

THE HIGH COURT OF MADHYA PRADESH: JABALPUR

(Division Bench)

Writ Appeal No. 536/2021*(Nirmal Lohiya Vs. State of Madhya Pradesh and others)***Coram**

Hon'ble Shri Justice Mohammad Rafiq, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Presence:

Shri Rahul Rawat, learned counsel for the appellant/writ-petitioner.

Shri Bramhadatt Singh, learned Government Advocate the respondent No.1/State.

Shri Purushendra Kaurav, learned Advocate General/Senior Counsel with Shri Aditya Khandekar, Advocate for the respondent No.2.

Shri Prakash Upadhyay, learned counsel for the respondents No.3 and 4.

Whether approved for reporting: Yes

Heard through Video Conferencing.

ORDER
(23.06.2021)**Per: Mohammad Rafiq, Chief Justice:**

This writ appeal is directed against an order dated 14.6.2021 passed by the leaned Single Judge, by which Writ Petition No.5851/2021 filed by the appellant challenging the action of the respondent No.2 in proceeding to determine the electricity tariff of year 2021-2022 without giving an opportunity of hearing to him, has been dismissed.

2. Appellant/writ-petitioner approached the writ Court for issuance of a writ of mandamus commanding the respondent No.2-M.P. Electricity

Regulatory Commission (for short “the Commission”) to decide his preliminary objections and provide him a copy of the petition and after giving adequate opportunity of hearing, to decide the matter finally. The learned Single Judge while issuing notice to the respondents on 16.3.2021 restrained the respondent No.2-Commission from passing final order in Public Notice (Petition No.5/2021), Reference No.MPERC/2021/265 in respect of ARR and Tariff till next date of hearing. Respondents joined the writ petition and submitted their reply refuting the averments of the writ petition.

3. Shri Rahul Rawat, learned counsel for the appellant has submitted that the learned Single Judge has not correctly analysed the provisions of Section 64 of the Electricity Act, 2003 (for short “the Act of 2003”) and Regulation 12 of the Madhya Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Supply and Wheeling of Electricity and Methods and Principles for Fixation of Charges) Regulations, 2015 (for short “the MPERC Regulations, 2015”), which in fact mandated the Regulatory Authority to provide opportunity of hearing to those who file suggestions/objections. It is argued that the appellant applied for obtaining copy of the petition filed by the respondents No.3 and 4 on 3.3.2021, but the Commission provided him copy of the petition belatedly i.e. on 31.3.2021. However, by that time, 08.03.2021, the date for filing objection, had gone. Even though the appellant filed his preliminary objections but he could file a detailed objection only after receiving copy of the petition. It is submitted that the appellant also checked the website of the Regulatory Commission but he could not find copy of the petition uploaded and only annexures thereof were available on the website. Such fact was asserted in Para 5.12 of the

memorandum of Writ Petition. Learned counsel for the appellant in support of his arguments has cited judgment of the Supreme Court in **West Bengal Electricity Regulatory Commission Vs. CESC Ltd.** reported as **(2002) 8 SCC 715** and argued that the Supreme Court in the aforesaid case held that when the statute itself confers a right of hearing to consumers in conformity with the principles of natural justice, the Court cannot deny such right on the ground of practical inconvenience. Reference, in particular, is made to discussion in para 40 of the aforesaid judgment.

4. Shri Purushendra Kaurav, learned Advocate General submitted that the learned Single Judge has not only properly considered the cited judgment of the Supreme Court but also correctly analysed the ratio thereof. On that basis, the learned Single Judge has rightly held that as provided in Regulation 12 of the MPERC Regulation, 2015, the Commission may, if it considers necessary, conduct hearing of the stakeholders on their suggestions and objections. Appellant had filed his objections styled as 'preliminary objections' with the Commission and that the Commission had given due consideration to his objections. In the reply filed by the respondents, the assertion of the appellant has been categorically refuted that copy of the petition filed by the respondents No.3 and 4/Company was not provided to him. It was asserted that the copy of the petition along with its annexures was made available on 12.2.2021 for information in public on the official website of the MPERC as well as official website of the Commission, both in English and Hindi Language, by providing URL for MPERC website i.e. <http://www.mperc.in/12022021-ARR%20-%20Tariff%20petition%FY-2021-22.pdf>. Learned Advocate General asserted that the Regulatory Commission had provided/uploaded copy of petition along

with all its annexures on their website. Therefore, it was for the appellant to have timely obtained copy of petition, to submit any further and detailed objections.

5. Learned Advocate General argued that in total 50 suggestions/objections, including that of the appellant, were received and the Regulatory Commission fixed 9.3.2021 and 10.3.2021 as the dates for public hearing. A general notice to this effect was published for information of all concerned. In response to that, 9 persons participated in the hearing. The appellant opted not to participate in the hearing for reasons best known to him, for which the Commission cannot be blamed. Reference is made to the public notice dated 12.2.2021, in which public hearing was fixed at 11 AM, both on 9.3.2021 and 10.3.2021, before the Commission. The respondent No.2 has placed on record the said public notice dated 12.2.2021 as Annexure R/1 with its reply. It is submitted that wide publicity was given to the notice of public hearing, which was published in seven leading newspapers of the State i.e. Free Press, Indore; Pradesh Today, Indore; The Hitavada, Jabalpur; Dainik Bhaskar, Jabalpur; Dainik Bhaskar, Sagar; Peoples Samachar, Bhopal and Raj Express, Gwalior. The respondent No.2 has also produced on record the list of 50 objectors, with their names and addresses, who submitted their objections/suggestions vide Annexure R/2. It therefore cannot be said that the appellant would be unaware of public hearing conducted after giving wide publicity of the public notice. Learned Advocate General further contended that on account of the interim order of stay, passed by the learned Single Bench, which remained in operation for three months, the finalization of the tariff by the Commission has already been delayed. Timely determination of

the tariff is crucial for supply of the electricity to the consumers on equitable rates. Therefore, the judgment passed by the learned Single Judge is just and proper and does not call for any interference.

6. The cited judgment in **West Bengal Electricity Regulatory Commission Vs. CESC Ltd.** reported as **(2002) 8 SCC 715** was considered by the learned Single Bench and the same has again been cited before us. Reliance has been placed on what was held in para 40 of the judgment. The Supreme Court in that case while interpreting Section 58 of the Electricity Regulatory Commissions Act, 1998 and considering challenge to Regulations 25 and 31(4) of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2000, held that the Commission in discharge of its power under Section 58 of the 1998 Act has framed the Regulations keeping in mind the mandate of the Act. In Regulations 18, 19, 24, 25 and 31(4), the Commission has evolved a procedure by which it could restrict the number of representations as also the method to be followed in the proceedings before it which includes the restriction on hearing. Regulations 18 and 19 required the Commission to recognize such associations or other bodies of consumers which in its opinion, should be permitted to appear before the Commission. The said Regulations also empowered the Commission to regulate the nature and extent of participation by such groups. Regulation 31(4)(ii) and (iii) therein also empowered the Commission to control the proceedings before it. It is evident from these observations that even in the cited judgment, the Commission had the necessary power to regulate the proceedings of hearing before it and the apprehension expressed by the appellant before the Supreme Court that by granting such power, the Commission may have to hear all the 17

lakhs of consumers of Calcutta, was held to be imaginary. The Supreme Court held that the Commission had the necessary statutory power to frame the Regulations conferring the right of hearing on the consumers and the Regulations provided for a procedure for controlled hearing and therefore there was no basis to assume that it would give rise to indiscriminate hearing. Thus, the Regulations were held to be in conformity with the provisions of the Act.

7. In our view, the cited judgment does not in any manner help the appellant-writ petitioner. On the contrary, the Supreme Court observed therein that the relevant provisions give right to the Commission to have controlled hearing in a regulated manner. Obviously the purpose of doing so is to expedite the process of finalization of the tariff as per the Act and the Regulations. No doubt, the Commission in its functioning has to ensure the transparency and allow public participation but this has to be done within the limits of statutory restrictions under Section 64 of the Act of 2003, with which we are concerned in the present case too. Sub-section (3) of Section 64 provides that the Appropriate Commission shall, within one hundred and twenty days from the date of receipt of an application for determination of tariff under sub-section (1) and after considering all suggestions and objections received from the public, (a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order; (b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act. Proviso to sub-section (3) of Section 64 of the Act of 2003 stipulates that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

8. Regulation 12 of the MPERC Regulations, 2015, on which reliance has been placed by the learned counsel for the appellant, also provides that in accordance with the provisions of Section 64(3) (supra), the Commission shall invite suggestions and objections from the public for consideration before determination of ARR and tariff. Subsequently, the Commission may, if it considers necessary, conduct hearing of the stakeholders on the suggestions and objections submitted by them or may determine the ARR and Tariff giving due consideration to the suggestions and objections received. The Commission may also conduct hearing with the applicant as and when considered necessary. The language employed in the Regulation 12 thus clearly conveys that discretion has been given to the Commission to conduct hearing, if it considers necessary, by giving opportunity of hearing to the stakeholders on suggestions and objections submitted by them and after giving due consideration to the suggestions and objections received, determine the tariff. Learned Single Judge in our view was perfectly justified in holding that before determining the tariff for supply and wheeling of electricity, reasonable opportunity of hearing has been given to the appellant. In our view, when the considerations applicable to hearing of application with reference to Section 64(3) have been by Regulation 12 (supra) applied to hearing of objections to the proposed tariff, the proviso thereto, which postulates that a reasonable opportunity of hearing shall be given to the applicant, shall also apply to objectors. In the facts of the case, when the appellant has already submitted his objections, which he chose to describe as 'preliminary objections' and did not make an endeavour to timely obtain copy of the petition and file any further suggestions and objections, it

cannot be allowed to say that it was not provided reasonable opportunity of hearing.

9. In view of the aforesaid, reasonable opportunity of hearing, in our opinion, has been provided to the appellant. There being no infirmity in the impugned judgment, no case for interference is made out.

The writ appeal is accordingly dismissed.

(Mohammad Rafiq)
Chief Justice

(Vijay Kumar Shukla)
Judge

C.