

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

Petition No. 32 of 2024
Date of Hearing: 21.08.2024
Date of Order: 03.09.2024

Petition under regulation 58 Chapter (IX) & Regulation 68, 69, 70,71 of Chapter (XIII) of Conduct of Business Regulations, 2005 of PSERC, notified under Electricity Act, 2003 and under Regulations, 44, 45, 46 and of supply code, 2014 notified under section 181 of the Electricity Act, 2003 for seeking Clarification/Interpretation of Regulations notified by PSERC

And

In the matter of: Sandeep Gulati, 12-H Textile colony, Industrial Area-A (R/o 529 L, Model Town, Ludhiana).

...Petitioner

Versus

Sr. Xen/Addl. Superintending Engineer, Operation, CMC Division, PSPCL, Ludhiana

.... Respondent

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

Petitioner: Sh. Sandeep Gulati

ORDER

The petition was taken up for hearing on admission. The petitioner is an MS Category consumer of PSPCL bearing a/c No. E12/36/109, Industrial Area-A, Ludhiana. The Enforcement Division of PSPCL checked the above connection on 27.04.2012 and upon finding unauthorized use of electricity, the proceedings under Section 126 of the Electricity Act, 2003 were initiated. The final assessment order was passed on 15.06.2012 and aggrieved against the final assessment order, the

petitioner filed an Appeal under Section 127 of the Electricity Act, 2003 before the Additional Deputy Commissioner, Ludhiana on 13.07.2012 after depositing 50% of the assessed amount. The Appellate Authority dismissed the Appeal vide order dated 05.08.2013 and aggrieved against the order of the Appellate Authority, the Petitioner filed CWP No. 25096 of 2013 on 10.10.2013 which was dismissed on 12.12.2023 by Hon'ble Punjab and Haryana High Court upholding the order dated 05.08.2013 passed by the Appellate Authority as well as the order dated 15.06.2012 passed by the Additional Superintending Engineer (Operation), CMC Division, Ludhiana. The petitioner submits that the Appellate Authority as well as the Hon'ble High Court has not mentioned in their respective orders as to the payment of interest on the balance 50% amount. However, PSPCL has served notice dated 28.02.2024 for Rs. 7,38,616 by calculating interest from 15.06.2012 to 12.12.2023. The interest calculation has been on full amount under Regulation 36.4 of the Supply Code by assuming that balance 50% amount was defaulting amount. The petitioner requested PSPCL to charge interest on balance of 50% assessed amount on account of UUE after 30 days from final decision/order of the Hon'ble High Court. The ASE (Operation), CMC Division, PSPCL Ludhiana sought clarification from Deputy Chief Engineer (Operation), PSPCL, East, Ludhiana, on the issue as to whether the 16% interest per annum is to be compounded from 05.08.2013 i.e. date of order of Appellate Authority or from 12.12.2023 i.e. the date of order passed by Hon'ble Punjab and Haryana High Court. The petitioner submits that the Deputy Chief Engineer (Operation), PSPCL, Ludhiana sought clarification from Chief Engineer/Commercial, PSPCL, Patiala but no clarification has been given. The matter remained sub-judice for adjudication before Hon'ble Punjab and Haryana High Court from 2013 to 12.12.2023 and as such the same does not qualify to be labelled as the defaulting amount. The petitioner

has prayed to clarify on the interest chargeable on the balance 50% of the assessed amount after 30 days from 05.08.2013 or after 30 days from 12.12.2023 when the matter was decided by the Hon'ble High Court.

Upon carefully examining the submissions made by the petitioner, the Commission refers to Section 126 and 127 of the Electricity Act, 2003. While Section 126 deals with the meaning and the assessment in case of Unauthorized use of Electricity, Section 127 prescribes the provisions relating to the Appeal to the Appellate Authority. In this regard, Section 127 is extracted as under:

127. Appeal to appellate authority

- (1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.*
- (2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to [half of the assessed amount] is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.*
- (3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.*
- (4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.*
- (5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.*
- (6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on*

the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months.

Thus, the Act itself lays down that the Appeal against the final order of assessment made under Section 126 of the Act implies the appeal to the Appellate Authority as prescribed in Section 127 *ibid*, the decision of whom would be final. Further, in deference to the Act, Regulation 36.3 (a) of the Supply Code, 2007 specifies that the Appellate Authority would be prescribed by the State Government. For ready reference, Regulation 36.3(a) is reproduced below:

36.3 Appeal to appellate authority

a) The consumer/person aggrieved by the final assessment order made under Regulation 36.2 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and accompanied by such fee as specified by the Commission in its Regulations for 'Procedure of filing Appeal before the Appellate Authority'.

No appeal shall be entertained by the Appellate Authority prescribed by the State Government unless the consumer/person deposits with the Licensee an amount equal to half of the assessed amount inclusive of the amount already deposited as per Regulation 36.2 (d) and encloses documentary evidence of such deposit along with the appeal. No appeal will lie against the final order of the assessment if it has been passed with the consent of the parties.

Further, vide Govt. of Punjab Notification No. 1/13/04-EB(PR)-161 dated 09.03.2006, the Appellate Authority for all LT industrial consumers has been prescribed as the Additional Deputy Commissioners (General) in whose jurisdiction the concerned premises is located. Thus, Hon'ble Punjab and Haryana High Court is not the Appellate Authority under Section 127 of the Act. Rather, the petitioner had approached Hon'ble High Court, through Civil

Writ Petition under its writ jurisdiction. In this case, the prescribed Appellate Authority is the Additional Deputy Commissioner who dismissed the Appeal vide order dated 05.08.2013. Further, Regulation 36.4 of the Supply Code, 2007 and also of the Supply Code, 2014 specify as under:

36.4 Default in Payment of Amount Assessed

In case of default in payment of the assessed amount or any installments thereof by a consumer, the distribution licensee shall, without any notice disconnect the supply of electricity. The defaulter, on the expiry of thirty (30) days from the final order of assessment or the decision of the appeal as the case may be, shall also be liable to pay interest on the outstanding amount at the rate of sixteen percent (16%) per annum compounded every six (6) months till the assessed amount is finally paid.

The Regulation 36.4 of the Supply Code 2014 is clear and unambiguous that the defaulter, **on the expiry of 30 days from the final order of assessment or the decision of the Appeal as the case may be**, shall also be liable to pay interest on the outstanding amount at the rate of 16% per annum compounded every six months till the assessed amount is finally paid. The decision of the Appellate Authority in the present case is dated 5th August, 2013 which has become the applicable date for calculating the 30 day period after which interest is leviable as per the Regulation.

Thus, the above Regulation is clear and does not need any further clarification. The petition stands disposed of accordingly.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 03.09.2024