

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

Review Petition No. 01 of 2020 in
Petition No. 28 of 2018
Date of Order: 09.09.2020

Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 64 of the PSERC (Conduct of Business) Regulations, 2005 for review of the Order dated 04.12.2019 passed by the Commission in Petition No. 28 of 2018.

In the matter of: Punjab State Power Corporation Limited, The Mall, Patiala-147001.

.Review Petitioner

Versus

Nabha Power Limited, Aspire Tower, 4th Floor,
Plot No. 55, Industrial and Business Park, Phase-1,
Chandigarh-160002.

Respondent

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

ORDER

Punjab State Power Corporation Limited (PSPCL) has filed the present review petition seeking review of the Order dated 04.12.2019 passed by the Commission in Petition No. 28 of 2018. The petition was taken up for hearing on admission on 01.07.2020 wherein the Commission observed that NPL needs to be heard on the admission of the petition and accordingly notice was issued to NPL to file its reply. NPL filed its reply vide letter dated 28.07.2020. PSPCL, vide memo No. 5534 dated 10.08.2020, reiterating its earlier submissions, filed reply to the objections raised by NPL.

The petition was taken up for hearing on 19.08.2020 and after hearing the parties, the order was reserved vide Order dated 24.08.2020 allowing the parties to submit their respective written submissions within a week.

2. PSPCL has submitted, in short, that there are certain patent errors and inconsistencies on the face of record in the Order. The Commission has itself held in its order dated 19.02.2014 that it is not mandated to approve procurement / price of material and it is for PSPCL and NPL as the contracting parties to decide on such issues. The said finding recognizes the well settled position that a commission/court cannot modify the terms of a contract. The Order under Review is contrary to the settled law that the Commission cannot alter the terms of the contract entered into by the parties through a competitive bidding process u/s 63 of the Electricity Act, 2003 and that it is only for the parties to agree upon any deviation therefrom. The Commission has granted relief of approval for imported coal beyond the paddy season without the approval of the Standing Committee which is inconsistent with the Commission's own findings/observations in its order dated 19.02.2014. The Commission has committed a patent error by proceeding to determine the requirement of imported coal for the period November 2017 – March 2018 on the basis of scheduled generation by NPL and not on the principle of minimal usage basis as set out in the Commission's order dated 19.02.2014. The Order under Review has not appreciated the fact that power was being scheduled for the period October 2017 – March 2018 under merit order dispatch based on cost of domestic coal which position was well known to NPL and dispatch instructions were obtained by the NPL on the basis of such declaration. The computation of

requirement of alternate / imported coal in the Order under Review suffers from patent error to the extent GCV of linkage coal has been assumed at 4117 Kcal/Kg whereas minutes of meeting of the Standing Committee dated 26.05.2017 clearly demonstrate the GCV of coal from SECL at 4150 Kcal/Kg. The Order under Review has failed to consider the important fact that the quantum of coal provided under the LOA and the FSA by the coal supplier was based on the original capacity of 1200 MW. PSPCL has also referred to Section 94 of the Electricity Act, 2003 that the Commission is vested with the same powers as are vested in a Civil Court under the code of Civil Procedure, 1908 and as per Order 47 rule 2 of the Code of Civil Procedure PSPCL can file a review even if an Appeal is pending against the impugned Order before the Hon'ble APTEL. The non-consideration of the material facts and arguments by the Commission has caused grave injustice to the Petitioner and its consumers by burdening them with additional cost of Rs. 84 crores which is not justified in the facts and circumstances of the present case.

3. NPL has submitted in its reply, in short, that the review petition is not admissible in view of the provisions of Regulation 64 of the PSERC (Conduct of Business) Regulations 2005 and it is time barred. It is a matter of record that NPL has filed appeal No. 22 of 2020, before the Hon'ble Appellate Tribunal against the Order dated 04.12.2019 and the Review Petition is not admissible. There is no discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of PSPCL or could not be produced at the time when the Order is passed and there is no other sufficient reason for filing the review petition. All the grounds raised by the Review Petitioner seeking

review of the part of the Order dated 04.12.2019 (i.e., in favour of NPL) fail to disclose any error let alone any error apparent on the face of the record. The Review Petitioner is raising the same grounds which were already considered and rejected by the Commission while passing the Order dated 04.12.2019. PSPCL, under the garb of the present Review Petition, cannot be allowed to seek redetermination of the issues already decided in the Petition.

4. Observations and Decision of the Commission

The Commission has examined the averments made in the Review petition, the reply filed by NPL on admission of the petition, the submissions made by the parties during hearing and the case law submitted in support of their respective contentions.

PSPCL has stated that the Commission has erred in deciding the issue of shortage of coal where as the Standing Committee appointed by the Commission is the appropriate authority. Vide its Order dated 11.10.2018 in petition No. 28 of 2018, the Commission issued directions to the Standing Committee on NPL project to submit its recommendations regarding the post facto approval of purchase of 3.55 Lakh MT coal by NPL. PSPCL, vide memo no. 5523/TR-5/911 dated 05.02.2019, filed the Minutes of Standing Committee Meeting held on 28.12.2018 wherein it was stated that in view of the divergent views of NPL and PSPCL, consensus could not be reached in the Standing Committee.

In view of the inability of the Standing Committee to approve the aforementioned procurement of coal, it fell upon the Commission to proceed in the matter.

In this regard, it is pertinent to extract Hon'ble APTEL's Order dated 16.03.2016 in Appeal No. 68 of 2013 & IA Nos. 423 of 2014 and 60 of 2015 filed by Nabha Power Ltd. and L&T Power Development Ltd. against the Impugned Order dated 31.12.2012 in Petition No. 56 of 2012 passed by the Commission, as under:

“

5) The learned counsel for the contesting parties have agreed to the situation that the Interim Order dated 21.08.2013, passed by this Appellate Tribunal in the instant appeal be hereby made absolute and be given effect to finally along with the relevant part quoted above of the order dated 19.02.2014 of the State Commission in Petition No.57 of 2013.

6) Hence, with the consent and agreement of learned counsel for the parties, we hereby dispose of this appeal with the aforesaid directions given in our Interim Order dated 21.08.2013 and State Commission's order dated 19.02.2014 with one clarification, though, the State Commission is of the view that there is no shortage of coal at present, if there is any shortage of coal in future, at any point of time, for the reasons like shortage of any kind of coal namely, domestic coal or shortage of railway rakes or shortage of any other kind of transport not attributable to the appellant(s) then the State Commission is directed to consider the reasons and pass appropriate order at appropriate stage without any procrastination or undue delay. With these terms, the instant appeal is hereby disposed of.”

Considering the above and the fact that the Standing Committee appointed by the Commission, having expressed its inability to decide the matter it was incumbent upon the Commission to consider the same on merits.

Regulation 64 (1) of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations 2005, pertaining to review, mandates as under:

“64. Review of the decisions, directions and orders:-

(1) Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decision/order was passed by the Commission or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision/ order of the Commission.”

The Commission had passed a detailed and reasoned Order after considering all submissions, pleadings, record and arguments of the parties after discussing all the points and the same needs no reconsideration in this review. As the facts and evidence remains the same and there is no error apparent on the face of record therefore, there is no reason for reviewing the Order. PSPCL has failed to make out any ground for review as stipulated under Regulation 64 of the Punjab State Electricity Regulatory

Commission (Conduct of Business) Regulations 2005. The Review petition therefore does not merit to be admitted and is dismissed accordingly.

Sd/-
(Anjuli Chandra)
Member

Sd/-
(S.S. Sarna)
Member

Sd/-
(Kusumjit Sidhu)
Chairperson

Chandigarh

Dated: **09.09.2020**

