

**Review Petition No. 01 of 2019
In Petition No. 32 of 2018**

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

**Review Petition No. 01 of 2019
In Petition No. 32 of 2018
Date of Order:30.09.2019**

Review Petition/Application under Section 94(1) (f) of the Electricity Act, 2003 read with Section 64 (Chapter XIII) of PSERC (Conduct of Business) Regulations, 2005 and other provisions for reviewing the order dated 29.11.2018 rendered by the Commission in Petition No. 32 of 2018.

In the matter of: Punjab State Power Corporation Limited (PSPCL),
The Mall, Patiala-147001.

..Petitioner/Non-Applicant

Versus

M/s Shree Ganesh Edibles Private Limited, Shop
No. 25-B, New Grain Market Khanna, District
Ludhiana, Punjab, through its Director Sh. Hansraj
Garg.

..Respondent /Applicant

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjuli Chandra, Member

ORDER

Shree Ganesh Edibles Pvt. Limited (SGEPL) has filed the present review petition for review of the Order dated 29.11.2018 passed by the Commission in Petition no. 32 of 2018 and grant the tariff of Rs. 6.29/ kWh as determined by the Commission for the FY 2017-18.

**Review Petition No. 01 of 2019
In Petition No. 32 of 2018**

1.1 SGEPL submitted that PSPCL filed the petitioner no. 32 of 2018 before the Commission seeking approval of PPA dated 25.01.2018 executed by PSPCL with SGEPL for sale of upto 500 KW power from its 2.920 MW NRSE based co-generation cum captive power plant at the levellised tariff of Rs. 5.08/kWh (Rs. 2.74/kWh- Rs. 0.17/kWh Accelerated Depreciation Benefit per unit as per Order dated 31.10.2017 passed in Suo-Moto Petition No. 50 of 2017)=Rs. 2.57/kWh as levellised fixed charges + first year variable charges of Rs. 2.51/kWh with escalation of 5% per annum as per PSERC Norms.

1.2 The said petition has been decided by the Commission vide order dated 29.11.2018, operative part of the order is as under:-

“The Commission notes that both the parties i.e. PSPCL and SGEPL have executed the PPA on 25.01.2018 with a tariff of Rs. 5.08 per kWh for purchase of 500 kW power from 2.92 MW Bagasse based power project being established by SGEPL and prayed for approval of the same. The Commission finds no merit in the SGEPL’s contention that it had no option but to negotiate the tariff for the project. The Commission is of the view that the decision of SGEPL to agree to the said tariff is a commercial decision especially when it has considered and reduced the

quantum of power offered to PSPCL from upto 1 MW to 500 kW and also signed the PPA unconditionally.

Accordingly, the Commission approves the procurement of 500 kW power from the said 2.92 MW Bagasse based co-generation Power Project under the PPA signed between PSPCL and SGEPL on 25.01.2018 at the tariff of Rs. 5.08 per kWh i.e. Rs. 2.57 per kWh as levellised fixed charges and Rs. 2.51 per kWh as variable charges for the first year with 5% per annum escalation in variable charges for the tariff period of 20 years.....”

1.3 SGEPL has submitted that there are errors apparent on record in the Order dated 29.11.2018 and after passing of the Order some new facts have come to the knowledge of SGEPL which require the consideration of the Commission on the following issues:-

A) Issue with respect to negotiating the terms and signing of PPA dated 25.01.2018 by SGEPL with PSPCL.

The Commission after due deliberation as to all the aspects determined the year wise Tariff (RS/KWH) determined for Non Fossil Fuel /Baggase based Co-gen Plants for Punjab by the Commission for FY 2017-18 at Rs. 6.29/kWh. Despite this, PSPCL while showing its dominance being the Sole Distribution Licensee

**Review Petition No. 01 of 2019
In Petition No. 32 of 2018**

declined to enter into a PPA with SGEPL and forced to negotiate the terms of tariff for entering into PPA. The aforesaid grievance raised by SGEPL warranted consideration of the Commission before passing final order in the captioned petition as the same is prejudicial to the rights of SGEPL.

B) Discriminatory behavior of PSPCL while entering into a Power Purchase Agreements amongst similarly situated power producers:

- i) It has come to the knowledge of SGEPL that PSPCL has entered into a PPA dated 04.12.2018 for purchase of power from Baggasse fuel based Co Generation power project of 15 MW capacity being setup under NRSE Policy, 2012 by Bhogpur CO-OP Sugar Mills Limited, District Jalandhar, Punjab at a tariff of Rs. 6.29/kWh.
- ii) It has also come to the knowledge of SGEPL that PSPCL has entered into supplementary PPA for purchase of power from Baggasse fuel based Co Generation power project of 40 MW capacity being setup under NRSE Policy, 2012 with Indian Sucrose Limited, Mukerian, Punjab at a tariff of Rs. 6.22/kWh.

1.4 The Electricity generated by the project is to be counted towards the non-solar renewable purchase obligation of

**Review Petition No. 01 of 2019
In Petition No. 32 of 2018**

PSPCL and is already unable to meet its non-solar renewable purchase obligation. However, despite this, PSPCL instead of cooperating, is acting arbitrarily and creating hurdles for the State of Art Project setup by the Petitioner by not paying the tariff as determined by the Commission after due deliberation for a particular category of projects, which is binding in itself upon the distribution licensee being a judicial order passed by the Commission. This aforesaid grievance warranted consideration of the Commission before passing final order in the captioned petition as the same is prejudicial to the rights of SGEPL.

1.5 Thus, the instant petition and is invoking the jurisdiction of the Commission to rectify the errors apparent on record in the order dated 29.11.2018. That the prayer made by SGEPL is as under:-

A) Allow the present application and review the order dated 29.11.2018 passed by the Commission in Petition No. 32 of 2018, titled as M/s. Punjab State Power Corporation Limited (PSPCL) Versus M/s Shree Ganesh Edibles Private Limited and grant SGEPL the tariff of Rs. 6.29/kWh as already determined by the Commission for FY 2017-18.

B) Pass any other order in favour of SGEPL which the Commission deems fit in light of the facts and circumstances of the instant matter.

**Review Petition No. 01 of 2019
In Petition No. 32 of 2018**

2. The petition was fixed for hearing on admission on 24.04.2019. The Commission vide Order dated 25.04.2019 directed to issue notice to PSPCL to file its reply and rejoinder there to by the review petitioner, if any.

3. PSPCL filed its reply vide memo no. 5380 dated 15.07.2019 and filed written submission vide letter dated 27.08.2019. PSPCL submitted that there is no merit in the review petition. The contentions raised in the review petition are wrong and the review petitioner is attempting to challenge the PPA dated 25.01.2018 which was entered upon pursuant to the negotiations and express consent of the Review petitioner.

3.1 The PPA was based on the negotiations between the parties including the tariff that SGEPL is entitled to for supply of electricity to PSPCL. The prayer in the petition no. 32 of 2018 was in the nature of joint prayer as the same was expressly supported by SGEPL by executing the PPA and agreeing to the tariff as incorporated in the PPA. In fact it was the petitioner who had offered vide letter dated 13.12.2017 the tariff of Rs. 5.25/- per kWh with 5% escalation. The said tariff was accepted with the only adjustment of 17 paise/kWh on account of availing accelerated depreciation.

3.2 That while negotiating the tariff SGEPL submitted that it had reworked the viability of the project and reduced the quantum of surplus power to 0.5MW. Further, SGEPL expressly sought in the prayer made in its reply filed to the petition no. 32 of 2018 that keeping in view the fact that the Co-generation plant has

**Review Petition No. 01 of 2019
In Petition No. 32 of 2018**

been set up under the NRSE policy 2012, the PPA and the tariff provided therein may be approved. PSPCL relying upon the judgment in case of Bachhaj Nahar Vs. Nilma Mandal and Other (2008) 17 SSC 491 passed by the Hon'ble Supreme Court submitted that it is a well settled principle of law that one cannot go beyond one's own prayer and the consent granted in the proceedings and therefore, the review petition is not maintainable.

3.3 PSPCL relying on the decision of the Hon'ble Supreme Court in case of Pushpa Devi Bhagat (Dead) Vs. Rajinder Singh and Others (2006) 5 SSC 566 submitted that the impugned order passed by the Commission is in the nature of a consent Order. Both the parties had consented to the approval of the PPA including the tariff provided therein and therefore, the Order dated 29.11.2018 cannot be challenged.

3.4 That in the present case there is no question of any error apparent on the face of the record. The tariff agreed in the PPA was by means of negotiations and in terms of law. The Commission in its tariff Order determines tariff which is the ceiling tariff. It is always open to the parties to agree on a lower tariff, which is in public interest.

3.5 That Considering the provision in Clause 6.4 (2) of the revised Tariff Policy notified by Ministry of Power on 28.01.2016, as the tariff based competitive bidding was not possible in the case of power procurement from the Co-Generation power projects, the petitioner was asked to offer discount on the generic tariff determined by the Commission in its Order dated 31.10.2017 in petition No. 50 of

**Review Petition No. 01 of 2019
In Petition No. 32 of 2018**

2017 (Suo-Motu). After holding negotiations, the petitioner vide letter dated 13.12.2017 offered to sell the surplus power upto 500 Kw to PSPCL at a tariff of Rs. 5.25/kWh for the first year with 5% per year increase in the variable cost (fuel cost) per annum. There can be no question of any duress as is now sought to be claimed by the petitioner. As the generating company is availing the accelerated depreciation benefit, Rs. 0.17 per kWh has been reduced from the fixed charges component of the tariff. Therefore, the revised applicable tariff for the project of the generating company came out to Rs. 5.08 per kWh for which the PPA has been signed.

3.6 The claim of the alleged duress cannot be considered when the petitioner had itself prayed before the Commission for approval of the PPA and tariff.

3.7 That it is not open to the petitioner to compare itself with other project developers and claim any higher tariff. There are numerous persons from whom PSPCL is procuring power and it is not essential that the tariffs for all such persons are identical. The present review petition is an abuse of process of the court and is liable to be dismissed with exemplary costs.

4. SGEPL filed rejoinder to the reply filed by PSPCL denying the averments made by PSPCL and reiterating its earlier submissions. It has been further submitted that once SGEPL invested a huge amount for setting up the project, SGEPL had no other option but to accede to the un-warranted/illegal approach of PSPCL rendering lesser tariff than the tariff allocated in the IA signed with PEDDA. Relying upon the judgment of the Hon'ble Supreme Court in

**Review Petition No. 01 of 2019
In Petition No. 32 of 2018**

case of Central Inland Water Transport Corporation Limited and Anr. Vs BrojoNath Ganguli and Anr. (1986) 3 SSC 156 as to the concept of coercive bargaining, it has been submitted that in the instant case, SGEPL under duress was forced upon by PSPCL to sign on the dotted lines in terms of PPA and SGEPL had no option but to sign the PPA. The PPA deserves to be struck down granting the tariff as prayed for.

5. The parties were heard on admission of the petition on 21.08.2019 and after hearing the parties, Order was reserved vide Order dated 26.08.2019.

6. **Observations and Decisions of the Commission.**

The Commission has examined the averments made in the Review Petition, reply thereto by PSPCL, rejoinder filed by the Review petitioner, the other documents and the arguments addressed by the Ld. Counsel for the parties. The Review of the decisions, directions and Orders passed by the Commission is covered under Regulation 64 of the PSERC (Conduct of Business) Regulations, 2005. Regulation 64 (1) reads 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

**Review Petition No. 01 of 2019
In Petition No. 32 of 2018**

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....”

A bare perusal of the above Regulation clearly makes out that review of the Order is maintainable only if there is discovery of a new and important matter or evidence, which after the exercise of due diligence was not within the knowledge of the review petitioner 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. There is no discovery of a new and important matter or evidence which could not be produced by the review petitioner at the time when the Order dated 29.11.2018 was passed by the Commission. Nor is there any mistake or error apparent on the face of record in the Order dated 29.11.2018 which has been brought to the notice of the Commission. The judgment relied by the review petitioner in case of Central Inland Water Transport Corporation Limited and Anr. Vs BrojoNath Ganguli and Anr. (1986) 3 SSC 156 is not attracted to the facts of the present review petition. In the present case the review petitioner and PSPCL duly negotiated the terms of tariff and thereafter executed the PPA which was approved by the Commission vide Order dated 29.11.2018 in petition No. 32 of 2018. This is not the case wherein the review petitioner had no choice but

**Review Petition No. 01 of 2019
In Petition No. 32 of 2018**

to give his consent to the PPA or to sign on the dotted lines in a prescribed form. The Commission while passing the Order dated 29.11.2018 in Pt No. 32 of 2018 duly considered all the relevant aspects.

Keeping in view the above facts the review petition is without any merit. It is not fit to be admitted and is accordingly dismissed.

Sd/-
(Anjali Chandra)
Member

Sd/-
(S.S. Sarna)
Member

Sd/-
(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated: **30.09.2019**