

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

**I.A. No.07 of 2017
In Petition No. 22 of 2016
Date of Order: 18.05.2017**

Present: Shri D.S. Bains, Chairman
Shri S.S. Sarna, Member

In the matter of: Application seeking adjudication of the issue with respect to undue influence of the counsel representing the Petitioner in the captioned matter before this Hon'ble Commission as the counsel representing the Petitioner has been representing this Hon'ble Commission before other Court(s)/forum(s)/Tribunal(s) which is gravely prejudicing the rights of the Applicant-Respondent-PEDA.

In the matter of: M/s Solaire Urja Private Limited.Petitioner

Versus

1. Punjab State Power Corporation Limited (PSPCL)
.....,Non-Applicant - Respondent
2. Punjab Energy Development Agency (PEDA)
..Applicant/ Respondent

ORDER

The Punjab Energy Development Agency (PEDA), Respondent No.2 has filed the present I.A. stating that the Counsel for the petitioner Shri Tajender Kumar Joshi, Advocate, has been representing the Punjab State Electricity Regulatory Commission before other Courts / Forums and is representing the Commission before the Hon'ble Punjab & Haryana High Court in CWP No.5855 and 11155 of 2016 titled as Malkiat Singh Randhawa Vs. Union of India. The Applicant – Respondent on becoming aware of the same immediately submitted request vide letter No.4198 dated 25.10.2016 and letter No.623 dated 30.01.2017 before the Commission that the Counsel representing the

petitioners should not be allowed henceforth to represent any of the parties before the Hon'ble Commission. It has been submitted by the Applicant – Respondent that despite the aforesaid letters, the Hon'ble Commission was pleased to carry out further proceedings without adjudicating upon the issue / grievance raised as to the issue of undue influence of the counsel of the Hon'ble Commission representing other parties against PEDDA before the Commission in various petitions.

2. It has been further submitted that the undue influence is apparent from the fact that all the matters, wherein the petitioners were represented by Shri Tajender Kumar Joshi, Advocate, that have been adjudicated so far by the Commission, have been decided in favour of the petitioners. However, in the matter of M/s Abundant Energy Pvt. Ltd. Vs. PSPCL and another, where the petitioner was represented by another counsel, seeking similar relief on the same footing, was decided against the petitioner. Mr. Tajender Kumar Joshi, Advocate, represented the parties in Petition No(s).1, 6, 7, 9, 10, 14 of 2016 before the Hon'ble Commission which were decided in favour of the petitioners. It has been alleged that the counsel for the Hon'ble Commission is appearing before the same Commission against PEDDA while representing the petitioner, which is totally unethical, wrong and pre-judicial to the rights / interest of PEDDA.

3. It has been submitted that the grievances raised by the Applicant –respondent warrant consideration of the Commission at the very outset, before passing final orders in the captioned petition as the same shall gravely prejudice rights of PEDDA and in fact Mr. Tajender Kumar Joshi should not be permitted to appear before this Commission in any of the matters once he is representing the Commission before the other courts. The Applicant – Respondent has prayed that grievance of Applicant – Respondent/PEDDA at the very outset be decided before deciding the matter on merits, and restrain Shri Tajender Kumar Joshi from appearing before this Commission while representing the petitioner

in the captioned matter, and to adjudicate upon the matter afresh so as to render justice and equity to all the parties to the lis.

4. A reply to the I.A. has been filed by Shri Tajender Kumar Joshi. Denying the allegations made in the application it has been submitted –

- i) that he is appearing for the PSERC before the Hon'ble Punjab & Haryana High Court in CWP No. 5855 of 2016 and 11155 of 2016. These two petitions have been filed by various farmers who have participated in the bids and were declared successful by the PEDDA for allotment of 250 MW capacity. He was engaged as a counsel for appearing on behalf of PSERC. Thereafter CWP No. 11155 of 2016 was filed and being a connected case, he was engaged by the PSERC in this writ petition also.
- ii) that applicant PEDDA has failed to mention any rule or regulation which bars a counsel from appearing before a body / authority while exercising a quasi judicial power in case that counsel has represented that body / authority before any other court or forum. Moreover, there is no such clause in the power of attorney / Vakalatnama given by the PSERC that he shall not appear before the Commission while exercising quasi judicial powers.
- iii) that Hon'ble High Court of Punjab & Haryana, Chandigarh also has dual role i.e. judicial role as well as administrative role while taking any decision regarding employees of the High Court. Advocates appear before the Hon'ble High Court of Punjab & Haryana Chandigarh, on behalf of the Court itself when a writ etc. is filed and High Court is arrayed as a party.
- iv) that the contention of PEDDA is totally wrong, misconceived and ridiculous and can not be accepted by any stretch of imagination. In case the PSERC is arrayed as a party and any action of the Commission is challenged before any court then it has a right to be defended and engage counsel. In CWP No. 5855 of 2016 &

11155 of 2016 no relief has been claimed by the petitioner against the PSERC.

- v) that as per section 124 of the Electricity Act, 2003, The Commission has been given the right to engage a counsel to appear before the Hon'ble APTEL as presenting officer in any appeal filed against the order passed by the State Commission. So, if the contention of PEDDA is accepted then the Commission can not choose an advocate to represent before the APTEL. Moreover, the Vakalatnama given by the PSERC, nowhere prevents / bars the counsel appearing on behalf of Commission to appear before the Commission in any other matter. PEDDA has failed to show as to how the appearance of Sh. Tajender Kumar Joshi, has prejudiced the rights of the PEDDA and has adversely influenced the Commission.
- vi) that as per the Bar Council of India Rules, the counsel accepting the brief has a duty towards his clients and an advocate cannot ordinarily withdraw from engagements without sufficient cause.
- vii) that the cases related to PPAs dated 31.03.2015 executed between the PSPCL and Solar Developers allotted by PEDDA were filed by various counsels, but PEDDA is mentioning only those cases which were filed by Tajender Kumar Joshi, Advocate and has not mentioned any other cases filed by various other counsels. Petition No.20 of 2016 titled as P.L. Sunshine Vs. PSPCL and another relating to the same solar projects was filed by Tajender Kumar Joshi, Advocate and was dismissed by the Commission. Similarly, petition No.17 of 2016 titled as M/s Oasis Green Energy Pvt. Ltd. related to the same solar projects was filed by some other Advocate which was allowed by the Commission. So the averments of PEDDA that the petitions which have been filed by Tajender Kumar Joshi, Advocate has been

allowed by the Commission and remaining has been dismissed are factually incorrect and wrong.

- viii) The Commission is deciding the cases as per merits and evidence of the cases and only because some of the cases filed by a counsel have been allowed does not mean that there is any undue influence upon the Commission. It has been further submitted that he has been appearing before the Commission since the year 2010 and has been filing and appearing in numerous matters, however, PEDDA has mentioned only five matters which have been decided in favour of the counsel however, it has willfully and intentionally not mentioned about the other matters filed by him which have been decided by the Commission against the consumers.
- ix) The present application is an abuse of the process of law and PEDDA has failed to produce on record any Rule, Regulation to prove how the conduct of Tajender Kumar Joshi, Advocate and Shri Sanjay Sen, Senior Advocate is unethical, wrong and prejudicial to the rights and interests of PEDDA.
- x) He has suggested that the application filed by PEDDA / Applicant may be dismissed with exemplary costs.

5. We have examined the application filed by PEDDA, the reply submitted by Tajender Kumar Joshi, Advocate and the submissions made by the respective parties during the hearing of the proceedings. The allegations made in the I.A. in brief are that in the matters wherein Mr. Tajender Kumar Joshi, Advocate has represented the parties before this Commission, the Commission has decided in favour of the petitioners. The applicant has mentioned a list of six cases wherein Shri Tajender Kumar Joshi, Advocate represented and the cases were decided in favour of his clients. However, it has been alleged that in the matter of **M/s Abundant Energy Private Ltd. Vs. PSPCL** and another where the petitioner was represented by some other counsel, seeking

similar relief on the same footing has been decided against the petitioner therein and has also attached the copy of order dated 14.02.2017 passed in petition No.25 of 2016 and I.A. No.17 of 2016.

6. The Learned Counsel for the Applicant-PEDA, while arguing the I.A., submitted a copy of the judgment passed in Criminal Appeal Nos. 753-755 of 2009 by the Hon'ble Supreme Court of India in the case titled as **State of Punjab Vs. Davinder Pal Singh Bhullar and Ors.** etc. in support of his contention that mere ground of appearance of bias is enough to vitiate the order. The said judgment is, however, distinguishable on facts. A perusal of the said Judgment shows that in the said case an FIR under section 302, 307, 437 and 12-B of the Indian Penal Code and under section 3 & 4 of Explosive Substances Act was filed and the trial court acquitted all the three accused. The state preferred a criminal miscellaneous appeal challenging the said acquittal, which was thereby dismissed. The High Court, after 20 days of the disposal of the said criminal application, took up the case suo moto, and directed the authorities to furnish details of proclaimed offenders.

7. Rebutting the contentions of the Applicant-PEDA, Shri Tajender Kumar Joshi, in support of his contentions, has submitted copies of judgment titled and reported as **R. Balakrishna Pillai Vs. State of Kerala**, (2000) 7 Supreme Court Cases 129, wherein it has been held that mere allegation of apprehension of denial of justice is not sufficient and the apprehension must appear to the court to be reasonable, genuine and justifiable. The counsel for the applicant further relied on the Judgment of the case of **Abraham Kuruvila Vs. S.C.T. Institute of Medical Sciences & Technology and others** reported in (2005) 9 Supreme Court Cases 49, wherein it was held by the Hon'ble Apex Court that specific plea of factual bias must be raised and proved by adducing cogent and sufficient evidence. The council also relied on a judgment of the **Punjab & Haryana High Court reported in the Times**

of India dated 10.02.2017 wherein the Hon'ble High Court dismissed the petition seeking recusal of its two Judges, belonging to Jatt Sikh community , from hearing a plea related to reservation of Jatts in the category of backward class (BC) in Haryana.

Commission's Observations, Findings and Decision:

8. The cases filed by the parties are decided by the Commission on merits keeping in view the pleadings of the parties, documents produced in support of their claims and the relevant law and regulations applicable in this regard. In case any party to the petition feels aggrieved by any order of the Commission, the same can be challenged as per the procedure stipulated under the Electricity Act, 2003 / the Regulations framed there under and the grievance of the concerned party (if any) can be redressed accordingly. The apprehension and submissions made by the Applicant-PEDA are based merely upon conjectures and surmises without adducing any evidence on record.

9. Nevertheless, Sh. Tajender Joshi, Advocate has withdrawn from the cases assigned to him by PSERC before the Hon'ble Punjab and Haryana High Court. Further, many of the cases decided by the Commission where in Sh. Tajender Joshi, Advocate was the counsel, have been dismissed. Thus, the allegations made in the I.A. are without any substance and accordingly the same is hereby dismissed.

Sd/-
(S.S. Sarna)
Member

Sd/-
(D.S. Bains)
Chairman

Date: 18.05.2017
Chandigarh