

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

**Petition No. 46 of 2023**  
**Date of Order: 18.03.2024**

Petition under Section 86(1)(b) and (f) of the Electricity Act 2003 seeking to quash and set-aside the invoice no. NPL/CD/JU/PSPCL/SEI/230602/1 raised by NPL from making a claim of Rs. 164.14 crore and declaring that NPL is not entitled to raise the claim on PRAAPTI Portal under LPS Rules 2022.

In the matter of: Punjab State Power Corporation Limited, The Mall, Patiala, Punjab.

.....Petitioner

Vs.

Nabha Power Limited, Post Box No. 28, near Nalash, Rajpura, Punjab.

.....Respondent

**Alongwith**

**Petition No. 47 of 2023**

Petition under Section 86 of the Electricity Act, 2003 read with Order XXI of the Code of Civil Procedure, 1908 for execution of order dated 04.12.2019 in Petition No. 28 of 2018 and initiation of proceedings under Section 142 read with Section 146 of the Electricity Act, 2003 against Punjab State Power Corporation Limited in relation thereto.

In the matter of: Nabha Power Limited, Post Box No. 28, near Nalash, Rajpura, Punjab

.....Petitioner

Vs.

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

.....Respondent

Commission: Sh. Viswajeet Khanna, Chairperson  
Sh. Paramjeet Singh, Member

PSPCL: Sh. Sakya Singh Chaudhari, Advocate (through VC)

NPL: Sh. Venkatesh, Advocate (through VC)

## **ORDER**

1. Petition No. 46 of 2023 has been filed by PSPCL seeking to quash/set aside the invoice dated 02.06.2023 raised by NPL and declaration that NPL is not entitled to raise the said claim on PRAAPTI Portal under the LPS Rules 2022, with plea that the same is barred by limitation and also is not in accordance with the Commission's Order dated 04.12.2019 passed in Petition No. 28 of 2018. Whereas, Petition No. 47 of 2023 is a counter petition filed by NPL seeking execution of the Commission's Order dated 04.12.2019 in Petition No. 28 of 2018 and initiation of proceedings under Section 142 read with Section 146 of the Electricity Act, 2003 against PSPCL for non-payment of its claim in relation thereto.
2. Since both the Petitions arise from the same order of the Commission i.e. Order dated 04.12.2019 passed in Petition No. 28 of 2018, the Commission, vide Order dated 11.08.2023, ordered to club and hear both the Petitions together. In their respective replies to the petitions, both the parties have filed preliminary objections to the maintainability of the petitions filed by each other. After hearing the learned counsel for the parties on 06.03.2024, Order on maintainability of the petitions was reserved.
3. The Commission observes that the genesis of the dispute between the parties is the invoice dated 02.06.2023 raised by NPL purportedly in

terms of the Commission's Order dated 04.12.2019 passed in Petition No. 28 of 2018. While, NPL is objecting to the maintainability of Petition No. 46 of 2023 filed by PSPCL on account of a jurisdictional issue in the matters of LPS Rules, PSPCL is objecting to the maintainability of Petition No. 47 of 2023 filed by NPL on the issues of limitation and conformity with the Commission's Order/PPA. The Commission examines the same as under:

### **3.1 Petition No. 46 of 2023 filed by PSPCL, Issues of Jurisdiction:**

NPL's contention is that it has issued the invoice dated 02.06.2023 in compliance of the Commission's Order dated 04.12.2019. The compliance of the Commission's Order, i.e., issuance of invoice dated 02.06.2023 in terms of the directions of the Commission, cannot be considered as a "dispute" subject to the jurisdiction of the Commission itself. Further, that the LPS Rules, 2022 which require generating companies to upload details of outstanding dues of distribution licensees on PRAAPTI portal are binding in nature and the Commission does not have the authority/jurisdiction to grant any relief against the said Rules.

PSPCL's plea on other hand, is that the Impugned Invoice is not based on actual figures and admittedly computed on the basis of hypothetical figures. Therefore, PSPCL is entitled to challenge the validity of the invoice. PSPCL has further submitted that any or all dispute(s) between the Procurer/Discom and the Generator fall under the purview of Section 86(1)(f) of the Electricity Act 2003. As such, the Commission has the jurisdiction to take cognizance of a dispute and adjudicate the same. It is also argued by PSPCL that

it is neither challenging nor seeking any relief against the LPS Rules. It is only seeking to quash the impugned invoice which is not in terms of the PPA read with the Commission's Order dated 04.12.2019 passed in Petition No. 28 of 2018. PSPCL has also submitted that it is pertinent to highlight that the PRAAPTI Portal itself, vide email dated 25.04.2023, had specifically directed the suppliers not to upload any invoices for the period prior to 03.06.2022, unless the same is payable as per any recent Order.

The Commission observes that NPL's assertion that it has issued the invoice dated 02.06.2023 in accordance with the Commission's Order dated 04.12.2019 is being disputed by PSPCL. Therefore, its argument that issuance of invoice dated 02.06.2023 cannot be considered as a "dispute" subject to the jurisdiction of the Commission itself is not established. Further, NPL's contention that PSPCL is seeking relief against the LPS Rules is also not correct. Herein, the matter brought up for adjudication is the dispute between the parties on the issue of invoice raised by NPL, purportedly in terms of the Commission's Order, which squarely comes under the jurisdiction/functions of the Commission stated under Section 86 (1)(f) of the Electricity Act, reproduced below:

*"86. (1) The State Commission shall discharge the following functions, namely: -*

*.....*

*(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;"*

### **3.2 Petition No. 47 of 2023 filed by NPL**

#### **a) Issue of Limitation:**

PSPCL's contention is that NPL's claim is barred by limitation as it has raised the invoice, pursuant to the commission's Order dated 04.12.2019, only on 02.06.2023 (i.e., after a period of 3 years).

NPL's contrary plea is that the Commission's Order dated 04.12.2019 is under challenge before APTEL by the parties through Appeal Nos. 22 of 2020 filed by NPL and 68 of 2021 filed by PSPCL. Alongwith the said appeal, PSPCL had also filed an I.A. No. 1394 of 2020 seeking a stay on the operation of the Commission's Order dated 04.12.2019. As PSPCL's said IA was pending before APTEL, NPL did not precipitate the matter and take any action against PSPCL. However, APTEL vide its order dated 12.05.2022 was pleased to dismiss the I.A. No. 1394 of 2020. Once PSPCL's IA was dismissed by APTEL, NPL decided to press for enforcement/compliance of the Commission's Order dated 04.12.2019 by filing I.A. No. 934 of 2023 in Appeal No. 22 of 2020 before APTEL. Whereon, APTEL vide its Order dated 09.05.2023 disposed of the said I.A. by recording NPL's submission that, without prejudice to its right in the Appeal pending before Tribunal and subject to the result of the Appeal, it shall raise a bill in terms of the Order of the Commission seeking payment for the quantum of coal as approved by the Commission. Accordingly, NPL vide its letter dated 02.06.2023 submitted the impugned invoice for Rs. 164.14 crore i.e. Rs. 76.21 crore towards incremental energy charges and Rs. 87.93 crore towards late payment surcharge, in

accordance with the Commission's Order dated 04.12.2019. However, PSPCL vide its letter dated 12.06.2023, has refused to make the payment by raising frivolous contentions regarding the Petitioner's claim being time-barred and based on hypothetical figures. It is settled law that a first appeal is a continuation of the suit (original proceeding) and when the Appellate Court passes a decree, the decree passed in the suit merges with the decree of the Appellate Court, irrespective of whether the Appellate Court affirms, modifies or reverses the decree of the lower Court. In the present case, the Petitioner as well as the Respondent have challenged the Order dated 04.12.2019 before APTEL. Thus the proceedings in Petition No. 28 of 2018 are still continuing and when APTEL decides the Appeals, the Order dated 04.12.2019 will merge with the decree or Order that will be passed by APTEL. It was also submitted by NPL that as per Article 136 of the Limitation Act, 1963 the period of limitation for execution of a decree is twelve years from the date the decree becomes enforceable.

The Commission notes that its Order dated 04.12.2019 is still under challenge by both the parties before Hon'ble APTEL, wherein the IA filed by PSPCL for seeking stay on operation of the Commission's Order dated 04.12.2019 was dismissed on 12.05.2022. Further, on an I.A. No. 934 of 2023 filed by NPL to its Appeal No. 22 of 2020, Hon'ble APTEL vide its Order dated 09.05.2023 has allowed NPL to raise a bill in terms of the Commission's Order dated 04.12.2019 for the quantum of coal

as approved by the Commission, without prejudice to its right in the Appeal before the Tribunal and subject to the result of the Appeal. Accordingly, PSPCL's contention that the Petition filed by NPL for enforcement of the Commission's Order dated 04.12.2019 is barred by Limitation is not tenable.

**b) Issue of conformity of the impugned invoice in terms of the PPA read with the Commission's Order:**

PSPCL's contention is that the impugned invoice raised by NPL is based on hypothetical figures and is not in accordance with the Commission's Order. Nor is it in line with APTEL's order which also directs NPL to raise the invoice in line with the Commission's order dated 04.12.2019. PSPCL is also disputing the amount of LPS charged by NPL. It has been submitted that, even after receiving the Commission's Order dated 04.12.2019; NPL chose not to raise the revised bill(s) towards procurement of imported/alternate coal till 02.06.2023. As such, NPL cannot seek to claim LPS for the delay caused by itself. It was further pleaded that any deviation from the terms of the Commission's Order dated 04.12.2019 renders the present petition for enforcement otiose and not maintainable.

Whereas, NPL's plea is that its invoice dated 02.06.2023 has been raised in compliance of the Commission's Order dated 04.12.2019.

The Commission observes that matter of the impugned invoice being in conformity or not with the provisions of the Commission's Order/PPA, is also the core issue in the Petition

No. 46 of 2023 filed by PSPCL. Adjudication of the same requires examination of the issues in detail, which cannot be decided at the stage of admissibility of these petitions.

Thus, the Commission decides to admit both the petitions in order to examine the issue raised in detail and pass appropriate orders. The parties are directed to file their respective submissions on merits in both petitions within two weeks with a copy to each other (through hard copy & soft copy) and the rejoinders thereto, if any, can also be filed by the parties within one week thereafter with a copy to each other (through hard copy & soft copy).

The Petitions shall be taken up for hearing on 15.05.2024 at 11.30 AM.

**Sd/-**

(Paramjeet Singh)  
Member

**Sd/-**

(Viswajeet Khanna)  
Chairperson

Chandigarh  
Dated: **18.03.2024**