

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

Petition No. 57 & 58 of 2022
Date of Hearing: 07.12.2022
Date of Order: 09.12.2022

Petition under Section 86 (1) (b) & (f) of the Electricity Act, 2003 regarding deployment of CSIR-CIMFR to undertake sampling and analysis of coal received at the project site of Talwandi Sabo Power Limited, the Respondent herein.

In the matter of: Punjab State Power Corporation Limited (PSPCL), Shakti – Vihar,
PSPCL, Patiala - 147001
And
.....Petitioner

Versus

Talwandi Sabo Power Limited, Mansa- Village Banawala, Distt. Mansa,
Punjab - 151302
....Respondent

And
Petition No. 58 of 2022

Petition under Section 86 (1) (b) & (f) of the Electricity Act, 2003 regarding deployment of CSIR-CIMFR to undertake sampling and analysis of coal received at the project site of Nabha Power Limited, the Respondent herein.

In the matter of: Punjab State Power Corporation Limited (PSPCL), Shakti – Vihar,
PSPCL, Patiala - 147001
.....Petitioner

Versus

Nabha Power Limited, P.O. Box No. 28, Nalash Village, Distt. Patiala,
Rajpura, Punjab, 140401.
....Respondent

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

PSPCL: Sh. M.G Ramachandran, Sr. Advocate
Sh. R.S Randhawa, CE/ARR&TR
Sh. Gurvinder Singh, Sr.Xen
Sh. Charanjit Singh
Sh. Sh. Dheeraj Kumar/ASE Fuel
Sh. Kulvir Singh, ASE/IP-1

TSPL: Sh. Sourav Roy Advocate.

NPL: Sh. Sajan Poovayya, Sr. Advocate
Sh. Aniket Prasoon, Advocate
Sh. Rajnish Kaushik, DGM Legal
Sh. Balram Verma, DGM Legal

ORDER

The above two petitions filed by PSPCL have a common issue and hence were taken up together for hearing on admission.

Ld. Counsel for the petitioner stated that the deteriorating quality of coal received from the supplier companies has led to substantial extra cost for the petitioner company. The coal is tested at the loading site by CISR – CIMFR but the quality received at the generation site of the respondents units is far inferior to the one certified at the loading site. The respondents are required as per PPA to take up the issue with the coal suppliers MCL & CIL to obtain credit for the poor quality of coal received which is to be passed on to PSPCL as only actual cost of coal received at the site is to be paid to the respondent companies. Since the testing at the receiving site is being done by a joint team of PSPCL and the respondents, the results are not accepted by the coal supplier companies resulting in substantial overpayment for the coal received. Thus, these petitions have been filed so that a common, independent third party CSIR – CIMFR could be deputed to undertake coal testing at the receiving site also in order to obtain accurate results which the coal companies would be obliged to accept.

At the outset the petitions were challenged on their maintainability by both TSPL and NPL.

TSPL. Ld Counsel for TSPL stated that the joint sampling and testing of coal carried out at the receiving site is based on an agreed condition approved by an order of the commission dated 11 Feb 2014 in Petition No 60/2013 which has attained finality.

The sampling and testing is being done in the presence of PSPCL's team. Counsel also questioned the jurisdiction of the commission on this issue since the

petition has been filed u/s 86 (1) (f) and no dispute qua the respondent has been raised as per the definition and dispute resolution sections of the PPA. He also pointed out that the petition is barred by limitation. It was also pointed out that the price of coal is paid as tested at the loading side and thus the testing by CSIR – CIMFR at the generation site will have no substantial benefit.

NPL. Ld. Sr. Counsel for NPL also challenged the maintainability of the petition. While not questioning the jurisdiction of the commission, Ld. Counsel endorsed the other arguments put forward by counsel for TSPL on the consented joint inspection being carried out, the terms of the PPA and issue of limitation. Additionally, Ld. Sr. Counsel asserted that not only has the commission approved the joint sampling and inspection by the team of PSPCL and the Respondent in Petition No 57/2013, this procedure has also been approved by APTEL in 68/2013 and the Hon'ble Supreme Court.

Thus, if PSPCL has now to seek any change, then it needs to approach APTEL again. NPL has been fully participating and cooperating in the consented to process as approved by PSERC and APTEL. These orders have not been challenged and are now final. The Supreme Court too has taken cognizance of this procedure in its judgment dated 05 Oct 2017. Ld. Counsel raised the issue whether the relief sought by PSPCL can be granted by the commission in light of the APTEL and SC judgments referred to above. Since such relief cannot be granted, the petition automatically becomes infructuous and is not maintainable. PSPCL does not have the locus to come before the commission u/s 86 (1) (f) as there is no dispute or allegation against NPL and thus it should be dismissed in limine.

Ld. Counsel further stated that all credits received from CIL / MCL are being passed on to PSPCL. The present petition does not raise a dispute u/s 86 (1) (f) but only brings out a procedural issue and is thus not maintainable.

PSPCL. Ld. Counsel stated that PSPCL does not contest the fact that an agreed and consented joint sampling and testing is carried out at the receiving site at which

point the GCV of the coal received is tested which has an impact on the final payment to the generator and tariff charged from the consumers. Ld. Counsel asserted that they are not contesting the earlier orders of the commission, APTEL and the Hon'ble Supreme court and are bound by them. However, none of those orders stipulate that full payment has to be made for inferior coal supplied by the coal companies. Compensation ought to be obtained from MCL/CIL for such inferior supplies due to which this option has been proposed by PSPCL through these petitions. Such compensation obtained from MCL / CIL would not have any adverse impact on TSPL / NPL but would result in reduced costs for PSPCL and finally the consumer in reduced tariff.

Thus, the respondents should be willing to seek such compensation from the coal suppliers. Since the coal companies do not accept the results of the joint inspection by PSPCL and NPL / TSPL at their generating sites, PSPCL has proposed the name of CSIR – CIMFR, an independent, Ministry of Power approved company already engaged in testing at the loading site. Ld. Counsel pointed out that the Supreme Court has held in the Gujarat Urja Case that the scope of 86 (1) (f) is wide enough for the Commission to consider all issues / disputes. Also if MCL/CIL themselves are willing to participate in the joint testing, PSPCL has no objections since the joint sampling presently being carried out is not meeting the objective and is resulting in substantial extra cost and loss to PSPCL. If PSPCL's prayer is allowed, it will have no negative impact on either TSPL or NPL but result in substantial savings for PSPCL and finally have a positive impact on the tariff charged from the consumer. Thus, neither TSPL nor NPL should have any objection.

NPL has already filed written submissions challenging the maintainability, as also a timeline of relevant references and court orders. TSPL has also sought time to file their written submission on maintainability.

The commission directs the parties to file their submissions / additional submissions within two weeks and also address the issue raised by Ld. Counsel for PSPCL that the prayed for arrangement of inspection at receiving site by CSIR – CMIFR which will have no negative impact on either TSPL or NPL but have in fact, a positive

outcome for all stakeholders and thus, NPL / TSPL should have no objections to the maintainability of these petitions and the prayers made by PSPCL.

The order on maintainability is reserved pending receipt of written submissions.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: 09.12.2022