

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

SITE NO. 3, MADHYA MARG, SECTOR 18-A, CHANDIGARH-160018

**Review Petition No. 01, 02 & 03 of 2022 in
Petition No. 20 of 2021 & 39 of 2021**

Date of Hearing: 19.07.2022

Date of Order: 23.08.2022

Review Petitions/Applications under Section 94(1) (f) of Electricity Act, 2003 read with Section 64 (Chapter XIII) of PSERC (Conduct of Business) Regulations and other applicable provisions of the Electricity Act, 2003 and applicable Regulations formulated for Reviewing the order dated 22.03.2022 rendered by the Commission in Petition No. 20 of 2021 and 39 of 2021. And for other reliefs as prayed for.

In the matter of:

Mohan Dai Oswal Cancer Treatment & Research Foundation, Ludhiana.

.....Review Petitioner No. 1

Dayanand Medical College and Hospital, Civil Lines Ludhiana.

.....Review Petitioner No. 2

Sh. Nihal Singh Pahwa Charitable Hospital.

.....Review Petitioner No. 3

Versus

Punjab State Power Corporation Limited (PSPCL)

.....Respondent

Commission:

Sh. Viswajeet Khanna, Chairperson

Sh. Paramjeet Singh, Member

Review

Petitioner No. 1:

Sh. Alok Jagga, Advocate

Review Petitioner

No. 2 & 3:

Sh. Aditya Grover, Advocate

PSPCL: Sh. Rupinderjit Singh Randhawa, CE/ARR&TR
Sh. Ravi Luthra, SE/TR-2
Sh. Gurwinder Singh/Sr.Xen/TR-5

ORDER

1.0 The petitioners have filed the present Review Petitions for the review of the Order dated 22.03.2022 passed by the Commission in petition No. 20 of 2021 and 39 of 2021. These two petitions were clubbed vide the Commission's Order dated 29.07.2021 as the issues involved in both the petitions were the same. The submissions of the petitioners in the present review petitions are as under:

1.1 The review petitioner No. 1 is a charitable hospital exempted under Section 80G of the Income Tax Act, 1961 and had filed the petition U/s 94 of the Electricity Act, 2003, challenging /interpreting provisions of the tariff order for year 2019-20 and 2020-21, to the effect that 25% increased energy charges shall not be leviable upon the Hospitals run by Charitable Institutions covered U/s 80-G of Income Tax Act, 1961 and for setting aside the consequential communications issued by PSPCL, demanding 25% extra energy charges in terms of the Circulars No.25/2019 and 28/2020. One of the additional contentions/submissions submitted was that it did not receive uninterrupted electricity supply on continuous basis and was still being charged 25% additional charges being completely arbitrary. The issue was not dealt with on merits in Petition No. 20 of 2021 and it was held that the issue is similar to the issue raised in petition No. 66 of 2021 pending with the Commission for adjudication and the same would be decided therein. The instant application for review is being filed seeking review of the order dated 22.03.2022 inter alia on the following grounds:-

- i. PSPCL could not claim 25% extra charges, if it would not have provided uninterrupted power supply during year 2010 onwards. It was not disputed by PSPCL that there had been frequent power cuts as contended by the petitioner in its submissions. It is settled principle of law as contained in Order 8 Rule 1 CPC that in case, if a pleading is not specifically denied, the same is deemed to be admitted, which even otherwise, is the settled principle of law. Even before this Commission, this principle of law would apply. From 2010 onwards, no uninterrupted power supply was made available to the petitioner, so the very pre-requisite to claim 25% extra tariff does not exist and PSPCL cannot claim this amount. The error apparent on the face of record is that in spite of the aforesaid submission having been raised which goes to the root of the matter, regarding entitlement of the Respondent to recover the said charges, the said issue has not been adjudicated while the claim of the petitioner has been declined.
- ii. It is well settled principle of law that once the claim has been raised, it is required to be decided by the authority in toto. Till such decision is not taken, the petitioner cannot be disentitled nor the Respondent can be entitled to claim 25% extra energy charges. To say that the said issue would be decided along with petition No. 66 of 2021 and deferring adjudication thereon, while granting liberty to effect recovery, is an error apparent on the face of record and is required to be decided, once it has been raised by the petitioner.
- iii. The adjudication of petition No. 66 of 2021 cannot have any bearing upon the factual claim of the petitioner. Secondly, while the claim has been turned down, the petitioner would not be available to make its submission while this Commission would adjudicate the issue involved in petition No.66 of 2021, assuming the claim involved

therein, has any bearing on the aforesaid issue, which has been left undecided regarding uninterrupted power supply.

- iv. Once the petitioner has raised a submission, which has come up for consideration before this Commission, it cannot be deferred to be adjudicated in other matter, rather, it is required to be adjudicated in this very matter and petition No. 66 of 2021, would follow the decision. There is no adjudication done on the aforesaid issue while the petitioner is made to suffer and PSPCL is now intending to claim the arrears.
 - v. The Commission is required to comply with the principles of natural justice which means that all issues raised, are to be decided independently. Instead of declining the instant petition, it should have been clubbed with the said petition and till that time, the Respondent should have been restrained from claiming extra 25%.
 - vi. As per the third Proviso to Regulation 35.1.3 of the Supply Code, 2014, the distribution licensee is required to issue notice to the consumer on account of change of tariff due to any order or amendment in Regulations, which has not been done and not considered while disposing of the petition.
 - vii. The petition No. 66 of 2021, cannot contain the issue involved in the present petition which is peculiar the facts of the petitioner. Therefore, question of fact could not be deferred adjudication for pending adjudication in the other matter.
- 1.2 The Review Petitioner No. 2 & 3 are running Charitable Hospital at Ludhiana and have been rendered exemption under Section 80G of the Income Tax Act, 1961. The review petitioners have submitted that they have filed petition No. 20 & 39 of 2021 before this Commission and had raised the following issues:
- i. Impugned demand raised by PSPCL is belated in nature.

- ii. A similar issue in the year 2009-10 had also cropped up upon which, Dayanand Medical College and Hospital, Ludhiana filed petition No. 39 of 2010 before this Commission seeking clarification to the extent that the levy of 25% extra tariff is applicable on Private Hospitals only, other than Charitable hospitals, which came to be decided vide order dated 01.12.2010 in which the Commission clarified that the exemption from levy of 25 % extra charge tariff would be available to all government hospitals and hospitals run by charitable institutions exempted under section 80G of the Income Tax Act, 1961.
- iii. The tariff order for the previous FY 2018-19 specifically mentions that the 25% increased energy charges shall not be levied upon all Govt. hospitals and hospitals run by charitable institutions covered under Section 80-G of Income Tax Act, 1961.
- iv. PSPCL, while wrongly interpreting the tariff order, has arbitrarily raised the demand on account of 25% extra energy charges upon the Petitioner on the premise that the tariff order does not exempt the Govt. hospitals and hospitals run by charitable institutions covered under Section 80-G of Income Tax Act, 1961, as were specifically exempted in the tariff order for FY 2018-19 and earlier years. Had this Commission intended to impose the 25% extra energy charges upon Govt. hospitals and hospitals run by charitable institutions covered under Section 80-G of Income Tax Act, 1961, the same would have been categorically stipulated by the Commission in the tariff orders for the subsequent years.

1.2.1 During the hearing of the matter, in addition to the above, by way of additional submissions, Review Petitioners have inter-alia raised the following additional grounds: -

- i. Levy of 25% extra charges is for providing giving uninterrupted power supply without power cut on the pattern of essential services. However, the petitioner(s) are not being provided uninterrupted supply

on continuous basis without power cuts like essential services for their hospitals.

- ii. PSPCL is surplus in power and this Commission is finding ways and means to dispose of the surplus power. Levy of 25% additional charges for hospitals having MRI etc., will be putting restrictions on the usage of power by such hospitals, thus reducing their power consumption and revenue of PSPCL and thereby defeating the target of increasing the utilisation of surplus power.
- iii. As per the third Proviso to Regulation 35.1.3 of the Supply Code, 2014, the distribution licensee is required to issue notice to the consumer on account of change of tariff due to any order or amendment in Regulations. No such notice has been served upon the Petitioners in compliance to the above at the time of change of tariff applicability.
- iv. The 'word' used in the tariff order for levy of 25% extra energy charge is 'private hospitals'. Had it been the intention to impose 25% extra energy charge on Government/Charitable hospitals, then the 'word' used therein should have been "Hospitals" and not "Private Hospitals". Therefore, from the plain reading of the tariff order, 25% extra energy charge shall be levied upon private hospitals and not on Government hospitals and hospital runs by charitable institutions.
- v. PSPCL is not levying 25% extra energy charge on account of continuous supply on government hospitals, accordingly, PSPCL cannot levy 25% extra energy charge on account of continuous supply upon the charitable hospitals being covered under the same provisions of the Tariff Orders for FY2019-20 onwards, which categorically provides that 25% extra energy charge on account of continuous supply shall be levied on private hospitals. Therefore, the petitioners, being charitable hospitals, and not private hospitals cannot be levied 25% extra energy charge on account of continuous supply.

1.2.2 The petitioner 2 & 3 have further submitted that the petition No. 20 of 2021 and petition No. 39 of 2021 filed by the petitioners being the connected matters were dismissed by the Commission vide a common order dated 22.03.2022. The Commission has gravely erred while passing the order dated 22.03.2022 and the errors in the order ibid are apparent on record and require kind consideration of the Commission on the following issue(s):

- a) Impugned demand raised by PSPCL is belated in nature.
- b) Cropping up of the similar issue in the year 2009-10 in which the Petitioner filed petition No. 39 of 2010 before the Commission, wherein the Commission clarified that the exemption from levy of 25% extra tariff would be available to all government hospitals and hospitals run by charitable institutions exempted under section 80G of the Income Tax Act, 1961. The Commission, inadvertently, did not examine the ibid issue and omitted to adjudicate upon this matter while passing the order dated 22.03.2022.
- c) Essential requirement for levy of 25% extra charges in giving uninterrupted power supply without any power cut on the pattern of essential services. The petitioner submitted that it is not being given uninterrupted supply on continuous basis without power cuts like essential services for their hospitals.
- d) No notice has been served upon the Petitioners in compliance to the third Proviso to Regulation 35.1.3 of the Supply Code, 2014.
- e) PSPCL is not levying 25% extra energy charge on account of continuous supply to Government hospitals, hence, PSPCL cannot charge 25% extra energy charge on account of continuous supply to the charitable hospitals, being covered under the same provisions of the Tariff Orders for the year 2019-20 onwards, which categorically provides 25% extra energy charge on account of continuous supply shall be levied on private hospitals.

1.2.3 The petitioners further submitted that as per the PSERC (Conduct of Business) Regulations 2005, the Commission is vested with the power to review. The review jurisdiction can be exercised only in two event ualities i.e. in case of discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by the petitioner 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. The Order dated 22.03.2022 deserves to be reviewed for just and proper adjudication of the instant matter, as there are certain errors apparent on record in the order dated 22.03.2022, which deserves to be rectified. Since the petitioner No. 2 & 3 have received PSPCL letters dated 07.04.2022 and letter dated 19.04.2022 respectively to deposit the demand, the review petitioners have prayed to the Commission to:

- I. Allow the present application
- II. Grant immediate/early hearing
- III. Review the order dated 22.03.2022 in Petition No. 20 & 39 of 2021
- IV. Stay the operation of the impugned demand raised by the PSPCL upon the petitioner by way of communication dated 25.03.2021/26.03.2021 and 19.04.2022 whereby, it has wrongly demanded 25% extra energy charges from the Petitioner, during the pendency of the present petition;
- V. Pass any other order in favour of the Applicant which the Commission deems fit in light of the facts

2.0 The Review petition No. 1& 2 were taken up for hearing on admission on 20.04.2022 and the review petition No. 3 was taken up for hearing on admission on 18.05.2022. PSPCL was directed to file its reply.

3.0 PSPCL filed its reply to Review Petitions 1&2 vide letter No. 5883 dated 28.04.2022 and letter No. 5885 dated 28.04.2022 respectively with submissions as under:

- i. The petitioner has never raised the issue of uninterrupted Electricity supply in original petition, rather his petition was regarding clarification for implementation/ interpretation of tariff orders issued in 2019-2020 and 2020-2021 with regard to payment of 25% increased energy charges to be levied on charitable Institutions covered under section 80-G of income tax Act 1961 running on independent feeder. This petition is not maintainable in present form. Moreover, the consumer has never ever complained this fact before the competent authority of PSPCL.
- ii. PSPCL has correctly issued the demand of 25% as per rules and regulation of PSPCL and as per decision dated 22.03.2022 of the Commission. The issue of uninterrupted Electricity Supply is wrongly raised by petitioner in this review petition as the matter is still under consideration before the Commission vide petition No. 66 of 2021. The intention of the petitioner to file this review petition merely on the basis that they are not getting uninterrupted supply is wrong. This issue was not originally raised by the petitioner in its original petition. The decision of the Commission is complete and there is no need of filing this review application as matter is already under consideration before the Commission.
- iii. The order of the Commission dated 22.03.2022 has correctly upheld the charging of 25% charges as per rules and regulation. The issue of uninterrupted Electricity Supply is wrongly raised by the petitioner in this review petition as the matter is still under consideration before the Commission vide petition No.66 of 2021. The review petition is premature and filed because of misinterpretation of orders dated 22.03.2022. PSPCL has submitted that the consumer was getting uninterrupted Electricity Supply as per rules and regulation of PSPCL except due to force majeure, if any. No intentional power cuts were ever imposed.

PSPCL prayed that review petition of petitioner may kindly be dismissed in the interest of justice.

3.1 PSPCL submitted its reply to the review petition No. 3 vide letter No. 6252 dated 08.06.2022 as under:

- i. PSPCL has raised legal objections that the review petition is not maintainable and merits dismissal. A well-reasoned, lawful and speaking order has been passed by the Commission. There is no error on the face of it and as such the present review Petition does not lie and merits dismissal. Even otherwise, the provision of regulation 64 of the PSERC Conduct of Business 2005 is not applicable to this case because no such error which is apparent on record is pointed out in the review Petition. All the grounds taken in the review Petition were already taken in the main Petition which were discussed and considered by the commission and rightly rejected in the final order.
- ii. The claim of the petitioner regarding the wrong interpretation of the commercial circular 25/2019 dated 31.05.2019 and 28/2020 dated 03.08.2020 by PSPCL is not correct and it is wrongly presumed by the petitioner that the Commission wants to continue to give relaxation to the petitioner and other such consumers exempting them from the 25% increased energy charge as in the case of Government hospitals since the petitioners are covered under section 80-G of income tax act,1961 as charitable hospital. It is a wrong interpretation of the petitioners as there is no such clause under the Bulk Supply category tariff in the commercial circular No. 25/2019 dated 31.05.2019 and No. 28/2020 dated 03.08.2020.
- iii. The Petitioner in his original petition never ever raised the issue of uninterrupted Electricity supply, rather his petition was regarding clarification for implementation / interpretation of tariff orders issued in 2019-2020 and 2020-2021 with regard to payment of 25%

increased energy charges to be levied on charitable Institutions running on independent feeders and covered under section 80-G of the income tax Act 1961. Moreover, the petitioner never raised this issue before the competent authority of PSPCL. PSPCL has correctly issued the demand of 25% as per Commercial Circular No. 25/2019 dated 31.05.2019 and Commercial Circular No. 28/2020 dated 03.08.2020 and in light of the Order of the Commission dated 22.03.2022. PSPCL has prayed that the review petition be dismissed.

4.0 The Review petition No. 1 & 2 were taken up for hearing on admission on 11.05.2022 and Review petition No. 3 on 18.05.2022. After hearing the learned counsel of review petitioners, the impugned demand raised by PSPCL for 25% enhanced energy charges was stayed to the extent of 25% enhanced energy charge only till the next date of hearing.

5.0 The review petitions were taken up for hearing on admission on 19.07.2022. The Commission observed that the issue regarding charging of 25% additional charges by PSPCL despite the petitioners' claim that PSPCL failed to provide uninterrupted supply on continuous basis is pending adjudication in Petition No. 66 of 2021 and the petitioners have been impleaded in that petition where the demand raised by PSPCL for 25% enhanced energy charges and any disconnection or suspension of connection has been stayed till the disposal of the petition No. 66 of 2021. After hearing the review petitioners and PSPCL, Order was reserved.

6.0 Observations and decision of the Commission

The Commission has examined the review petitions and the reply filed by PSPCL. After hearing the parties, the Commission observed that review petitioners have raised the following issues for its consideration. The issues vis-à-vis the Commission observations are as under:

- a) The Review Petitioners have submitted that Impugned demand raised by PSPCL is belated in nature. In this regard Section 56 (2) of the Electricity Act specifies as under.

“56 (2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

In this context, the Hon’ble Supreme Court in para 8 of its judgment in Civil appeal No. 1672 of 2000 in the case of Ajmer Vidyut Vitran Nigam Ltd. v. Rahamatullah Khan has observed as under:

“8. Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.”

The Commission notes that PSPCL has raised a demand of 25% enhanced charges for the period June 2019 to January 2021 in March 2021. Thus, the demand raised by PSPCL is not barred by any such limitation as claimed by the petitioner.

- b) The Review Petitioners have submitted that a similar issue cropped up in the year 2009-10 in which Dayanand Medical College & Hospital had filed petition No. 39 of 2010 before the Commission, wherein the Commission clarified that the exemption from levy of 25% extra tariff would be available to all government hospitals and hospitals run by charitable institutions exempted under section 80G of the Income Tax Act, 1961. The Commission inadvertently did not examine the ibid issue and omitted to adjudicate the matter by passing the order dated 22.03.2022.

The Commission observes that in the Order dated 01.12.2010 in Petition No. 39 of 20210, the Commission clarified that the exemption from levy of 25% extra tariff would be available to all Government hospitals and hospitals run by charitable institutions exempted under section 80G of the Income Tax Act, 1961. The same

exemption was mentioned in Schedule of tariff in tariff order for FY 2018-19. However in tariff Order for FY 2019-20 and FY 2020-21, the 25% enhancement of energy charges was made applicable for all private hospitals & MRI/CT scan centres and no exemption to any private hospitals including private charitable hospitals was allowed. The Commission observes that Section 94(f) of the Electricity Act empowers the Commission to review its decisions, directions and Orders and each tariff Order for the relevant year is distinct and independent. There are always variations and changes in each tariff Order.

c) Essential requirement for levy of the 25% extra charges is for providing uninterrupted power supply without any power cut on the pattern of essential services. The petitioners have submitted that they are not being given uninterrupted supply on continuous basis without power cuts like essential services for their hospitals. The review Petitioner No. 1 has pleaded that it should have been clubbed with the petition No. 66 of 2021 and till that time, PSPCL should have been restrained from claiming extra 25%.

Regulation 64(1) of the PSERC (Conduct of Business)

Regulations, 2005 mandates as under:

“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 observes that vide Order dated 22.03.2022 in petition No. 20 of 2021 & 39 of 2021, the issue of clarification of exemption of 25% increased charge under Section 80 (G) of the Income Tax Act 1961 was decided and dismissed. The issue of not providing uninterrupted supply was not part of prayers of these original petitions. However, this issue of obtaining uninterrupted

supply on a continuous basis by paying 25% additional charges is already under consideration of the Commission in petition No. 66 of 2021. It was further held in the order dated 22.03.2022 that the petitioners would be at liberty to raise this issue in petition No. 66 of 2021. The review petitioner No. 1 had filed IA No. 15 of 2022 submitting that the adjudication in petition No. 66 of 2021 would affect the rights and interest of the applicant and therefore the applicant be impleaded as an intervener in petition No. 66 of 2021. Accordingly, the Commission allowed IA No. 15 of 2022 and the petitioner was impleaded as an intervener in the petition no. 66 of 2021 vide Order dated 12.05.2022.

The review petitioner No. 3 had filed IA No. 19 of 2022 for impleading it as an intervener in the petition No. 66 of 2021. The Commission vide Order dated 21.07.2022 has also allowed the same. The review petitioner No. 2 has also been impleaded as an intervener in the petition No. 66 of 2021 by the Commission vide Order dated 21.07.2022.

Further to provide interim relief to the petitioners, the Commission stayed any disconnection or suspension of connection till the disposal of the petition No. 66 of 2021.

d) The Review Petitioners have submitted that no notice has been served upon the Petitioners in compliance of the third Proviso to Regulation 35.1.3 of the Supply Code, 2014.

The Commission notes that all the Commercial circulars are available on PSPCL's website. The Commission also observes that PSPCL had issued Commercial circular No. 25/2019 dated 31.05.2019 depicting General Conditions of Tariff and Schedule of Tariff for FY 2019-20 and Commercial Circular No. 28/2020 dated 03.06.2020 depicting General Condition of Tariff and Schedule of Tariff for FY 2020-21. All the Commercial circulars are available on PSPCL's

website for perusal of the General Public. Thus PSPCL, through its commercial circulars has notified the tariff/terms and conditions for FY 2019-20 and FY 2020-21 for the information of all the consumers of different categories.

e) The Review Petitioners have submitted that since PSPCL is not levying 25% extra energy charges on account of continuous supply to Government hospitals, therefore it cannot charge 25% extra energy charges on account of continuous supply to the charitable hospitals being covered under the same provisions of the Tariff Orders for the year 2019-20 onwards, which categorically provide that 25% extra energy charges on account of continuous supply shall be levied on private hospitals.

The Commission has already clarified the ibid matter vide its Order dated 22.03.2022 issued in Petition No. 20 of 2021 and 39 of 2021 as under:

*“It is amply clear from a bare reading of the above mentioned schedule note that the ibid enhancement of energy charges is applicable for all private hospitals & MRI/CT scan centres and **the Commission has not allowed any exemption to any private hospitals including private charitable hospitals.** We find no ambiguity in the relevant provisions of the Tariff Order. Hence, no further clarification/interpretation is required. Moreover, any amendment in schedule of Tariff to provide relief of 25% increased charges to Charitable Hospitals covered under Section 80-G of Income Tax Act as sought by the petitioners will lead to undue over burdening of other categories of consumers. There is no logic to giving any additional relief based on section 80-G exemption in the income tax Act. The relief under that provision is linked to the liabilities of the petitioner under the income tax Act and there is no logical reason to provide additional relief to the petitioners in the applicable power tariff. In view of the above, the petitioners prayer to set aside all the communications of PSPCL seeking 25% extra energy charges is rejected.”*

In view of the above observations, the Commission finds that the review petitions are without any merit and are therefore dismissed.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh
Date: 23.08.2022