

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

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

Petition No. 52 of 2021

(Suo Motu)

Date of Order: 21.01.2022

PR circular No. 09/2021 dated 05.07.2021 and PR Circular No. 11/2021 dated 07.07.2021 regarding Power Regulatory Measures on Industrial Consumers (except Essential Industries/Services & other exempted categories) from 08.07.2021 to 11.07.2021 in all DS Zones.

And

In the matter of: The Punjab State Power Corporation Limited, the Mall Patiala, through its Chairman-Cum-Managing Director.

Present: Sh. Viswajeet Khanna, Chairperson
Ms. Anjuli Chandra, Member
Sh. Paramjeet Singh, Member

ORDER

Punjab State Power Corporation Limited (PSPCL) is obligated to supply electricity to the consumers as per the provisions of Electricity Act, 2003 and the Regulations framed there under by the State Commission. Imposition of any Regulatory measures on the consumers is effected by PSPCL with the prior approval of Punjab State Electricity Regulatory Commission (PSERC). However, PSPCL issued the following circulars

imposing Regulatory Measures on the consumers without the approval of the Commission.

- i) On 01/07/2021 vide PR Circular No. 01/2021 power regulatory measures were imposed for the period from 08:00/14:00 hrs of 01/07/2021 to 08:00/14:00 hrs of 03/07/2021 on the industrial consumers except continuous process and essential industries/services in North and Central Zones. By way of this circular, two weekly day offs were imposed on General Industry (LS), Rolling Mill and Arc/Induction furnaces fed from Category 2 & 3 feeders in North and Central zones. The above Circular was amended by way of PR Circular No. 02/2021 on the same day, i.e., 01.07.2021. One additional weekly day off was imposed on General Industry (LS), Rolling Mill and Arc/Induction furnaces consumers fed from Category 2 & 3 feeders in North and Central zones from 08:00/14:00 hours of 01/07/2021 to 08:00/14:00 hours of 04/07/2021 & for LS consumers fed from Category 1 feeders in Central and North zones from 08:00 hours of 02/07/2021 to 08:00 hours of 05/07/2021. Further, there was an amendment to the penalty mechanism i.e., for first default the penalty for defaulting consumers would be Rs. 100/-per KVA and for the second and subsequent defaults Rs. 200/- per KVA for every default. This penalty was also applicable for the defaulting consumers being fed from Category-1 feeders for both North and Central Zones.
- ii) PSPCL issued another circular separately for the West Zone on 01.07.2021 vide PR Circular No. 03/2021 and for the South and Border Zones on 02/07/2021 vide PR Circular No. 04/2021. Through these circulars, three weekly off days were imposed on General Industry (LS), Rolling Mill and Arc/Induction furnaces fed from Category 1, 2 & 3

feeders from 22:00 hours of 01/07/2021 to 22:00 hours of 04/07/2021 and from 08:00 hours of 04/07/2021 to 08:00 hours of 07/07/2021 respectively. The penalty imposed was similar to that of North and Central Zones.

- iii) On 02/07/2021, PSPCL issued PR Circular 05/2021 extending the power regulatory measures on continuous process consumers fed from category 4 feeders. All continuous process consumers were directed to use only 15 % of total Scheduled Contract Demand or 100 kVA whichever is lower. The off days imposed were from 08:00 hrs of 05/07/2021 to 08:00 hrs of 08/07/2021. Thereafter, vide PR Circular No. 06/2021, a clarification was issued with respect to category -4 feeder that category – 4 feeders would mean independent feeders feeding continuous process/ essential industries.
- iv) Representations were received from various consumers expressing difficulties to comply with the provisions related to restriction of load as per PR Circular No. 05/2021. The matter was then considered by PSPCL and the same was amended by PR Circular No. 07/2021. As per the revised directions, continuous process consumers shall restrict their drawl of power up to the extent of 30% of their continuous process load.
- v) On 05/07/2021 PSPCL issued, PR Circular No. 09/2021 with respect to the West, North and Central Zones continuing the power regulatory measures on General Category (LS), Rolling Mill and Arc/Induction furnace consumers being fed from Category 1, 2 and 3 feeders. The said regulatory measures were to be imposed from 07/07/2021 to 10/07/2021 and the penalty mechanism was to be continued as per the earlier circulars. It was decided to extend the regulatory measures vide

PR Circular No. 10/2021 for continuous process consumers who were directed to restrict their drawl of power up to the extent of 50% of their continuous process load from 08:00 hrs of 08/07/2021 to 08:00 hrs of 18/07/2021.

vi) On 07/07/2021, PSPCL issued PR Circular No. 11/2021 amending PR Circular No. 09/2021 and extending the power regulatory measures from 10/07/2021 to 11/07/2021 in all distribution zones. As per the said Circular , all General Industry (LS), Rolling Mills and Arc/Induction furnaces consumers being fed from Category-1, Category-2 and Category-3 feeders were to restrict their drawl of power. The quantum of penalty was amended to Rs. 500/kVA/day on maximum load used in a day in excess of the restricted load. Vide PR Circular No. 12/2021 the penalty was similarly increased for continuous process consumers. Owing to the increase in the penalty, several queries were received by PSPCL and thus PR Circular No. 13/2021 was issued offering clarification that PR Circular No. 09/2021 shall remain in force till 08/07/2021 and thereafter PR Circular No. 11/2021 would take over. Further clarifications were issued by PSPCL vide PR Circular No. 14/2021.

2. The Commission, taking Suo-motu notice of the circulars issued by PSPCL, issued letter no. PSERC/Reg./1733-34 dated 14.07.2021 directing PSPCL to show cause within a week as to why action should not be taken under section 142 of the Electricity Act, 2003 for violating the provisions of the Electricity Act, 2003 read with the respective Regulations of the PSERC, further directing PSPCL to withdraw the circulars with immediate effect, penalty should not be imposed for consumers drawing power within sanctioned load and to immediately

- reverse the penalty already imposed as a result of these circulars. PSPCL, vide memo no. 6693 dated 15.07.2021, submitted the copy of the circulars no. 01/2021 to 13/2021 and further submitted that reply regarding circular no. 09 of 2021 and 11 of 2021 shall be submitted at the earliest. PSPCL, vide memo no. 6703 dated 16.07.2021, submitted the copy of circulars no. 14/ 2021 to 19/2021. PSPCL, vide memo no. 6775 dated 22.07.2021, submitted reply to the show cause notice dated 14.07.2021 submitting that due to prolonged dry weather spell, non-availability of full generation from TSPL units, reduced hydro power potential and unprecedented rise in demand, PSPCL was constrained to impose power regulatory measures on industry in order to divert power to agriculture sector and requested to withdraw show cause notice and regularize the power regulatory measures imposed by PSPCL. PSPCL, further, vide memo no. 6693 dated 15.07.2021 and 6703 dated 16.07.2021, submitted that reply to the letter dated 14.07.2021 shall be submitted at the earliest. PSPCL was again directed vide letter no. PSERC/Reg./1922-23 dated 06.08.2021 to reply to the letter no. 1733-34 dated 14.07.2021 at the earliest without any delay, further directing PSPCL to immediately refund the penalty recovered, if any, under intimation to the Commission.
3. PSPCL reiterating its earlier submission made in memo no. 6775 dated 22.07.2021 submitted vide memo no. 7011 dated 13.08.2021 that reply to the letter no. 1733 dated 14.07.2021 has already been submitted. The reply submitted by PSPCL was examined by the Commission and was not found satisfactory. Suo-motu cognizance of the matter was taken as petition no. 52 of 2021, notice dated 14.09.2021 was issued to

PSPCL to file its reply and the petition was fixed for hearing on 27.10.2021.

4. Indian Acrylics Limited vide letter no. IAL/S/AG/ELECT/22 dated 05.10.2021 submitted that the petition refers to only PR Circular 09/2021 & 11/2021 and all the circulars should be taken note of by the Commission. The applicant was advised vide letter dated 30.10.2021 to be present during hearing on 27.10.2021. Indian Acrylic Limited vide letter dated 25.10.2021 submitted that despite instructions of the Commission, PSPCL has issued demand notice of Rs. 1,32,08,880 on 23.09.2021 for recovery of penalty on account of extra usage of power during the period 05.07.2021 to 12.07.2021 in pursuance of their PR Circular 07/21 & 12/21. It was further requested for instructions to PSPCL to withdraw the notice. The petition was taken up for hearing on 27.10.2021 and it was clarified that the present petition covers PR circular no. 01/21 dated 01.07.2021 to PR Circular No. 19/21 dated 13.07.2021 with regard to Power Regulatory Measures on industrial consumers. The Learned counsel for PSPCL requested for time to file a detailed reply. Steel Strips Wheels Ltd, vide letter no. SSWL/G-001/2021-22/37 dated 15.10.2021 also submitted to include in the petition PR Circular no. 07/21 to 19/21. After hearing the matter on 07.12.2021 order was reserved. Nahar Spinning Mills Ltd., vide letter no. NSML/2021-22/4476 dated 08.11.2021, submitted that PSPCL has issued supplementary bill vide letter no. 6010 dated 2.11.2021 for payment of Rs. 2127183 towards penalty for violation of weekly off days for 5.7.2021 to 08.07.2021 for overdrawl of permitted demand and requested the Commission to consider their case in the present petition and for refund of the penalty with interest. ITFAQ Steel Pvt. Ltd.,

Amritsar vide letter dated 30.11.2021 also disputed the bills issued by PSPCL including the penalty charges against default of PR circular no. 01/21 to 19/21. Focal Point Industries Association, Amritsar also vide letter no. FPIA/890 dated 11/12/2021 submitted that imposition of huge penalties by PSPCL as per circular no. 1/21 to 19/21 is unjustified and requested for its withdrawal.

5. PSPCL submitted its detailed reply vide memo no. 7727 dated 29.11.2021. PSPCL has submitted that:

i) PSPCL is the distribution licensee in the State of Punjab and for the purposes of distribution and retail supply activities; it has tied up purchase of electricity from various generating stations and other sources to meet the demand of the consumers in the State of Punjab. As a distribution licensee PSPCL is to ensure uninterrupted power supply to all of its consumers and regulate the supply only in case of unavoidable exigencies. PSPCL had filed Petition No. 08 of 2021 under Section 23 of the Electricity Act, 2003 seeking regulatory guidance and concurrence of the Commission for taking measures for load regulation and imposing power cuts in case of exigencies and system operational requirements. The Commission, in Petition No. 08 of 2021, had inter-alia, held as under:

“7....

b) Therefore PSPCL is authorized to impose regulatory measures including rotational power cuts so as to bridge the gap between demand and supply, in case of exigencies & system requirements only. The approval in this respect is subject to the following:

- i) *In view of surplus power available with PSPCL, routine power cuts and compulsory weekly off day(s) will not be imposed in Punjab, on any category of consumers.*
- ii) *However, if regulatory measures for maintaining Grid are necessitated in case of any exigency; PSPCL may take Regulatory Measures/ impose rotational Power cuts for which, information will be given to the concerned consumers through SMS/E-Mail (including written intimation, wherever possible) and same shall also be uploaded on its website.*
- iii) *Unscheduled load shedding, if any, shall only be imposed during sudden outage of generating units or exigencies in the grid. The duration of such load shedding shall be kept to be as minimum as possible.*
- iv) *The Commission shall be informed regarding emergency situations and resultant system constraints, reasons thereof and details of power cuts imposed feeder wise along with duration and its impact on PSPCL revenue at the earliest.”*

It is evident from the above directions that Commission was conscious of the possibility of there being exigencies wherein PSPCL would have no other option but to resort to imposing power regulatory measures to bridge the gap between demand and supply and allowed PSPCL to impose such regulatory measures for which information was to be given to the concerned consumers and also had to be uploaded on website of PSPCL.

- ii) That on 30/06/2021, the state witnessed highest demand of 15336 MW to the consumption of 3240 LUs. Further, the situation did not improve and the demand remained on the higher end while the generation remained on the lower side. On 01/07/2021, the maximum demand met by PSPCL was of 13431 MW to the

consumption of 3066 LUs. Despite utilizing full available transmission capacity i.e., ATC/TTC limits of 7300/7900 MW on 29/06/2021 and 30/06/2021, PSPCL was able to supply only 06:02 hours and 07:23 hours of supply to agriculture consumers respectively, and had to consequently carry out load shedding on domestic consumers of 04:59 hours on an average.

- iii) The very high demand was further exasperated by the shortfall in the monsoon and prolonged dry spell which continued till 11/07/2021. As a result, while the State witnessed an all-time high-power demand, the reservoirs witnessed low levels leading to low generation from hydro power stations. Generation from Central Sector Hydro Generating Stations like Damodar Valley Corporation and BBMB was on the lower end due to depleted reservoir levels. In addition, even generation from UMPP CGPL was on a lower end. As the demand continued to rise and there was shortfall in the supply available to the agricultural consumers during the paddy season, there were agitations and protests amongst the agricultural consumers for not receiving the promised 8-hour power supply. It was in the above circumstances that PSPCL was constrained to undertake the power regulation measures and impose power regulations on the consumers in the State of Punjab. PSPCL has made best efforts to meet the gap in the demand and availability but the present instance of regulating the power of the consumers arose due to natural and unforeseen exigencies being beyond the control of PSPCL. As soon as the situation was brought under control with the arrival of monsoon and with resumption of Unit 2 of TSPL on 12/07/2021, the

regulatory measures were gradually relaxed for all category consumers with effect from 12/07/2021.

- iv) That Section 142 of the Electricity Act, 2003 is a punitive provision, in the nature of a quasi-criminal provision, and ought to be interpreted and applied strictly. Only deliberate and intentional non-compliance of a specific provision of law or any particular direction issued by the Commission attracts this punitive provision. Further, the procedure to be followed has also been settled by the Hon'ble Appellate Tribunal in the order dated 19/04/2011 in Appeal No. 183 of 2010 in case of BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission wherein it has been held as under:

The above procedure in penalty proceedings would clearly indicate that the State Commission shall first determine the prima facie violation and then issue show cause notice. The alleged violator has the right to file a reply and thereafter the State Commission has to frame charges and give further opportunity to the person concerned to place materials on record to disprove the charges and then decide the case on the basis of the evidence available on record.

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28. Thus, there are two phases. (i) One is to arrive at a satisfaction to issue show cause notice while initiating penalty proceedings and (ii) Next is, after issuance of the show cause

notice, the person must be heard to arrive at a satisfactory conclusion whether such contravention has actually been committed or not. Only then can the State Commission find him culpable or not under Section 142 of the Act. Thus, it became evident that the show cause notice should contain (i) specific allegations of violation, (ii) prima facie satisfaction over the said allegations (iii) issuance of show cause notice in respect of specific allegations by way of giving an opportunity to the concerned person to rebut those allegations. All these three ingredients must find place in the notice, which is a show cause notice.

- v) That the Commission has not pointed out in the show cause notice dated 14/07/2021 any specific violation of any particular directions in the order dated 31/03/2021 that is alleged to be violated by PSPCL. No particular Regulation is also specified, which is alleged to be violated by PSPCL. The show cause notice therefore does not fulfill the requirement of law and ought to be discharged.
- vi) That the defect in the present proceedings is also evident by the fact that the show cause notice dated 14/07/2021 was only limited to two (2) Circulars, whereas in the hearing dated 27/10/2021 the Commission has enlarged the scope of the proceedings to cover other Circulars issued by PSPCL. In this regard, the Hon'ble Supreme Court in Commissioner of Central Excise v. Brindavan beverages (P) Ltd[2007 (5) SCC 388]has held as under:

A show cause notice is the foundation on which the Department has to build up its case. If the allegations in the show-cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice.

In the circumstances, the Commission may close the present proceedings and discharge PSPCL.

- vii) That there has been no non-compliance by PSPCL of any directions of the Commission issued in Petition No. 08 of 2021, or of any regulations as framed by the Commission or of any provisions of the Electricity Act, 2003, by PSPCL. The surplus power capacity is only on an average basis, and does not take into account capacity available from time to time and the peak demand that may be reached in the operation of the system in the State. Keeping in view of the same, the Commission authorized PSPCL to impose regulatory measures including rotational power cuts so as to bridge the gap between demand and supply, in case of exigencies & system requirements only. Such regulatory measures by PSPCL were to be uploaded on its website and all the circulars were duly and timely uploaded on the website of PSPCL.
- viii) That the circulars were issued strictly consistent to the terms of the order dated 31/03/2021 of the Commission in Petition No. 08

of 2021. It was important for PSPCL to meet the demand of the agricultural consumers at the time of the peak season, PSPCL was not in a position of making a choice and to control the situation going out of hand, PSPCL had to impose power regulatory measures.

- ix) That the power regulation measures were taken only to meet the exigencies and were limited to the period of undue deficit in the power availability as against the demand. The measures were limited to 12 days and were also only progressively applied based on the demand-availability scenario. The measures were also withdrawn forthwith immediately upon the demand-availability gap reducing and the ability of PSPCL to meet the demand in the State.
- x) That the measures taken by PSPCL were only due to the exigencies faced, and there was no intention or deliberate action of PSPCL to violate any directions of the Commission. The actions of PSPCL are bona fide and taken in the best interest of the State and the power system, and ought not to be subjected to any punitive action under Section 142 of the Electricity Act, 2003. Further, for any punitive action to be taken under Section 142 of the Electricity Act, there has to be a finding that the action was deliberate and in conscious disregard of the obligation under law. It has been held in case of *M/s Hindustan Steel Ltd. v. State of Orissa*, 1969 (2) SCC 627 as under:

“8. Under the Act penalty may be imposed for failure to register as a dealer – Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately or in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.....”

- xi) In case of T. Ashok Pai v Comm. of Income Tax, Bangalore, (2007) 7 SCC 162 it has been held as under:

“16. The order imposing penalty is quasi-criminal in nature and, thus, burden lies on the Department to establish that the assessee had concealed his income. Since burden of proof in penalty proceedings varies from that in the assessment proceeding, a finding in an assessment proceeding that a particular receipt is income cannot automatically be adopted, though a finding in the assessment proceeding constitutes good evidence in the penalty proceeding. In

the penalty proceedings, thus, the authorities must consider the matter afresh as the question has to be considered from a different angle.

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27. It is not a case where penalty has been imposed for breach of contravention of a commercial statute where lack of or intention to contravene or existence of bona fides may not be of much importance. It is also not a case where penalty is mandatorily impossible (sic imposable). It was, therefore, not a case where the enabling provision should have been invoked.”

In case of *Bharjatiya Steel Industries v. Comm., Sales Tax*, (2008) 11 SCC 617 it has been held as under:-

“19. A distinction must also be borne in mind between a statute where no discretion is conferred upon the adjudicatory authority and where such a discretion is conferred. Whereas in the former case the principle of mensrea will be held to be imperative, in the latter, having regard to the purport and object thereof, it may not be held to be so.

.....

22. It is, therefore, difficult to accede to the contention of Mr Banerjee that under no circumstances absence of mensrea would not be a plea for levy of penalty. An assessing authority has been conferred with a discretionary jurisdiction to levy penalty. By necessary implication, the authority may not levy penalty. If it has the

discretion not to levy penalty, existence of mensrea becomes a relevant factor.....”

In the present set of facts and circumstances PSPCL has in no manner violated the directions of the Commission and the present proceedings under Section 142 of the Electricity Act, 2003 be dismissed and the notice of the Commission may be discharged.

Observations and decision of the Commission

6. The Commission vide letter No. PSERC/Reg./1733-34 dated 14.07.2021, referring to PR Circular No. 09 of 2021 dated 05.07.2021 and 11 of 2021 dated 07.07.2021 intimated PSPCL that imposition of any regulatory measures on the consumers is required to be effected with the prior approval of the Commission and the said circulars impose regulatory measures and also contained penalty clause on the defaulting consumers who draw excess power than the specified limit @ of Rs. 500/kVA/day on maximum load used in a day in excess of their restricted load. The said circulars are in contravention of the provisions of the Electricity Act 2003, Regulations framed by the Commission as well as the order dated 31.03.2021 passed by the Commission in Petition No. 08 of 2021. The Commission, taking suo motu notice of the above circulars, directed PSPCL to show cause why action should not be taken under section 142 of the Electricity Act, 2003. PSPCL was further directed to withdraw these circulars with immediate effect and any penalty already imposed as a result of these circulars should be reversed immediately. PSPCL submitted its reply vide memo no. 7011 dated 13.08.2021 submitting that due to prolonged dry weather spell, non-availability of full generation from TSPL units, reduced hydro power potential including that of BBMB due to low reservoir levels and unprecedented rise in

demand, PSPCL was constrained to impose power regulatory measures on industry in order to divert power to agriculture sector. The reply submitted by PSPCL was not found satisfactory and cognizance of the matter was taken as Petition No. 52 of 2021(Suo-Motu). PSPCL has disputed the show cause notice on the grounds that:

- a) The show cause notice dated 14.07.2021 does not point out any specific violation of any particular directions in the order dated 31.03.2021 passed by the Commission in Petition No. 08 of 2021 and any particular Regulation that is alleged to be violated by PSPCL. The show cause notice does not fulfill the requirement of law and ought to be discharged.
- b) The show cause notice dated 14.07.2021 was limited only to two (2) circulars whereas in the hearing dated 27.10.2021, the Commission enlarged the scope of the proceedings to cover other circulars issued by PSPCL.
- c) The action on the part of PSPCL was not deliberate and in conscious disregard of its obligation under law.

The Commission has examined the PR Circulars No. 01 of 2021 to 19 of 2021 issued by PSPCL, the reply filed by PSPCL to the show cause notice and the judgments relied upon by PSPCL in support of its contentions. The Commission decides on the above issues as under:-

- a) PSPCL has submitted that the Hon'ble Supreme Court in case of Commissioner of Central excise vs. Brindavan Beverages (P) Ltd. [2007] (5) SCC 388 has held that a show cause notice is the foundation on which the Department has to build up its case. If the allegations in the

show – cause notice are not specific and are on the contrary vague, lack details and / or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. The Hon'ble APTEL in case of BESE Rajdhani Power Limited vs. Delhi Electricity Regulatory Commission dated 19.04.2011 in Appeal No. 183 of 2010 has held that the show cause notice should contain i) specific allegations of violation, ii) prima facie satisfaction over the said allegations iii) issuance of show cause notice in respect of specific allegations by way of giving an opportunity to the concerned person to rebut those allegations. The show cause notice dated 14.07.2021 issued by the Commission does not point out any specific violation of any particular directions in the order dated 31.03.2021 and no particular Regulation which is alleged to be violated by PSPCL.

The aforesaid judgment cited by PSPCL, does not support its contentions and is not attracted to the facts of the present case. In case of BESE Rajdhani Power Limited vs. Delhi Electricity Regulatory Commission. The contents of the notices dated 21.05.2008 and 27.10.2009 were as under:-

NOTICE

Whereas the Complainant above named has filed a complaint before the Commission on the above mentioned subject. Copy enclosed. The Respondent is directed to file their replies within 15 days from the date of issue of this notice and serve a copy of the same on the Complainant. Take notice that in case, the Respondent fails to file the reply within the time and manner prescribed above, it shall be presumed that they have nothing to say and the matter shall be proceeded in absence of such replies.

Sd/-
(Ajay Kr. Arora)
Bench Officer

NOTICE FOR HEARING

Whereas the Petitioner above named has filed a petition before the Commission regarding above mentioned subject. The Commission has decided to hold a hearing on dt. 17.11.2009 at 3.00 P.M at the Commission's Office and the parties are directed to appear before the Commission on aforesaid date and time. Take notice that in case, the parties fails to appear before the Commission on the aforesaid date and time, the matter shall be decided in absence of such parties as per the provisions of law.

Sd/-

(M.S. Gupta)

Dy. Director (Law)/Bench Officer

The facts of the judgment cited by PSPCL are totally different from the facts of the present case. In case of BESE Rajdhani Power Limited vs. Delhi Electricity Regulatory Commission, the notices issued by the Commission do not specifically mention the violation of the particular rule/regulations. However, as is apparent on a perusal of the notices dated 14.07.2021 and 14.09.2021 issued by the Commission to PSPCL, the violation of specific rules/regulations/law has been duly mentioned. The show cause notice dated 14.07.2021 as well as 14.09.2021 clearly stipulate therein "Imposition of any Regulatory measures on the consumers is required to be effected with the prior approval of the Punjab State Electricity Regulatory Commission, Chandigarh. The above circulars imposes Regulatory measures and also contains penalty clause on defaulting consumers who draw excess power than the specified limit @ Rs.500/kVA/day on maximum load used in a day in excess of their restricted load. The Commission has noticed that the above circular is in contravention of the provisions of the Electricity Act 2003, Regulations

framed by the Punjab State Electricity Regulatory Commission as well as the order dated 31.03.2021 passed by the Commission in Petition No. 08 of 2021. Therefore, taking Suo-Motu notice of the above circulars, PSPCL is directed to show cause within a week as to why action should not be taken under Section 142 of the Electricity Act 2003 for violating the provisions of the Electricity Act 2003 read with respective Regulations on the Punjab State Electricity Regulatory Commission. It is further directed that these circulars may be withdrawn with immediate effect and no penalty should be imposed on consumers drawing power within sanctioned load. Any penalty already imposed as a result of these circulars should be reversed immediately.” The Commission vide order dated 31.03.2021 passed in Petition No. 08 of 2021 authorized PSPCL to impose regulatory measures including rotational power cuts so as to bridge the gap between demand and supply, in case of exigencies & system requirements only. Moreover, the Commission while passing the Order dated 31.03.2021 in petition No. 08 of 2021 considered the submissions of PSPCL wherein the order of imposing Power cuts/Regulatory measures generally to be followed was as under:-

1. **AP Feeders:** Power Cut (opening of Breakers from the Grid Substations for certain period in rotation depending on the requirement in real time) for safeguard of grid. Thereafter, all possible efforts will be made to compensate the AP supply within 24 Hrs.
2. **UPS/Category-1 High Loss Feeders:** Power Cut for opening of Breakers from the Grid Substations for certain period in rotation depending on the requirement in real time.

3. **Kandi feeders/UPS Feeders:** Power Cut for opening of Breakers from the Grid Substations for certain period in rotation depending on the requirement in real time.
4. **Category-1 feeders:** Power Cut for opening of Breakers from the Grid Substations for certain period in rotation depending on the requirement in real time.
5. **Category-2 feeders:** Restricting the drawal of the LS & MS category consumers to the extent required for keeping the system running within grid code limitations / Imposing Weekly-Off Day on LS & MS Category consumers.
6. **Category-3 feeders:** Restricting the drawal of the LS & MS category consumers to the extent required for keeping the system running within grid code limitations /Imposing Weekly-Off Day on LS & MS Category consumers.
7. **Category-4 feeders feeding continuous status process industrial consumers:** To restrict the drawl of power by Continuous process consumers to the extent of their continuous process load allowed to them during peak/off-peak load hours.

Further, the general conditions of the distribution licensee as contained in Appendix-3 A of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 clearly mandate as per condition no. 18 that the distribution licensee shall take all reasonable steps to ensure that all consumers connected to the Distribution Licensee's Distribution System receive a safe, economical and reliable supply of electricity as provided in the Performance Standards, and other Guidelines

issued by the Commission in accordance with the provisions of the Act and the Rules and Regulations issued there under.

However, PSPCL vide above PR Circulars has not only imposed penalty on the defaulting consumers who draw power in excess of the limit specified in the circulars but has also waived the fixed charges for the period during the Regulatory Measures. The Commission in its order dated 31.03.2021 had not allowed PSPCL to impose any penalty on the consumers or waive the fixed charges during the period of Regulatory Measures. PSPCL imposed the penalty on the defaulting consumers of its own without the approval of the Commission, which is clearly in defiance and violation of the order dated 31.03.2021. Further, a number of consumers objected to the aforesaid circulars and submitted their respective representations for setting aside the penalty imposed by PSPCL in pursuance to the aforesaid circulars. Therefore, the contention of PSPCL that the show cause notice dated 14.07.2021 issued by the Commission has not pointed out any specific violation of any particular direction in the order dated 31.03.2021 and particular Regulations that is alleged to be violated by PSPCL, is not tenable.

- (b) PSPCL has further contented that the show cause notice dated 14.07.2021 was limited only to two (2) circulars whereas in the hearing dated 27.10.2021, the Commission enlarged the scope of the proceedings to cover other circulars issued by PSPCL. PSPCL issued PR circulars no. 01/21 to 19/21 regarding power regulatory measures on industrial consumers (except continuous process, essential industries/ services and other exempted categories) and the Power Regulatory Measures have been extended from Central and North Zone to West Zone, South and Border Zones and thereafter in all DS Zones. The issue involved in the

aforesaid circulars is with regard to imposition of Power Regulatory Measures and PR circulars no. 09/21 and 11/21 also pertain to imposition of Power Regulatory Measures which also provide for penalty on the defaulting consumers and waiving of the fixed charges for the weekly off days. The issue that the show cause notice dated 14.07.2021 is limited only to PR circulars No. 09/2021 and 11/2021 was raised during hearing on 27.10.2021 and the Commission vide Order dated 01.11.2021 clarified the same that the present petition covers PR circulars No. 01/2021 dated 01.07.2021 to PR circular No. 19/2021 dated 13.07.2021 issued by PSPCL with regard to Power Regulatory Measures on Industrial consumers. PSPCL was again directed to not impose any penalty as per the above circulars. Therefore, even if the Commission has initially taken note of PR circulars no. 09/21 and 11/21, PSPCL is estopped from claiming that the other circulars in this regard cannot be considered by the Commission. The allegations in the show cause notice are specific, clear and unambiguous and PSPCL has been given full opportunity to reply to the allegations indicated in the show cause notice and the objection raised by PSPCL in this regard is without any substance.

- c) PSPCL has submitted that for any punitive action to be taken under Section 142 of the Electricity Act there has to be a finding that the action was deliberate and in conscious disregard of its obligation under law. PSPCL has relied upon judgments passed by the Hon'ble Supreme Court in case of M/s Hindustan Steel Ltd. vs. State of Orissa 1969 (2) SCC 627, T. Ashok Pai vs. Comm. Of Income Tax, Bangalore (2007) 7 SCC 162 and Bharjatiya Steel Industries vs. Comm. Sales Tax (2008) 11 SCC 617. In case of M/s Hindustan Steel Ltd. vs. State of Orissa, the issue was as to whether the imposition of penalty for failure to register as a 'dealer' was

justified. The Hon'ble Supreme Court has held that penalty may be imposed for failure to register, as a 'dealer' but the discretion to impose penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law or is guilty of contumacious or this honest conduct or acts in conscious disregard of its obligation but not in cases where there is a technical or venial breach of the provisions of the Act for where the breach flows from a bonafide belief that the offender is not liable to Act in the manner prescribed by the statute. The said judgment is not attracted to the facts of the present case. In case of T. Ashok Pai vs. Comm. of Income Tax, Bangalore, the issue was as to the burden of proof to establish that the assessee had concealed his income and is not attracted to the facts of the present case. In case of Bharjatiya Steel Industries vs. Comm. Sales Tax it has been held that an assessing authority has been conferred with a discretionary jurisdiction to levy penalty. By necessary implication, the authority may not levy penalty, if it has the discretion not to levy penalty. The judgment cited by PSPCL further contains reference to judgment titled as the Chairman SEBI v. Shriram Mutual Fund (2006) 5SCC (361) wherein it has been held as under:-

“35. In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not. We also further held that unless the

language of the statute indicates the need to establish the presence of mens rea , it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15-D(b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow."

The present case pertains to imposition of Power Regulatory Measures by the distribution licensee and violation of the directions of the Commission and the mandate of the order dated 31.03.2021 passed in Petition No. 08 of 2021. The submission of PSPCL that action on its part was not deliberate and in conscious disregard of its obligation under law is without any substance. The Commission has noted with concern. The deliberate disregard to the directions of the Commission, even issued during the course of this Suo-Motu petition. PSPCL was directed not to impose penalties and refund any penalties already imposed. However, it is evident from the representation received from various entities detailed earlier in this order that PSPCL chose to disregard the Order of the Commission and imposed penalties in the bills raised and did not reverse those penalties imposed earlier.

Section 142 of the Electricity Act 2003 specifically provides that *"in case any complaint is filed before the appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the Rules or Regulations made there under, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which*

he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.” In view of the observations of the Commission in the forgoing paras, PSPCL contravened the provisions of the Supply Code, 2014 as well as the directions/order dated 31.03.2021 passed by the Commission in Petition No. 08 of 2021 and is liable for penalty under Section 142 of the Electricity Act 2003. However, considering the exigencies expressed by PSPCL the Commission is not imposing any penalty. PSPCL is warned to be careful in future and shall strictly comply with the directions/orders passed by the Commission in discharge of its obligations. PSPCL shall recover the fixed charges waived by it for the period under regulatory measures and shall refund the amount of penalty, if any, imposed on the defaulting consumers who drew power in excess of the limit specified in the said circulars, within a month from the date of this Order. The Commission has taken a lenient view in the present proceedings however, any further violation of the Commission’s Order by the PSPCL shall be taken seriously.

The petition is disposed of accordingly.

Sd/-

(Paramjeet Singh)

Member

Sd/-

(Anjali Chandra)

Member

Sd/-

(Viswajeet Khanna)

Chairperson

Chandigarh

Dated: 21.01.2022