

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI**

(APPELLATE JURISDICTION)

**APPEAL NO.256 OF 2021&
IA NO. 885 OF 2021**

Dated: 24.02.2022

**Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

M/S MAHINDRA AND MAHINDRA LTD.

Regional Distribution Centre,
Plot No. DTA 004 to 009, 10 & 004-11
Mahindra World City,
Tilawas, Jaipur,
Rajasthan – 302037

.... Appellant(s)

VERSUS

1. JAIPUR VIDYUT VITRAN NIGAM LTD

Vidyut Bhawan, Jyoti Nagar,
Jaipur – 302005,
Rajasthan

2. RAJASTHAN ELECTRICITY REGULATORY COMMISSION

Through its Secretary
VidhyutViniyamak Bhawan, Sahakar Marg,
Near State Motor Garage, Jaipur,
Rajasthan 301001

... Respondents

Counsel for the Appellant (s) : Mr.Anand K. Ganesan
Mr. Ashwin Ramanathan

Counsel for the Respondent (s) : None

J U D G M E N T(Oral)

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

2. The appellant is a consumer which had a contract for supply of electricity by the first respondent (distribution licensee) describing it as a consumer falling under “*large industrial consumer category*”. It appears the distribution licensee unilaterally converted the appellant categorizing it as “*non-domestic (commercial) category*” on 02.04.2019 raising bills in that light. The appellant contending that it continued to fall under the *large industrial consumer category*, the re-categorization being improper and unfounded, approached the State Commission by Petition no. RERC-1598/20. The said petition was not entertained by the respondent/ Rajasthan Electricity Regulatory Commission (“RERC”) by Order dated 23.04.2020 observing, *inter alia*, that it did not have the jurisdiction to adjudicate on such a dispute, it being a consumer dispute which required to be agitated before the Consumer Grievance Redressal Forum under Section 42(5) & (6) of the Electricity Act, 2003.

3. The above order is under challenge by the present appeal. The first respondent (licensee) had filed reply with averments on the merits of the case of the appellant with regard to its claim to have continued as large industrial consumer.

4. On the matter being called out, there is no appearance on behalf of any of the respondents.

5. Having heard the learned counsel for the appellant, we are of the view that the appeal must succeed. In this context, we only need to extract relevant observations in two judgments of this Tribunal, i.e. (a) *Madhya Gujarat Vij Company Limited v. Yash Co-operative Group Housing Society Ltd.*, Appeal No. 311 of 2013 dated 27.05.2014 and (b) *Paschim Gujarat Vij Company Limited v. Gokul Agro Resources Ltd.*, Appeal No. 264 of 2016 dated 07.02.2017.

6. In *Madhya Gujarat Vij Company Limited* (supra), this tribunal had observed as under:

“12.1 The State Commission has no jurisdiction to entertain the individual consumer disputes under the provisions of Electricity Act, 2003. As observed by the Hon’ble Supreme Court in Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd. (2007) 8 SCC 381 and in M/s H.P. State Electricity Board v. M/s Gujarat Ambuja Cements Ltd. and others, in Civil Appeal No. 2005 of 2011, vide judgment, dated 22.2.2011, the State Commission, being State Electricity Regulator, is under statutory obligation to ensure that any particular category of consumers has been rightly considered under the approved tariff category to which it belongs and is charged the tariff approved by the State Commission for the said category because the State Commission is under statutory duty or obligation to ensure the complete and full compliance of its tariff order in letter and spirit by the distribution utility and to direct the distribution licensee to comply with the tariff order by adhering to consumer categories as approved under the tariff order and recover tariff as approved for that category. Thus, the adjudication of consumer disputes arising out of classification and reclassification of consumer categories is quite different

and distinct from ensuring compliance of the tariff order in letter and spirit. The State Commission, being State Electricity Regulator, is fully competent and empowered to look into the fact that the particular class of consumers or category of consumers is not over-charged under any so called new nomenclature or by making quite new categories without the approval of the State Commission, otherwise, the provision of Electricity Act, 2003, State Commission's Regulations, Supply Code and National Tariff Policy, would be put to misuse by some errant distribution licensees."

7. In *Paschim Gujarat Vij Company Limited* (supra), this tribunal held thus:

"13. The second issue is regarding the recovery of 11.11% charges in addition to monthly energy bill. It is linked to the issue of merger of two connections. It was submitted before the State Commission that due to non-merger of two connections, the Appellant was incurring loss equivalent to 11.11% units consumption in individual connection. It is pertinent to note that Respondent No.1 has filed the petition also under Section 62(6) of the said Act. Section 62 relates to determination of tariff by the Appropriate Commission. Section 62(6) says that if any licensee or a generating company recovers a price or charge exceeding the tariff determined under Section 62, the excess amount shall be recoverable by the person who has paid such amount. Thus, the licensees can charge the tariff approved and determined by the Appropriate Commission. Whether 11% additional amount on energy bill is recoverable or not can be decided by the State Commission which has passed the tariff order in the light of the tariff order, said Act and relevant regulations. Counsel for the Appellant submitted that every dispute will involve interpretation of tariff orders or relevant regulations and CGRF or Ombudsman can very well conduct the exercise. We are unable to agree with the

counsel. The present dispute is not a typical consumer-licensee dispute. For examining the issue of merger, the relevant regulations will have to be studied. Similarly, for examining 11% additional charges, which are linked to merger, tariff orders will have to be seen. Provisions of the said Act also have to be looked into. Whether a particular dispute is a consumer dispute or not, will depend on facts and circumstances of each case. This dispute does not merely involve calculation of amounts and finding whether billing is wrong in light of determined tariff. It involves complex issues of merger of connections and 11% additional amount on energy bill not covered by the tariff order. In our opinion, therefore, the State Commission has jurisdiction to entertain Respondent No.1's petition.

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*22. We must also revisit Section 42(8) of the said Act which states that the provisions of sub-Sections (5) and (6) shall be without prejudice to the right which the consumer may have apart from the right conferred upon him by sub-Sections (5) and (6) of Section 42. It is clear from the language of sub-Section (8) of Section 42 that any right the consumer may have under sub-Sections (5), (6) and (7) of Section 42 would be in addition to and not in derogation of any other right under the said Act. Counsel for the Appellant has, relying on the judgment in *Dakshin Haryana Bijli Vitaran Nigam Ltd.*, urged that Section 173 of the said Act saves the Consumer Protection Act, 1986, and, therefore, the consumer can approach the Consumer Redressal Forum constituted thereunder. It is true that a consumer's right to approach the Consumer Redressal Forum can be said to be covered by Section 42(8), but *Dakshin Haryana Bijli Vitaran Nigam Ltd.* does not say that any other right which the consumer may have under the said Act is not covered by Section 42(8). Thus, a consumer will be entitled to approach the State Commission in cases where there is a violation of the provisions of the said Act or the regulations framed by the State Commission or orders passed by the State*

Commission or in complex cases, which are not pure and simple billing disputes but which involve interpretation of the provisions of the said Act, relevant regulations and tariff orders.”

8. The above decisions squarely apply to the fact-situation at hand. The Commission is not correct in rejecting the petition of the appellant on the ground of jurisdiction. The violation of the provisions of law, regulations and tariff orders is a subject matter requiring adjudication by the Commission.

9. For the forgoing reasons, the impugned Order dated 23.04.2020 passed by the Rajasthan Electricity Regulatory Commission in Petition no. RERC-1598/20 is set aside. The matter arising out of the petition of the appellant is remitted to the State Commission for consideration on its merits and fresh decision, after hearing the parties in accordance with law, expeditiously.

10. The appeal is disposed of in above terms. The pending application is rendered infructuous and disposed of accordingly.

(Sandesh Kumar Sharma)
Technical Member

vt/tp

(Justice R.K. Gauba)
Officiating Chairperson