

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No.58 of 2013
Date of Order: 07.03.2014**

In the matter of : Petition under Section 86 (1) K of Electricity Act, 2003 read with Regulation 49 and 50 of Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2007 (as amended upto date) for allowing continuous process load retrospectively and not prospectively as per sanction and not to levy additional 10p / per unit energy charges on continuous process consumers on actual consumption of energy drawn from PSPCL while issuing sanction of continuous process of load as per provisions of PR Circular No.06/2012.

AND

In the matter of: Trident Limited having its registered office of Sanghera, District Barnala, Punjab-148101 through Shri Deepak Nanda, authorized representative.

Versus

Punjab State Power Corporation Limited, Patiala.

Present: Smt.Romila Dubey, Chairperson
Shri Virinder Singh, Member
Shri Gurinder Jit Singh, Member

ORDER

The petitioner is a Public Limited Company registered under the Companies Act, 1956. The company has two connections for supply of electricity by Punjab State Power Corporation Limited (PSPCL) vide (i) Account No.LS-19 in the name of Trident Limited, Mansa Road, Dhaula and (ii) Account No.LS-21 in the name of Trident Limited, Raikot Road, Raikot Road, Sanghera. PSPCL issued PR Circular No.06/2012 dated 06.07.2012 as per amended policy in respect of grant of continuous process status to industrial consumers

as per guidelines and procedure issued vide Order dated 01.06.2012 passed by the Commission. The petitioner has submitted the particulars and detail of alleged dispute in respect of Account No. LS-19 in Part A of the petition, which is summed up as under:-

- (i) The petitioner applied for grant of continuous process status in reference to PR Circular No.06/2012 dated 06.07.2012 vide letter dated 27.07.2012 addressed to the Engineer-in-Chief, Power Purchase and Regulations, PSPCL, Patiala. Necessary affidavit on the prescribed performa was annexed with the application. The petitioner has submitted that it was stated in the application dated 27.07.2012 that the petitioner has installed co-generation based Turbo Generator Sets (2x20 MW + 1 x 9.4 MW + 1 x 13MW + 1x4 MW) running in synchronization with the grid for captive use by the industrial units of the petitioner. It was also submitted that the load demand of the petitioner varies upto 9.72 MVA during normal running condition of the Turbo Generator sets but during maintenance / break down of any of the TG set, the petitioner needs to utilize the full sanctioned demand of 19950 kVA from PSPCL to maintain the continuous process of the industrial units. Therefore, the petitioner's peak load demand varies from 7 MW to 18 MW depending upon normal TG running or shut down.
- (ii) PSPCL granted continuous process status for the load of 19950 kVA, out of total sanctioned load and sanctioned contract demand of 1,11,351 kW and 19950 kVA respectively on the basis of wrong interpretation of verification made by Dy.C.E./DS Barnala, vide memo No.9548 dated 19.11.2012 and imposed terms and conditions by taking continuous process status load as 19950 kVA. As per term and condition No.4, the petitioner was required to maintain minimum of 19950 kVA load during peak load restriction hours and as per term and condition No.2, the petitioner was required to pay PLEC for the load required during peak load restriction hours. The petitioner vide its letter

dated 23.12.2012 to Deputy Chief Engineer, Power Purchase & Regulations, requested for amendment for retaining 7000 kW as regular peak load demand, which can be extended upto 19950 kVA during shutdown of any of TG sets against the grant of continuous process status for load of 19950 kVA. On the advise of the officials of PSPCL, a revised affidavit dated 14.01.2013 alongwith letter of the even date was submitted. The inspection was made by Dy.C.E./Operation, Barnala on 14.01.2013 and he made his recommendation to Chief Engineer/PP&R, Patiala vide No.489 dated 15.01.2013. After further persuasion, PSPCL allowed the correction and decided to reduce the continuous process load from 19950 kVA to 9722 kVA against a total sanctioned load of 1,11,351 kW and sanction contract demand of 19950 kVA respectively w.e.f. 11.02.2013 vide letter dated 26.02.2013. The petitioner represented vide letter dated 18.03.2013 that correction / reduction in the continuous process load should have been made from the very inception date i.e. from the date of issue of letter No.9548 dated 19.11.2012. The representation of the petitioner was considered on 29.05.2013 by the Committee on grant of continuous process status to industrial consumers and the minutes of meeting dated 29.05.2013 were conveyed to the petitioner on 18.07.2013. The Committee inter-alia observed:-

“The representation of the consumer for the grant of revised approval of the continuous process status retrospectively for both these accounts for a reduced load during off load hours discussed in the meeting of the committee on dated 11.02.2013 and the committee in its meeting dated 11.02.2013 approved the reduction applied by the consumer with effect from 11.02.2013 only and not retrospectively from 04.01.2013 and 19.11.2012 for LS-21 & LS-19 respectively”.

The petitioner has prayed :

- (a) to allow continuous process load to the petitioner unit retrospectively and not prospectively as per sanction and not to impose condition of levy of additional 10p / per unit energy charges on continuous process consumers on total actual consumption of energy drawn from PSPCL while issuing sanction of continuous process of load as per provisions of PR Circular No.06/2012 by amending the impugned letter memo No.9548 dated 19.11.2012, letter memo No.1729 dated 26.02.2013 and impugned minutes of meeting of the committee on grant of continuous process status to industrial consumers dated 29.05.2013 informed vide letter No.6260 of 18.07.2013 passed by the respondent-corporation. This is against the original order of PSERC that 10 p/ unit levy is on pro-rata basis.
- (b) that the operation of the impugned memo No.9548 dated 19.11.2012 with regard to condition mentioned at Sr.No.4 therein, may kindly be stayed during the pendency of the present petition, before this Commission, in the interest of justice.
- (c) to issue any other order or direction, which this Commission may deem fit and proper, keeping in view the facts and circumstances of the present case.
- (d) to exempt the captive units from 25% clause in circular 06/2012 as the circular 06/2012 is silent about the continuous process industry, which are meeting their power demand from their co-generation turbines and is giving relaxation to the Grid throughout the year but seeks power only in the event of tripping of their turbine. The clause of 25% enhanced off peak load demand from peak load demand in circular no. 06/2012, can not be defined by single values in case of these captive units as there is huge difference in their power demand depending upon the status of running of their TG sets.

- (e) to enhance non-peak hour allocation automatically by 125 percent to the petitioner, in the cases where PSPCL has duly enhanced peak load exemption of consumer for a particular day of restricted period.

In part B of the petition from para 22 to para 35, the case relating to connection LS-21 has been submitted by the petitioner, in which same / similar issue has been raised and same / similar relief has been sought. So summary of facts of the case related to LS-21 is not required to be recorded for the sake of brevity.

2. The petition was admitted vide Order dated 20.11.2013 and PSPCL was directed to file reply by 13.12.2013 with copy to the petitioner. PSPCL filed reply dated 16.12.2013 and submitted that the petition is not maintainable before the Commission as the same does not fall within the scope of Section 86 (1) (f) of the Electricity Act, 2003. The disputes are purely disputes raised by the petitioner as a consumer of the respondent (PSPCL) in respect of billing of the electricity consumption from the electricity connections given to the petitioner. The issue with regard to jurisdiction of individual consumer disputes is no longer res-integra and has been settled by Hon'ble Supreme Court of India in the case of Maharashtra Electricity Regulatory Commission v Reliance Energy Limited (2007) 8 SCC 381 vide which the Hon'ble Supreme Court has upheld the decision of Hon'ble Appellate Tribunal for Electricity holding that the consumer disputes can not be raised before the Regulatory Commission under the provisions of the Electricity Act, 2003. Such disputes has to be adjudicated in terms of Section 42 (5) and (6) of the Electricity Act, 2003. PSPCL has further submitted that the petitioner has erroneously sought to invoke Section 86 (k), as the decision of Hon'ble Supreme Court has a force of Law in terms of Article 141 of the Constitution of India. The petitioner has also relied on the Electricity Supply Code, which also does not help the petitioner in this case. The entire dispute being a consumer dispute arising out of the billing and related matters, has to be adjudicated in terms of Section 42 (5) and (6) of the Electricity Act, 2003 only.

3. The petitioner filed the rejoinder dated 03.01.2014 to the reply of PSPCL. The petitioner has submitted that the dispute is not a consumer billing dispute as per the Notification dated 04.10.2013 whereby the Commission has notified the consumer complaint handling procedure. The present petition has been filed against the arbitrary and erroneous decision of the committee of the respondent corporation in which the continuous process load has been granted prospectively and not retrospectively.

4. The arguments of the parties were heard at length on 25.02.2014 and hearing of the case was closed. Order was reserved.

5. The Commission has gone carefully through the submissions of the petitioner, reply of the respondent, rejoinder of the petitioner and arguments of the parties. The Hon'ble Supreme Court in the case of Maharashtra Electricity Regulatory Commission v. Reliance Energy Limited (2007) 8 SCC 381 has inter-alia held as under:-

“31. The basic question which arises for our consideration in this appeal is whether the individual consumer can approach the Commission under the Act or not.

32. For deciding this question, the relevant provision is Section 42(5) of the Act, which reads as under:

“42. Duties of distribution licensee and open access-
(1)-(4)*

**

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission”.

33. As per the aforesaid provision, if any grievance is made by a consumer, then they have a remedy under Section 42(5) of the Act and according to sub-section (5) every distribution

licensee has to appoint a forum for redressal of grievances of the consumers. In exercise of this power the State has already framed the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 (hereinafter referred to as “the 2003 Regulations”) and created Consumer Grievance Redressal Forum and Ombudsman. Under these 2003 Regulations a proper forum for redressal of the grievances of individual consumers has been created by the Commission. **Therefore, now by virtue of sub-section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have been left to the said forum.** This question has already been considered and decided by a Division Bench of the Delhi High Court in Suresh Jindal v. BSES Rajdhani Power Ltd. [(2006) 132 DLT 339 (DB)] and Dheeraj Singh v. BSES Yamuna Power Ltd. [Ed.: (2006) 127 DLT 525 (DB)] and we approve of these decisions. **It has been held in these decisions that the forum and ombudsman have power to grant interim orders. Thus a complete machinery has been provided in Sections 42(5) and 42(6) for redressal of grievances of individual consumers. Hence wherever a forum/ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances. Therefore, not much is required to be discussed on this issue. As the aforesaid two decisions correctly lay down the law when an individual consumer has a grievance he can approach the forum created under sub-section (5) of Section 42 of the Act”.**

In view of the law laid down by the Hon'ble Supreme Court in above cited case, there remains hardly any scope to invoke Section 86 (k) of the Electricity Act, 2003 for the sake of jurisdiction of the Commission. The facts of the case leave no doubt that the dispute is necessarily a consumer / billing dispute. Remedy for redressal of the grievance arising out of any billing dispute has to be sought before the 'Forum for redressal of grievances of the consumers'. This Commission has already framed the "Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2005, amended from time to time. The Commission further observes that Regulation 49 – Powers to remove difficulties and Regulation 50 – Power to amend, PSERC (Electricity Supply Code and Related Matters) Regulations, 2007, are not attracted in the disputes of this nature between the supplier and the consumer.

The petition is dismissed.

Sd/-
(Gurinder Jit Singh)
Member

Sd/-
(Virinder Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 07.03.2014