

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

Petition No. 8 of 2014
(Suo-Motu)

Date of Order: 09.06.2014

In the matter of : Regarding action under Section 142 of the Electricity Act, 2003 for contravening the directions of the Commission issued vide Order dated 28.10.2013 passed in Petition No.3 of 2012 filed by M/s Ludhiana Hand Tools Association, D-90, Phase-5, Focal Point Ludhiana U/S 86/94 of Electricity Act 2003 regarding treatment to be meted to Billet / Induction heating load by PSPCL and quashing of CC 38/2009 dated 29.10.2009.

AND

In the matter of: Punjab State Power Corporation Limited, The Mall, Patiala

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

ORDER

Ludhiana Hand Tools Association filed petition No. 3 of 2012 regarding treatment to be meted to Billet/Induction heating load by PSPCL and for quashing of Commercial Circular No. 38/2009 dated 29.10.2009 of PSPCL. The Commission passed Order dated 28.10.2013 disposing of the said petition. The Commission had decided the matter as under:-

“21(v) The Commission accepts the comments of PSPCL given vide letter no. 6225 dated 05.09.2013 and decides that **all LS consumers where the Induction Billet Heaters/Surface Hardening Machines are installed shall be treated under PIU category.** This Order of the Commission will be applicable with effect from 01.01.2014. The respondent PSPCL shall issue a public notice in the leading newspapers having wide circulation in the State for wide publicity to the Order of the Commission and its impact. The requisite formalities, if any, required for implementing this decision by PSPCL be completed before 01.01.2014.”

“22. The Commercial Circular No. 38/2009 dated 29.10.2009 was allowed to be in operation by the Commission vide letter No.5908-09 dated 30.09.2011. This circular was amended vide Commercial Circular No.28/2012 dated 06.09.2012 issued by PSPCL in compliance with Order dated 04.07.2012 of the Commission directing PSPCL to implement the Order dated 21.12.2011 of the Hon’ble Punjab and Haryana High Court in CWP No.5222 of 2010, as under:

‘All the large supply consumers having Billet Heater Load upto 25% of connected load or 500 kW whichever is higher may be considered as General Category Consumers’.

This amendment of CC No. 38/2009 dated 29.10.2009 through CC No. 28/2012 dated 06.09.2012 renders the prayer to quash CC No. 38/2009 infructuous.

The Order dated 21.12.2011 of the Hon’ble Punjab and Haryana High Court further states as under:-

‘If there is any change in policy or any other legally enforceable directive, the exercise of such a power shall not be fettered by this Order’.

Accordingly, Order dated 28.10.2013 passed by the Commission in petition No. 3 of 2012 was required to be implemented w.e.f. 01.01.2014 by PSPCL after issuing a public notice in the leading newspapers having wide circulation in the state for wide publicity of the Order of the Commission and its impacts. PSPCL was further required to complete the requisite formalities required for implementing the decision, before 01.01.2014.

2. Chief Engineer/ARR & TR was requested vide Commission’s letter No. 9780-81 dated 27.11.2013 to intimate the action taken by PSPCL in the matter. Copy of this letter was endorsed to Chief Engineer/ Commercial of PSPCL. Chief Engineer/ ARR & TR was also requested vide letter No. 10545 dated 19.12.2013 to supply information regarding implementation of orders passed by the Commission during month of October, 2013. PSPCL vide C.E. /ARR&TR memo. No. 5017 dated 27.01.2014 gave the status of implementation of decision of the Commission in petition No. 3 of 2012 as under :-

“As per the decision of WTD’s of PSPCL, the matter has been referred to Punjab Govt. for considering the issue under section 108 of the Electricity Act, 2003.”

The Commission was satisfied that the Order dated 28.10.2013 of the Commission was not being implemented willfully by PSPCL as no action had been initiated by PSPCL even after elapse of about 4 month’s time, which tantamounted to contravention of the order issued by the Commission in accordance with Hon’ble Punjab and Haryana High Court Order dated 21.12.2011 on the issue wherein Hon’ble High Court had decided as under:-

“.....If there is any change in policy or any other legally enforceable directive, the exercise of such a power shall not be fettered by this Order.”

The Commission, therefore, decided to issue Notice to PSPCL through C.E./ARR & TR to show cause why action should not be initiated under section 142 of the Electricity Act, 2003. Accordingly, a Show Cause Notice was issued to PSPCL vide No. PSERC/Reg./2190-91 dated 24.02.2014 calling upon PSPCL to file reply within 15 days from receipt of this Notice. The date of hearing was fixed on 25.3.2014 at 11.30 A.M.

3. PSPCL filed reply vide C.E./ARR & TR Memo. No. 5208 dated 13.03.2014. PSPCL submitted that the matter was deliberated at length by the High Authorities and it was decided to bring the case before the WTDs. Accordingly, Memorandum No. 02 dated 13.01.2014 was placed before WTDs and it was decided as under :-

“RESOLVED THAT Punjab Govt. be requested to issue direction under section 108 of the E.A. 2003 to PSERC for considering that “All the large supply consumers having Billet Heater Load upto 25% of connected load or 500 MW, whichever is higher may be considered as general category consumers”.

PSPCL has further submitted that based upon this resolution, the issue was referred to Govt. of Punjab to issue direction to the Commission under

section 108 of the E.A. - 2003 and matter was under consideration with Govt. of Punjab. PSPCL requested that in view of above submissions and in order to protect the industry , which is already undergoing economic crisis from further damage, the matter regarding Show Cause Notice needed review.

After hearing PSPCL on 25.03.2014, the Commission directed it to produce entire original record (files alongwith noting files) wherein the matter in respect of order dated 28.10.2013 passed by the Commission in petition No. 3 of 2012 was dealt. The original record was directed to be submitted in the Registry of the Commission by 25.4.2014. The matter was listed for further hearing on 06.05.2014 vide Order dated 25.03.2014. On 06.05.2014, PSPCL submitted that original file, wherein the matter was dealt was submitted to the Registrar of the Commission on 25.04.2014 as per Order dated 25.03.2014 of the Commission. As such, the case could not be prepared for arguments of the case. PSPCL prayed that record be returned back to enable it to argue the case on next hearing. PSPCL prayed for adjournment for about three weeks. Accordingly, the Commission decided to hear the case on 03.06.2014. File was returned to PSPCL vide No. PSERC/Reg./5136 dated 07.05.2014.

PSPCL submitted vide C.E./ARR & TR memo. No. 5877 dated 02.06.2014 that in compliance to the Commission's Order dated 28.10.2013 passed in petition No. 3 of 2012, a Commercial Circular No. 27/2014 dated 29.05.2014 has been issued. PSPCL enclosed copy of the circular with the letter.

After hearing PSPCL on 03.06.2014, the Commission decided to close the further hearing of the case. Order was reserved.

4. The Commission has gone through the record submitted by PSPCL wherein Order dated 28.10.2013 passed in petition No. 3 of 2012 has been dealt. The Commission has gone carefully through the noting of officers on the file. The Commission has also considered the reply of PSPCL to the Show Cause Notice dated 24.02.2014 for initiating proceedings under section 142 of the E.A., 2003. The Commission has also heard in detail the submissions of representatives of the PSPCL. The Commission notes that PSPCL has failed to

implement the Order of the Commission which was in accordance with the pleadings of the PSPCL itself in petition No. 3 of 2012 based upon the technical parameters evolved after intensive study carried out by CPRI, Bangalore, in which officers of PSPCL and the representatives of the petitioner association were involved.

The issue was purely of technical nature and was unnecessarily referred to the Govt. of Punjab for issuing direction under section 108 of the E.A., 2003, particularly when Secretary/ Power, Govt. of Punjab, vide his e-mail dated 16th November, 2013 had already conveyed as under:-

“Please see the attached message from DCM’s office. I think the solution lies in the industry approaching PSERC to review its Order. We can also take an appropriate stand in the larger interests of the state.”

Keeping the above facts of the case in view, the Commission is of the considered opinion that delay caused in implementation of Order of the Commission dated 28.10.2013 was deliberate and could have been avoided by PSPCL. The Commission does not agree with the justification for delay given by PSPCL and holds that inordinate delay of more than six months amounts to contravening the directions of this Commission. The Commission accordingly decides that PSPCL shall pay Rs.25,000/- (Rupees Twenty Five Thousand only) by way of penalty under section 142 of the Electricity Act, 2003.

The petition is disposed of.

Sd/-
(Gurinder Jit Singh)
Member

Sd/-
(Virinder Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 09.06.2014