

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI
(APPELLATE JURISDICTION)**

APPEAL NO.83 OF 2019

Dated: 07.04.2022

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

In the matter of:

HINDUSTAN PETROLEUM CORPORATION LIMITED

Through The Dy.General Manager
Mangalore Terminal
Village Bala, Via Katipala,
Mangalore – 575 030

.... Appellant(s)

VERSUS

1. KARNATAKA ELECTRICITY REGULATORY COMMISSION

[Through its Secretary]

No.16, C-1, Millers Tank Bed Area,
Vasanth Nagar, Bengalure-560052
Karnataka, India

**2. CHAMUNDESHWARI ELECTRICITY SUPPLY
CORPORATION LTD.**

[Through its Managing Director]

No.29, Kaveri Grameena Bank Road,
Hinkal, Vijaynagar, 2nd Stage,
Mysore-570 017

... Respondent(s)

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

Counsel for the Respondent (s) : Mr. Darpan K.M.
Ms. Amrita Sharma
Mr. Rajat Jonathan Shaw for R-1

Mr. Sriranga Subbanna, Sr. Adv.
Ms. Sumana Nagand

Ms. Medha M. Puranik
Ms. GayathriSriram
Mr. Sanjay Reddyfor R-2

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 Appeal is by *Hindustan Petroleum Corporation Limited* (HPCL), a public sector company, engaged in the business of marketing petroleum and petroleum products. It seeks to question the correctness, legality and propriety of the order dated 14.05.2018 passed by the *Karnataka Electricity Regulatory Commission* (KERC) on the petition for annual performance review for financial year (FY) 2017-18, revision of annual revenue requirement for FY 2019-20 and revision of retail supply tariff for FY 2019-20 of Respondent *Chamundeshwari Electricity Supply Corporation Limited* (CESCOM) to the extent thereby the activity in the nature of the petrol/diesel storage plant operated by the appellant was categorized as HT-2(b) for FY 2019-20, the result being that the appellant's activities have been treated as commercial as against its claim that it should have been subjected to tariff for industrial category – HT-2(a).

3. It appears when the petition of CESCOM was under consideration in response to the public notice that would have been issued and published, the appellant had submitted its objection on the above issue. It is appropriate to extract the following portion of the submission made by the appellant in the said objection petition:

“8. It is submitted that the activity involved at each stage includes the following:

- a) Drawing the products for further distribution in bulk or wholesale;*
- b) Storage;*
- c) Packing in special containers or distribution in bulk or wholesale and also for usage of the consumers;*
- d) Blending of certain other products and doping of Kerosene oil for differentiating the same for domestic and commercial uses;*

9. The tank at HPCL's terminal are not meant for “storing” petrol/diesel products for days but for receiving the product from the pipeline and keep it their only for a few hours i.e. the time required for quantification of the product received. The product comes and goes out on a continuous basis and there is hardly any time left for the product to remain in the stored condition beyond a few hours.

10. I state that Hassan Terminal of HPCL is not a Petrol/Diesel and Oil storage plant rather it is a processing plant with petroleum pipeline project. The nature of activity carried at the Petitioner Corporation is purely an industrial activity which involves various processes detailed below as per the requirement of the Retailer:

I. Gasohol Product: As per Government of India norms, HPCL is required to blend 10% ethanol in petrol as a measure to reduce carbon emissions. Industrial Process involved for processing of Gasohol is Receipt of Motor Spirit thru Petroleum Pipe Line and procurement of following additives:

- A. Ethanol,*
- B. Erganite*
- C. Anti Oxidents*

These additives are procured from outside agencies. These different additives are stored in different Tanks and are pumped to blending unit where the proper blending of all these additives takes places with Motor Spirit and the blended product is called Gasohol which is directly supplied to Retailers as per requirement.

II. Power Fuel: Power Fuel is a speciality petrol produced and marketed by HPC Industrial Process involved for processing of Power Fuel is Receipt of Motor Spirit thru Petroleum Pipe Line and procurement of additives “Petrol Plus B +” from outside agencies.

Storing the same in different Tanks and pumping to blending unit where the proper blending of additive takes place with Motor Spirit, changing the characteristics of the parent product and the

blended product is called Power Fuel which is directly supplied to Retailer as per requirement.

III. Turbojet Fuel: Turbojet fuel is a speciality diesel product produced and marketed by HPCL. Industrial process involved for processing of Turbojet fuel is receipt of High Speed Diesel thru Petroleum Pipe Line and procurement of additive called "Diesel Plus A" from outside agencies.

These products are pumped to blending unit where the proper blending of both the products takes place, which changes the characteristics of the parent product and the blended product is called Turbojet Fuel which is directly supplied to Retailer as per requirement.

The diagrams of the said process are annexed as annexure-1 series for the kind reference of the Commission".

4. The Commission by the impugned order has described the activities covered by tariff schedule for HT-2(a) in the impugned order as under:

"TARIFF SCHEDULE HT-2(a)

Applicable to Industries, Factories, Workshops, Research & Development Centres, Industrial Estates, Milk dairies, Rice Mills, Phova Mills, Roller Flour Mills, News Papers, Printing Press, Railway Workshops/KSRTC Workshops/ Depots, Crematoriums, Cold Storage, Ice & Ice-cream mfg. Units, Swimming Pools of local bodies, Water Supply Installations of KIADB and other industries, all Defence Establishments. Hatcheries, Poultry Farm, Museum, Floriculture, Green House, Bio Technical Laboratory, Hybrid Seeds processing Units, Stone Crushers, Stone cutting, Bakery Product Manufacturing Units, Mysore Palace illumination, Film Studios, Dubbing Theatres, Processing, Printing, Developing and Recording Theaters, Tissue Culture, Aqua Culture, Prawn Culture, Information Technology Industries engaged in development of Hardware & Software, Information Technology (IT) enabled Services / Start-ups (As defined in GOI notification dated 17.04.2015)/ Animation / Gaming / Computer Graphics as certified by the IT & BT Department of GOK/GOI, Drug Mfg. Units, Garment Mfg. Units, Tyre retreading units, Nuclear Power Projects, Stadiums maintained by Government and local bodies, Railway Traction, Effluent treatment plants and Drainage water treatment plants owned other than by the local bodies independently serviced outside the premises of industries/ Buildings for which the HT power supply is availed, LPG bottling plants, petroleum pipeline projects, Piggery farms, Analytical Lab for analysis of ore metals, Saw Mills, Toy/wood industries, Satellite

communication centres, Mineral water processing plants / drinking water bottling plants and Solid Waste Processing Plant.”

(Emphasis supplied)

5. In contrast, the activities covered by the tariff schedule for HT-2(b) category has been described and set out in the impugned order as under:

“TARIFF SCHEDULE HT-2(b)

Applicable to Commercial Complexes, Cinemas, Hotels, Boarding & Lodging, Amusement Parks, Telephone Exchanges, Race Course, All Clubs, T.V. Station, All India Radio, Railway Stations, Air Port, KSRTC bus stations, All offices, Banks, Commercial Multi-storied buildings. APMC Yards, Stadiums other than those maintained by Government and Local Bodies, Construction power for irrigation, Power Projects and Konkan Railway Project, Petrol / Diesel and Oil storage plants, I.T. based medical transcription centers, telecom, call centers, BPO/KPO, Diagnostic centres, concrete mixture (Ready Mix Concrete) units and Private Guest Houses / Travelers Bungalows.

(Emphasis supplied)

6. The learned counsel for the appellant submitted, and the learned counsel for respondent/CESCOM did not plead to the contrary, that the impugned order of KERC does not dwell at all on the contentions raised by the appellant in the objection petition glossing them over. There is no discussion, not even a remote one, on the submissions made by the appellant before the Commission on the subject of categorization.
7. In these circumstances, we are unable to uphold the order to the said extent questioned. The learned counsel for the second respondent (CESCOM), however, pointed out that the impugned order has since run its course, it having been taken over by subsequent tariff orders. Be that as it may, the question of appropriate categorization by a reasoned order is still required so that error, if any committed, does not perpetuate. In these

circumstances, we direct a remit of the issue to the respondent Commission which shall pass a fresh detailed order on the subject after hearing the appellant and other such parties as may have a stake in the matter. Since payments would have been made in terms of the impugned order, we leave the issue as to whether the inclusion of the appellant in the HT-Industrial Category, if so granted by the Commission, should be applied retrospectively or from a future date.

8. Needless to add, given the fact that the issue has lingered all these years, it is desirable that the Commission takes a fresh call at the earliest, preferably within three months hereof. We order accordingly.
9. The appeal is disposed of in above terms.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING
ON THIS 07th DAY OF APRIL, 2022.**

(Sandesh Kumar Sharma)
Technical Member

pr/tp

(Justice R.K. Gauba)
Officiating Chairperson