

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No. 59 of 2017
Date of order: 26.07.2018**

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjuli Chandra, Member

In the matter of: Petition under Supply Code (2007) Regulation 49 & Supply Code (2014) Regulation 46 for setting aside the illegal demand of Rs. 5,40,97,475/- raised by PSPCL on account of voltage surcharge for the period 01.04.2011 to 11.09.2017 in violation of the Electricity Act, 2003 & Supply Code Regulations.

In the matter of: SEL Manufacturing Company Ltd., Village Lall Kalan, Ludhiana-Samrala Road, District Ludhiana, through its President (Engg.) Pardeep Kumar Aggarwal.
.....Petitioner

Versus

Punjab State Power Corporation Ltd., The Mall, Patiala.

.....Respondent

ORDER

SEL Manufacturing Company Ltd (SEL), having a large supply industrial connection with a sanctioned load of 4905.730 kW and a Contract Demand (CD) of 4500 kVA, has filed the present petition under Regulation 49 of the Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related matters), Regulations, 2007 and Regulation 46 of the Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related matters), Regulations, 2014 for setting aside the demand of Rs. 5,40,97,475/- raised by Punjab State Power Corporation Ltd (PSPCL) on account of voltage surcharge for the period 01.04.2011 to 11.09.2017 in violation of the Electricity Act, 2003 & Supply Code Regulations. The petitioner also filed an application for stay against disconnection of supply by the respondent.

- 1.0 The petitioner submitted as under:
- 1.1 A new industrial connection having a load of 4905.730 kW with a Contract demand of 4500 kVA was applied on 03.03.2006 in the name of Saluja Cotex Pvt. Ltd (now known as SEL Mfg. Co. Ltd.). After technical clearance, A & A form was submitted on 25.05.2006 and the demand notice was issued on 28.06.2006. The compliance was made on 17.07.2006 by depositing Rs. 30,00,000/- on account of cost of 66 kV Bay & Rs.1,00,000/- for survey of 66 KV line.
- 1.2 The survey of the route for 66 kV line was not under taken promptly by PSEB (now PSPCL). After completion of survey for 66 kV line, route plan was to be approved by the competent authority. Thereafter, it was to be notified and estimate for erection of 66 kV line was to be sanctioned by the respondent.
- 1.3 Keeping in view the delay on the part of respondent for survey of 66 kV line route & sanctioning of estimate, the petitioner requested the respondent to allow partial load of 2000 kW with a CD of 1500 kVA at 11kV as a stop gap arrangement on account of urgency for commissioning its plant to fulfill its overseas commitments being 100% export oriented unit. This request was accepted by the respondent on 11.10.2006. Accordingly, A&A Form was submitted on 16.10.2006 and after compliance of the demand notice by the petitioner, the connection was released on 09.11.2006 for 2000 kW/1500 kVA at 11 KV.
- 1.4 After a long delay, the route plan for 66 KV line was approved by the department on 23.01.2007. The petitioner under compelling circumstances requested the respondent for allowing balance load of 2905.730 kW & 2500 kVA CD at 11 kV (maximum of 4000 KVA at 11 KV). Request of the petitioner was accepted on 11.04.2007. The A&A form was submitted on 20.04.2007 by depositing Advance Consumption Deposit (ACD) of Rs. 15,00,000/-. Demand notice was issued on 15.05.2007 for a total load of 4905.730 kW/4000kVA at 11 kV by the PSPCL. Compliance of the same was made by the petitioner on 23.05.2007 and the load was released thereafter.

- 1.5 After sanction of estimate for Rs.1,72,36,203/- for erection of 66 KV line, ASE/TLSC Division Mohali vide memo no. 2569 dated 29.05.2007 asked the petitioner to deposit the balance amount. In compliance, the petitioner deposited the amount so demanded. Thus full compliance of the demand raised for erection of 66 kV line was made by the petitioner up to 23.06.2008 for availing supply at 66 kV.
- 1.6 The work of erection of 66 kV line was taken in hand by the respondent, but after completion of about 70-80% work some dispute arose between the respondents & owners of land falling enroute. The remaining work has not been completed till date. As such the petitioner is getting the load of 4905.730kW/4000 kVA at 11 kV.
- 1.7 The petitioner had completed the work of erection of its 66 KV substation in the year 2007-08 and got it cleared for energization from Chief Electrical Inspector (CEI), Punjab on 26.08.2008. Thus there was nothing left to be done by the petitioner for receiving the supply at 66 kV.
- 1.8 After clearance of the petitioner's substation by CEI, the petitioner represented to the respondent for discontinuing levy of voltage surcharge as per instructions. This was accepted and the levy of surcharge was discontinued/withdrawn w.e.f 23.12.2008 vide CE/ Commercial, Patiala memo no. 18311 dated 12.04.2010. Since then petitioner is being billed as per tariff without levy of any surcharge.
- 1.9 Now after more than 7 years, a demand of Rs. 5,40,97,475/- has been raised against the petitioner by AE/Katani Kalan sub division vide memo no. 474 dated 10.10.2017 on account of voltage surcharge of 7% from 01.04.2011 to 11.09.2017 directing the petitioner to deposit this amount within seven days. This demand is totally wrong, unjustified and illegal on the following grounds.
 - i) Voltage surcharge for a period of more than 6 years has been charged in utter violation of the instructions of CE/ Commercial. The voltage surcharge has been re-imposed without any prior notice to the petitioner.

- ii) Levy of surcharge after a period of more than 7 years is in violation of Section 56(2) of the Electricity Act, 2003. No amount on account of surcharge has ever been mentioned in the electricity bills issued to the petitioner or demanded since 2010.
- iii) Levy of voltage surcharge from 05.10.2016 onwards is in violation of Regulation 4.2.2 inserted by 2nd amendment to Supply Code,2014 notified by the Commission vide notification dated 05.10.2016.
- iv) The petitioner has already incurred an expenditure of more than Rs.4 crore on account of deposits made to the respondent for erection of 66 kV line & bay, erection of its own 66 kV sub -station and for paying cost of 11 kV line etc. There is nothing else to be done by the petitioner to get supply at 66kV. Imposition of voltage surcharge on the petitioner to the tune of Rs. 5,40,97,475/-is totally wrong & unjustified under these circumstances. The petitioner had to incur expenditure of more than Rs. 30 lac. on the erection of 11 kV line which was necessitated due to failure of the respondents to deliver power at 66 kV. This unnecessary expenditure would have been avoided If the respondents had made supply available to the petitioner at 66kV in time.
- v) The petitioner is running its business by taking loans from Banks on which it is paying hefty interest. It cannot afford to keep huge amounts of its finances dumped in the coffers of Government department without any return for years together.

1.10 The nature of issues involved are peculiar & do not fall within the purview of CGRF of PSPCL. The Forum has powers to settle only disputes arising out of violation or non implementation of Regulations. As such the matter is being brought before the Commission with the request that the Petition may be registered & heard for fairness & equity to the petitioner.

1.11 The petitioner prayed that the undue demand of Rs. 5,40,97,475/- raised against the petitioner may kindly be set aside being totally unfair under the facts & circumstances of the case and the respondents may be directed to stop levying 7% surcharge in future bills and also to complete the erection

of 66 kV line at the earliest. The petitioner also submitted an application for stay against disconnection of power supply.

- 2.0 The petition was admitted vide order dated 15.11.2017, with a direction to PSPCL to submit reply by 05.12.2017. The petitioner was directed to file rejoinder, if any, by 19.12.2017.
- 3.0 PSPCL vide CE/ARR & TR submitted the reply to the petition vide Memo No. 5974 dated 27.12.2017. The gist of the submissions is as under:
- 3.1 The petitioner applied for a load 4905.730kW/4500 kVA on 03.03.2006 and deposited EMD Rs.5,00,000/- on 03.03.2006 and Rs. 10,00,000/- on 25.05.2006. The application was registered on 25.05.2006 in concerned office. The demand notice was issued on 28.06.2006. The consumer deposited the entire cost of erection of 66 kV line with erstwhile PSEB (Now PSPCL). The work of erection was started, but could not be completed due to dispute with farmers. Hence, 66kV line was not erected and connection could not be released.
- 3.2 Meanwhile, the petitioner applied for a new LS connection for a load of 2000kW/1500 kVA at same premises on 16.10.2006 and the same was released on 09.11.2006. Thereafter, the consumer applied for extension in load of 2905.730 kW/2500 kVA on 20.04.2007 which was released on 18.11.2007. The total load of consumer became 4905.730 kW/4000 kVA.
- 3.3 The petitioner represented to SE/OP. Circle, Ropar stating that he had erected the 66kV substation at his premises, got it approved from CEI and had also deposited the total cost of the line on 26.06.2008. Since TLSC was not able to complete the 66KV line, so as per clause 5.8.1 of PSEB's Electricity Supply Regulations (ESR), 10% voltage surcharge should be stopped from 22.12.2008. The said representation of firm was considered by the CE/Commercial and it was decided to discontinue levy of 10% surcharge w.e.f. 23.12.2008 as per ESR clause no. 5.8.1 and 5.8.2.4.
- 3.4 Thereafter, during the audit of the Company, it was pointed out that the petitioner firm with contract demand of 4000 kVA was being supplied power at a lower supply voltage of 11kV against specified supply voltage of

33kV/66kV. Accordingly, voltage surcharge was being levied on the consumer in view of instructions, which was discontinued w.e.f Dec. 2008.

3.5 PSPCL could install only 10 out of 16 towers by incurring an expenditure of Rs. 0.84 crore. However, it could not provide 66 kV line to the consumer as the execution of the work at site was opposed by the farmers on whose land towers were to be erected. The Punjab & Haryana High Court while adjudicating a civil writ petition filed by the consumer for installation of 66 kV line directed PSPCL in October, 2010 not to install any high tension electric wire/poles in the land of farmers without paying adequate compensation to their satisfaction or to explore the possibility of alternate route. In the month of August 2013, PSPCL called the affected farmers and the petitioner to negotiate and settle the quantum of compensation to be paid to the farmer by the petitioner but consensus could not be reached between the parties. Any alternate route plan for the 66 kV line was also not found technically feasible by the Company.

3.6 The Company has been supplying power at 11kV to the consumer without levying any voltage surcharge in violation of the instructions on the ground that the consumer had deposited the total cost of line/bay also built in-house 66 kV sub-station. In this regard, Audit observed that while framing the route plan of the proposed 66kV line, PSPCL did not consider the feasibility of availability and acquisition of land for erection of 66kV line and went for the work which could not be completed and had to be left mid-way. The compensation to the farmers for the acquisition of land was to be paid by the consumer and the onus was on him to settle the amount of compensation to be paid to the farmers. As the supply voltage could not be upgraded due to constraints as mentioned above, the ESIM provisions stipulated that under such conditions the supply could be continued at lower voltage but only on the payment of voltage surcharge. Audit has observed that non-levy of the prescribed voltage surcharge required under ESIM at the rate of seven per cent on the consumption charges during April 2011 to November 2016, resulted in loss of revenue of Rs. 2.37 crore (after deducting the amount deposited by the consumer for deposit work i.e. Rs. 1.72 crore from due voltage surcharge of Rs. 4.09 crore) besides

PSPCL incurring transformation and incremental line losses. Above audit para was deliberated in the office of CE/Commercial PSPCL, Patiala and subsequently memo no.1051 dated 27-09-2017 was issued to the ASE/CBC PSPCL, Ludhiana directing him to levy the voltage surcharge. The ASE/CBC PSPCL, Ludhiana has issued RBS no. 113/2017 dated 03.10.2017 of Rs.5,40,97,475/-.

- 3.7 As per tariff order for the FY 2009-10, which was notified on 08.09.2009, PSPCL was directed by the Commission to ensure that existing consumers getting supply at voltage lower than the specified voltage would be provided supply at the specified voltage within a period of 18 months. In case there are constraints in releasing a new connection and/or additional load/demand at the prescribed voltage or in converting the supply voltage of an existing consumer, the supply may be given/continued to be given at a lower voltage on the condition of payment of surcharge specified in the General Conditions of Tariff. As such, voltage surcharge was recoverable w.e.f. April, 2011 as per para 5.5 of the Tariff Order for the FY 2009-10, Clause no. 5.2 of the Conditions of Supply (applicable w.e.f. 01.04.2010), and Clause no. 13 of appendix to Section IV of ESIM-2011. The demand has been raised as per rules/regulations of PSPCL and in compliance to the Audit Para issued by Accountant General (Audit), Punjab. The demand raised by AE/ Katani Kalan is correct, justified and in compliance to rules and regulations of PSPCL.
- 4.0 The petition was taken up for hearing on 03.01.2018 and vide Order dated 15.01.2018, the Commission stayed the recovery of voltage surcharge amounting to Rs. 5,40,97,475/- raised by PSPCL vide Memo No. 474 dated 10.10.2017. The Commission directed PSPCL to submit copy of Public Notice issued for inviting objections for erection of 66 kV line and objections received, if any, in this regard. PSPCL as asked to explain as to what action has been taken to resolve the issue of compensation to the affected farmers in accordance with Punjab Works of Licensee Rules, 2008. PSPCL was asked to explain why approval from the Commission was not taken for extension in the time period specified for release of connection under Regulation 6 (b) of the Supply Code, 2007. PSPCL

should intimate the interest/penalty payable to the petitioner for delay in release of connection as per regulations. Certain other queries were also raised by the Commission and PSPCL was directed to submit detailed reply by 22.01.2018 with a direction to the petitioner to file rejoinder, if any, by 29.01.2018. The petition was fixed for hearing/ arguments on 07.02.2018. However, on the request of PSPCL, the hearing was postponed to 11.04.2018.

5.0 In response to Commission's order dated 15.01.2018, PSPCL submitted its reply vide CE/ARR&TR Memo No. 6755 dated 06.04.2018 as under:

5.1 The work with respect to erection of the line was started by the PSPCL and the work of erection of the line was completed to the extent as per notification no. 36/BD/G-2583. There was strong opposition from the farmers which is evident from the letters written on various dates addressed to SHO, Samrala & DSP, Samrala for giving necessary police protection to erect the line. When the work pertaining to erection of line was going on, some of the farmers had caused damage to the property of the respondent PSPCL towers. The execution of work at site especially pertaining to tower No.4, 13, 14 and 15 was opposed by the farmers of Lal Kalan Village. After facing such harsh situation, the respondent PSPCL was constrained to lodge a complaint with the concerned SHO against the unscrupulous people. Resultantly, an FIR No.18 dated 23.01.2009 was registered at Police Station Samrala, which is still pending adjudication before the court of Ld.JMIC, Samrala. Besides this, court case, was filed by one Kulwant Kaur in the court of Learned Chief Judicial Magistrate First Class, Samrala against the erection of line. An application for granting interim injunction during the pendency of the instant suit was also filed by the plaintiff Kulwant Kaur. Resultantly, the Learned court vide order dated 15.12.2009 restrained PSPCL from erecting high tension line over the said property. PSPCL filed appeal against the interim injunction granted by the court and the case remained sub-judice up to 30.05.2012.

5.2 After considering the application submitted by the petitioner, the respondent issued notification in the newspaper namely Indian Express for

the purposes of erection of the lines. The publication with respect to erection of line was also published in local newspaper namely Jagbani.

5.3 On the basis of the approved route plan for the purposes of erection of 2.75 KM line consisting of 16 no. towers, the deposit estimate of Rs.1,72,36,203/- was sanctioned by the Office of Engineer-in-Chief/TS, PSEB, Patiala vide its memo bearing No.1179 dated 14.05.2007, which was duly deposited by the consumer vide receipt No.563/84079 dated 30.06.2007 for Rs.69,40,000/- and receipt bearing No.582/85572 dated 23.06.2008 for an amount of Rs.1,02,96,203/-.

5.4 One of the farmers namely Surinder Pal filed a CWP No.9511 of 2009 wherein interim directions were issued in favour of the petitioner and PSPCL was also restrained to erect the line over the land. The said writ petition was decided by the Hon'ble High Court vide its order dated 16.01.2012 observing as under:-

“till the route of transmission line in question is revised by the notification no electricity transmission line shall be laid down on the revised proposed route. Mr.Mattewal further states that fresh notification is likely to be issued for the revised route. Learned counsel for the petitioner states that petitioners shall be at liberty to file objection against the revised route notification and perse the petition be disposed of in the light of statement made by Mr.Mattewal, Learned counsel for respondent Nos.2 and 3.”

5.5 Civil Writ Petition bearing No.15943 of 2009 titled as “M/s Saluja Cotex Pvt. Ltd. Versus State of Punjab” was filed by the petitioner company before the Hon'ble High Court, wherein vide Order dated 14.10.2010, the Hon'ble High Court had directed the respondent PSPCL not to install any high tension electric wire/pole in the land of farmers/agriculturist without paying adequate compensation to their satisfaction. However, if 66 kV line can be provided to the petitioner through any alternative route without affecting the land of any farmer/agriculturist, the PSPCL was permitted to explore such possibility. However, after due deliberation between the petitioner and respondent Corporation no fruitful decision came out. The compensation with respect to land was to be paid to the farmers by the

petitioner firm. However, the petitioner firm could not pay the adequate compensation to the aggrieved farmers hence the line could not be erected in the given route. So there is no such lapse on the part of the respondent in erection of the line.

- 5.6 The interim order in CWP No.9511 of 2009 & 15943 of 2009 could not facilitate the erection of line as the injunction granted by the civil court Ludhiana in case of Kulwant Kaur remained in force & appeal of PSPCL against injunction also could not be heard as the record remained in Hon'ble High court and was returned only on 05.03.2012 as is evident from order 30.08.2012 of Addl. Distt Judge Ludhiana in case of PSEB vs Kulwant Kaur. As such the erection of the line upto 2012 was not possible.
- 5.7 The surcharge of the petitioner firm was waived off by the answering respondent from time to time meaning thereby the petitioner firm has availed the benefit by way of waiving of surcharge charges. Since the petitioner firm has already been compensated by the answering respondent, now the petitioner firm cannot claim benefit second time for the same cause.
- 5.8 On a bare perusal of the instant chronology of events and facts of the case, it was not possible to erect the line till 2012 since multifarious litigation were started simultaneously. It was the duty of the petitioner company to pay adequate and justifiable compensation to the effected farmers. The farmers were demanding an amount of Rs.3 crores, however, the petitioner company had offered only Rs.60 lakhs thus, the matter could not be settled. Keeping in view the same, it can be safely presumed or assumed that the petitioner company had no bonafide necessity to carry on its business and was stretching the issue without any justifiable reason. Now after a lapse of more than 12 years from the date of initial release of connection, the petitioner has raised a challenge which is barred by the law of limitation. No justifiable and convincing reason or such inordinate delay has been given by the petitioner company. It is settled position of law that delay of each and every day has to be explained by the person who is seeking relief from the court.

- 5.9 After the dismissal of the Suit No.200 filed in Civil Court Samrala in favour of PSPCL (decision received on 05.12.2012) and decision of the Hon'ble High Court, lot of correspondence was made in order to comply with the order dated 14.10.2010 passed by the Hon'ble High Court. The firm finally gave its undertaking on 17.6.2013 and a meeting for the purposes of resolving the issue, was held in the office of ASE/TL Jalandhar on 26.08.2013 to decide the amount of adequate compensation to the satisfaction of farmers/agriculturist. However, no agreement was reached on the quantum of compensation between the firm and the farmers. Since various court's proceedings were initiated by the petitioner firm as well as farmers before competent court of law, therefore, there is no lapse on the part of the respondent PSPCL.
- 5.10 The matter was referred to Legal Section of answering respondent seeking legal opinion in the case. The Legal Advisor, vide letter bearing No.55476 dated 19.04.2014 opined that the rights of parties regarding compensation have to be adjudicated as envisaged under Part-III of the Indian Telegraph Act. Accordingly, the compensation as offered by the beneficiary firm be paid to the land owners. However, if the land owners/farmers are aggrieved, they shall be at liberty to move before the appropriate court. It is relevant to mention herein that the Hon'ble High Court vide its order 14.10.2010 directed the respondent Board not to work in the land of farmers without paying adequate compensation to their satisfaction. Therefore, due to compensation issue remaining unresolved, the work could not be executed at that time. It is worthwhile to submit herein that after availing the benefits of surcharge waiver the petitioner firm did not come forward with an intention to pay compensation to the aggrieved farmer.
- 5.11 As far as another alternative of rerouting of 66 kV line is concerned, it has been seen that it is not technologically feasible to explore possibility of rerouting of 66 kV line to avoid the land of farmers in view of populated & industrial area. Keeping in view the same, the line could not be erected.
- 5.12 The present demand has been raised by the petitioner firm as the temporary relaxation of not charging voltage surcharge pending the

erection of the line has been mis-utilized by the firm and this is only because of this relaxation that the firm is not serious and coming forward to pay adequate compensation to the farmers and get the line erected as per Hon'ble Punjab & Haryana High court order dated 16.01.2012 either on the original route or on the alternate route. Till the time such relaxation will continue, the firm is not going to get the line erected as it is against the interest of the firm and the firm is otherwise enjoying the benefit of no voltage surcharge even when the transformation losses are being counted on PSPCL side. It shall also bear O&M charges of 66 kV sub- station which has to be maintained by the firm in case of 66 kV supply.

- 6.0 During hearing on 11.04.2018, the Commission noted with concern that the reply dated 06.04.2018 of PSPCL in compliance to order dated 15.01.2018 was incomplete and deficient in many respects. Accordingly, the Commission vide order dated 13.04.2018 directed PSPCL to file a detailed reply covering all points within ten days. The petitioner was directed to file rejoinder, if any, within a week thereafter. The petition was fixed for hearing on 16.05.2018.
- 7.0 In compliance to the order of the Commission dated 13.04.2018, PSPCL submitted additional reply vide memo no. 6852 dated 11.05.2018. The gist of the submissions is as under:
- 7.1 Regarding public notices issued by PSPCL for inviting objections for the erection of 66 kV lines and also objections received, if any, PSPCL submitted that prior to the erection of the line, the respondent had issued notices in the concerned newspapers and the same is already on record. No objections were received by the respondent PSPCL in the aforesaid matter.
- 7.2 On resolving the issue of compensation to the effected farmers in accordance with Punjab Works Licence Rules, 2008, PSPCL submitted that at the time of erection of the line, the aggrieved farmers as well as the petitioner firm approached the Hon'ble Punjab and Haryana High Court by way of writ petitions. The Hon'ble High Court vide order dated 14.10.2010 restrained the respondent PSPCL from erecting the line without paying

compensation. It was also directed by the Hon'ble High Court that the compensation would only be solved subject to satisfaction of the aggrieved farmers. Since the petitioner firm did not pay the amount as demanded by the farmers so the matter remained unresolved.

7.3 Regarding query of the Commission as to why approval from the Commission was not taken for extension in the time period specified for release of connection under Regulation 6 (b) of the Supply Code, 2007, PSPCL submitted that the subject cited case involves the augmentation of supply from 11 kV to 66 kV and since the supply of the consumer is already running at 11 kV so regulation 6 of the Supply Code, 2007 shall not strictly apply to this case as the same is applicable to provide electricity to new applicants seeking connections. Further, sensing the delay in erection of the line the petitioner firm was given benefit and the levy of voltage surcharge was discontinued in December 2008 itself considering the request of the consumer. Since there was no dis-agreement with the firm, the need to approach the Commission was not necessary at all.

7.4 The delay in completing the erection of line is due to the fact that issue became subjudice in 2009 when the civil court Ludhiana granted the stay on the execution of the line. Appeal as filed before Additional District Sessions Judge and the stay was vacated only as per his order on 30.08.2012. Evidently no work was possible during this period and simultaneously CWP No.9511 of 2009 and 15943 of 2009 also remained pending in the Hon'ble Punjab and Haryana High Court which was decided vide order dated 16.01.2012. In view of the above order only, the stay granted by the Civil Judge was vacated on dated 30.08.2012 by Additional District Judge, Ludhiana. The perusal of the order dated 16.01.2012 reveals that revised route was to be made and the petitioner will be at liberty to file objections against the revised route. This order of 16.01.2012 is required to be read with the interim order passed by Hon'ble Punjab and Haryana High Court dated 14.10.2010 wherein PSEB/PSPCL was restrained to erect any line without paying compensation to farmers to their satisfaction and such compensation was to be got from beneficiary industry. The above said order was binding on M/s Saluja Cotex also as

the order was passed in CWP No.15943 of 2009 preferred by M/s Saluja Cotex only. The firm cannot run away from the judgment and should have joined hands with PSEB/PSPCL to get the revised route finalized, pay compensation to the farmers to their satisfaction and get the line erected.

7.5 In response to direction of the Commission to intimate the interest/penalty payable by PSPCL to the petitioner for delay in release of connection as per regulations, PSPCL submitted that no such interest/penalty is to be paid to the petitioner firm. The connection for the load as demanded by the consumer was immediately released to the petitioner firm and the petitioner firm is running its business since 2007 without any hindrance or hurdle on the part of the PSPCL.

7.6 Regarding the details of proceedings before the competent authority for awarding compensation to the land owners who are said to have raised dispute in the erection of 66 kV line, PSPCL informed that the respondent has applied for determination of compensation before the worthy District Magistrate, Ludhiana. PSPCL had deliberated upon the issue and resultantly, the matter was sent to the Legal Department of PSPCL which on 14.10.2014 also advised that the compensation as offered by the beneficiary be paid to the land owners. The payment by beneficiary firm was a rider and eventually an obstacle for PSPCL to pay compensation of its own as no Act provides for compensation of land and Indian Telegraphy Act only provides for crop compensation. The authority to prove the above fact is that it is only vide Ministry of Power, New Delhi notification 03/07/2015/Trans dated 15.10.2015 adopted by Punjab Government vide its letter No.11/139/15/A.S.3/2723 dated 26.11.2015 that detailed guidelines for payment of compensation towards damage in regard to Right of Way have been circulated. The above provision which has been made in 2015 could not be applied prior to its issue and the entire compensation to the farmers for Right of Way was required to be settled and paid by firm as Licensee Company has no authority to do so except paying crop compensation. It is only due to the above facts that the various meeting were held during 2013 & 2014 with the firm to come forward and join hands with PSPCL to finalize the revised route and pay compensation

to the farmers. The Hon'ble High Court had categorically stated in its order that compensation has to be paid by beneficiary firm to the farmers to their satisfaction. As such no unilateral order by any authority could suffice as the compensation to the satisfaction of farmers can only be decided by the farmers and beneficiary firm as per their mutual agreement. In view of the order, it is clear that the petitioner firm has defaulted itself in execution of the order which was passed in CWP No.15943 of 2009 preferred by the beneficiary firm and consequently PSPCL had no other option but to charge voltage surcharge to the firm.

- 8.0 The petitioner filed rejoinder to the reply filed by PSPCL on 14.05.2018 as under:
- 8.1 The Respondent instead of explaining as to what steps have been taken by the Licensee to obtain permission as provided under the Rule 3(1)(b) of "The Works of Licensees Rules, 2006" made by the Government of India as per notification no. G.S.R. 217(E) dated 18.04.2006 & subsequently by the Punjab Govt. in 2008, is trying to confuse the matter, with the motive to take undue benefit of its own wrongs.
- 8.2 There is procedure provided under the law giving statutory powers to the Licensee for erection of lines and for dealing with such situation/contingency when there is any objection/opposition to the erection of the line etc., but the respondent has not adopted the required procedure till date. The respondent has also not produced or mentioned any such order of any Court which restrained the respondent from adopting the procedure provided under the law for erection of lines. Further, the respondent has also not mentioned as to why the required procedure was not adopted even after 30.05.2012. It is wrong and baseless that the officials of the PSPCL continuously tried to resolve the disputes.
- 8.3 The proceedings with regard to the litigation with Kulwant Kaur if any is denied for want of knowledge. The said order dated 14/10/2010 was only interim order, while adjourning the writ for 4/3/2011 as apparent from the said order itself, and it is also made clear that the said order dated 14/10/2010 was never made absolute and the said CWP was dismissed as

withdrawn vide order dated 16/1/2012. Thus, respondent cannot take benefit of said order also and it is totally wrong and baseless that there is no such lapse on part of respondent in erection of line.

8.4 Waiving of surcharge is not denied, but it is totally wrong and baseless that the petitioner firm has ever been compensated. Waiving of surcharge is consequence of the admitted lapse on the part of the respondent in providing the required load and the said lapse on the part of the respondent is still continuing. Further the said waiver cannot be considered as compensation for losses and damages suffered and being suffered by the petitioner. Thus, it is totally wrong and baseless to say that the petitioner cannot claim benefit second time for the same cause, more so, when the cause is still continuing. The detail of the losses/damages suffered till 2017 on account of poor quality of supply at 11 kV compared to supply at 66 KV is Rs.1.53 crore approx, 66 kV supply voltage rebate as per tariff orders is Rs.2.002 crore and interest paid to banks for raising loan of Rs.4 crore for erection of its own 66 kV sub-station & deposit of security (works) for 66 kV line & bay is Rs.4.70 and respondent is required to compensate the petitioner for the same along with the damages *pendente lite* and future damages till the respondent does not provide the required load at 66 kV to the petitioner. Had the connection of the petitioner at 66 kV been given as applied for, the petitioner would not have had to incur an expenditure of Rs.31,12,068/- as cost of 11 KV independent feeder for availing load of 4000 KVA at 11 KV. Interest is payable to the petitioner as per Reg. 19.3(b) of Supply Code, 2007 for not giving connection at 66 KV within the stipulated period, which has not been paid by respondent till date.

8.5 To the knowledge of the petitioner, the respondent has also not published any revised route notification. The petitioner has never denied paying adequate and justifiable compensation to the effected farmers, rather as evident from the averments of the respondent itself in reply, the petitioner offered Rs.60 Lakhs as compensation to solve the matter amicably. Had the respondent adopted the required procedure as per law and the electricity rules, the adequate and justifiable compensation for the use of

the land of effected/objecting farmers could be only a fraction of the amount offered by the petitioner. The demand of the farmers was imaginary and so much exaggerated, which cannot be met with by any person of ordinary prudence. Petitioner never denied paying the adequate and justifiable compensation as per rules & always ready to pay in future also. Moreover, the respondent never raised any such demand under any rules and the respondent has also not adopted any statutory procedure for determination of compensation from any competent authority. Thus, the petitioner was not even duty bound to make any such offer in the absence of any statutory procedure required to be adopted under the works of Licensees rules dated 18.04.2006 and for the reasons best known to the respondent, the respondent has not adopted any such procedure for completing the erection of line, whereas the petitioner firm has already performed its part.

8.6 The averment of the respondent that now after a lapse of more than 12 years the petitioner has raised a challenge which is barred by law of limitation is totally wrong, false and baseless. It is made clear that there has been no delay on the part of the petitioner Company, rather the petitioner Company has already performed its part, and thus there arises no question of any delay on the part of the petitioner or giving of any justifiable or convincing reason. The inordinate delay is on the part of the respondent department. The petitioner has no statutory powers to carry out the work of erection of line and the respondent who has got the statutory power should have used it for erection of line. The respondent has not used the same & has not done the needful till date and has instead started raising illegal, null and void demand of surcharge impugned before this Commission. The petitioner filed the present Petition within limitation from the date of notice of surcharge issued by the respondent and the cause of action is continuing one and there is no delay on the part of the petitioner.

8.7 The respondent has not conveyed any such report, if any, as to non feasibility of rerouting of the line to the petitioner and the respondent is trying to confuse the matter instead of completing the work by adopting the procedure as per notification referred above and is making lame excuses.

- 8.8 It is denied that relaxation of surcharge has been misutilized by the firm and the firm is not serious and coming forward to pay adequate compensation as alleged and it is also made clear that there is no such direction to the petitioner in the mentioned order. On the other hand the respondent has not acted even as per the referred Order dated 16/1/2012.
- 8.9 The respondent was supposed to give supply to the petitioner on request as per Regulation 5 of Supply Code 2007 within the time frame specified in Reg. 6.3(b). In case of failure to do so, respondent was required to seek approval of the Hon'ble Commission within 15 days for extension of period, which has not been sought till date.
- 9.0 The petitioner filed rejoinder to the additional reply filed by PSPCL on 14.05.2018 and reiterated some of the submissions made in the rejoinder brought out in para 8 above. To avoid repetition, only the following additional submissions are reproduced:
- 9.1 The public notice issued by PSPCL does not contain the required particulars about the land to be effected by the route of the line. However, when no objection had been received, the respondent should have completed the work without any delay.
- 9.2 The present case is not involving the issue of augmentation, rather it was a case of new connection. The petitioner applied for 66 KV connection, but the respondent did not provide the same in time, as such the petitioner had to avail partial load at 11 KV in the compelling circumstances. In the present case, the provisions of regulation 6.3 (b) are duly applicable and the respondent cannot escape its liability and obligations by making wrong averments. The respondent cannot veil its wrongs by taking false plea that there was no dis-agreement with the firm. Rather, the question of the same does not arise when the petitioner has suffered and is suffering huge losses as already submitted in rejoinder to the earlier reply. The averment of the respondent that the need to approach the Commission was not necessary at all, is also wrong and baseless.
- 9.3 The respondent did not adopt the required procedure to make it possible to erect the line and has just been putting off the matter on one pretext or the

other. It is also humbly submitted that the averment of the respondent that the order dated 16/1/2012 is required to be read with the interim order dated 14/10/2010 is incorrect and the respondent is trying to misinterpret the matter for taking undue benefit. The liability of making of revised route cannot be put upon the petitioner. The petitioner has already performed its part and the respondent has no justified reason or explanation for delay on part of the PSPCL.

- 9.4 The regulation 7 of Supply Code 2007 provides for penalty of Rs. 1000/- for each day of default and regulation 19.3 (b) of Supply Code 2007, provides interest on security works for the delay period beyond the period as specified in Regulation 6. The application to the District Magistrate, Ludhiana has been moved under the directions of the Commission and even the said application is neither proper nor as per the rules. The said application is apparently made just for eye wash. The respondent cannot make any offer on behalf of the petitioner for any compensation and the respondent also cannot bind the petitioner by the said offer in any manner, more so when the petitioner has suffered for many years even after the said episode of making effort of amicable settlement.
- 10.0 During hearing on 16.05.2018, the counsel for PSPCL requested to file specific reply to para no. 11 (b) of the petition regarding levy of surcharge in violation of section 56(2) of the Act. The Commission vide order dated 17.05.2018 directed PSPCL to file the same within ten days and the order was reserved.
- 11.0 The submissions made by PSPCL in the short reply dated 29.05.2018 as per Order dated 17.05.2018 are summarized as under:
- 11.1 Section 56(2) of the Electricity Act, 2003 is a non-obstante provision which gives a right in favour of the Electricity Consumer only when the ingredients of Sub Section 2 are strictly fulfilled. It is not a case where some exaggerated demand, new tariff has been invoked against the existing consumer. Rather, the demand has been raised on account of surcharge which has surfaced after an audit objection to that effect was raised by Principal Accountant General (Audit) Punjab, Chandigarh. Sub

Section 2 uses the word “..... such sum became first due.....”. The dictionary and ordinary meaning of the word first due would be when the consumer was first called upon to pay the dues. A demand which was never raised can never become due and it only became due when for the first time it was raised and consequently it became due. Any other interpretation of the above mentioned word in the clause would create a bar on the legitimate recoveries which has surfaced and are being sought to be recovered within two years itself.

- 11.2 This view has already been upheld by the Hon'ble Division Bench of the Bombay High Court in the matter pertaining to the said issue in the matter of *M/s Rototex Polyester and anr Versus Administrator, Administration of Dadra and Nagar Havli (U.T.) Electricity Department, Silvassa and ors. 2011(1) RCR (Civil) 61*. The operative part of the judgment is reproduced herein below for ready reference of this Hon'ble Commission:-

“Electricity Act, 2003, Section 56 – Electricity Bills due – Default of payment – Disconnection of electricity supply – Recovery of dues – Limitation – Section 56(2) provides a period of two years from recovery of dues from date it became ‘first due’ and not thereafter – In the instant case consumer was under billed due to clerical mistake – Consumer cannot take bar of limitation – Limitation period will commence on the revised bill amount when it first became due that is on date when demand notice with revised bill was served upon the consumer”

A bare perusal of the aforesaid ratio laid down by the Hon'ble Division Bench of the Bombay High Court clearly shows that, a demand which is being raised there is no bar of limitation. The limitation period will commence on the revised bill amount when it first became due i.e. on the date when demand notice is to be served upon the consumer. The demand has been raised by PSPCL upon the petitioner firm on 10.10.2017. The Principal Accountant General (Audit) Punjab, Chandigarh conducted the audit of the respondent Corporation and it raised objection with respect to outstanding amount due against the petitioner firm. Immediately after receiving the said objection from the Principal Accountant General (Audit) Punjab, Chandigarh, the respondent

Corporation issued notice upon the petitioner firm. If there is any miscalculation on the part of the Corporation in that eventuality, the petitioner firm cannot be benefited in any manner whatsoever. The demand as raised by the respondent against the petitioner firm is legitimate and is sustainable in the eyes of law. The same is duly supported by the law settled by the Division Bench of the Bombay High Court. Further, in case the said demand is not accepted in that eventuality, the respondent Corporation will suffer huge losses which cannot be compensated in any manner whatsoever. Considering the all aspects incorporated herein above, the demand as raised is sustainable in the eyes of law.

12.0 Commission's Findings and Decision:

The Commission has examined the petition, the reply filed by PSPCL, rejoinder to the reply, additional reply by PSPCL and rejoinder thereto, documents adduced on record by the parties, submissions made by the parties during hearing and decides as under:-

- 12.1 The petitioner applied for a load of 4905.730 kW with a contract demand of 4500 kVA on 03.03.2006. The load was sanctioned at 66 kV supply voltage. The demand notice was issued on 28.06.2006 and the petitioner deposited various charges including the entire cost of 66 kV line along with bay from time to time. Apprehending delay in the release of connection at 66 kV, the petitioner requested the respondent for release of partial load of 2000 kW with a contract demand of 1500 kVA at 11 kV and the same was released on 09.11.2006. Subsequently, the petitioner requested for extension in load to 4905.730 kW with a contract demand of 4000 kVA at 11 kV and according to the respondent, the same was released on 18.11.2007. The demand of 4000 kVA was sanctioned at 11 kV as per the instructions prevailing at that time, according to which a general industrial consumer having a load of more than 2500 kVA and up to 4000 kVA can avail supply at 11 kV provided the consumer is ready to pay voltage surcharge @ 10% to compensate the utility for transformation losses, incremental line losses & service charges incurred in this regard.

The work of erection of 66 kV line was started by PSEB (now PSPCL) but the work was held up due to stiff resistance by some farmers forcing the respondent to lodge FIR in January 2009 and sought police protection for completing the work. The dispute with some farmers on erection of towers in their land resulted in protracted litigation in various courts. The courts even issued restraint orders to PSEB. Meanwhile, the petitioner completed the erection work of 66 kV grid sub-station at his premises and got the same cleared from Chief Electrical Inspector, Punjab on 26.08.2008. Thereafter, the petitioner represented to the respondent to discontinue levy of voltage surcharge since he had deposited the cost of the line/bay & also completed erection of 66 kV grid sub-station at his premises and got it cleared from CEI, Punjab. Chief Engineer/Commercial vide its Order dated 12.04.2010 decided to discontinue the levy of voltage surcharge @ 10% w.e.f 23.12.2008 as per clause 5.8.1 and 5.8.2.4 of Electricity Sales Regulations (ESR) of PSEB.

However, now PSPCL vide letter dated 10.10.2017 has raised a demand of Rs. 5,40,97,475/- for recovery of voltage surcharge @ 7% for the period 01.01.2011 to 11.09.2017 on the basis of the Audit Report, which has been challenged in this petition. The petitioner prayed that the demand of Rs. 5,40,97,475/- raised by PSPCL may be set aside and the respondent may be directed to stop levy of 7% voltage surcharge in future bills. The petitioner also prayed that directions may be issued to complete the erection of 66 kV line.

PSPCL in its reply justified the levy of voltage surcharge on the ground that it is in accordance with the directions of the Commission incorporated in Tariff Order for FY 2009-10 notified on 08.09.2009. In para 5.5 of the Tariff Order, PSPCL was directed to ensure that the existing consumers getting supply at voltage lower than specified should be provided supply at specified voltage within a period of 18 months. In case there are constraints in releasing a new connection and/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 lower voltage on the condition of payment of surcharge specified in the General

Conditions of Tariff. PSPCL submitted that it could erect only 10 out of 16 towers by incurring an expenditure of Rs. 84,00,000/- but could not complete the work due to stiff resistance by some farmers. On the Civil Writ Petition filed by the petitioner, the Hon'ble Punjab & Haryana High Court directed PSPCL in October, 2010 not to install any HT line/Pole in the land of farmers without paying adequate compensation to their satisfaction or to explore the possibility of alternative route. PSPCL submitted that despite best efforts, no consensus could be reached between the petitioner and the farmers since the petitioner was not agreeing to the amount of compensation demanded by the farmers. The alternative route was also not found feasible. PSPCL claimed that it was the responsibility of the petitioner to settle the amount of compensation with the farmers since the Orders of the Hon'ble Punjab & Haryana High Court was on the petition filed by the petitioner. On the other hand, the petitioner referred to the provisions of Punjab Works of Licensee Rules, 2008 and argued that PSPCL has failed to adopt the procedure as prescribed in these rules.

During proceedings, the Commission directed PSPCL to produce the copy of Public Notice for inviting objections for erection of 66 kV line. PSPCL submitted the copy of the public notice and informed that no objection was received against this public notice. The Commission observed that no detail of area/land likely to be affected due to the erection of this line was mentioned in the public notice. PSPCL was also directed to explain why no action was taken to resolve the issue of compensation to the affected farmers in accordance with Punjab Works of Licensee Rules, 2008 but no satisfactory reply was submitted. On the other hand, it was confirmed that PSPCL has filed an application before District Magistrate for determination of compensation on 16.04.2018. On the query of the Commission as to why approval for extension in time period for release of connection at 66 kV as per provision of regulation 6 (b) of the Supply Code, 2007 was not obtained from the Commission, PSPCL submitted that since the case involves augmentation of supply from 11 kV to 66 kV so this regulation is not strictly applicable in this case. It was further submitted that since load

of the petitioner was released on 11 kV and levy of voltage surcharge was discontinued in December, 2008, so there was no disagreement with the firm which requires any intervention of the Commission. All these arguments were countered by the petitioner as brought out in para 9 of this order.

12.2 The petitioner challenged the levy of voltage surcharge from 01.01.2011 to 11.09.2017 mainly on the following grounds:

- i) Levy of voltage surcharge for a period of more than 6 years is a violation of Chief Engineer/Commercial Order dated 12.04.2010
- ii) Levy of surcharge after a period of more than 7 years is in violation of section 56(2) of the Electricity Act, 2003.
- iii) The levy of voltage surcharge w.e.f. 05.10.2016 onwards is in violation of regulation 4.2.2 of Supply Code, 2014.
- iv) The petitioner has deposited more than Rs. 4 crore towards the cost of 66 kV line/bay, erection of own 66 kV grid sub-station at his premises, cost of 11 kV line and completed other formalities. Thus imposition of voltage surcharge is unjustified.

Let us examine the Tariff Orders issued by the Commission for relevant years and various provisions of the General Conditions of Tariff, Supply Code, Conditions of Supply and orders of the various courts to settle the issues involved in this petition.

12.3 The first plea of the petitioner is that the levy of voltage surcharge from 01.01.2011 is against the order of CE/Commercial dated 12.04.2010 vide which petitioner was exempted from payment of surcharge w.e.f 23.12.2008. The commercial matters including billing of consumers in the erstwhile PSEB were governed by Sales Regulations, which were replaced with Electricity Supply Regulations (ESR) notified as per the power conferred to Board under section 49 and sub-section (j) of section 79 of Electricity (Supply) Act 1948. As per the commercial instructions issued by PSEB and the provisions of Sales Regulations prevailing at that time, the supply voltage for general industrial consumers up to 2500 kVA was 11 kV but the consumer with a contract demand above 2500 kVA but up to 4000

kVA was allowed supply at 11 kV with payment of voltage surcharge @ 10% to compensate the utility for transformation losses and incremental line losses etc. The petitioner was levied a surcharge of 10% since his demand was 4000kVA and was catered at 11 kV. The petitioner was exempted from payment of surcharge w.e.f 23.12.2008 as per the provisions of ESR.

However, with the enactment of Electricity Act, 2003, which came in to force w.e.f 10.06.2003, the Electricity (Supply) Act 1948 was repealed. The powers to determine tariff and other charges were entrusted to Regulatory Commissions. The State Commissions were also empowered to make regulations under section 181 of the Act to carry out the provisions of the Act. The Commission in para 9.11 of the Tariff Order for FY 2004-05 decided to uphold the policy of the PSEB to levy 17.5% surcharge on all Arc Furnace consumers and general industrial consumers with load above 4000 kVA & catered at 11 kV and a surcharge @ 10% on all large supply consumers (except Arc Furnace) with demand above 2500 kVA and up to 4000 kVA & fed at 11 kV. In the Tariff order for FY 2005-06, while deciding to continue the existing system of surcharge, the Commission directed PSEB to submit comprehensive proposal in the next ARR for FY 2006-07. In the tariff order for FY 2006-07, the Commission reiterated its decision to continue with the existing system of surcharge & rebates. Meanwhile, the Commission approved the General Conditions of Tariff and Schedules of Tariff vide letter No.1372 dated 06.03.2006. As per clause 13.3 of the General Conditions of Tariff, it was provided that a large supply consumer with contract demand exceeding 2500 kVA and up to 4000 kVA catered at 11 kV was liable to pay a surcharge of 10% on the consumption charges including demand charges, if any, or MMC as compensation for transformation losses and incremental line losses etc.

The Commission in its Tariff Order for FY2009-10 issued on 08.09.2009, discussed the issue of Supply Voltage to different category of consumers and payment of surcharge/rebate thereof in detail in para 5 and decided that henceforth supply will be given only at the specified voltage & option to avail supply at lower voltage with payment of surcharge was allowed

only where there is constraint in releasing/converting the supply at specified voltage. The Commission observed as under:

“5.5.3 The Commission notes that as per existing General Conditions of Tariff and Schedules of Tariff, surcharges and rebates are being dealt with in the following manner.

- i) -----
- ii) -----
- iii) *Large Supply consumers with contract demand exceeding 2500 KVA and upto 4000 KVA catered at 11 KV are liable to pay a surcharge @ 10% on the consumption charges including demand charges, if any, or monthly minimum charges as compensation for transformation losses and incremental line losses.*
- iv) -----
- v) -----

*The Commission observes that voltage at which supply is to be given to different category of consumers has been specified in the Conditions of Supply since last more than 10 years and the Board was required to release all new connections/change load/demand at the voltage specified in the Conditions of Supply.The Commission also observed that there is a need for the existing consumers getting supply at lower voltage to convert to the specified voltage for the benefit of system and to reduce T&D losses, however, actual conversion of supply voltage of the existing consumers will require some time. **There could also be technical constraints in the conversion of supply voltage or release of a new connection or additional load/demand at the prescribed voltage which merits consideration.....”.** [Emphasis Added]*

The Commission thus decided as under:

“In the light of the above observations, the Commission decides to discontinue all voltage rebates w.e.f. 1st April, 2010. The Board will henceforth release all new connections or additional load/demand only at the specified voltage. Furthermore, the Board will take steps to ensure that existing consumers getting supply at voltages lower

than the specified voltage will be provided supply at the specified voltage within a period of 18 months. In case there are constraints in releasing a new connection and/or additional load/demand at the prescribed voltage or in converting the supply voltage of an existing consumer, the supply may be given/ continued to be given at a lower voltage on the condition of payment of surcharge specified in the General Conditions of Tariff. -----”

Thus, while appreciating that there may be technical constraints in conversion of supply voltage, as encountered in this case, the above order of the Commission, was very clear that in such cases, the existing consumers getting supply at voltage lower than that specified shall be allowed supply at lower voltage on the condition of payment of surcharge as specified in General Conditions of Tariff. Since the petitioner was catered at 11 kV against the specified supply voltage of 66 kV so he was liable to pay voltage surcharge after 18 months from the date of issue of Tariff Order i.e 01.04.2011. **No exemption from payment of voltage surcharge in case where a consumer is fed at a voltage lower than specified, as was allowed to the petitioner by CE/Commercial vide his order dated 12.04.2010, was incorporated in the order of the Commission. Moreover, with the notification of PSERC (Electricity Supply Code & Related Matters) Regulations, 2007 read with Conditions of Supply approved by the Commission, the provisions of Sales Regulations or the ESR or the commercial instructions issued from time to time by PSEB, which were in-consistent with Electricity Act, 2003 or not provided in the Tariff Orders issued by the Commission or the Regulations framed by the Commission, were no longer legally sustainable.**

The Hon'ble Punjab & Haryana High Court dismissed the writ petitions filed by industrial consumers against levy of voltage surcharge by its order dated 27.04.2009 *inter alia* on the grounds that after enactment of Electricity Act, 2003, all the concessions made earlier by the State Government or granted through commercial circulars would cease to have any legal effect unless specifically acknowledged by the Regulatory

Commission. The view was upheld by Division bench of High Court in its order dated 09.09.2011 in LPA 605 of 2009 and also by Hon'ble Supreme Court in its order dated 19.06.2017 in Civil Appeal No. 7856 of 2012. Since there was no exemption to consumers getting supply at lower voltage as per the Tariff Order for FY 2009-10 issued by the Commission on 08.09.2009 read with provisions of Supply Code, Conditions of Supply and General Conditions of Tariff so the order of CE/Commercial, PSEB dated 12.04.2010 and/or provisions of ESR cease to have any legal effect after the issuance of the Tariff Order on 08.09.2009.

The provisions of voltage surcharge as contained in the Tariff Order of FY 2009-10 was challenged by some consumers before Hon'ble APTEL in Appeal No. 192 of 2009 but the levy of voltage surcharge was upheld by the Hon'ble APTEL vide its order dated 16.07.2010. However, on remand back, the Commission re-determined the voltage surcharge payable by different consumers and the voltage surcharge of 10% was reduced to 7% vide Commission's order dated 19.01.2011 in petition no. 31 of 2010.

The order of APTEL was challenged in Hon'ble Supreme Court in Civil Appeal No. 10889 of 2010 which was also dismissed on 14.02.2011 thus confirming the levy of surcharge. The Hon'ble Punjab & Haryana High Court also dismissed the Letter Patent Appeals filed by industrial consumers vide its order dated 09.09.2011. This order was challenged in the Supreme Court and the same was dismissed by an order dated 19.06.2017. Thus the issue has attained finality and it has been upheld that consumers catered at voltage lower than that specified by the Commission are liable to pay voltage surcharge as specified in general conditions of tariff. **Accordingly, the petitioner is liable to pay voltage surcharge @ 7% as per order of the Commission dated 08.09.2009 in Tariff Order for FY 2009-10 after 18 months from the date of issue of the tariff order for FY 2009-10 i.e w.e.f 01.04.2011.**

- 12.4 The petitioner further argued that recovery of voltage surcharge after a period of 7 years is barred by section 56(2) of the Act. PSPCL referred to Judgment of the Hon'ble Bombay High Court [2011(1)RCR(Civil)61] wherein it has been held that limitation period will commence on the

revised bill amount when it first become due that is on date when demand notice with revised bill was served upon the consumer.

The applicability and interpretation of the section 56(2) of the Act has been discussed in detail by Hon'ble APTEL in its judgment dated 09.05.2008 in Appeal No. 74 of 2007 in the matter of Ajmer Vidyut Vitran Nigam Ltd. v/s RERC & others. The relevant extract of the Judgment is reproduced below;

“31) Clause (1) & (2) of 56 have to be read together to understand the import of the second sub section. The Section is extracted below:

“56. Disconnection of supply in default of payment. –(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for the purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together such any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

- (a) an amount equal to the sum claimed from him, or*
- (b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.*

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum

became first due unless such sum has been shown continuously supplied and the licensee shall not cut off the supply of the electricity.”

32) Section 56 has the caption “Disconnection of supply in default of payment”. **Section 56 is not prescribing the period of limitation. It is prescribing a procedure of disconnection of supply in default of payment.** It is a tool of recovery of dues. 56(1) says that the dues towards electricity supply can be recovered by a licensee of a generating company by disconnecting electric supply line. This procedure is without prejudice to the right of licensee or the generating company to recover such charge by the legal process of filing a suit. The consumer can save himself such consequences of default by making the payment as prescribed in (a) and (b) to the proviso to 56(1). If the electricity company intend to file a suit it will have to file a suit within the time prescribed by the Limitation Act. However, even without resorting to a suit, the company is allowed to use the coercive method of disconnection of electricity to force the consumer or purchaser of electricity to make the payment. [Emphasis Added]

35) The two years period starts when such sum became ‘first due’ which is another important term to notice here. Now the protection given to a consumer (not to others purchasing electricity) is that the electricity shall not be disconnected for recovery of dues which are more than two years old or after the lapse of two years from the time the sum became first due. Now this has to be read with the interest of the consumer in view. **Vis-a-vis a consumer a sum becomes due towards his electricity consumption when a bill is raised by the distributing company. In that sense, the words “first due” may be read to mean when the sum was first billed.** [Emphasis Added]

37) The last words “and the licensee shall not cut off the supply of electricity” has to be read with the first clause of the sentence i.e. “no such shall be recoverable”. The sub section, thus, says that the licensee shall not cut off electricity after a lapse of two years from the date the sum became due unless the dues have been continuously shown for two years”.

Thus the recovery of the voltage surcharge from the petitioner is not barred by section 56(2) of the Electricity Act, 2003.

12.5 Though we have held that voltage surcharge is payable by the petitioner and the amount due from the petitioner is not barred by section 56(2) of the Act but it was a serious lapse on the part of the concerned officers of the licensee for not implementing the orders of the Commission dated 08.09.2009 for almost 6 to 7 years till it was pointed out by the Audit. The inordinate delay in carrying out audit of the accounts is also a matter of serious concern. Such a long delay in raising the demand or audit of accounts is against Commercial prudence. When such large sums of money are allowed to remain unrecovered from the consumers for long periods of time, it not only affects the finances of the licensee but also results in avoidable financial hardship to the consumers. It demonstrates a total lack of commercial discipline in the utility. **We direct PSPCL to identify the delinquent officials/officers responsible for non-implementation of Commission's Order resulting in accumulation of dues and initiate disciplinary proceedings under intimation to the Commission. We also direct PSPCL to recover the amount on account of voltage surcharge from the petitioner in 12 monthly installments without levy of any interest provided the petitioner firm does not default in making regular payments.**

12.6 The petitioner referred to 2nd amendment to the Supply Code, 2014 notified on 05.10.2016 and argued that after this amendment, voltage surcharge is not payable by him. The Commission vide notification dated 05.10.2016 issued 2nd amendment to Supply Code, 2014 and the limit of Supply Voltage for large supply (General & PIU) industrial consumers has been raised from 2500 kVA to 4000 kVA. It has further been provided in sub regulation 4.2.2 (added by 2nd amendment) that the existing consumers having specified supply voltage of 33/66 kV but catered at 11 kV as per provisions of regulation 4.2.1 to Supply Code, 2014 or note (ii) below clause 5.2 of Conditions of Supply by payment of surcharge shall be allowed to convert their supply voltage as per the amended limits specified

in the regulation 4.2 by signing a fresh A&A form with the distribution licensee.

Since the amendment was applicable from the date of notification i.e 05.10.2016 so to extend the benefit of higher specified supply voltage limit to the existing consumers, the Commission decided that such eligible consumers shall enter in to fresh agreement with the distribution licensee under amended regulation 4.2 of the Supply Code, 2014. It has also been provided that A&A form shall be approved within 15 days so that no voltage surcharge is levied after 15 days from the date of submission of fresh A&A form.

It is a fact that the specified supply voltage of the petitioner is 66 kV but was allowed to be catered at 11 kV in accordance with the orders of the Commission dated 08.09.2009 read with clause 5.2 of 'Conditions of Supply' and the provisions of Supply Code. Thus, the petitioner is required to sign fresh A&A form with the distribution licensee as provided in regulation 4.2.2 inserted through 2nd amendment to Supply Code, 2014 vide notification No. PSERC/Secy./Regu.116 dated 05.10.2016 to enter in to a valid legal agreement to cater a demand of 4000kVA at 11 kV without payment of any voltage surcharge. However, in this case, at the time of notification of 2nd amendment to Supply Code, 2014 issued on 05.10.2016, no voltage surcharge was being levied (though erroneously) on the petitioner by PSPCL. Even the licensee came to know that voltage surcharge is recoverable from the petitioner only when it was pointed out by the Audit in October, 2017. So there was no occasion for the petitioner to know that he was required to submit fresh A&A form to get the surcharge discontinued since it was not levied at all by the licensee. For the negligence on the part of PSPCL, the petitioner cannot be penalized or allowed to suffer. Had it been in the notice of the petitioner at the time of issue of notification, there was no reason for the petitioner not to file fresh A&A form, which the licensee was bound to sanction within 15 days i.e by 20.10.2016.

In view of above, the Commission decides that voltage surcharge can be recovered from the petitioner only up to 20.10.2016 i.e up to 15

days from the date of notification of 2nd amendment to Supply Code, 2014.

- 12.7 The petitioner pleaded that he has made substantial investment for getting supply at 66 kV and due to the failure of PSPCL to release the load at 66 kV he has incurred huge loss. PSPCL argued that the erection of 66 kV line has been held up due to stay orders and failure of the petitioner to settle compensation amount with affected farmers. The petitioner referred to the provisions of Punjab Works of Licensee Rules, 2008 and argued that PSPCL has failed to adopt the procedure as prescribed in these Rules. The relevant Rule 3 reads as under:

“3. Licensee to carry out works.-

(1) A licensee may—

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, where over or where under any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;

(b) fix any support of overhead, line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support.

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate shall fix, after considering the representations of the concerned persons, if

any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate under sub-rule (1), shall be subject to revision by the Commission.

(4) Nothing contained in this rule shall affect the powers conferred upon any licensee under section 164 of the Act.”

PSEB issued a notification no 36/BD/G-2583 dated 15.05.2007 and notified the public through a notice in the Newspapers wherein it was mentioned that Board proposes to undertake various schemes/ transmission works necessary for dispensation/ distribution of power under Part III of the Telegraph Act 1885 and various provisions of Indian Electricity Act 1910. The work for erection of 66 kV line to the premises of the consumer was mentioned at Sr. No. 17 of the list of works. Since PSEB is executing the work on behalf of petitioner so in accordance with Punjab Works of Licensee Rules, 2008, the licensee should have acted by approaching the District Magistrate for resolution of the dispute with the owners of the land. However, the responsibility to pay compensation to the farmers shall be that of the petitioner and not the licensee as mentioned in Rule 3(2) above.

During hearings, PSPCL produced a copy of the guidelines issued by issued by Ministry of Power, Gol dated 15.10.2015 for payment of compensation towards damage in regard to Right of Way for transmission lines and argued that these provisions could not be applied prior to its issue. The argument does not hold good since a procedure to settle such issues had already been provided in Works of Licensee Rules, 2006 notified by the Central Government and Punjab Works of Licensee Rules, 2008 notified by the State Government. The guidelines were issued in order to have uniform policy for payment of compensation and early resolution of RoW issues. The applicability of these rules was not affected in the absence of such guidelines. From the submissions made by both the parties, it is also evident that once demand of 4000 kVA was released to the petitioner at 11 kV & voltage surcharge was discontinued, neither party

took any tangible action to get the matter resolved and complete the erection of 66 kV line.

The Commission has specified time period for release of connection to various categories of applicants/consumers in regulation 6.3 of the Supply Code, 2007 and the relevant sub-regulation is reproduced below;

“6.3(b) In cases where augmentation/extension of a distribution main or augmentation of power transformer/distribution sub station is required but there is no requirement of erecting and commissioning a new distribution sub station or power transformer, the supply will be provided within the period specified hereunder:

Type of service connection requested	Period from date of compliance of Demand Notice within which the Licensee shall provide supply
Low Tension (LT) supply	45 days
High Tension (HT) supply	
- 11000 volts	60 days
- 33000 volts	120 days
Extra High Tension (EHT) supply	120 days

Provided that the Licensee may, within 15 days of receipt of application(s), seek approval of the Commission, for extension of period specified above, in cases where the magnitude of work involved for extension/augmentation of the supply system is such that the Licensee may reasonably require more time.”

The proviso was amended by 1st amendment to the Supply Code, 2007 vide notification dated 24.05.2010 which reads as under;

Provided that the Licensee may, at the earliest but not later than fifteen days before the expiry of the time schedule, seek approval of the Commission, for extension of the period specified above, in cases where the magnitude of work involved for extension/augmentation of the supply system is such that the Licensee may reasonably require more time.

The argument of PSPCL that regulation 6 of the Supply Code, 2007 is not applicable in this case since it is a case of augmentation of supply from 11 kV to 66 kV, is devoid of any merit. The release of load at 11 kV by paying surcharge was a stop gap arrangement for which the petitioner paid separate charges. The licensee had recovered all applicable charges for release of load at 66 kV separately and was liable to provide supply at the approved voltage within specified time period provided the petitioner has complied with the demand notice or should have obtained the approval of the Commission for extension of the period specified above. However, the licensee has not obtained any extension in the period for release of load applied by the petitioner at 66 kV from the Commission. Thus the respondent was required to release the load at specified voltage within 120 days from the date of compliance of demand notice.

It has further been provided in Regulation 19.3(b) of the Supply Code, 2007 that in case of failure to release the load within period specified in regulations 6 or the period allowed by the Commission, the licensee shall pay interest on security (consumption) beyond the specified period. The relevant sub-regulation reads as under:

“In case release of new connection /extension in load/demand is delayed beyond the period as specified in Regulation 6 of these Regulations or such period as may be allowed by the Commission, the Licensee will pay interest on Security (works) for the period of delay beyond the specified period at the SBI’s Short Term PLR prevalent on first of April of the relevant year. This will be in addition to a penalty liable to be imposed on the licensee under Regulation 7 of these Regulations.”

The interest rate has been revised from time to time by the Commission.

In view of the above, PSPCL is liable to pay interest on security (works) deposited by the petitioner after 120 days from the date of compliance of the demand notice complete in all respects at the rate as specified by the Commission in the Supply Code from time to time till release of demand at the specified supply voltage. It is further

decided that interest amount payable to the petitioner shall not be allowed as pass through in the ARR.

The petitioner deposited the full cost of the line & bay and also incurred expenditure for erection of 66 kV grid sub-station. The licensee also erected 10 out of 16 towers and incurred an expenditure of approx. Rs.84 lac. All these costs have become stranded due to complacency of the officers of the licensee by not getting the matter resolved as envisaged in the rules and the regulations. **We direct PSPCL to initiate disciplinary proceedings against delinquent officials/ officers for causing loss to the utility by not following the procedure laid down in Supply Code and in the Rules.**

Summary of Findings and Order:

- 1. The petitioner is liable to pay voltage surcharge @ 7% as per order of the Commission dated 08.09.2009 in Tariff Order for FY 2009-10 after 18 months from the date of issue of the tariff order for FY 2009-10 i.e w.e.f 01.04.2011.**
- 2. The recovery of the voltage surcharge from the petitioner is not barred by section 56(2) of the Electricity Act, 2003.**
- 3. The voltage surcharge can be recovered from the petitioner only up to 20.10.2016 i.e up to 15 days from the date of notification of 2nd amendment to Supply Code, 2014.**
- 4. PSPCL is liable to pay interest on security (works) deposited by the petitioner after 120 days from the date of compliance of the demand notice complete in all respects at the rate as specified by the Commission in the Supply Code from time to time, till release of load at the specified voltage.**
- 5. The amount of the penal interest paid by PSPCL to the petitioner shall be intimated to the Commission and it shall not be allowed as pass through in the ARR.**
- 6. PSPCL is directed to initiate disciplinary proceedings against the delinquent officials/officers for not implementing the orders dated**

08.09.2009 of the Commission regarding application of voltage surcharge. PSPCL is further directed to initiate disciplinary proceedings against officials/officers responsible for not following the procedure laid down in Supply Code & in the Rules resulting in inordinate delay in release of the load to the petitioner, which is still pending.

In view of the above findings of the Commission, PSPCL is directed to overhaul the account of the petitioner as mentioned above within a month of the issue of this order and recover the net amount payable by the petitioner in 12 installments without any interest provided the petitioner firm does not default in making regular payments. In case, the petitioner is not satisfied with the amount calculated by PSPCL as directed above, the petitioner shall be free to approach the grievances settlement mechanism of the licensee as per law.

The petition is disposed of accordingly.

Sd/-

(Anjuli Chandra)

Member

Sd/-

(S.S. Sarna)

Member

Sd/-

(Kusumjit Sidhu)

Chairperson

Chandigarh

Date 26.07.2018