

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 42 of 2020
alongwith IA No. 06 of 2021
Date of Order: 02.06.2021

Petition under Regulation 4.2,6.6.2,44,45 and 47 of the Supply Code 2014 and Regulation 13 and 24 of the General conditions of tariff contained in tariff order for the year 2020-21 passed by the Commission and other relevant rules and regulations as approved by the Commission including 68,69,70,71 and 72 and other relevant provisions of Chapter XIII of the Conduct of Business Regulations 2005 as amended up to date for Setting aside the Order dated 21.10.2020 passed by the respondent-PSPCL, whereby, the Respondent has wrongly rejected the request of the Petitioner to grant NOC/Electricity connection at 11 KV system of PSPCL

AND

In the matter of: M/s Sushma Buildtech Limited having its registered office at B- 107, First Floor, Business Complex at Elante Mall, Industrial Area, Phase-1 Chandigarh-160002, through its authorized representative Sh. Bhupinder Singh Bedi.

...Petitioner

V/s

1. Punjab State Power Corporation Ltd. (PSPCL), having its office at the Mall, Patiala, through its Chairman-Cum-Managing Director.
2. Chief Engineer (Commercial), The Mall, Patiala.
3. Superintending Engineer/DS, PSPCL, 220 KV Grid, Industrial Area, Phase-7, SAS Nagar, Mohali.
4. Sr. Executive Engineer/DS, PSPCL, Zirakpur Division, Ambala Road, Zirakpur, District SAS Nagar, Mohali.

...Respondents

Present: Ms. Anjuli Chandra, Member
Sh. Paramjeet Singh, Member

ORDER

1.0 The petitioner, Sushma Buildtech Limited, is engaged in the business of construction and sale of residential/commercial projects and

has come out with a commercial project namely Sushma Infinium at Village Bishan Garh, Ambala Road, Zirakpur. The grievance of the petitioner is that despite fulfilling all the pre-requisites, PSPCL is not giving no objection certificate/electric connection for its project at 11 KV system of PSPCL. The petitioner has prayed to set aside the Order dated 21.10.2020 passed by PSPCL rejecting the request of the petitioner to grant NOC/electric connection at 11 KV system.

1.1 The petition was admitted vide order dated 16.12.2020. PSPCL filed reply to the petition. PSPCL was directed vide order dated 18.01.2021 to submit on affidavit the details of the similarly placed projects wherein NOC has been granted at a voltage lower than the specified voltage subject to payment of voltage surcharge and the petitioner was directed to submit on affidavit the details of at least similarly placed projects as alleged during the hearing. The petitioner filed additional affidavit dated 29.01.2021 and rejoinder dated 05.02.2021. PSPCL, vide memo No. 5246 dated 08.02.2021, filed affidavit in response to the directions of the order dated 18.01.2021. The petition was taken up for hearing on 15.02.2021 and PSPCL was directed to reply on an affidavit filed by petitioner with respect to each connection pointed out by the petitioner and also on the prayer for release of load of 495 kVA for his exclusive use as an NRS consumer. The petitioner filed IA No. 06 of 2021 for early hearing of the matter and for a direction to PSPCL for normal NRS connection of 495 kVA electricity load at 11 KV system for running its own office and common services during the pendency of the petition. PSPCL filed affidavit vide memo No. 5990 dated 27.04.2021 in response to the directions of the Order dated 15.02.2021. After hearing the parties on 12.05.2021, Order was reserved.

Observations and Decision of the Commission.

2. The Commission has examined the petition, the reply filed by PSPCL, rejoinder thereto by the petitioner, other documents adduced on the record and after hearing the parties decides as under.

The petitioner, Sushma Buildtech Limited, is engaged in the business of construction and sale of residential/commercial projects. The petitioner is developing a commercial complex namely Sushma Infinium at Zirakpur. PSPCL, the sole distribution licensee operating in the State and its officers are the respondents. The present petition has been filed under various provisions of the Supply Code, 2014, Conduct of Business Regulations read with General Conditions of Tariff for setting aside the order dated 21.10.2020 issued by PSPCL rejecting the request of the petitioner to grant NOC/Connectivity to its commercial complex having an estimated load of 4298 kVA at 11 kV instead of at specified voltage of 66 kV, subject to payment of voltage surcharge. As an interim measure, the petitioner prayed to grant him NRS connection for a demand of 495 kVA at 11 kV for his office use and common services of the project.

2.1 As per the petitioner, the layout plan of the instant commercial project with 989 commercial units was approved by MC Zirakpur on 19.12.2011 and the project was started on 20.01.2012. The petitioner initially applied online to PSPCL on 18.01.2018 for issue of NOC seeking Single Point Supply under Regulation 6.6.2 of the Supply Code, 2014 read with 7th proviso to section 14 of the Electricity Act, 2003. After protracted correspondence/discussions, particularly on the issue of estimated load, the petitioner re-submitted his application to PSPCL first on 06.06.2019 and finally on 27.02.2020 for granting NOC for Single Point Supply for an estimated load of 4298 kVA. The petitioner requested PSPCL to allow the connectivity at 11 kV instead of specified

voltage of 66 kV due to space constraint at the project site for setting up 66 kV grid sub-station. The petitioner agreed to pay voltage surcharge as per Regulation 4.2.1 of the Supply Code, 2014 read with clause 13 of General Conditions of Tariff. The petitioner also requested PSPCL to release a NRS connection for a load/demand of 495 kVA at 11 kV for his office use and common services of the project. Both these requests were disallowed by the distribution licensee and in compliance to Commission's order, PSPCL issued a speaking order to this affect vide Memo No. 808-09 dated 21.10.2020. The petitioner prayed that PSPCL's order dated 21.10.2020 may be set aside and direct PSPCL to grant NOC at 11 kV.

2.2 PSPCL, on the other hand, argued that the petitioner is a developer seeking single point supply as a franchisee under Regulation 6.6.2 of the Supply Code, 2014 which is governed by Model Franchisee Agreement issued by PSPCL vide circular dated 14.12.2016, whereas Regulation 4.2.1 of the Supply Code, 2014 is applicable in case of consumers. PSPCL rejected the request of the petitioner for release of NRS connection for a load/demand of 495 for his office use and common services on the grounds that since he has applied for NOC under Regulation 6.6.2, so connectivity and the partial load can be allowed only after issue of NoC and as per para 2 of the Franchisee Agreement.

2.3 The petitioner, who is a Developer of the commercial complex, approached PSPCL, the distribution licensee, for seeking connectivity for his commercial complex at single point under Regulation 6.6.2 of the Supply Code, 2014 read with 7th proviso to section 14 of the Electricity Act, 2003. Let us examine the relevant provisions for grant of Single Point Supply and engagement of Franchisee by a distribution licensee.

The Regulation 6.6.2 of the Supply Code, 2014 provides for Single Point Supply to a franchisee for further distribution to the residents/occupiers of colonies/complexes. The Regulation 6.6.2 of the Supply Code, 2014 reads as under;

“6.6 Single Point Supply

6.6.1 *The distribution licensee shall provide Single Point Supply for residential purposes ----- as per PSERC (Single Point Supply to Group Housing Societies/ Employers) Regulations, 2008, as amended from time to time.*

6.6.2 *Notwithstanding anything contained in Regulation 6.6.1, the licensee may appoint a franchisee for a particular area in its area of supply as per 7th proviso to section 14 of the Act. The licensee may provide single point supply on an application by the franchisee for making electricity available within the particular area to the following categories:*

- (i) residential colonies*
- (ii) commercial complexes*
- (iii) industrial complexes*
- (iv) IT parks*
- (iii) other single point supply consumers.”*

‘Franchisee’ has been defined in sub-section (27) of section (2) of the Electricity Act, 2003 as under;

(27) “franchisee means a person authorised by a distribution licensee to distribute electricity on its behalf in a particular area within his area of supply;

The 7th proviso to section 14 of the Act reads as under;

“Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned

State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply.”

Thus it is the prerogative of the distribution licensee to appoint any person as a ‘franchisee’ to carry out certain functions on his behalf in a particular area within his area of supply on mutually agreed terms and conditions. Accordingly, in Regulation 6.6.2 of the Supply Code, 2014, it has been provided that distribution licensee **may** appoint a franchisee and provide electricity at a Single Point for further distribution to the occupiers/residents of colonies/complexes.

2.4 The petitioner demanded connectivity at a voltage (11 kV) lower than that specified (66kV) firstly on the basis of Regulation 4.2.1 of the Supply Code and secondly on the plea that similar concession has been extended to other developers by the distribution licensee. The second proviso to Regulation 4.2.1 of the Supply Code, 2014 provides as under

“Provided further that in case of constraint(s) in releasing a new connection or additional load/demand at the specified voltage or in converting the supply voltage of an existing consumer, the supply may be given/continued to be given at a lower voltage subject to technical feasibility and payment of surcharge as specified in the General Conditions of Tariff, as amended from time to time. However, the exemptions from levy of surcharge(s) shall continue as provided in the General Conditions of Tariff.”

We agree with the argument of PSPCL that **the Regulation 4.2.1 is applicable in case of consumers as defined under sub-section (15) of section (2) of the Act and not to the ‘franchisees’ appointed under Regulation 6.6.2 of the Supply Code, 2014 read with 7th proviso to section 14 of the Electricity Act, 2003. The petitioner case is governed by the provisions of Model Franchisee Agreement circulated by PSPCL vide CC No. 58 of 2016 dated 14.12.2016. The petitioner failed to point out any provision of the Model Franchisee**

Agreement which allows connectivity to a complex developed by a promoter under State Government bye-laws at a voltage lower than specified voltage with payment of voltage surcharge.

2.5 The other argument put forth by the petitioner is that since PSPCL has allowed supply at a voltage lower than specified voltage subject to payment of surcharge to some other developers so he is also entitled to draw parity and demand single point supply on same terms and conditions. PSPCL in its reply submitted that after issue of Model Franchisee Agreement on 14.12.2016, only one connection has been allowed at a lower voltage with payment of voltage surcharge. Admitting its mistake, PSPCL pleaded that the approval was accorded by the Board of Directors on 03.02.2017 due to lack of understanding of the concept of Franchisee at that time.

During proceedings, the petitioner also alleged that PSPCL has rendered Single Point supply connections while converting existing NRS connections without grant of NOC and also at 11 kV having load more than 4000 kVA to various other consumers (developers).

PSPCL submitted the details of all the nine connections pointed out by the petitioner on affidavit, according to which all the connections have been released at specified voltage. PSPCL contended that these NRS connections, which were released as per the instruction prevalent prior to the issue of Model Franchisee Agreement vide CC No. 58 of 2016 dated 14.12.2016 and have been converted in to Franchisee model to prevent resale of power.

The Commission approved the Conditions of Supply (CoS) under Regulation 3.2 of the Supply Code, 2007 which came in to force w.e.f 01.04.2010. Single Point Supply to Shopping Mall/Commercial Complex was permitted under clause 8.2 of the CoS. Before approval of CoS, the

single point supply connections were governed by the provisions of Sales Regulations and/or commercial instructions issued from time to time by PSPCL. As per the provisions of Sales Regulations of PSPCL and Conditions of Supply approved by the Commission, the developers were treated as consumers and single point supply was allowed for further distribution to the residents/occupiers. The total consumption of the complex was recorded at point of supply and billed at NRS tariff.

The Hon'ble Appellate Tribunal of Electricity in its Judgment dated 11th July, 2011 in Appeal No. 155 of 2010 and Appeal No. 156 of 2010 in K.Raheja Corporation Pvt. Ltd. V/s MERC case held that sub-distribution and sale of electricity to the occupants of a building by the owner or consumer of such building is unlawful and contrary to Sections 12 and 14 of the Electricity Act, 2003. A consumer receives electricity only "for his own use" and this excludes a situation where a consumer can on receipt of electrical energy sell a part of that energy or the entire energy itself to different people for their respective consumption. With the notification of Supply Code, 2014, which came in to force w.e.f 01.01.2015, the Conditions of Supply was repealed and the provision of Single Point supply as contained in CoS was withdrawn. The Commission in its order dated 09.06.2015 in petition no. 61 of 2014 (Suo-moto) directed PSPCL as under;

PSPCL is directed to draft Model Distribution Franchisee Agreement in accordance with the position brought out in para 10.1 to 10.8 above within 3 months of the issue of this Order and put it on its website for the information of all the stakeholders. Individual notices shall also be issued to consumers who have been granted single point supply under clause 8.1 to 8.4 of the repealed Conditions of Supply. It shall be ensured that Terms & Conditions offered to the

existing single point supply consumers for continuing as 'franchisee' for the area/colony/ complex for which Agreement (A&A form) has already been signed under clause 8 of the 'Condition of Supply' shall not be changed to the disadvantage of the consumer/developer of such colony/complex provided the provisions of Franchisee agreement are in conformity with the Electricity Act, 2003. However, the parties are free to negotiate the Terms & Conditions of the franchisee agreement which are mutually acceptable to both the parties, in accordance with the Act and the regulations framed under the Act.

The existing single point supply consumers who have been released connections under clause 8.1 to 8.4 of the repealed Conditions of Supply shall sign the franchisee agreement within 3 months of receipt of Model Distribution Franchisee Agreement from PSPCL.

In compliance to the above orders of the Commission, PSPCL issued Model Franchisee Agreement vide CC No. 58 of 2016 dated 14.12.2016 after consultations with the stakeholders and converted the existing single point supply connections to distribution franchisees model by signing the bilateral franchisee agreements with developers. It may be noted that since it is bilateral agreement between distribution licensee and the person (developer) so neither the Commission has approved this agreement nor has specified any terms & conditions of such bilateral arrangement in the Supply Code, 2014 except as provided in the order dated 09.06.2015 of the Commission as stated above.

We do not intend to investigate each individual case referred by the petitioner to settle the dispute in the instant petition. However, **after the approval and notification of the Model Franchisee Agreement by the distribution licensee as per the directions of the Commission, the Single Point Supply under Regulation 6.6.2 of the Supply Code, 2014 has to be governed by the provisions of this model agreement.** In case of any violation of the instructions/regulations or the provisions of law by any officer, action can be taken against the delinquent officials/officers by the competent authority. But the petitioner cannot claim relief on the basis of a wrong doing, if any, committed by the officer of the licensee. The deviation in one case has been admitted by the licensee however, it is seen that there violations or deviations in other cases in the report submitted by PSPCL. **We direct PSPCL to investigate all the Single Point Supply cases sanctioned under Regulation 6.6.2 of the Supply Code, 2014 after issue of Model Franchisee Agreement vide circular dated 14.12.2016 and ensure that there is no violation/deviation in implementation of the provisions of Model Agreement. PSPCL shall submit its report along with action taken within 3 months of the issue of this order.**

The petitioner also prayed that as an interim measure, PSPCL may be directed to grant NRS connection for a load/demand of 495 KVA at 11 KV for running its own office and common services. PSPCL rejected this request on the grounds that since he has applied for NOC under Regulation 6.6.2 so connectivity can be allowed only after issue of NoC and as per the provisions of Franchisee Agreement. The release of partial load is possible only after NOC is issued to the petitioner by PSPCL and shall be governed by the provisions of Franchisee Agreement. The clause (2) of the agreement provides that

“2) The phase wise development of the load/ demand of the Franchisee Area as per requirement shall be permitted by PSPCL. However, in case Distribution Franchisee requests for supply at a lower voltage than the specified HT/EHT voltage for development of partial load/ demand, the request may be accepted by PSPCL subject to deposit of cost of works for supply at the lower voltage and furnishing Bank Guarantee (BG) equivalent to 150% of the cost of HT/EHT Transmission Line, HT/EHT Sub-Station including the cost of incomplete LD system. The amount of Bank Guarantee shall keep on reducing with the completion of remaining works of the Transmission Line, Sub-Station and LD system. After the Distribution Franchisee shifts to the specified voltage at a later stage, no credit of the works carried out for supply at lower voltage shall be given to the Distribution Franchisee.”

As per petitioner's own admission, the load of 495 kVA also includes load for running common services of the complex and thus is a part of total estimated load of 4298 kVA of the complex. **The release of this partial load of 495 kVA has to be in accordance with para (2) of the Model Franchisee Agreement, as reproduced above, after the issue of NoC.**

2.6 The petitioner is pleading for supply at 11 kV instead of 66 kV, which is the specified voltage for a load/demand of 4298 kVA, due to lack of space for constructing a 66 kV grid sub-station in the complex. The petitioner even referred to the report of a committee of PSPCL's officers to establish the claim that there is space constraint at the site to construct 66 kV sub-station. We don't want to go in to the competency of these officers to certify such constraint or the legal sanctity of such a

report. The petitioner is a Developer engaged in the business of construction of residential and commercial complex for which he must have engaged a team of professionals looking after various aspect of design of such a big project. He should have earmarked space for 66 kV Grid Sub-station and for installing other electrical equipments in the complex. As per his own admission, the layout plan of the instant commercial project was approved by MC Zirakpur on 19.12.2011 and project was started on 20.01.2012. The partial completion certificate was issued by Executive Officer, MC, Zirakpur on 15.12.2017. However, the petitioner applied to PSPCL for the first time for issue of NOC seeking Single Point Supply under Regulation 6.6.2 of the Supply Code, 2014 on 18.01.2018 i.e after a lapse of six years of getting the approval of layout plan from competent authority and one year after issuance of partial completion certificate by MC Zirakpur. The Department of Housing and Urban Development, Government of Punjab notification dated 06.05.2008 makes it mandatory for the developer to obtain NOC from the concerned departments including PSPCL before starting the development works. The relevant Para 3 of the ibid notification mandates as under;

*“3. No Objection Certification from the different departments shall not be a precondition for issuance of licence for development of colonies, but **the promoter shall be liable to get No Objection Certificate from the concerned departments** e.g. Punjab Pollution Control Board, **Punjab State Electricity Board**, P.W.D. (Drainage Department), Forest Department or the concerned Municipal Corporations/Committees as the case may be **before start of development works of the colony at site.** [Emphasis added]*

In para 2 of the Partial Completion approval letter dated 15.12.2017 and completion/occupation letter dated 25.07.2019 issued

by MC Zirakpur, it has been mentioned that the developer shall be bound to get NOC from the concerned departments as per Government instructions and also to abide by the directions issued by the government from time to time. Thus the onus to get a No Objection Certificate from PSPCL before starting any development work in the commercial complex was on the petitioner. However the petitioner approached PSPCL for NOC not only after starting the development works but after obtaining partial completion certificate from the competent authority. The provision of obtaining NOC from all the concerned departments, before start of development works by a promoter, has been made precisely to acquaint the developer/promoter with the Rules/Regulations and requirements of each department which the promoter is supposed to implement while executing the project. Had the petitioner implemented the provisions of Punjab Government notification dated 06.05.2008, conditions of the approval from MC Zirakpur and applied/obtained the NOC before starting the development work he would not have faced the issue of space constraint. Now the petitioner cannot claim any concession by citing space constraint to set up a Grid Sub-station due to his negligence and non implementation of statutory provisions of Government Rules.

However, PSPCL is also responsible for not getting the instructions of State Government implemented. The para 4 of the Department of Housing and Urban Development, Government of Punjab notification dated 06.05.2008 mandates that the concerned departments shall ensure that development works shall not be started by the promoter before getting NOC from the concerned department. PSPCL failed to get these instructions implemented. **We direct the distribution licensee to take appropriate action against delinquent officials/officers.**

2.7 Conclusion

- 1. The Regulation 4.2.1 of the Supply Code, 2014 is applicable in case of 'consumers' as defined under sub-section (15) of section (2) of the Act and not to the 'franchisees' appointed under Regulation 6.6.2 of the Supply Code, 2014 read with 7th proviso to section 14 of the Electricity Act, 2003.**
- 2. The petitioner case for Single Point Supply under Regulation 6.6.2 of the Supply Code, 2014 read with 7th proviso to section 14 of the Electricity Act, 2003 is governed by the provisions of Model Franchisee Agreement notified by PSPCL vide CC No. 58 of 2016 dated 14.12.2016 and there is no provision to allow connectivity to a complex at a voltage lower than the specified voltage with payment of voltage surcharge.**
- 3. In case of violation of the instructions/regulations or the provisions of law by any officer of the distribution licensee, action be taken against the delinquent officials/officers by the competent authority. The petitioner cannot claim relief on the basis of a wrong doing, if any, committed by the officer of the licensee.**
- 4. After the approval and notification of the Model Franchisee Agreement by the distribution licensee as per the directions of the Commission, the Single Point Supply has to be governed by the provisions of this model agreement. PSPCL is directed to investigate all the Single Point Supply cases sanctioned under Regulation 6.6.2 of the Supply Code, 2014 after issue of Model Franchisee Agreement vide circular dated 14.12.2016 and ensure that there is no violation/deviation in implementation of the provisions of Model Agreement. PSPCL**

shall submit its report along with action taken within 3 months of the issue of this order.

5. The release of this partial load of 495 kVA has to be in accordance with para (2) of the Model Franchisee Agreement after issue of NoC.
6. The petitioner has violated the Department of Housing and Urban Development, Government of Punjab notification dated 06.05.2008 and conditions of approval granted by MC Zirakpur by not obtaining NOC from PSPCL before start of development work in the complex. The petitioner cannot claim any concession by citing space constraint due to his negligence and non implementation of the statutory provisions of Government Rules.

In view of the above, the petition along IA No. 06 of 2021 is dismissed.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Anjuli Chandra)
Member

Chandigarh
Dated: 02.06.2021