

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO 220-221, SECTOR-34 A CHANDIGARH

Petition No.66 of 2015

Date of order: 27.01.2016

Present: Smt. Romila Dubey, Chairperson
Shri Gurinder Jit Singh, Member

In the matter of: Petition under Rule 10, 69, 71 and 73 of PSERC (Conduct of Business) Regulations, 2005 and clause 44, 45, 46 and 47 of Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2014, with prayer to issue necessary direction to the respondent to accept A&A form for electricity load applied by the petitioner and further condone the delay, if any, occurred in submitting A&A form with PSPCL and accordingly extend the time required as per clause 6.3.3 of Punjab State Electricity Regulatory Commission (Electricity Supply code and Related Matters) Regulations, 2014, with further prayer to set aside the letter dated 03.09.2015 directing the petitioner to submit A&A form upto 16.09.2015 and letter dated 20.10.2015 whereby the feasibility clearance granted to the petitioner has been cancelled, being contrary to clause 6.3.3 of the Supply Code, 2014 and Order dated 05.08.2015 passed by this Commission in petition No.32 of 2015.

AND

In the matter of: Asian Fine Cements Pvt. Ltd., SCF 270, Motor Market, Mansa Devi Road, Mani Majra, Chandigarh through its authorized signatory Shri Harish Aggarwal s/o Shri Prem Parkash Aggarwal, Managing Director of the Company.

-----Petitioner

Versus

Punjab State Power Corporation Limited, The Mall,
Patiala

-----Respondent

Order

1.0 The present petition has been filed by Asian Fine Cements Pvt. Ltd., Mani Majra through its authorized signatory Shri Harish Aggarwal, Managing Director of the Company. The petitioner made the following submissions:

1.1 The petitioner applied for an electricity connection with a load of 7500 KW and CD of 6500 KVA and sought feasibility clearance. The Feasibility Clearance Committee (FCC) granted feasibility clearance in its meeting held on 24.09.2014. The petitioner found the proposal financially unviable besides being against the provision of law, Act and Regulations and hence requested for review of the feasibility clearance. The respondent informed the petitioner vide memo 722 dated 27.01.2015 that the revised feasibility has been worked out in meeting held on 30.12.2014.

1.2 The petitioner aggrieved by the feasibility clearance granted by the PSPCL filed a petition No. 12 of 2015 before this Commission and this Commission vide Order dated

11.03.2015 advised the petitioner to first approach PSPCL by filing a representation. The petition was not admitted as the petitioner had not first approached the PSPCL.

- 1.3 The petitioner filed a detailed representation with the Chief Engineer/Commercial, PSPCL, Patiala and enclosed a correct diagram of Power System around Rajpura. PSPCL vide its letter dated 24.03.2015 reiterated its earlier feasibility clearance and informed that the last date for making a formal application on A&A form was 26.03.2015. This was in contravention to the Orders of the Commission in petition No. 12 of 2015.
- 1.4 As the respondent has failed to comply with the Order dated 11.03.2015 passed by this Commission accordingly the petitioner filed a petition No. 32 of 2015 before this Commission under section 142 and 146 of the Electricity Act, 2003.
- 1.5 This Commission vide interim Order dated 15.06.2015 directed the respondent to give a personal hearing to the petitioner in respect of the objections of the petitioner regarding Feasibility Clearance earlier granted. The respondent sent a letter dated 02.07.2015 and fixed 03.07.2015 for giving personal hearing to the petitioner. On the appointed date, authorized person of the petitioner company, appeared before the FCC and pointed out various defects in the earlier Feasibility Clearance granted by the respondent. But the FCC did not agree with the objections of the petitioner and vide its memo No. 233 dated 17.7.2015 held that the earlier feasibility clearance granted as per

meeting held on 30.12.2014 is in order. The PSPCL put this decision of FCC before this Commission.

- 1.6 This Commission vide Order dated 05.08.2015 disposed of the above said petition No.32 of the 2015 filed by the petitioner. This Commission held that in view of the detailed decision of the FCC after giving an opportunity of being heard to the petitioner, the PSPCL has made the compliance of the Order dated 11.03.2015, passed in petition No. 12 of 2015. The petitioner submitted before the Commission during the hearing on 05.08.2015 that the decision of FCC conveyed to the petitioner is defective/deficient, in as much as, it does not indicate the date from which the time of 30/60 days shall start within which the petitioner is required to register A&A form and complete the other formalities. PSPCL submitted during hearing that the same shall be conveyed to the petitioner within a week.
- 1.7 Clause 6.3 of the Supply Code-2014 deals with release of connection for demand exceeding 500 kW/kVA. From the bare perusal of clause 6.3.3, it is very much clear that a distribution licensee shall clearly mention in the feasibility clearance letter the date by which the A&A form has to be registered. In the letter dated 17.07.2015, it was not mentioned and accordingly the petitioner rightly took an objection during the hearing of the above said petition No. 32 of 2015. The PSPCL has submitted during the hearing of the above said petition that the same shall be conveyed to the petitioner within a week. The time should have been clear 30 days extendable by further 30 clear days from the date mentioned in the Feasibility Clearance letter.

- 1.8 PSPCL issued Memo no. 384 dated 03.09.2015 in compliance of Order dated 05.08.2015 of this Commission in petition No. 43 of 2015 and mentioned therein that the petitioner is requested to get A&A form registered and deposit requisite charges before 16.09.2015 failing which feasibility granted shall stand cancelled and earnest money would be forfeited.
- 1.9 As per clause 6.3.3 of the Supply Code -2014, the petitioner was entitled to get clear 60 days from the date mentioned in the Feasibility Clearance and as the date was not mentioned in the Feasibility so as per the order dated 05.08.2015, the petitioner was entitled to get clear 60 days from the date the PSPCL sent the letter dated 03.09.2015 to the petitioner. But the PSPCL wrongly and illegally held that the petitioner is liable to submit A&A form upto 16.09.2015 which was against clause 6.3.3 of the Supply Code and Order dated 05.08.2015 passed by this Commission in petition No. 32 of 2015. Accordingly the petitioner sent a letter dated 01.10.2015 to the PSPCL and requested for grant of clear 60 days from 03.09.2015 for submitting A&A form.
- 1.10 The petitioner also sent a letter dated 21.09.2015 to the Chief Engineer/ ARR&TR, PSPCL and submitted therein that the PSPCL has not conveyed the expenditure likely to be incurred for development of the infrastructure as approved by FCC.
- 1.11 The petitioner visited the office of the respondent many time along with complete A&A form but the respondent failed to accept the same. Thereafter the respondent sent a letter dated 20.10.2015 to the petitioner and mentioned therein that

as per letter dated 03.09.2015, the petitioner was required to submit A&A form upto 16.09.2015 and as the petitioner has failed to submit the same so the feasibility granted shall stand cancelled and earnest money stands forfeited. It was further mentioned that after the registration of A&A form, the possible expenditure to be incurred for transmission works etc. will be intimated through demand notice.

- 1.12 The petitioner could be asked to submit A&A form within 60 clear days from the date requisite information was supplied to the petitioner in compliance of the Order dated 05.08.2015. PSPCL sent the letter dated 03.09.2015 and accordingly, the petitioner could be asked to submit A&A form within 60 days from the date of issue of this letter. But the respondent wrongly and illegally mentioned in this letter that the petitioner is required to submit A&A form upto 16.9.2015, which is totally contrary to clause 6.3.3 of the Supply Code, 2014 and Order dated 5.8.2015 passed by this Commission in petition No. 32 of 2015.
- 1.13 The petitioner is always ready to take an electricity connection from the respondent and submit A&A form for the same. Even today, the petitioner is ready to submit the A&A form. The petitioner requested the respondent to give details of the expenses to be incurred on the works but the respondent informed vide letter dated 20.10.2015 that only after A&A form is submitted, the petitioner would be informed the cost of the lines etc. by issuance of a demand notice.
- 1.14 No prejudice would be caused to PSPCL in case the above said letters dated 03.09.2015 and 20.10.2015 are set aside

and the petitioner is allowed to submit A&A form with the PSPCL.

- 1.15 This Commission has inherent powers as per Reg. 69 & 71 to 73 of PSERC (Conduct of Business) Regulations, 2005 & Supply Code, 2014 to pass orders as may be necessary for meeting the ends of justice.
- 1.16 There is no delay on the part of the petitioner in submitting the A&A form but the respondent wrongly and illegally refused to accept the same and cancelled the feasibility clearance and forfeited the earnest money. If this Commission comes to the conclusion that there is a delay on the part of the petitioner in submitting the A&A form then this Commission has power to condone that delay and extend the time for submission of A&A form as per the provisions already mentioned above.
- 1.17 In a similar matter in petition No. 6 of 2013, filed by M/s International Tractors limited for extension of compliance period for registration of A&A forms beyond 60 days, this Commission allowed the petition and extended the time. As such, this Commission has jurisdiction and power to decide the present case also.
- 1.18 The petitioner made the following prayers:
 - a) Necessary directions may kindly be issued to the respondent to accept the A&A form for the electricity load applied by the petitioner.
 - b) The delay, if any, occurred in submitting the A&A form with the PSPCL may kindly be condoned and accordingly the time required as per clause 6.3.3 of the Supply Code, 2014, for submitting A&A form may kindly

be extended in the case of the petitioner as per peculiar facts and circumstances of the case as mentioned above, in the interest of justice.

- c) The letter dated 03.09.2015 directing the petitioner to submit A&A form upto 16.09.2015 and letter dated 20.10.2015 whereby the feasibility clearance granted to the petitioner has been cancelled and earnest money has been forfeited, may kindly be set aside, being contrary to clause 6.3.3 of the Supply Code -2014 and Order dated 5.8.2015 passed by this Commission in petition No. 32 of 2015, in the interest of justice.

2.0 The petition was admitted and the Commission vide Order dated 02.12.2015 directed PSPCL to file reply by 11.12.2015 with a copy to the petitioner. The petition was fixed for further hearing on 15.12.2015.

3.0 PSPCL vide Chief Engineer/ARR & TR Memo No.5253 dated 15.12.2015 sought two weeks time to file reply. The Commission vide Order dated 18.12.2015 directed PSPCL to file reply by 28.12.2015 with copy to the petitioner. The petition was fixed for hearing on 29.12.2015, which was postponed to 01.01.2016.

4.0 PSPCL vide Chief Engineer/ARR & TR Memo No. 5370 dated 31.12.2015 filed the reply and submitted as under:

4.1 The petitioner required an electricity connection for the cement plant and accordingly applied for feasibility clearance. Feasibility clearance was granted by FCC in its meeting held on 24.09.2014. The feasibility clearance was subsequently reviewed and revised by FCC on the

representation of the petitioner and the same was intimated to the petitioner by the office of EIC/Commercial, Patiala vide memo no. 722 dated 27.01.2015.

- 4.2 As per Supply Code, 2007, once the feasibility is granted, the prospective consumer is allowed to make the compliance of further formalities within 30 days of the receipt of communication from PSPCL and the period is extendable for further 30 days. The decision of FCC meeting held on 30.12.2014 was conveyed to petitioner on 27.01.2015. On the representation of the petitioner to EIC/Commercial, PSPCL, Patiala, the petitioner was heard and the petitioner was asked to make the compliance of registration of A&A form and other formalities by 26.03.2015 vide EIC/Commercial memo No. 792 dated 24.03.2015. Hence, the total period of 30/60 days was validly allowed to the petitioner.
- 4.3 For making the compliance of Orders of the Commission dated 11.03.2015, EIC/Commercial, PSPCL, Patiala made speaking orders vide memo no. 792 dated 24.03.2015, clearly stating that the petitioner should make the compliance of registration of A&A form up to 26.03.2015. PSPCL did not make any violation of the Orders of the Commission dated 11.03.2015 as well as rules & regulations governed under the Electricity Act, 2003.
- 4.4 The petitioner was granted a personal hearing by FCC in the meeting held on 03.07.2015 and the decision of FCC that the earlier feasibility clearance granted as per meeting held on 30.12.2014 is in order was conveyed to the petitioner vide memo no. 233 dated 17.07.2015

- 4.5 PSPCL has implemented the decision of the Commission dated 11.03.2015 and further as per the decision of PSERC dated 05.08.2015, the respondent issued a letter dated 03.09.2015 by which the petitioner was requested to get A&A form registered and deposit requisite charges before 16.09.2015 failing which feasibility granted shall be cancelled and earnest money shall be forfeited.
- 4.6 The petitioner was given an opportunity of personal hearing on 03.07.2015 and the decision of said meeting was conveyed to the petitioner on 17.07.2015 through registered post and also on e-mail by giving the petitioner total 60 days for making the compliance of formalities. The petitioner was again reminded on 03.09.2015 through registered post and also on e-mail by giving him the directions to make the compliance of registration up to 16.09.2015 although the Commission decision dated 11.03.2015 in Petition No. 12 of 2015 is very much clear that 30/60 days for registration of A&A form starts from the date of decision of FCC is conveyed to him. He failed to register A&A form within the time limit so prescribed. Further, the applicant failed to register A&A form within the stipulated period i.e. by the date specified in letter dated 03.09.2015 as per Supply Code. EMD deposited by the applicant stands forfeited and the requisition form for load also stands cancelled.
- 4.7 In the Order dated 11.03.2015 of the Commission in petition no. 12 of 2015, it was mentioned that “The petitioner shall comply with the decision of Feasibility Clearance Committee within 30 days of receipt of communication from PSPCL without prejudice to his right for legal recourse.”

The Commission made it very much clear to the petitioner that it must comply the decision of FCC within 30 days of the receipt of communication from PSPCL. So, when the communication of feasibility clearance was conveyed initially on 27.01.2015, it is clear that the period of 60 days starts from these respective dates. The petitioner never applied/approached any office of PSPCL to get the period extended upto 60 days. However, the petitioner was also reminded by PSPCL on 03.09.2015 to make the compliance of Registration of A&A before 16.09.2015. Regarding the expenditure, the same is to be communicated with the demand notice after submission of A&A form.

- 4.8 The petitioner never visited the office of PSPCL for making the compliance of application. Moreover, the submission of A&A form is to be complied through online system. So the version of the petitioner is totally wrong.
- 4.9 The petitioner was given sufficient opportunities as per law but he failed to avail the opportunities and every time violates the rules and regulations and ignored the facts intentionally.
- 5.0 During hearing on 01.01.2016, the Counsel for the petitioner sought time to file rejoinder to the reply of PSPCL. The Commission vide Order dated 04.01.2016 directed the petitioner to file rejoinder by 15.01.2016 with copy to PSPCL. The next date of hearing was fixed for 19.01.2016.
- 6.0 The petitioner filed rejoinder dated 19.01.2016 and reiterated most of the submission made in the petition. However, following additional submissions were made:

- 6.1 PSPCL is relying upon the order dated 11.03.2015 passed by this Commission in petition No. 12 of 2015 but has lost sight of the fact that this Commission has passed fresh Order dated 05.08.2015 in petition No. 32 of 2015 and during the proceedings, PSPCL has made a statement to inform the date to submit the A&A form. So 30/60 days could only be after 05.08.2015 and as such PSPCL wrongly and illegally restricted the time limit upto 16.09.2015 in violation of the Order dated 05.08.2015 passed by this Commission in petition No. 32 of 2015.
- 6.2 As PSPCL has mentioned last date for submitting the A&A form as 16.09.2015 so the petitioner had no other option but to visit the office of the respondent.
- 6.3 The petitioner approached this Commission because the Electricity Act, 2003 gives this right to the petitioner. From the submission of the respondent, it appears that they are punishing the petitioner for approaching this Commission. The respondent never gave time as per clause 6.3.3 of the Supply Code and as per Order passed by this Commission in petition No. 32 of 2015.
- 7.0 During hearing on 19.01.2016, the counsel for the petitioner submitted that the petitioner is ready to submit A&A form and deposit necessary charges within a short notice of 7 working days. After hearing the parties on 19.01.2016, the Commission vide Order dated 20.01.2016 closed the hearing of the matter and the Order was reserved.

8.0 Findings and Decision of the Commission

The only prayer of the petitioner is to set aside PSPCL's letter dated 03.09.2015 being in violation of regulation 6.3.3 of the Supply Code, 2014 & letter dated 20.10.2015 vide which the requisition has been cancelled and EMD forfeited due to non submission of A&A form along with charges within stipulated time. The petitioner originally filed petition No. 12 of 2015 challenging the conditions of the feasibility clearance given by PSPCL and the Commission vide Order dated 11.03.2015 disposed of the petition with the directions to the petitioner to first approach PSPCL for redressal of his grievance. PSPCL was directed to dispose of representation in accordance with law and the petitioner was further directed to comply with the decision of Feasibility Clearance Committee within 30 days of receipt of communication from PSPCL without prejudice his right for legal recourse. The time period for submission of A&A form as per regulation 6.3.3. of the Supply Code, 2014 was extended accordingly. However, PSPCL while reiterating the FCC decision, directed the petitioner vide letter dated 24.03.2015 to comply with the decision of FCC by 26.03.2015 i.e within two days of issue of the letter rejecting the objections of the petitioner.

The aggrieved petitioner again approached this Commission in petition No. 32 of 2015 with the prayer to initiate action against PSPCL under section 142 and 146 for non-compliance of the Order dated 11.03.2015 of the Commission. The Commission in its interim Order dated 15.06.2015 directed PSPCL to comply with the Order dated 11.03.2015 of the Commission and representation of the petitioner dated 10.03.2015 be considered again by FCC and a detailed reasoned Order may be passed after giving

personal hearing to the petitioner. Thus, it is clear that PSPCL disposal vide letter dated 24.03.2015 was not in accordance with the Orders of the Commission.

In compliance to the Order of the Commission dated 15.06.2015, a meeting of FCC was held on 03.07.2015 and the petitioner was accorded an opportunity of hearing. PSPCL again rejected the objections of the petitioner and conveyed its decision vide letter dated 17.07.2015 and submitted a copy of the same to the Commission vide CE/ARR&TR letter dated 22.07.2015. Accordingly, the Commission vide Order dated 05.08.2015 held that PSPCL has complied with the Orders of the Commission dated 11.03.2015, so there is no contravention of the orders/directions of the Commission. However, the petitioner during hearing on 04.08.2015 pointed out the deficiency in the decision of FCC conveyed to the petitioner vide letter dated 17.07.2015 since it does not indicate the date from which the time of 30/60 days shall start within which the petitioner is required to register A&A form and complete other formalities. The letter dated 17.07.2015 was just a detailed justification on the objections raised by the petitioner and this letter can at best be termed as a revised decision of the FCC. This letter cannot be treated as notice for compliance as per regulation 6.3.3 of the Supply Code, 2014. Moreover, the final Order of the Commission on this petition was also pending, which was delivered on 05.08.2015. PSPCL during hearing on 05.08.2015 assured that the same shall be conveyed to the petitioner within a week.

PSPCL vide Memo No. 348 dated 03.09.2015 directed the petitioner to register A&A form and deposit the requisite charges by 16.09.2015 i.e. within 13 days of the date of issue of notice to

the petitioner. Once again, PSPCL ignored the provisions of the regulation 6.3.3 of the Supply Code, 2014 and denied a clear 30 days to the petitioner. The principle of natural justice as well as regulations mandate that the notice under which any person has been asked to carry out some compliance must be as per laid down rules/regulations and sufficient time should be given for its compliance, particularly in those cases where financial liability is involved. The regulation 6.3.3 of the Supply Code, 2014 provides that a clear 30 days, extendable to 60 days, should be given to the applicant for registration of A&A form and for depositing necessary charges. The letter must also specify the date of compliance. Thus both the conditions of providing clear 30 days, extendable to 60 days, and specifying the date upto which compliance is to be made by the applicant are mandatory. Any notice or revised intimation to the applicant for registration of A&A form and deposit of necessary charges without fulfilling these two conditions shall be against the regulations as well as principle of natural justice.

However, the letter dated 03.09.2015 issued by the office of EIC/Commercial, PSPCL, Patiala directing the petitioner to submit A&A form and for depositing necessary charges by 16.09.2015, is clearly not as per the letter & spirit of regulation 6.3.3 of Supply Code, 2014. PSPCL took almost one month, against seven days committed to the Commission, to issue this letter and expected that the applicant will comply with various formalities including deposit of requisite charges, for which the applicant may have to arrange funds, within a short notice of 13 days. No loss would have occurred to PSPCL had it provided a clear 30 days to the petitioner to comply with the letter dated 03.09.2015.

Accordingly, EIC/Commercial, PSPCL, Patiala office Memo No. 407 dated 20.10.2015 for cancellation of requisition form and forfeiting the EMD of the petitioner is set aside. The counsel for the petitioner submitted during hearing that they are willing to comply within a short notice of seven working days. Accordingly, the petitioner shall submit the A&A form along with necessary charges as per the decision of Feasibility Clearance Committee within 10 days of the issue of this Order. The period for compliance shall be deemed to have been modified accordingly.

The petition is disposed of accordingly

Sd/-

(Gurinder Jit Singh)

Member

Sd/-

(Romila Dubey)

Chairperson

Chandigarh

Dated: 27.01.2016