

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

Petition No. 48 of 2020
Date of Hearing: 03.08.2022
Date of Order: 24.08.2022

Petition under Section 43 of E.A 2003 read with Supply Code (2014) Reg 5.1 in the matter of refusal by the Licensee to release electricity connections to the residents of Gulmohar Residency Section 116 Mohali.

AND

In the matter of: Residents of Gulmohar Residency Sector 116 Mohali through their authorised representative Sh. Harbans Dhiman
S/o Sh. BansariDass and Dr.Charan Singh Rayat.
.....Petitioners

V/s

1. Punjab State Power Corporation Ltd. the Mall, Patiala.
2. M/s Shivalik Site Planners Pvt. Ltd. House No. 57, Phase-2 Mohali.
3. Greater Mohali Area Development Authority, Sector 62, S.A.S Nagar Mohali, through its Chief Administrator.

...Respondents

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

Petitioner: Sh. Aditya Grover, Advocate
Sh. C.S. Rayat

PSPCL: Sh. Naveen S. Bhardwaj, Advocate
Sh. Rupinderjit Singh, CE/ARR&TR
Sh. Ravi Luthra, SE/TR-2
Sh. Gurvinder Singh, Sr.Xen/TR-5
Sh. Sukhjot Singh Sidhu, SE/Regulation

M/s Shivalik: None

GMADA: Sh. Balvir Singh Gill

PUDA: None

DTP: None

Local Bodies

Govt: Vinay Mahajan, MC/Kharar, Engineer
Punjab

ORDER

1.0 The petition has been filed by Sh. Harbans Dhiman S/o Sh. Banarsi Dass, resident of Shiv Mandir, Sector 10, Kharar on behalf of the residents of Gulmohar Residency, Sector 116, Mohali under Section 43 of the Electricity Act, 2003 read with Regulation 5.1 of the Supply Code, 2014 wherein it has been pleaded that a developer named M/s Shivalik Site Planners Pvt. Ltd. got CLU approved from the Town Planner for a residential colony on a piece of land measuring 25 acres in Sector 116, Mohali. Thereafter, in 2013, this developer obtained license from GMADA for raising a residential colony named Gulmohar Residency over this land. But after obtaining license from GMADA, this developer fled the scene after handing over possession of parts of the land to other developers for raising various colonies. But the Developer(s) did not obtain an NOC from PSPCL for laying electrical local distribution (LD) System in the area. However, these developers sold plots in the colonies and many buyers have constructed houses on these sites. After completing construction of houses, the residents approached PSPCL for electricity connections for

their houses. However, their applications were not registered on the plea that the Developer M/s. Shivalik Site Planners Pvt. Ltd. has not obtained an NOC from PSPCL for laying the LD system in this area. The petitioners have further submitted that while purchasing plots they had no idea that they would be refused electricity connections for their houses since thousands of other residents in the vicinity were already having electricity in their houses and the area was fully electrified. Even temporary connections were given to some of the petitioners for construction of the houses and no government agency stopped them from going ahead with their construction activity at any stage. Non-compliance by the Developer with statutory provision regarding laying of LD system in the colony was not their fault and PSPCL was duty bound to give them electricity connections in accordance with Section 43 of the Electricity Act, 2003 and Regulation 5.1 of the Supply Code, 2014. PSPCL is giving connections to the residents of even unauthorised colonies on payment of service connection charges and production of CLU. PSPCL has also allowed release of regular domestic connections on temporary basis under normal DS tariff to the applicants falling in the Chandigarh Periphery area subject to furnishing of undertaking that the connection will be disconnected, if the premises are declared illegal by the State Government. It has been pleaded that the connections may be given to the petitioners on some such condition. With the plea that electricity is an essential service and basic necessity and there is no other source from which the petitioners can get it, they have prayed that the respondent PSPCL may be directed to release electricity connections to them in the interest of justice.

- 2.0 The petition was admitted vide Order dated 19.01.2021. Since the presence of the Developer M/s. Shivalik Site Planners Pvt. Ltd and GMADA was necessary for proper adjudication of the matter, they were impleaded as respondents in the petition and notice was issued to them to file replies. During hearing on 14.01.2021, Sh. Sandeep Kumar, a resident of Gulmohar Residency, submitted that a temporary connection was released to his house but the same was later disconnected by PSPCL and that the permanent connection was not being released on the plea that the developer has not obtained NOC from PSPCL. The officers appearing for PSPCL submitted that the temporary connections were released to some individual residents for construction of their houses, some of which were disconnected after the expiry of the time period allowed for these temporary connections as per the prevailing instructions. However, PSPCL officers failed to convince the Commission as to how at the first instance, temporary connections were released to the individual residents of the colony for which not even an NOC has been issued by the distribution licensee. Accordingly, PSPCL was directed to investigate the matter and submit its report.
- 3.0 PSPCL submitted its reply vide memo no. 5256 dated 09.02.2021 that a mega residential project in 25 acres land at Sector-116, Kharar, named as "Gulmohar Residency" was got approved from GMADA vide License No-13/2013 dated 27.05.2013 by M/s Shivalik Site Planners Pvt. Ltd. This project comprises of pockets of different sized residential plots and some towers having different sized flats. For their construction, the main builder i.e. M/s. Shivalik Site Planners Pvt. Ltd. had handed over the pockets of

land to sub-builders/promoters. As per the conditions of license granted by GMADA under PAPRA-1995 to M/s. Shivalik Site Planners, the builder was required to get approval for the electrification scheme of its project from the electrical wing of GMADA. Thereafter, as per Electricity Supply Instruction Manual's (ESIM) clause No-3.2.4 and Supply Code Regulation 6.7, the builder was required to apply online at the single window system of PSPCL to get a no objection certificate (NOC) from PSPCL for the electrification scheme of its project. Also, the builder was required to install an LD system (comprising of HT Lines/cables, Transformers, LT Lines/cables and meter panels etc.) as per the approved scheme and hand over the same to PSPCL after due approval/clearance for the installed LD system of the colony from Chief Electrical Inspector, Govt. of Punjab. The builder/GMADA was also required to deposit the electrical connectivity charges to PSPCL as per the NOC given by PSPCL for the project. But nothing was done till date by M/s. Shivalik Site Planners to get the approval for electrification scheme of their project from GMADA and further to get NOC from PSPCL. The Builder had not yet installed the LD system in the colony on its own to fulfil the conditions of license granted to him by GMADA. Due to the above non-action on part of the builder, PSPCL was not able to provide permanent electricity connections to individual flat/plot holders in the project named Gulmohar Residency. PSPCL further submitted that apart from filing this petition, residents of D-Homes (within Gulmohar Residency) have filed Complaint No-93/17/2020 against PSPCL at Punjab State Human Rights Commission, Chandigarh for release of electricity connections to them, which is pending for decision. Also, the residents of Arcadia Dream Homes (within

Gulmohar Residency) have filled CWP No-32454 of 2019 against PSPCL in the Hon'ble Punjab & Haryana High Court, Chandigarh for release of electricity connection to them which is pending for decision. PSPCL further stated that they can't be blamed for any non-action on the part of Developer and that they are duty bound to provide electricity connections but after following the prevailing rules and regulations. The temporary connection to the residents and builders were issued in 'Gulmohar Residency' as per prevalent instructions and there were no specific instructions regarding non-release of temporary connections in approved colonies. Therefore, when an applicant applied for a temporary connection, the connection was released on the basis of regular supporting documents. However, specific instructions for release of temporary connections in approved colonies were issued vide CE/Commercial, PSPCL memo no. 584-88 dated 07.08.2020 as per which temporary connection can be released only in the name of developer to whom the license to develop the colony is issued and individual temporary/permanent connections to residents can only be released from the LD system laid down by the developer in line with NOC granted to developer as per Clause 6.7 of Supply Code by PSPCL.

- 4.0 Some residents of Gulmohar Residency presented themselves before the Commission on the next date of hearing i.e.10.02.2021 and pleaded for release of permanent electricity connections whereupon vide Order dated 15.02.2021, they were advised to get themselves impleaded as respondents by submitting applications to that effect. The representatives of the Developer and GMADA did not appear and accordingly it was directed to issue notice to

GMADA through Secretary, Department of Housing & Urban Development, Govt. of Punjab.

- 5.0 The petitioners also filed IA No. 7 of 2021 stating that they were leading a miserable life without there being any supply of electricity and were surviving on electricity through generator sets. Since the approaching summer season would further worsen their plight, it was pleaded to grant early hearing and to direct PSPCL, in the interim, to immediately render connectivity to them for their houses. It was submitted that the Punjab State Human Rights Commission while adjudicating upon a similar matter in complaint No. 93/17/2020 vide order dated 19.11.2020 had inter-alia directed the Respondent PSPCL to submit a report after issuing temporary electricity connections to the resident of D Home society located in Sector -116, Mohali without any delay. Further, this Commission, while adjudicating upon Petition No. 22 of 2020 vide order dated 02.11.2020, had inter-alia held that residents cannot be denied essential electricity services and therefore till such time as the matter is resolved, PSPCL is obligated to provide supply to the residents. It was added that the petitioners in terms of the regulations framed by this commission were willing to pay the requisite charges to the respondent PSPCL for release of respective electricity connections to the petitioners for the houses. Further, as per Section 43 of the Electricity Act, PSPCL was bound to render connectivity to the petitioners being the sole distribution Licensee in the state of Punjab and that Section 43 ibid provides as under:

Section 43. (Duty to supply on request): --- (1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises,

give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation:- For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

It was further pleaded that from time to time, the Hon'ble courts have rendered kind indulgence on similar issues being faced by similarly placed persons, upon which the distribution licensee has

been directed to immediately provide the connectivity to the residents. In case of Ravi Dutt Badyal vs. PSPCL and others, while deciding Civil Misc. No. 5737 in CWP No 34999 of 2019, vide order dated 20.07.2020 the Hon'ble Punjab and Haryana High Court had passed the following order:

“1. Learned counsel for the Respondent No. 5/Builder states that the laying of electricity cables for the Petitioner's plot will be completed within one week from today.

2. As regards providing the electricity connection to the Applicant/ Petitioner's plot, it appears that the plot was not part of the Mega Housing Project. It is part of a colony which was subsequently regularized by the competent authority of the local government in Patiala. It appears that the plot is under the jurisdiction of the Municipal Council, Kharar.

3. Learned counsel for the Punjab State Power Corporation Ltd. ('PSPCL') states that a separate electricity line has to be laid to the Petitioner's plot for providing electricity connection. Learned counsel for the Petitioner, on instructions, states that the Petitioner is prepared to pay the requisite charges for the laying of such line “as per regulations”.

4. Mr. Sehajbir Singh, Advocate for the PSPCL states that within two weeks from today, the Petitioner will be informed about the requisite charges that have to be paid by him for laying of the line from the transformer, as per regulations.

5. It will be open to the Petitioner, if aggrieved by such decision of the PSPCL, to seek appropriate remedies in accordance with law.

6. The application is disposed of in the above terms.

.....”

The copies of aforementioned documents were appended with the IA and it was prayed that in case the instant matter is not taken up immediately and the petitioners are not rendered electricity connections in the interim, the petitioners would suffer irreparable loss.

- 6.0 Some residents filed IA No. 8 of 2021 to get themselves impleaded in this petition i.e. Petition No. 48/2020 stating that their facts, grievances and circumstances were the same as those in Petition No. 48/2020.
- 7.0 During the hearing on 03.03.2021, the learned counsel representing the residents of Gulmohar Residency pleaded that the condition of the residents of the colony was miserable due to denial of electricity connections by PSPCL and they were constrained to meet their essential requirements with costly diesel generated power. The counsel requested that pending the final outcome of the petition, the Commission may grant interim relief by directing PSPCL to release electricity connections to the residents by recovering Service Connection Charges/other applicable charges as had been allowed by the Commission to the residents of Shivalik City, Kharar in Petition No. 22 of 2020. The counsel presented photographs to substantiate the claim that the LD system in the colony was available and connections could be released to the residents. The officer representing PSPCL submitted that a few distribution transformers were installed in the colony to release temporary connections to the developer and to some individual residents. GMADA in its reply dated 10.02.2021 informed that a licence no.13/2013 dated 27.05.2013 was issued to M/s Shivalik Site Planners Pvt. Ltd. to develop a colony named

“Gulmohar Residency” and the licence was valid till 17.05.2018. GMADA submitted that the following condition was laid down in the licence:

“vii) The Licensee shall obtain a final/confirmed No objection Certificate from the PSPCL within 90 days from the issue of this License, failing which penal action shall be initiated against the Licensee under the relevant provisions of PAPR Act, 1995 and rules made there under.”

GMADA further submitted that action related to taking permanent electricity connections in the colony and final NOC from PSPCL was to be taken by the Developer.

After considering the submissions, the Commission vide Order Dated 15.03.2021, made observations as under:

“.....the developer was required to obtain NOC from PSPCL within 90 days from the issue of the licence but never approached PSPCL to submit electrification plan and obtain NOC. Govt. of Punjab, Department of Housing and Urban Development issued a notification dated 06.05.2008 which provides that the concerned departments including PSPCL shall ensure that no development work is started by the promoter before getting No Objection/Clearance Certificate, if required from the concerned Departments/Agency. The para 3 & 4 of the said notification is reproduced as follows;

*“3. No objection Certification from the different departments shall not be a precondition for issuance of licence for development of colonies, but **the promoter shall be liable to get No Objection Certificate from the concerned***

departments e.g. Punjab Pollution Control Board, **Punjab State Electricity Board**, P.W.D. (Drainage Department), Forest Department or the concerned Municipal Corporations/Committees as the case may be **before start of development works of the colony at site.**

4. A copy of the license shall be endorsed to the concerned Department by the concerned Competent Authority asking the said Department to **ensure that the Development works shall not be started by the promoter before getting No. Objection/Clearance Certificate if required from the concerned Departments/Agency.**” [Emphasis Added]

The Commission observes that the developer never approached PSPCL to obtain NOC, however PSPCL not only released temporary connections to the **developer** to carry out construction/development works but also to some individual residents despite clear instructions of GOP and the conditions of licence by GMADA. It appears that PSPCL and the licensing authority never bothered to enforce the above mentioned provisions of GOP notification read with Conditions of the licence mentioned above, resulting in not only financial loss to the licensee but also avoidable inconvenience to the residents.

Electricity is an essential service and residents cannot be denied electricity connections merely because the developer has not fulfilled the conditions of license and the distribution licensee has failed to get the conditions of the licence implemented by the developer. Depriving the residents of Gulmohar Residency of electricity connections shall be against the principle of natural **justice**. As per section 43 of the

Electricity Act, 2003, a distribution licensee has a universal service obligation in his area of supply, subject to the rules/regulations framed under the Act.”

After hearing the counsel and the officers of PSPCL, the Commission passed the following order:

“.....the Commission directs PSPCL to release electricity connections to the residents of Gulmohar Residency after recovery of Service Connection Charges/ other applicable chargers as per the Cost Data approved by the Commission within the time limits specified in Regulation 8 of the Supply Code, 2014 subject to the final order in the instant petition. A separate account of the expenditure incurred by PSPCL on release of these connections may be kept and the amount may be recovered from the developer or the delinquent officials/officers as per applicable law. It is reiterated that the above interim directions to PSPCL have been issued keeping in view the peculiar facts and circumstances of the present case and are not necessarily applicable to other cases. IA No. 07 of 2021 stands disposed of accordingly.....”

- 8.0 Further, the IA No. 08 of 2021 was allowed and the applicants were impleaded as petitioners.
- 9.0 During the hearing on 28.4.2021, the petitioners submitted that PSPCL was not releasing connections to them. However, PSPCL submitted that they had released electricity connections to approximately 70% of the applications received from the residents of Gulmohar Residency and that the remaining connections would also be released shortly. Vide Order Dated 03.05.2021, PSPCL was directed to submit a detailed report on the release of connections to the residents of Gulmohar Residency within two weeks. During the hearing on 26.05.2021, the petitioners had

submitted that keeping in view the load, PSPCL may be directed to upgrade the transformers to avoid any disruption in supply of electricity to the consumers. Vide Order dated 11.06.2021, PSPCL was asked to file its reply in this regard. During the next hearing held on 16.06.2021, the counsel for the petitioners confirmed that electricity connections to them had been released and PSPCL submitted that the 25 kVA distribution transformer had been augmented with 63 kVA distribution transformer and the LD system was being strengthened as per the loading conditions.

- 10.0 During hearing on 20.07.2021, the Commission observed that Department of Housing and Urban Development, Govt. of Punjab Notification dated 06.05.2008 provided that the concerned departments including PSPCL shall ensure that no development work is started by the promoter before getting No Objection/Clearance Certificate, if required from the concerned Departments/Agency. But the Developer never approached PSPCL to obtain NOC. However, PSPCL not only released temporary connections to the Developer to carry out construction/development works but also to some individual residents thus evidencing that PSPCL and the licensing authority never bothered to enforce the above mentioned provisions of the notification read with conditions of the licence, resulting in financial loss to the licensee and also avoidable inconvenience to the residents. Vide Order dated 27.07.2021, PSPCL was directed to submit the action taken report against the erring staff/officials commensurate with the lapse for violating the relevant Rules, Regulations and the applicable provisions and PUDA/GMADA were directed to submit the details of action taken against the

Developer for violation of the terms and conditions of the license granted to the Developer. Regarding the Bank Guarantees/securities, GMADA submitted that a Bank Guarantee amounting to Rs.154 lakh was available against internal development works whereas separate Bank Guarantee for electrical works is to be taken by PSPCL. The Commission directed PSPCL to provide the expenditure incurred/likely to be incurred for providing connections in the colony.

- 11.0 Vide memo no. 7072 dated 24.08.2021, PSPCL intimated that an enquiry has been initiated by calling explanation of officers for releasing 5 nos. temporary connections to the sub-developers during their tenure. PSPCL further informed that the total cost of completing electrification infrastructure of the colony was Rs. 89.84 lakh. Vide memo dated 09.11.2021, GMADA submitted that a bank guarantee of Rs. 1.54 crore is available for development of internal works of the colony but it does not include the estimate for electrical works. The Commission observed that as per the conditions of license, the Developer was requested to take NOC for LD system from PSPCL within 90 days of issue of license, but compliance with this condition has not been ensured/monitored by the GMADA. Having been responsible for this lapse, the GMADA was directed vide Order dated 15.11.2021 to encash the Bank Guarantee and hand over the required amount to PSPCL for completion of LD system. Since the Developer M/s Shivalik Site Planners Pvt. Ltd. was given repeated directions to appear before the Commission and file its reply and despite giving ample opportunity, the aforesaid Developer has failed in doing so, it amounted to clear violation of the directions of the Commission.

Thus a cost of Rs. 1,00,000/- was imposed on the Developer for non-compliance of the directions of the Commission.

12.0 GMADA filed an affidavit stating that the Developer had submitted a Bank Guarantee of Rs.1.54 crore for completion of internal development works of the colony but the Bank Guarantee did not include the estimated cost of the electrical works. As per instructions issued by the Department of Housing and Urban Development, Govt. of Punjab vide memo no. 12092-98 dated 18.06.2013, Bank Guarantee against electricity works to be carried out by the Developers has not been obtained by GMADA, thus no amount can be transferred by GMADA to PSPCL for electrification of the colony out of the Bank Guarantee of Rs.1.54 crore submitted by the Developer. This affidavit was taken on record and the order was reserved vide Order dated 05.08.2022.

Commission's Findings and Order

The petition sought directions to the distribution licensee i.e. PSPCL for release of electricity connection to the residents of the colony named Gulmohar Residency for the development of which the licence was issued by the licensing authority i.e. GMADA to M/s Shivalik Site Planners Pvt. Ltd. on 27.05.2013. The main argument of the petitioners was that they cannot be deprived from electricity connections which is a basic necessity, on account of failure of the Developer to comply with the conditions of licence to obtain NOC from PSPCL and to develop LD system in the colony. It was pleaded that as per Section 43 of the Electricity Act, PSPCL was bound to release connections to the petitioner being the sole distribution Licensee in the state of Punjab.

On the other hand, PSPCL submitted that as per the conditions of license granted by GMADA under PAPRA-1995 to M/s Shivalik Site

Planners and Regulation 6.7 of the Supply Code, 2014, the Developer was required to get NOC from PSPCL for the electrification scheme of its project. Also, the Developer was required to install LD system as per the approved scheme and handover the same to PSPCL after due approval/clearance for the installed LD system from the Chief Electrical Inspector, Govt. of Punjab. The Developer was also required to deposit the electrical connectivity charges to PSPCL as per the NOC to be given by PSPCL for the project. But due to inaction & non-compliance on the part of the Developer, PSPCL was not able to provide permanent electricity connections to the residents.

In this context, it is observed that the Commission in exercise of its powers, conferred under Section 181 of the Act read with all other powers enabling it in this behalf, notified PSERC (Electricity Supply Code and Related Matters) Regulations, 2014 as amended from time to time (hereinafter referred to as Supply Code, 2014) and Regulation 6.7 of *ibid* Regulations specifies as under:

“6.7 Supply of Electricity to Individual Consumers in the Residential Colonies / Multi- Storey Residential Complexes Developed under bye– laws/rules of the State Govt.

6.7.1 In the event of residential colonies/complexes developed by developers/builders/societies/owners/associations of residents/ occupiers under bye-laws/rules of the State Govt. not covered under Regulation 6.6 above, the residents/occupiers of such colonies /complexes shall obtain individual connections directly from the distribution licensee. The release of such connections shall be governed by the following terms and conditions:-

- a) *The developer/ builder/society/owners/ association of residents/ occupiers shall submit the complete lay out plan of the electrical network proposed to be erected in the colony and other documents prescribed by the licensee along with the processing fee as per Schedule of General Charges and obtain the preliminary NOC from the licensee. The NOC shall be issued by the licensee within 45 days of the receipt of proposal complete in all respects along with requisite documents. In case the developer/ builder/ society/ owners/ association of residents/ occupiers withdraw his request or fails to comply with the conditions within stipulated time, the processing fee shall be forfeited.*

Note: The developer/builder/society/owner/association includes any agency whether Govt./ Local body or private that constructs the colony/complex.

- b) *For planning the L.D system of such colonies/complexes or to issue NOC, the following guidelines may be adopted by distribution licensee for assessment of expected connected load/ demand of such colonies/complexes:*

.....
.....

- c) *The developer/ builder/ society/ owners/ association of residents/ occupiers may deposit the estimated cost of Local Distribution (LD) system of the colony as per approved layout sketch and get it executed from the distribution licensee. The expenditure of L.D system including service cable up to the metering point of each consumer and the 11kV system shall include cost of the material, labour plus 16% establishment charges there on. The phase wise development of LD*

system may be carried out by the licensee as per requirement but any cost escalation over a period of time shall be borne by the licensee. The distribution licensee shall be responsible to release individual connections within the time frame specified in Reg. 8. The expenditure incurred by the distribution licensee for providing connectivity to the colony shall also be borne by the developer/ builder/ society/ owners/ association of residents, as the case may be. This shall include the expenditure incurred by the distribution licensee for providing the individual 11kV service line(s) to the colony (cable or conductor from pole/ tower of feeder/ distribution main to the colony premises/ metering point) and proportionate cost of common portion of the distribution main including breaker from nearest feeding grid sub-station having power transformer of 33-66/11kV or 132-220 /11kV, as the case may be, which is feeding the 11kV line connected to the colony, as per the Standard Cost Data approved by the Commission. In case the existing 11kV distribution main is required to be augmented/ extended/bifurcated or a new 11kV line/plant is to be erected to allow connectivity to any colony then such work shall be carried out by the distribution licensee at its own cost provided the applicant pays the full cost of service line and proportionate cost of the common portion of the augmented/extended /bifurcated /new distribution main including breaker as per the Standard Cost Data approved by the Commission. However, the developer/ builder society/ owners/ association of residents/ occupiers shall have the option to execute the works of internal L.D system of the

colony/ complex of its own in accordance with the layout plan/sketch approved by the distribution licensee subject to payment of 15% supervision charges on the labour cost to the licensee. In such case, the developer/ builder society/ owners/ association of residents/ occupiers, as the case may be, shall furnish a Bank Guarantee (valid for the period of NOC) from any bank registered and regulated by RBI equivalent to 20% of the estimated cost of the LD system of the colony to be executed by the developer/ builder society/ owners/ association of residents/ occupiers before the approval of the electrification plan and issue of NOC by the distribution licensee. This BG shall be returned after the developer fulfils the conditions of NOC and submit BG in case he avails partial connectivity from the distribution licensee. Provided that the distribution transformers and other material to be used for the internal LD System of the colony shall be as per the specifications approved by the licensee and shall be procured from the vendors approved by the licensee. The Distribution Transformers (DTs) may be procured by the developer from the distribution licensee. However, the developer shall be at liberty to procure the DTs from the approved vendors of the distribution licensee after getting the same inspected from the distribution licensee at manufacturer's site. A 21 days' notice shall be served on the distribution licensee by the developer to inspect the DTs. In case DTs are not inspected within 21 days from the date of receipt of notice by the distribution licensee from the developer, it shall be deemed to have been inspected and approved by the distribution licensee. Provided further that

the phase wise development of LD system may be carried out by the developer/ builder society/ owners/ association of residents/ occupiers, as per requirement. In case the developer/ builder/ society/ owners/ association of residents/ occupiers requests for energisation of incomplete/partial LD system, the same shall be allowed provided the developer/ builder/ society/ owners/ association of residents/ occupiers furnish a Bank Guarantee (BG valid for 3 years) from any bank registered & regulated by RBI equivalent to the estimated cost of balance works as per the cost of material and labour prevailing at the time of allowing connectivity for the partial load plus expected % age increase in the cost of material & labour in the next 3 years as may be approved by the Commission on the basis of increase in the cost during the preceding 3 years. This BG may be extended for each block of 3 years by increasing the base value with expected % age increase in the cost of material & labour as may be approved by the Commission. The amount of Bank Guarantee shall keep on reducing with the completion of remaining works of the L.D system. After submission of Bank Guarantee to the satisfaction of the licensee, the BG accepted at the time of issue of NoC shall be returned to the developer and it shall be the responsibility of the licensee to release connections to the residents/ occupiers of the colony/complex according to the time frame specified in Reg. 8. After its completion and inspection by the Chief Electrical Inspector to Govt. of Punjab, the distribution licensee will take over the L.D system which will be connected to its

distribution system. The distribution licensee shall thereafter maintain the L.D system at its own cost.

d)

.....

e) Each resident/occupant shall submit A&A form for supply of electricity to the distribution licensee in accordance with regulation 6 of Supply Code and connected load of each applicant shall be determined/ computed as per regulation 4.5 of the Supply Code. The distribution licensee shall release the connections within time limits prescribed in regulation 6.8 & 8.

f) A developer/builder/society/owner/ association of residents/ occupiers shall obtain separate connection for common services under relevant category. The developer shall also be responsible to lay service cables up to the metering point of individual occupier's premises/common service connection points at its cost. In case meter is installed outside the consumer's premises, the service cable from the meter up to the main switch of the consumer shall also be provided at its own cost by the developer. The distribution licensee shall not recover any Service Connection Charges from individual consumers. However, applicant shall deposit Security (consumption) and Security (meter) as per Schedule of General Charges."

As per Section 43 of the Electricity Act, 2003, the obligation of the distribution licensee to provide supply of electricity in its area of supply is subject to the rules/regulations framed under the Act. The aforementioned Supply Code, 2014 regulations specify the procedure to

be followed and conditions to be fulfilled by the developers in case of licensed colonies before the electricity connections are released by the distribution licensee. However, in this case, the Developer did not even approach PSPCL for getting the NOC. But PSPCL also failed to take up the matter with the licensing authority i.e. GMADA regarding non-compliance by the Developer with the conditions of licence in respect of obtaining NOC from the distribution licence. Even PSPCL went ahead with issuing temporary connections to the builders even without NOC. Further, the licence issued by GMADA on 27.05.2013 and then extended on 03.01.2018 has already expired. Keeping in view the foregoing and that the developer has not fulfilled the conditions of license and the licensing authority & distribution licensee have failed to get the conditions of the licence implemented by the developer, to extricate the residents from their misery due to lack of electricity connections, the Commission vide Order dated 15.03.2021, as an interim measure, directed PSPCL to release electricity connections to the residents of Gulmohar Residency after recovery of Service Connection Charges/other applicable chargers as per the Cost Data approved by the Commission within the time limits specified in Regulation 8 of the Supply Code, 2014 subject to the final order in the instant petition. PSPCL was also asked to keep a separate account of the expenditure incurred on release of these connections and to recover the amount from the developer or the delinquent officials/officers as per applicable law. It was also underlined that the interim directions to PSPCL were issued keeping in view the peculiar facts and circumstances of the case and were not necessarily applicable to other cases. The petitioners have since confirmed that electricity connections to them have been released by PSPCL and PSPCL has submitted that

the distribution transformer has been augmented and the LD system was being strengthened as per the loading conditions.

Further, Sr. No. (vii) of the Annexure-1-Supplementary Terms & Conditions of the licence No. LDC-13/2013 dated 27.05.2013 issued by GMADA to the Developer clearly provides the following:

“vii) The Licensee shall obtain a final/confirmed No objection Certificate from the PSPCL within 90 days from the issue of this License, failing which penal action shall be initiated against the Licensee under the relevant provisions of PAPR Act, 1995 and rules made there under.”

But the Developer did not even approach PSPCL for issue of NOC. The licence was initially valid up to 26.05.2016. Even while extending the licence from 27.05.2016 to 17.05.2018 vide letter dated 03.01.2018, GMADA as the licensing authority, failed to take notice of the non-compliance by the Developer with the above mentioned condition of licence and did not take any penal action against the Developer. The submission of GMADA that the action related to taking permanent electricity connections in the colony and final NOC from PSPCL was to be taken by the Developer does not absolve GMADA of its responsibility as the licensing authority to ensure compliance by the Developer with the conditions of licence, including the one mentioned above, and to take penal action against the Developer in case of non-compliance as happened in the instant case.

Moreover, Govt. of Punjab, Department of Housing and Urban Development issued a notification dated 06.05.2008 which provides that the concerned departments including PSPCL shall ensure that no development work is started by the promoter before getting No Objection/Clearance Certificate, if required from the concerned

Departments/Agency. The Para 3 & 4 of the said notification provide as under:

- “3. No objection Certification from the different departments shall not be a precondition for issuance of licence for development of colonies, but the promoter shall be liable to get No Objection Certificate from the concerned departments e.g. Punjab Pollution Control Board, Punjab State Electricity Board, P.W.D. (Drainage Department), Forest Department or the concerned Municipal Corporations/Committees as the case may be before start of development works of the colony at site.*
- 4. A copy of the license shall be endorsed to the concerned Department by the concerned Competent Authority asking the said Department to ensure that the Development works shall not be started by the promoter before getting No. Objection/Clearance Certificate if required from the concerned Departments/Agency.” [Emphasis supplied]*

PSPCL released temporary electricity connections in favour of the builders even when the Developer had not taken NOC from PSPCL and above instructions forbade start of any development work without getting NOC from PSPCL. It also failed to take up the issue with GMADA regarding violation of the conditions of licence by the Developer. The Commission is not convinced with the submission of PSPCL that there were no specific instructions of release of temporary connections to such residents but now PSPCL has issued specific instructions dated 07.08.2020 to regulate release of temporary connections in the colonies which are being followed by the field officers. In fact, keeping in view Govt. of Punjab Notification Dated 06.08.2020, requisite instructions

should have been issued timely by PSPCL. Even GMADA, as the licensing authority, failed to notice the commencement of development work in the colony without issue of NOC by PSPCL during the initial validity of the licence, at the time of its extension on 03.01.2018 and during the subsequent period.

Thus, despite clear provisions in the conditions of licence to take action against the errant Developer, GMADA has not brought on record any action taken by it against the Developer, in fact has pleaded helplessness in encashing the available Bank Guarantee to complete the deficient LD system.

The Commission observes that people invest their lifelong earnings in purchasing a dwelling unit or a plot in an approved colony duly licenced by the licencing authority like GMADA, with their sacred belief in the enforceability of the conditions of licence and robust development of requisite civic facilities including well-developed local electricity distribution (LD) system and electricity connections. However, rampant violations of the conditions of licence by the Developers, e.g., non-development of LD system as in the instant case coupled with inexcusable inaction by the concerned departments results in undue harassment to the residents. In this backdrop, negligent attitude of the licencing authorities and their turning blind eye towards violations by the Developers are alarming. The Commission directs the Secretary, Department of Housing and Urban Development, Govt. of Punjab and the Chief Administrator, GMADA to identify the lapses which led to lenient oversight of GMADA regarding violation of the conditions of licence by the Developer i.e. M/s. Shivalik Site Planners, fix responsibility and to take appropriate remedial measures to prevent such recurrence. Moreover, as a deterrent, the licensing authority i.e. GMADA should take immediate penal action against the Developer i.e.

M/s. Shivalik Site Planners and its Directors as per law. The Secretary, Housing and Urban Development, Govt. of Punjab may also look into inserting appropriate checks in licensing conditions to plug the loopholes which enable such developers to get away with encashing the fruits of their license without meeting their obligations to the detriment of their customers/buyers of plots.

Further, PSPCL has intimated that the total cost of completing electrification infrastructure of the colony was Rs. 89.84 lakh. GMADA filed an affidavit stating that the Developer had submitted a Bank Guarantee of Rs.1.54 crore for completion of internal development works of the colony but the Bank Guarantee did not include the estimated cost of the electrical works. GMADA further argued that as per instructions issued by the Department of Housing and Urban Development, Govt. of Punjab vide memo no. 12092-98 dated 18.06.2013, Bank Guarantee against electricity works to be carried out by the Developers has not been obtained by GMADA, thus no amount can be transferred by GMADA to PSPCL for electrification of the colony out of the Bank Guarantee of Rs.1.54 crore submitted by the Developer. The aforementioned memo dated 18.06.2013 reads as under:

“The promoter brought to the notice of the government that as per the provisions of PAPRA they have to deposit bank guarantee equivalent to 25 percent of the cost of internal development works to the licensing authority. But the Punjab State Power Corporation Limited (PSPCL) again asks them to deposit 150% of the estimated cost of electric works in the colony with it as bank guarantee. This is double bank guarantee for the same work puts extra burden on the promoter. It should either be the total responsibility of licensing authority to transfer the bank guarantee taken in lieu of electric works in the colony

to PSPCL or the estimated cost for providing the electric works be excluded from the total estimated cost for internal development and for electric works the PSPCL should take separate bank guarantee.

The Govt. has agreed to the suggestions of the Promoters and has decided that from now onward no bank guarantee against electric works to be carried out by the Promoters in his project under PAPRA 1995 shall taken by the licensing authority.”

Thus, it is amply clear from above mentioned Govt. of Punjab memo dated 18.06.2013 that the Bank Guarantee taken from the Developers before the issue of this memo included the portion against the electric works to be executed by the Developer. Moreover, as per the provisions of the PAPR Act, the Bank Guarantee is to be taken by the licensing authority from the Developer before the issue of licence. In this case, the licence was issued on 27.05.2013 i.e. well before the issue of above mentioned Govt. of Punjab memo dated 18.06.2013. Thus the Commission does not agree with the submission of GMADA that Bank Guarantee against electricity works to be carried out by the Developer has not been taken as per instructions issued by the Department of Housing and Urban Development, Govt. of Punjab vide memo no. 12092-98 dated 18.06.2013. Accordingly, GMADA is directed to immediately pay Rs.89.84 lakh to PSPCL, through encashment of the Bank Guarantee or through its own resources, for completion of the electrification system in the colony.

PSPCL is directed to keep releasing electricity connections to the residents of Gulmohar Residency after recovery of Service Connection Charges/other applicable chargers as per the Cost Data approved by the Commission within the time limits specified in Regulation 8 of the Supply Code, 2014. PSPCL shall also keep a separate account of the

expenditure incurred on release of these connections and to recover the amount from the developer or the delinquent officials/officers as per applicable law. PSPCL is also directed to take suitable action against the Developer for recovering the amount spent/to be spent on developing the LD system in the colony and to investigate the lapses that led to issue of temporary connections in the colony even without NOC and to fix responsibility to prevent such recurrences.

Further, the licensing Authority i.e. GMADA and the distribution licensee i.e. PSPCL are directed as under:

Licensing Authority i.e. GMADA

1. Compliance of the conditions of licence by the Developers including the one for obtaining NOC from distribution licensee i.e. PSPCL be monitored regularly and a multilateral institutional mechanism be immediately set up. A mechanism be set up to ensure that the license conditions are complied with within the specified period failing which the required action as per law be initiated by the licensing authority.
2. Clearance from the distribution licensee i.e. PSPCL be taken before giving completion/partial completion certificate for the colony.
3. Immediate action be taken against the Developer i.e. M/s. Shivalik Site Planners and its Directors as per law.

Distribution Licensee i.e. PSPCL

1. Expeditious reporting to the licensing authority be ensured in case the Developer fails to obtain the NOC within the stipulated time or fails to implement the conditions of licence related to PSPCL/electricity system.

2. It must be ensured that temporary electricity connections are issued only in the name of the Developer after the issue of NOC.
3. It must be ensured that the temporary connection is used only for the purpose for which it has been given.
4. The timeline to set up the LD system must be the part of the NOC
5. Formal mechanism be set up immediately to undertake periodic checking vis-à-vis the timelines for erection of the LD system as per the conditions of NOC.
6. Immediate action be taken against the Developer as per law for effecting the recovery of expenditure for laying the LD system in the colony.
7. The expenditure to lay the LD system and to release electricity connections be recovered from the service connection charges, recovery from encashment of the Bank Guarantee with GMADA/its own resources, the Developer & from errant PSPCL officers. Any uncovered expenditure will be borne by PSPCL and will not be allowed as a pass through in the ARR.

The petition is accordingly disposed of.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 24.08.2022