

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

Petition No. 35 of 2016
Date of Order: 22.08.2023

Petition under Section 142 and 146 of Electricity Act, 2003 in the matter of non-compliance of the Order dated 13.01.2016 of PSERC in Petition No. 65 of 2015 and violation of Section 47.4 of Electricity Act, 2003 relating to payment of interest on security.

AND

In the matter of: Ladhar Paper Mills, Village Ladhran, Tehsil Nakodar, District Jalandhar through its partner Shri Amarjit Singh

.....Petitioner

Versus

Punjab State Power Corporation Limited, The Mall, Patiala.

...Respondent

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

For petitioner: Sh. M.R Singla

For PSPCL: Ms. Harmohan Kaur, CE/ARR&TR
Sh. Ajay Bansal, DY.CE
Sh. Vinay Komal, Sr.Xen

ORDER

The Petitioner has filed this petition under Section 142 and 146 of the Electricity Act, 2003 seeking directions against PSPCL for non compliance of order dated 13.01.2016 passed by the Commission in Petition No. 65 of 2015 and violation of Section 47 (4) of the Electricity Act, 2003 relating to payment of interest on security.

1.0 Submissions of the Petitioner.

- 1.1 The Petitioner, is running a paper mill at Jalandhar, falling under jurisdiction of sub-division Nakodar, Kapurthala Circle of PSPCL. It has a sanctioned load of 5200 KV with a contract demand of 5777 kVA at 66 KV, released on 09.09.2010.
- 1.2 The Petitioner, had deposited a sum of Rs. 68,16,860/- + 33,750/- upto 25.02.2009 towards ACD and meter security as per the demand raised by PSPCL. As per Section 47 (4) of the Electricity Act, 2003 Distribution Licensee (PSPCL) is liable to pay interest on security starting from the date of deposit but instead PSPCL started paying interest on security/ACD after the release of connection.
- 1.3 The grievance of the Petitioner is that despite repeated written requests by the Petitioner to pay arrears of interest on security from the date of deposit amounting to Rs. 10,61,166/- approximately, PSPCL has failed to pay the same. Non-payment of the said amount is causing unbearable hardship to the Petitioner as the Petitioner is also paying huge interest on the security amount raised by it in the form of loans from various banks.
- 1.4 The Petitioner, has relied upon order dated 17.09.2014 passed by the Commission in Petition No. 45 of 2014 titled as M/s GNA Udyog Limited vs. PSPCL wherein the Commission has held that in view of the Supply Code Regulations read in conjunction with Section 47 of the Electricity Act, 2003, interest is payable on

security whether the same has been recovered from the consumer before release of connection or thereafter during review while determining the adequacy of the amount of security deposited by the consumer. Further, in case of a new connection although interest is payable from the date of deposit of such amount but is actually paid to the consumer after release of connection through bills. The Petitioner, has also pointed out that the Commission, vide order dated 13.01.2016 in Petition No. 65 of 2015 titled as M/s Madhav Alloys Private Limited vs. PSPCL had again thrashed the issue of interest on security and held that any provision of Supply Code or the rules framed for their implementation are applicable to all similarly placed consumers and directed PSPCL to comply with order dated 17.09.2014 in Petition No. 45 of 2014 within 3 months of the date of issuance of order dated 13.01.2016 failing which PSPCL shall be liable to be punished under Section 142 and 146 of the Electricity Act, 2003. However, the Commission granted another opportunity to PSPCL to pay interest on initial security received from all consumers under Regulation 14 of the Supply Code.

- 1.5 The Petitioner, aggrieved on the ground that despite clear instructions/order of the Commission in Petition No. 45 of 2014 and 65 of 2015 and Section 47 (4) of the Electricity Act, 2003, PSPCL has not paid arrears of interest on security, has prayed for initiating action

against PSPCL under Section 142 and 146 of the Electricity Act, 2003.

2. The Petition was admitted on 10.05.2016, thereafter, PSPCL filed its reply on 03.06.2016.

3. Submissions of PSPCL

PSPCL while admitting the averments made by the Petitioner in the petition has stated that the case relates to an audited period from 15.04.2008 to 31.03.2010 and PSPCL has challenged a decision passed by the Commission in a similar case i.e. order dated 18.01.2016 in Petition No. 75 of 2015 before Hon'ble APTEL. Further, PSPCL informed that the said matter has been admitted by Hon'ble APTEL and requested the Commission to adjourn the case till the decision of the appeal pending before Hon'ble APTEL.

4. This petition was being adjourned repeatedly, awaiting the decision of Hon'ble APTEL and finally on 21.03.2017 the matter was adjourned sine-die till the pronouncement of decision by Hon'ble APTEL. The Hon'ble APTEL disposed of the appeal vide order dated 19.05.2020 in a batch of appeals led by Appeal No. 298 of 2014. The order dated 19.05.2020 passed by Hon'ble APTEL is under challenge before Hon'ble Supreme Court. Matter was reopened by the Commission and listed for hearing on 13.07.2023 and after hearing the parties, Order was reserved.

5. Commission's Finding and Decision

The instant petition has been filed under Section 142 and 146 of the Act seeking action against PSPCL for non-compliance

of Commission's order in Petition No. 65 of 2015. The Commission vide order dated 13.01.2016 passed in Petition No. 65 of 2015 held that the order of the Commission clarifying any provision of the Supply Code or laying down the rules for their implementation are applicable to all similarly placed consumers. While noting the submissions made by the petitioner and the respondent, the Commission observed that in a similar matter in Petition No. 75 of 2015, the respondent PSPCL had filed an appeal vide Appeal No. 105 of 2016 against the Commission's Order dated 18.01.2016 before Hon'ble APTEL. During the proceedings, as an *obiter dicta*, Hon'ble APTEL had also observed that no adverse action would be taken against the appellant in this case till the matter is disposed of. Accordingly, on 21.03.2017, the matter was adjourned sine-die by the Commission, till the pronouncement of decision by Hon'ble APTEL. Vide order dated 19.05.2020, Hon'ble APTEL disposed of the batch of appeals led by Appeal No. 298 of 2014 and set aside the order dated 13.01.2016 passed by the Commission in Petition No. 65 of 2015. On the issue as to whether interest is payable on the security deposit furnished by consumers in terms of Regulation 14 of the Supply Code Regulations, 2007, the Hon'ble APTEL held in Para No. 11.11 and 11.12 of the judgment as under:-

"11.11.....In the instant case, the initial security deposit is not covered under any Regulations of the State Commission and is all along separate and distinct security meant for specific purpose before the release of connection. After release of connection, the applicable two securities, namely, security (consumption) and security for line/plant/meter are

entitled for interest and so the same is being paid by the distribution licensee. Further, in the present case, even the State Commission has itself maintained that there is no provision in the supply code for payment of interest on initial security as per Regulation 14. Moreover, Regulation 18 provides for interest payable on the initial security in case it is to be refunded, subject to certain conditions to be fulfilled and admittedly, this regulation is not applicable to the present case as there is no refund of initial security.”

“11.12 In view of the above facts, we are of the opinion that the State Commission ought not to have granted interest on the initial security to the consumers merely because it is a security. Moreover, the Commission is bound to comply with its own Regulations in this regard as held under various Authorities.”

Further, on the issue of as to whether the State Commission is justified to entertain the dispute between an individual consumer and the licensee particularly when the subject matter falls under Part-VI of the Electricity Act, 2003, the Hon'ble APTEL held in para no. 11.21 of the judgment as under:-

“11.21 It would be seen from the above that the State Commission is required to adjudicate upon the disputes between licensees and generating companies only and not pertaining to consumers and any licensee otherwise. Further, Regulation 49 of the Supply Code provides that if any difficulty arises giving effect to the given provisions of this Regulation, the Commission

may do or undertake things or by a general or special order, direct the Licensee, to take suitable action, not being inconsistent with the Act, which appears to the Commission to be necessary or expedient for the purpose of removing difficulties. While analyzing the case in dispute, it does not emerge that there is any difficulty in implementing the provisions of the Regulation specified by the State Commission. In fact, the deposit of initial security itself is not covered under the specified Regulations of the Commission as far as it relates to the payment of interest. In view of these facts, we are of the opinion that neither the case is governed by Section 86 (i)(f) of the Act nor Regulation 49 of the Supply Code. As such, such grievances/claim sought to be adjudicated at the forum created under the Act u/s 46(v) and 46(vi) respectively. Therefore, the State Commission in the extant circumstances ought not to have exercised its jurisdiction to adjudicate the case arising between consumers and the distribution licensee.”

The Hon'ble APTEL allowed the appeals and set aside the orders dated 17.09.2014 (in P. No. 45 of 2014), 20.01.2016 (in P. No. 67 of 2015), 03.02.2016 (in P. No. 80 of 2015), 13.01.2016 (in P. No. 65 of 2015) and 18.01.2016 (in P. No. 75 of 2015) respectively passed by the Commission.

The Hon'ble APTEL has set aside the order passed by the Commission in Petition No. 65 of 2015. Madhav KRG Limited, S.S. Steel Industries and Arora Iron and Steel Rolling Mills have filed

Civil Appeal Nos. 4226 of 2020, 491 of 2021 and 713 of 2021, respectively, against the order dated 19.05.2020 passed by the Hon'ble APTEL before the Hon'ble Supreme Court. However, the Hon'ble Supreme Court has not passed any order staying the operation of the order dated 19.05.2020 passed in Appeal No. 298 of 2014 and other connected matters. The order passed by the Commission has already been set aside and in the absence of any stay, no ground is made out for taking action against the respondent under Section 142 and 146 of the Electricity Act, 2003. The petition is without any merit and is dismissed accordingly.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: 22.08.2023