



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO. 6670 OF 2014**

M/s Haldiram Foods International Private Ltd., Nagpur, Thr. its Managing Director Shri Sushilkumar S/o Shivkisan Agrawal, having registered Office at Small Factory Area, Bhandara Road, Nagpur, A Private Limited Company, Registered under Companies Act, 1956.

**PETITIONER**

**Versus**

Maharashtra State Electricity Distribution Company Limited, Thr. its Chief Engineer (Commercial), At Prakashgarh, Plot No:-G-09, Bandra East, Mumbai Maharashtra.

**RESPONDENT**

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Mr. T.D. Mandlekar, Advocate for the Petitioner.  
Mr. A.D. Mohgaonkar, Advocate for the Respondent.  
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**CORAM : URMILA JOSHI PHALKE AND  
NIVEDITA P. MEHTA, JJ.**

**DATED : 23<sup>rd</sup> APRIL, 2026.**

**ORAL JUDGMENT :- (PER : URMILA JOSHI PHALKE, J.)**

1. By this Petition, the Petitioner is seeking quashing

and setting aside the impugned communication dated 25.04.2014 issued by the Respondent, whereby the Petitioner is denied his right of getting Night Rebate as per the tariff order and also to declare the impugned communication dated 25.04.2014 issued by the Respondent is violative of Article 14 of the Constitution of India. It is further prayed that, the Petitioner be refunded the excess amount which is charged after denying the night rebate with effect from April 2014.

2. That, the Petitioner M/s Haldiram Foods International Private Ltd., Nagpur is a private limited Company registered under the Companies Act, 1956 on 04.09.1995. It is the contention of the learned Counsel for the Petitioner that, the Petitioner/Company is involved in large scale manufacturing of the food products and hence it is consuming huge Electricity for the purpose of its manufacturing unit and hence decided to have its own Solar Power Project in order to become self reliant for consumption of Electricity. Accordingly, the Petitioner/Company has invested Rs. 15 Crores for installation of 1.5 MW Solar Power Project for itself use. It is further contended that, the Government of India has prepared National Electricity Policy in compliance of Section 3 of the Electricity

Act, 2003 (for short “Act of 2003”) which came into force from 12.02.2005 in which the promotion of Non-Conventional Energy is discussed and framed. It is also informed that, as per the Clause 5.2.24 of the National Electricity Policy, Captive Generation is required to be promoted for securing cost effective power to the industries, which will also facilitate creation of employment opportunities through speedy and efficient growth of the industries.

**3.** The Respondent has not considered the recorded units by the meter during A-Zone i.e. night hours from 10.00 p.m. to 6.00 a.m. for billing purpose and also claimed the night rebate which is required to be given as per the tariff order issued by Maharashtra Electricity Regulatory Commission, Mumbai. It is further contended that, MERC has decided the tariff of selling Solar Energy @ Rs.7.95 / per unit. Accordingly, if the Petitioner sells his “Solar Energy” generated through his “Solar Power Plant” then he would receive an amount of Rs. 7.95 / per unit. If the Petitioner buys the thermal power generated by the Respondent then he has to buy it @ Rs.7.01 /per unit. If the Night Rebate is granted to the Petitioner as per the MERC Tariff Order passed under Sections 61, 62, 66, 86,

181 of the Act of 2003 then the Petitioner is entitled to get the electricity @ Rs.4.51/ per unit but the Respondent has deliberately denying this Night Rebate to the Petitioner for obvious reasons. It is submitted that, even otherwise the Petitioner is putting himself to loss by consuming the solar power for its own use when he could not sell it to other consumers, and therefore, the Petitioner is constrained to approach this Court by filing this Petition as the night rebate is recovered for the period April 2014 to December 2014.

4. The said Petition is strongly opposed by the Respondent on the ground that, the Respondent has already passed the Resolution as there were no rules to recover the rebate amount. It is contended that, a very high rebate in night tariff which also adversely affect other categories of consumers who are not eligible for the TOD tariff and utilizing power round the clock. The solar generation is available during day time and is utilized against the existing consumption during day time including peak hours and MSEDCL power will be utilized during night hours, when the power is available at cheapest rate with TOD night rebate, and therefore, the Petition being devoid of merits deserves to be dismissed.

5. Heard Mr. Mandlekar, learned Counsel for the Petitioner as well as Mr. Mohgaonkar, learned Counsel for the Respondent. Both have reiterated their contentions as per the contention raised in the Petition and reply, respectively.

6. We have perused the pleadings of both the sides as well as the order passed by the Maharashtra Electricity Regulatory Commission dated 26.06.2015, wherein in Clause 6.22.6 the Commission has specifically observed as under:

*“6.22.6. With the advancements in Solar power technology and economies of scale driving down the cost of Solar installations, and in view of the policy measures initiated by the Central Government to promote it, Solar power capacity addition is expected to increase in the State. The Commission has already initiated the regulatory process for formulation of Net Metering Regulations for Rooftop Solar power in Maharashtra, which is at an advanced stage. In addition, there are several other regulatory aspects associated with Solar power development, such as charges for captive/OA wheeling, connectivity standards for distributed Solar generation, interconnectivity agreements, etc, which will have to be dealt with comprehensively. Accordingly, MSEDCL may file a separate Petition for dealing with the regulatory aspects associated with Solar power wheeling transactions. However, until such comprehensive framework for Solar power development is evolved, the practice of reducing ToD rebate during night off-peak hours by Solar power generated during the day should be stopped.”*

7. It is submitted by the learned Counsel for the Petitioner, that in view of this observation, the Respondent is not

entitled to recover the amount towards the night rebate.

8. Learned Counsel for the Petitioner, has also relied upon Sections 61 and 62 of the Act of 2003, which reads as under:

*“61. **Tariff regulations.**- The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-*

*(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;*

*(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;*

*(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*

*(d) safeguarding of consumers’ interest and at the same time, recovery of the cost of electricity in a reasonable manner;*

*(e) the principles rewarding efficiency in performance;*

*(f) multiyear tariff principles;*

*(g) that the tariff progressively reflects the cost of supply of electricity and also reduces cross-subsidies in the manner specified by the Appropriate Commission;*

*(h) the promotion of co-generation and generation of electricity from renewable sources of energy;*

*(i) the National Electricity Policy and tariff policy:*

*Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948 (54 of 1948), the Electricity Regulatory Commissions Act, 1998 (14 of 1998) and the enactments specified in the Schedule as they stood immediately before the appointed date, shall*

*continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.*

**“62. Determination of tariff.** - (1) *The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –*

*(a) supply of electricity by a generating company to a distribution licensee:*

*Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;*

*(b) transmission of electricity;*

*(c) wheeling of electricity;*

*(d) retail sale of electricity:*

*Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.*

*(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.*

*(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer’s load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.*

*(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.*

*(5) The Commission may require a licensee or a*

*generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.*

*(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.”*

9. Learned Counsel for the Respondent, submitted that the Officers of the Respondent are unable to calculate the amount. The Petitioner has already placed on record the chart, therefore, it would be appropriate if the Officers of the Respondent would consider the same, deduct the amount which is already paid and recover which is due from the Petitioner and if excess amount is paid then the Petitioner is entitled to get it refunded back.

10. Learned Counsel for the Petitioner, also invited our attention towards Sub-Section (6) of Section 62 of the Act of 2003, which reads as under:

*“62(6). If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.”*

11. The Resolution which is passed by the Respondent is not accepted by the MERC and in view of Clause 6.22.6 they cannot demand for the night rebate and in view of that if any excess payment is paid by the Petitioner towards the night rebate, is entitled to get it back. Accordingly, we proceed to pass the following order.

### ORDER

- i. The Writ Petition is **allowed** with a direction that the Officers of the Respondent shall verify whatever amount is paid by the Petitioner and after deducting the amount which is paid towards the night rebate, if any amount is due from the Petitioner, they shall claim it by demand notice and if excess amount is already paid by the Petitioner then it should be refunded back to the Petitioner in view of Section 62(6) of the Electricity Act, 2003.

12. Rule is made absolute in the above terms.

13. Pending application/s, if any, shall stand disposed of accordingly.

(NIVEDITA P. MEHTA, J.)

(URMILA JOSHI PHALKE, J.)