learned counsel for the petitioner that the MERC tariff order no 19 of 2012 created a separate 'Public service', tariff category where in the services provided by the Diagnostic Center was not included and therefore the question of giving retrospective effect of re-categorization of tariff does not arise. It is submitted that the order dated 3 November 2016 passed by the MERC was prospective in nature and the same has already been given effect to from the date of the application i.e. dated 7 July 2016. It is submitted that the CGRF misconstrued Circular No.175 dated 5 September 2012, holding that the petitioner should change

the tariff automatically. It is submitted that as per circular no 175 it was necessary for the consumer to have applied for the change of tariff. It is submitted that the tariff relating to hospitals was classified by the MYT orders in case no 19 of 2012 from 1 August 2012 and vide case no 121 of 2014 the said tariff was further bifurcated as LT- X (A) for government educational institutions and hospitals and LT-X (B) others from 1 June 2015. it is submitted that therefore retrospective effect if any can be given to private hospitals only from 2015. It is submitted that the CGRF failed to see that the refund granted to some of the consumers from 2012 fell under a different category. It is submitted that the application was also barred by limitation under the Electricity Act and Regulation no 6.6 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 ('Regulations' for short).

8. The learned counsel for the respondent has supported the impugned order. It is submitted that a separate category for consumers in the 'public service' category was created as LT-X in the year 2012. It is submitted that notwithstanding the further bifurcation in the year 2015 as LT-X (A) and LT-X (B) the fact remains that the respondent was entitled to be charged as a public

service consumer from the year 2012. It is submitted that the petitioner was required to give effect to the order passed by the MERC and its internal circulars and this has nothing to do and cannot be made dependent on the consumer applying for the change of such category. It is submitted that such change has to be automatic. It is submitted that a consumer does not have access to the internal circulars of the petitioner and in the absence of knowledge of such circulars cannot be made to suffer in paying the charges for the category for which the consumer cannot be charged.

9. I have considered the rival circumstances and the submissions made. It is undisputed that in the year 2003 the petitioner was granted a contract demand of 80 KV for his Sun scan Center which is a diagnostic Center. That was granted under the LT-II(C) category which is commercial category of consumers. The MERC by an order dated 16 August 2012 in Case no 19 of 2012 created a separate Tariff category for 'Public services', designated as LT-X. The tariff was intended to apply to hospitals, dispensaries, primary health centers, pathological laboratories etc. On the basis of the said order the petitioner issued Commercial Circular No.175 on 5 September 2012. Clause 4 of the 'action plan' of the said circular reads as under:-

“4. The field officers are directed to ensure that where ever the tariff category is redefined or newly created by the Commission, the existing/prospective consumers should be properly categorized by actual field inspection immediately and the data to be immediately updated in the IT data base.”

As per MYT order passed by the MERC in case no 121 of 2014 the public service category was further bifurcated as LT-X (A) for Government Educational Institutions and hospitals and LT-X(B) others. This was applicable from 1June 2015.

10. There is yet another order passed by the MERC on 3 November 2016 in case no 48 of 2016 where under in the public services category LT-X (B) amongst others health care facilities such as hospitals, dispensaries, clinics, primary health centers, pathological laboratories and diagnostic center was specifically included.

11. It is a matter of record that the tariff category of the first respondent has been changed to LT-X (B) category from the date of the application. Be that as it may the question in this petition is whether the first respondent is entitled to difference in the tariff

from the date of the application or from 1 August 2012. The IGRC had granted the change in tariff from the date of the application. By virtue of an amendment the petitioner now contends that the public service category was bifurcated from 2015 and therefore the petitioner is entitled to the difference only from 2015. The CGRF has granted the difference from 1 August 2012. The contention of the petitioner in my considered view cannot be accepted. As noticed earlier the public service category was created in the year 2012. There is only further bifurcation of the public service category in the year 2015 in LT-X (A) and LT-X(B). The petitioner had initially taken a stand that the consumer is entitled to the change and the consequent difference only from the date on which he applies for the change of the category. As noticed earlier by virtue of an amendment to the petition it is now contended that the first respondent is entitled to the difference from the year 2015 when there was further bifurcation. If the petitioner is entitled to be charged in the public service category there is no reason why it should not be granted from the year 2012 as has been held by the CGRF.

12. It is contended on behalf of the petitioner that the petitioner is the largest public utility in the state and has lakhs of

consumers. The contention is that in such circumstances it is not expected of the petitioner to effect the change of category on its own. It is contended that the consumer on the basis of the change in the category should apply and the change can only be effected from the date of such application. On the contrary it is contended on behalf of the first respondent that the consumer has no means to know the internal circulars of the petitioner and it is for the petitioner to effect the change and extend the benefit of such change in the tariff category on its own.

13. I find that the contention on behalf of the first respondent is acceptable. This is because clause 4 of the 'action plan' of the circular no 175 as reproduced above would indicate that it was the responsibility cast on the field officers of the petitioner to ensure that whenever the tariff category is redefined or newly created by the commission the existing/ prospective consumer is properly categorized by actual field inspection and the data is updated in the system. Thus, the contention that the change can only be effected from the date of the application cannot be accepted.

14. This takes me to the issue of limitation. For this purpose reliance is placed on regulation no 6.6 of the Regulations which reads thus:-

“6.6 The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.”

15. In this regard it is also necessary to note regulation No.6.7(b) as which reads as under:-

“6.7 The Forum shall not entertain a Grievance :

(a)

(b) Unless the consumer is aggrieved on account of his Grievance being not redressed by the IGR Cell within the period set out in these Regulations.”

16. It can thus clearly be seen that a party has to first approach the IGRC and there after CGRE. No provision has been brought to my notice providing for limitation for approaching IGRC. Further once it is held that the petitioner was required to give effect to the change of the tariff category effected by the MERC on its own, it is not possible, at least in this case, to accept that the application and the claim for refund was barred by limitation.

17. I have carefully gone through the order passed by CGRF which consists of expert members in the field. I do not find that the order suffers from any infirmity so as to require interference in the exercise of supervisory jurisdiction of this court.

18. The petition is without any merit and it is accordingly dismissed with no order as to costs.

19. The amount deposited before this Court by the petitioner along with interest, if any, shall be paid to the respondent No.1, after a period of six weeks from today.

C.V. BHADANG, J.

Nilam
Kamble

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by Nilam Kamble
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