

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

Petition No. 30 of 2023
Date of Order: 19.02.2024

Petition under regulation 8.1 (b) of the supply code 2014 by Punjab State Power Corporation Limited for seeking approval of the Regulatory Commission for extension in time period of release of EHT Connection under regulation 69, 70, 71 & 72 of chapter XIII of the conduct of Business Regulations 2005 in the case of the connection of 4500kW load/ 5000 kVA contract demand applied by Divisional Railway Manager (Elect./TRD), Ferozpur through Sr. Divisional Electrical Engineer (TRD), DRM office Ferozpur under the category Railway Traction in sub-division Jaitu under Division Kotkapura (RID No. 9379)

AND

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

....Petitioner

Versus

Divisional Railway Manager (Elect./TRD), Ferozpur
(through Senior Divisional Electrical Engineer) TRD, DRM
Office, Ferozpur, Punjab.

.Respondent

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

PSPCL: Ms. Harmohan Kaur, CE/ARR&TR

Railway: Ms. Puja Priyadarshini, Advocate
Sh. Kunal Kashyap, Advocate

ORDER

PSPCL has filed this petition under Regulation 8.1(b) of the
Supply Code, 2014 for extension of the time period upto 31.12.2024 for

release of new Railway Traction Connection of 4500kW/5000kVA contract demand in Sub-Division Jaitu under Kotkapura Division. The Petition was admitted vide order dated 13.07.2023. Notice was issued to the Divisional Railway Manager (Electrical/TRD), Ferozpur, DRM office Ferozpur to file its reply to the petition. PSPCL was directed to submit activity-wise timelines for completion of the work for releasing the electricity connection.

2. The submissions of PSPCL, in brief, are that the Northern Railway applied on 13.05.2022 to PSPCL for release of a new connection of 4500 kW/5000kVA contract demand. PSPCL issued the demand notice on 10.08.2022 and the Railway complied with the demand notice on 20.09.2022. PSPCL sought the status of work and expected date of its completion from PSTCL, PSTCL intimated that the Civil work will be completed within 4 months of sanctioning the estimate and the work of the bay will be completed within 3 months after passing of the estimate and completion of related Civil work. PSPCL, considering the above response of PSTCL and considering the time required to complete other office formalities and installation of metering equipments etc, prayed that the time to release the connection may be extended upto 31.12.2024.
3. PSPCL submitted an activity-wise timeline for completion of the work vide memo 6762 dated 07.08.2023 and memo No. 7298 dated 13.10.2023. PSPCL

stated that due to the non-participation of contractors in the tender bid process, it had to be extended 3 times due to which there occurred a delay of almost 3 months. The extension of time period upto 31.12.2024 for release of connection was sought considering the activity-wise timeline intimated by the concerned wings of PSTCL. However, now it may not be possible to release the connection by 31.12.2024. PSPCL requested for a further extension of time in the original timelines from 31.12.2024 to 31.03.2025.

4. Northern Railway filed its reply dated 14.08.2023, submitting that:-

- i) PSPCL has not complied with the time period allowed as per the Supply Code 2014 and caused delay in releasing the connection to Northern Railways by delaying the issuance of demand notice, delaying transfer of amount to PSTCL and delay in filing the present petition. There is a delay on the part of PSPCL in transfer of the amount collected from the Northern Railway to PSTCL. PSPCL had recovered the amount from the Northern Railway on 14.09.2022 towards the estimated expenditure for construction of its transmission lines but transferred the amount to PSTCL only on 08.12.2022 and 05.01.2023 thereby violating Regulation 9.1.1(w) of the Supply Code which specifies that such transfer shall be done within 15 days of the receipt of amount from the applicant. Further, as per Regulation 8.1

- (b) of the Supply Code 2014, PSPCL is required to release the EHT connection within 90 days from the date of compliance of the demand notice. Even, if 20.09.2022 is considered as the date of compliance of the demand notice, the connection should have been released within 90 days which has not been done so far and PSPCL has contravened Regulation 8(1) (b) and 9.1.1(w) of the Supply Code, 2014.
- ii) PSPCL has suppressed material facts and has not come to the Commission with clean hands. The petitioner owes a duty to the Court to bring out all the facts and not to conceal/suppress any material fact within its knowledge or which it could have known by exercising due diligence. Northern Railway sent several reminders to PSPCL/PSTCL to provide the estimate of work involved. PSPCL has failed to disclose all material facts which have a bearing on the adjudication of the issues raised in this case. If a petitioner is found guilty of concealing material facts, the court not only has the right but a duty to summarily deny relief to the petitioner to prevent abuse of the process of law. In this assertion, Northern Railway has relied on the judgments passed by the Hon'ble Supreme Court in case of S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1, K.D. Sharma v. SAIL, (2008) 12 SCC 481. Railways further submits that it is a settled principle of law that when the statute requires a thing to be done in a

- particular manner it has to be done in that manner and no other manner and has relied in this regard on the judgment passed by the Hon'ble Supreme Court in case of J. Jayalalithaa v. State of Karnataka, (2014) 2 SCC 401.
- iii) The petition does not disclose 'cause of action' as PSPCL has not given any specific reasons for the time extension sought by it. PSPCL has failed to actually demonstrate as to how the magnitude of work involved is such that they require an extension. PSPCL is relying on the generic statements in PSTCL's letters regarding the time required for completion of such works without any particular reference to this work. Order VII Rule 1 of the Code of Civil Procedure stipulates that a plaint shall contain the facts constituting the cause of action and when it arose. Order VII Rule II of the Code of Civil Procedure, 1908 clearly mandates that the plaint shall be rejected where it does not disclose a cause of action. To support its contention, Northern Railway has relied on the judgments passed by the Hon'ble Supreme Court in the cases of State of Rajasthan v. Swaika Properties, (1985) 3 SCC 217, Gurdit Singh v. Munsha Singh, (1977) 1 SCC 791, Anil Rishi v. Gurbaksh Singh, (2006) 3 SCC 558 and Church of Christ Charitable Trust & Educational Charitable Society v. Ponnamman Educational Trust, (2012) 8 SCC 706.

iv) PSPCL has wrongly invoked the discretionary powers of the Commission under Regulation 69, 70, 71 and 72 of the PSERC (Conduct of Business) Regulations 2005 to obtain an extension in the time period for providing an electricity connection to the Northern Railway. Citing various case laws, the Northern Railway has further submitted as follows:

(a) The Commission is empowered under Regulation 69 of the PSERC (Conduct of Business) Regulations, 2005 to invoke its inherent power sparingly and only in the cases when the regulation is silent on an issue. Whereas, in the present case the timelines to be followed by the distribution licensee for the release of EHT connection have been clearly laid down in the Supply Code. Northern Railway has relied in this regard on the judgment passed by the Hon'ble Supreme Court in case of Gujarat Urja Vikas Nigam Ltd. vs. Solar Semiconductor Power Co. (India) (P) Ltd., (2017) 16 SCC 498.

(b) PSPCL has erroneously invoked Regulation 70 ibid which bestows the Commission with the power to review or rectify any decision, direction or order that it has passed. However, in the present case PSPCL is not seeking a review or rectification of any decision, direction or order of the Commission but of the regulation itself with a

view to wrongly legitimize its illegal and unreasonable actions. Northern Railway has relied in support of its contention on the judgment passed in the case of PTC India Ltd. vs. Central Electricity Regulatory Commission (2010) 4SCC 603.

(c) PSPCL has erroneously relied on Regulation 71 of the PSERC (Conduct of Business) Regulations, 2005. The power to remove difficulties is to be exercised when there is difficulty in effecting the regulations and not when difficulty is caused due to the application of the regulation. Northern Railway has relied in this regard, on the judgment passed by the Hon'ble APTEL in case of RGPPL V/s CERC and others (Appeal No.130 of 2009).

(d) Similarly, PSPCL has erroneously invoked Regulation 72 of the PSERC (Conduct of Business) Regulations 2005. The power to dispense with the requirement of the regulations under Regulation 72 ibid is akin to the 'power to relax' which is discretionary in nature and must be exercised reasonably in exceptional cases and with circumspection, keeping in view the facts and circumstances of the case. The party seeking exercise of this discretionary power must establish that the circumstances are not created due to its own acts of omission or commission whereas, in this case the delay has been on the part of the petitioner itself. In support of its submissions,

- Northern Railway has referred to the judgment dated 11.08.1981 passed by the Hon'ble Supreme Court in the case of R.K. Khandelwal vs. State of Uttar Pradesh & Ors., (1981) 3 SCC 592 and Order dated 25.03.2011 passed by Hon'ble APTEL in Appeal No. 130 of 2009 in case of RGPPL vs. CERC & Ors.
- v) PSPCL is bound by the doctrine of Promissory Estoppel and Legitimate Expectations. In view of the fact that the Supply Code was deemed to be a part of the A&A agreement with PSPCL which itself specifies that the connection would be provided within 90 days, thus, the Northern Railway had the legitimate expectation that the connection would be released within 90 days, especially since PSPCL had not approached the Commission by filing a petition under the proviso to Regulation 8.1(b) within the specified time period. In this regard, Northern Railway has relied upon judgments passed by the Hon'ble Supreme Court in Monnet Ispat and Energy Limited v. Union of India and Ors. (2012) 11 SCC 1, Delhi Cloth and General Mills Ltd. v. Union of India, (1988) 1 SCC 86 and Punjab Communications Ltd. v. Union of India and Ors. (1999) 4 SCC 727.
- vi) In similar petitions i.e. Petition No. 66 of 2022, 67 of 2022 and 71 of 2022 filed by PSPCL, seeking extension in time for release of an EHT connection, the Commission vide order dated 01.06.2023, has

observed that PSPCL has failed to perform its duty by not transferring the amount to PSTCL within 15 days and not releasing the connection within 90 days thereafter. A stern warning was also issued to PSPCL/PSTCL to take all necessary actions to prevent any reoccurrence in the future. However, despite explicit directions passed by the Commission vide order dated 01.06.2023, PSTCL/PSPCL have not taken up their job with promptness and have caused an unexplained delay in releasing the connection.

5. The Northern Railway filed additional affidavits dated 03.10.2023 and 02.11.2023 in response to the activity wise timelines filed by PSPCL. Northern Railway reiterated its earlier submissions and denied the averments made under the activity wise timelines. It has been further submitted that PSPCL has sought a further extension in the original timelines from 31.12.2024 to 31.03.2025 but has not furnished any explanation as to the reasons for seeking further time. That Northern Railway will complete the work of its TSS by 31.12.2023 and further connectivity involves careful co-ordination requiring parallel progress of work to be undertaken by both the railways and the respective transmission utility. Northern Railway objected to the request of PSPCL for further extension of timelines from 31.12.2024 to 31.03.2025, especially when the length of the transmission line has reduced to 13.695 Km from the earlier estimated 18 Km as envisaged under the

Feasibility Clearance. Further, non rebuttal of arguments made by Northern Railway has to be deemed as an admission by PSPCL. In this regard Railways has relied on the judgment passed by the Hon'ble Supreme Court in United India Insurance Co. Ltd. v. Samir Chandra Chaudhary, (2005) 5 SCC 784. Northern Railway requested for release of the connection by 30.12.2023 to avoid rendering of its TSS idle which will lead to a huge loss to the public exchequer. Northern Railway filed its written submissions praying for a direction to PSPCL/PSTCL to release the connection in a time bound manner and to pay the bank rate of interest for the period during which they had retained the amount deposited by the Northern Railway i.e. by PSPCL from 22.08.2022 to 21.12.2022 and thereafter by PSTCL from 22.12.2022 onwards.

6. PSPCL submitted its rejoinder to the reply as well as additional affidavits submitted by Northern Railway. PSPCL reiterated its earlier submissions and further submitted that originally the time line was indicated in the petition on the basis of tentative estimates apprised to the concerned PSPCL office by TLSC, Civil construction and Grid Construction wings of PSTCL. Later, an actual ground survey was conducted by PSTCL keeping in view the best suitable and feasible route and it was found that the actual length of the transmission line to be erected is 13.695 km. The reduction in 5 km length does not materially impact the release of the electric connection as a huge

quantum of work and a number of processes are involved, including survey of the route plan, preparation of estimates, floating of tenders, statutory clearances etc. PSPCL submitted that continuous efforts are being made to expedite the work and complete it as early as possible in the interest of the nation and the utility services of Railways.

After hearing the parties, Order was reserved on 02.02.2024.

7. **Observations and Decision of the Commission.**

The Commission has gone through the submissions made in the petition, reply submitted by the Northern Railways, PSPCL's rejoinder and arguments made during the hearing. The findings and decision of the Commission are as under:

7.1 The issues and the pleadings in the instant petition are similar to those in Petition no. 66 of 2022, Petition no. 67 of 2022, Petition no. 71 of 2022 and Petition No. 19 of 2023 filed by PSPCL for extension in time to release electricity connections to Northern Railway at various locations in Punjab. The Commission had already recorded its observations in its orders in the aforementioned petitions which are equally applicable in this case also. The relevant observations as contained in these orders are as under:

“..... PSPCL and PSTCL have failed to adhere to the timelines for various jobs specified in the Supply Code, 2014. PSPCL was required to transfer the amount recovered from the applicant to PSTCL for execution of transmission works within 15 days as per Regulation 9.1.1(a)(iii)(w) but failed to do so within the specified

time. PSTCL failed to promptly inform PSPCL about the timelines for completion of the job and PSPCL, even after getting the reply from PSTCL, delayed the filing of the petition for seeking approval of the Commission for extension of the time period for completion of the job as provided in Regulation 8.1(b) of the Supply Code, 2014. Regarding the comments of the respondent on invocation of the petitioner to the discretionary powers of the Commission, it is observed that Regulation 8.1 as discussed below, per se, vests the Commission with the power to grant extension in time period for release of the connection keeping in view the magnitude of work involved.

.....

It is a fact that erection of HT/EHT lines and Commissioning/Augmentation of Sub-Stations involves substantial work and such transmission and Sub-Station works require more time as compared to execution of distribution works. It is precisely due to this reason that no time frame has been specified in Regulation 8.1(c) which deals with cases where supply of electricity requires erection and commissioning of new sub-stations or power transformers including an HT/EHT line. In such cases, the distribution licensee is required to submit to the Commission a proposal for erection of the sub-station or power transformer and/or HT/EHT line along with the time required for their commissioning within 15 days of receipt of the application. As the petitioner has not submitted the proposal to the Commission within 15 days of receipt of application, Regulation 8.1(b) shall apply.

PSPCL should have approached the Commission for approval for extension of period for release of connection atleast 15 days before the expiry of the time period specified for release of the EHT connection. Moreover, the requirement of transferring the amount received from the applicant to PSTCL within 15 days as specified in Regulation 9.1.1(a)(iii)(w) has also not been complied with by PSPCL. PSPCL has also not given any cogent reasons for such delays. In this regard, the Commission tends to agree with the

respondent and also with their contention that PSPCL had initially based their petition for extension in timelines based on generic estimates without making efforts to draw the specific timelines for this transmission line, though later activity wise timelines were submitted by the petitioner after directions to that effect were issued by the Commission

- 7.2 As per Regulation 9.1.1(a)(iii)(w) of the Supply Code, 2014, PSPCL was required to transfer the estimated amount for the work received from an EHT consumer to the transmission licensee within 15 days of its receipt. The respondent deposited the amount on 14.09.2022 but PSPCL transferred this amount to PSTCL only on 08.12.2022 and 05.01.2023. No expenditure was incurred by PSPCL in carrying out any work of the respondent during this period and this amount was kept in its account. Accordingly, PSPCL is liable to pay interest at the bank rate to the respondent for the period of delay beyond the permissible period of 15 days in transferring this amount to PSTCL. The interest amount should be credited to the account of the respondent and accounted for while finalizing the recoverable amount from the respondent as per Regulation 9.3 of the Supply Code, 2014.
- 7.3 PSTCL was not prompt in informing PSPCL about the timelines for completion of the job. Even after getting the timelines from PSTCL, the petitioner delayed the filing of the present petition for seeking approval of the Commission for extension of time period. PSPCL should have approached the Commission with the proposal for erection of the EHT line and 220 kV bay within 15 days of receipt of the application as per Regulation 8.1(c) of the Supply Code, 2014. Since PSPCL failed to submit the proposal on time therefore, as per the second proviso to Regulation 8.1(c), the time

period specified in Regulation 8.1(b) shall apply. As per the proviso to Regulation 8.1(b) of the Supply Code, 2014, the distribution licensee may, at the earliest but not later than fifteen days before the expiry of the time schedule, seek the 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 distribution licensee may reasonably require more time. However, PSPCL filed the petition for extension of time for release of the connection after a period of 12 months. All these violations of the provisions of the Supply Code, 2014 have no relation with the quantum of work involved in the release of connection to the respondent but are indicators of irresponsible, inefficient and non-professional approach of the concerned officials/officers of PSPCL and PSTCL which has inordinately delayed the delivery of service to the respondent.

7.4 In the petition, the petitioner has sought extension in time for release of the connection to the respondent upto 31.12.2024. This timeline too was further revised to 31.03.2025 despite the fact that the length of the EHT line has been reduced to 13.695 km from 18 km as per the original activity wise timeline. The petitioner submitted that the earlier timelines were tentative but after the actual ground survey and keeping in view the best suitable feasible route, the actual length was found to be 13.695 km. However, reduction of line length does not impact timelines since a bulk of the time is required for procedural formalities. The tendering process had to be extended three times due to non-participation of contractors in the bid process leading to a delay of almost three months in the overall tendering process.

The Commission appreciates the fact that in the release of connection to the respondent, substantial work is involved. However, unnecessary delays should have been avoided. Keeping in mind all the facts, the Commission, as per the provisions of Regulation 8.1 of Supply Code, 2014, approves the time extension for completion of works to release the connection to the respondent only upto 31.12.2024 as per the original timeline projected in the Petition. We direct the licensee to make all out efforts to release the connection even earlier if possible to compensate for the unnecessary delays earlier. A stern warning is again issued to PSPCL/PSTCL to take all necessary measures to prevent such delays in the future failing which punitive action may be initiated as per law.

The petition is disposed of accordingly.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: **19.02.2024**