

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400 005
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Case No. 164 of 2011

In the matter of
Petition filed by M/s. Hindustan Antibiotics Ltd. seeking direction upon MSEDCL to provide electricity at concessional rates to the Petitioner and such other similar consumers engaged in the manufacture of life saving bulk drugs and by giving advise to the Govt. of Maharashtra to provide subsidy to the Petitioner

Shri V.P. Raja, Chairman
Shri Vijay L. Sonavane, Member

Shri Ashutosh Kishanrao Pohnerkar,Petitioner
Deputy Manager (Electrical)
Hindustan Antibiotics Ltd.,
Pimpri, Pune 411 018

Vs.

1. The Supdt. Engineer (TRC)
Maharashtra State Electricity Distribution Co Ltd.
5th floor, Prakashgad,
Bandra (East), Mumbai 400 051.

2. The Principal Secretary (Energy)
Industries, Energy & Labour Department,
Government of Maharashtra,
Mantralaya, Mumbai 400 032.

3. The Principal Secretary (Industries),
Industries Energy & Labour Department,
Government of Maharashtra,
Mantralaya, Mumbai 400 032.

.....Respondents

Present during the hearing :

For the Petitioner:

Shri. A.S. Vaidya, Director (Finance)
Shri. K.K. Lonkar, DGM (MTS)
Shri. Ashutosh K. Pohnerkar
Shri. S.C.Karandikar, Advocate
Shri.S.R.Patel, Advocate

For the Respondents:

Shri. Sunil Mahajan, Industries Dept., GoM
Shri. S.S.Dhande, MSEDCL
Shri. R.R.Beloskar, MSEDCL

ORDER

Dated: 11th April, 2012

The Petitioner M/s. Hindustan Antibiotics Ltd. (HAL) submitted a petition on affidavit before the Commission on October 18, 2011 (deficiency removed on November 28, 2011) under Sections 61 ,62, 65 and 86 of the Electricity Act, 2003 (“EA, 2003”) and Regulations 92 to 94 of MERC (Conduct of Business) Regulations, 2004 seeking Commission’s direction upon MSEDCL to provide electricity at concessional rates to the Petitioner and such other similar consumers engaged in the manufacture of life saving bulk drugs and by giving advice to the Government of Maharashtra (GoM) to provide subsidy to the Petitioner.

2. The prayers in the petition are as under:

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- a) *The Respondent No.1 be directed to supply electricity to the petitioner at Rs 3/- per unit or alternatively at the rate at par with the cost of supply of Respondent No.1*
- b) *The Respondent No.1 be further directed to suggest a separate category in H.T.Tariff for consumers manufacturing fermentation based bulk life saving drugs; and suggest a tariff at par with the rate in China which at present is Rs.3 per KWH.*
- c) *The Hon'ble Commission may advice Respondent No.2 to consider for providing subsidy to the petitioner.*
- d) *All other just and equitable reliefs be granted to the petitioner for the effective adjudication of this case.”*

3. The facts of the matter as submitted by the Petitioner, in brief, are as follows:

- a) It is averred that the Petitioner M/s. Hindustan Antibiotics Ltd. is the first Public Sector Undertaking in Drugs & Pharmaceutical Sector in India set up in 1954 at Pimpri, Pune for manufacturing bulk life saving drugs. The Petitioner is the first production Company in India to undertake production of fermentation based antibiotics like Penicillin, Streptomycin, Gentamycin, Hamycin, Aureofungin, etc. Furthermore, the Petitioner has other infrastructures which are suitable for fermentation based products.
- b) It was also submitted that the penicillin technology was upgraded by introducing world's best technology of penicillin manufacturing which increases the capacity of manufacturing of Penicillin-G from 900 MMU to 2400 MMU per annum through their joint venture company HINDUSTAN MAX-GB (HMGB).

- c) The Petitioner submitted that it has complete infrastructure, trained manpower for manufacturing of fermentation based bulk drug products like Penicillin –G, Erythromycin Thiocyanate. These intermediates are essential for the manufacture of life saving bulk drugs such as Ampicillin, Cloxacillin, Erythromycin, Stearate, Amoxycillin, Erythromycin Esolate, Roxythromycin Clarithromycin. Furthermore, presently all these vital intermediates were being imported to India from China at a much lesser price which is as a result of the subsidy in electricity available to Chinese manufacturers of similar drugs/products from the Government of China in their home country. If China abruptly stops the supply of these vital intermediates to our Country then it will lead to an acute shortage of fermentation based life saving drugs which will create a serious threat to public health at large.
- d) Therefore, in National Interest Electricity should be made available to local manufacturer's like the petitioner at the prevailing rate in China in order to provide a level playing field to local manufacturers in an effort to avoid sole dependence on China.
- e) The Petitioner submitted that the cost of products of these fermentation based bulk drugs in China is much lower than the manufacturing cost of Indian industry mainly because of the lower electricity tariff in China. The following table gives the comparative analysis of power tariff in India and China.

Tariff in China	Tariff in India
Rs.3.00/kWh	Rs.6.87/kWh

Due to the above reason, the overall cost of production of Penicillin, Erythromycin in India is 30-40 % higher than that of the Chinese manufacturers selling the similar drugs/products in India.

- f) The Petitioner further submitted that it is getting supply at 22 kV from Respondent No.1 MSEDCL and when there is peak production in the plant, the Contract Demand reaches to 15 MVA and monthly consumption is around 70 lakhs units/month whereas In the case of lowest production, the Petitioner's Contract Demand reduces to 3 MVA and monthly consumption is around 7 to 8

lakhs unit/month. The Petitioner further submitted that the average yearly consumption of the Petitioner is around 84-96 lakhs units, which is around 0.015% of Respondent No.1 MSEDCL's yearly sale. Thus, the petitioner's share in users of electricity as well as revenue is negligible as compared to the total outlay. Therefore, there will not be any adverse effect on the ARR of the Respondent No.1.

- g) The Petitioner submitted that State Government is duty bound to make and implement favourable policies for the welfare of the society and its citizens. It is the duty of the State Government to provide subsidy to various sectors of the society. Though, the medical science has developed and is developing fast at one hand it is becoming costly and unaffordable on the other hand. It is the constitutional duty of the State Government to take all necessary steps for care and welfare of the health of the people of this state.
4. The Commission vide Notice dated December 8, 2011, scheduled a hearing in the matter on January 2, 2011 and directed the Petitioner complete service on the Respondents and four Authorised Consumer Representatives.
5. Thereafter, as scheduled a hearing in this matter was held on January 2, 2012 in the office of the Commission wherein Shri S. R. Patel, Advocate appeared on behalf of the Petitioner, and Shri S.S. Dhande, Chief Engineer, and Shri R.R. Beloskar, Executive Engineer appeared on behalf of the Respondent No. 1 (MSEDCL) respectively.
6. During the hearing, the Commission enquired about the number of Bulk Drug Manufacturers in India and Policies formulated by the Government of India (GoI) with regard to the Bulk Drug Manufacturers which provide for reduction in the cost of the product In this regard the Commission directed the Petitioner to submit the following details:-
- i) The list of Bulk Drug Manufacturers in India.
 - ii) Policy framed by Government of India (GoI) to reduce the manufacturing cost of Bulk Drug.
 - iii) Percentage of Electricity charges in the total production cost.

7. The Commission also directed that Senior officials of the Petitioner, either Managing Director or Director-Finance, to attend the forthcoming hearing, since the present Petition is related to the tariff and policy issues at the Central Government level. Furthermore, the Commission directed the Petitioner to implead GoM-Industries Department as a Respondent No.2 in the matter.
8. The Commission vide Notice dated January 11, 2012, scheduled a hearing in the matter on February 8, 2012 in the office of the Commission
9. As scheduled a hearing was held on February 8, 2012, wherein Shri. A.S. Vaidya, Director (Finance) Shri. K.K.Lonkar, DGM (MTS), Shri. Ashutosh Kishanrao Pohnerkar, Deputy Manager appeared on behalf of the Petitioner, Shri. S.S.Dhande, C.E. appeared on behalf of the Respondent No.1 (MSEDCL) and Shri. Sunil Mahajan, Asst. Director appeared on behalf of the Respondent No. 3 (Industries Dept., Govt. of Maharashtra)
10. In the hearing, the petitioner's representative briefly explained the background of the Petition and upgraded technology of the Petitioner's plant, and also mentioned that the policy applicable for M/s. Hindustan Antibiotics Ltd. The Petitioner further stated that there is no National policy has been formulated to bring down the price of bulk drugs by subsidising electricity.
11. The Commission noted that, at the moment no policy of the Government exists for subsidising electricity for Bulk drug manufacturers and observed that the Petitioner could approach the distribution licensee for any concessional tariff for the category of life saving bulk drug manufacturers.
12. The Petitioner has prayed that Respondent No.1 be directed to supply electricity to the Petitioner at Rs 3/- per unit or alternatively at the rate at par with the cost of supply of Respondent No.1. The Commission is of the view that this prayer cannot be granted in the present proceedings because such a dispensation is possible only when the State Government grants subsidy to the Petitioner and similarly placed class of consumers in the tariff determined by the Commission under section 62. If the State Government grants subsidy then it will need to pay in advance the amount to compensate Respondent No. 1.

13. As to whether the Commission could fix the rate at Rs 3/- per unit or alternatively at the rate at par with the cost of supply of Respondent No.1, the same cannot be done in the present proceedings *dehors* the requirements of Sections 61, 62 and 64 of the EA 2003, i.e., at the time of filing of annual revenue requirement and determination of tariffs for Respondent No. 1. A specific rate payable by a consumer or class of consumers is dependent upon what is proposed by Respondent No. 1 in its ARR and tariff filings; and a host of other factors that arises in a proceeding for determining the ARR and tariffs. Hence, at this stage, the prayer to fix the rate at Rs 3/- per unit or alternatively at the rate at par with the cost of supply of Respondent No.1, is not maintainable.
14. As regards the prayer to direct Respondent No.1 to suggest a separate category in H.T.Tariff for consumers manufacturing fermentation based bulk life saving drugs; and suggest a tariff at par with the rate in China which at present is Rs.3 per KWH, it would be appropriate for the Petitioner and similarly placed consumers to make these suggestions as part of the process of solicitation of comments and suggestions by Respondent No. 1 and the Commission in the ensuing proceeding for determining the ARR and tariffs.
15. As regards the prayer to advice Respondent No.2 to consider providing subsidy to the petitioner, the Commission notes that Shri. Avinash Subhedar, Dept. Secretary of Industries, Energy & Labour Department of GoM vide its letter dated February 15, 2012 has informed the Commission that it would not be possible to grant subsidy under Section 65 of EA, 2003 to the Petitioner.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman