

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

Review Petition No. 07 & 08 of 2022
In Petition No. 52 of 2021
Date of Order: 21.12.2022

Review of Order dated 21.01.2022 passed in petition No. 52 of 2021 (Suo Motu) Titled 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 and Other exempted Categories from 08.07.2021 to 11.07.2021 to 11.07.2021 in all DS Zones”.

In the matter of: 1. Vardhman Textiles Ltd, Chandigarh Road, Ludhiana, though authorized signatory, Mr. Sanjay Gupta, Company Secretary.

2. Vardhman Special Steels Ltd, Vardhman Premises, Chandigarh, Road Ludhiana through its authorized signatory Sanjeev Singla, Vice President, Vardhman Special Steel.

..Petitioners

Versus

Punjab State Power Corporation Limited, the Mall Patiala through its Chairman cum Managing Director.

Respondent...

And

Review Petition No. 08 of 2022

Review of Order dated 21.01.2022 passed in Petition no. 52 of 2021 (Suo-motu) Titled “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 and Other exempted Categories) from 08.07.2021 to 11.07.2021 in all DS Zones”.

In the matter of: Mandi Gobindgarh Induction Furnace Association, Grain Market Mandi Gobindgarh, District Fatehgarh Sahib, Punjab through their authorized signatory Mr. Mohinder Gupta,

(President of the Association) son of Sh. Parsard, aged about 64 years, House No. 6 Street No. 1, Sham Nagar, Sector 2, Mandi Gobindgarh District Fatehgarh Sahib.

....Petitioner

Versus

Punjab State Power Corporation Limited, the Mall Patiala through its Chairman cum Managing Director.

...Respondent

Commission: Sh. Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

Petitioner: Sh. Mayank Mathur, Advocate

ORDER

The Review Petitioners have filed the Review Petition No. 07 of 2022 and 08 of 2022 seeking review/modification of the Order dated 21.01.2022 passed by the Commission in petition No. 52 of 2021 (Suo-Motu) whereby Punjab State Power Corporation Limited (PSPCL) has been directed to recover the fixed charges from the petitioners despite the fact that the petitioners had closed their factories/units in compliance to the PR Circulars issued by PSPCL which stated that the fixed charges for the period of closure will be exempted. The facts of Review Petition No. 07 and 08 of 2022 are similar and both the Review Petitions are being disposed of by way of this common order.

The petitioners have submitted that PSPCL issued PR Circular No. 01/2021 dated 01.07.2021 whereby it had imposed Regulatory Measures on Industrial Consumers (except continuous process industries, essential industries/ services and other exempted categories) situated in north and central zones and issued further circulars in seriatim to extend/impose Power Regulatory Measures in the form of off days in different zones and clarifications and the last PR Circular was issued on 13.07.2021 being PRC

No. 19 of 2021 vide which the power restrictions were withdrawn. It was clearly mentioned in the Circulars that fixed charges for compulsory weekly off days would not be levied. Continuous process industries were also covered in the Power Regulatory Measures later on and in their case the PRC provided that the fixed charges shall be levied proportionate to the continuous process load allowed during off-peak hours. It was also provided in the Circulars that if any consumer defaults and draws excess power than the limit specified in the Circulars, the same would attract penalty. The petitioners being law abiding companies had duly followed the Circulars and closed their units during the period of Power Regulatory Measures and thus suffered a considerable loss of production including fixed cost and loss of profit. Keeping in view the provisions of the said PR Circulars, PSPCL did not Charge the fixed charges for the number of days on which they were asked to observe off days. Simultaneously PSPCL started charging penalty from the consumers which had drawn the excess electricity than permitted. However, PSPCL served notices to the petitioners demanding fixed charges even for those days on which the petitioners had to close their factories/units compulsorily due the Regulatory Measures. PSPCL has issued the demand notices on the basis of the Order dated 21.01.2022, passed by the Commission in petition No. 52 of 2021 (Suo-Motu) wherein the Commission has directed PSPCL to recover the fixed charges waived by it for the period under Regulatory Measures and 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, The petitioners came to know of the pendency of the petition No. 52 of 2021 (Suo-Motu) on the receipt of the notices for recovery of fixed charges on 28.09.2022 and had no occasion to come before the Commission to put forth their case. The proceedings in the (Suo-Motu) petition pertain to the consumers who had violated the said PR Circulars and to whom letters for penalty had been

issued. The petitioners were directed to forcibly close down their units vide the Circulars due to which, the petitioners have suffered considerable losses. Despite these losses the petitioners have been asked to pay fixed charges which is harsh and unreasonable. The petitioners are being penalized for obeying the circulars issued by PSPCL. They are being penalized without there being any fault on their part and it is PSPCL which is liable to be penalized. The Review Petitions were fixed for hearing on admission. After hearing the Ld. Counsel for the Review Petitioners on 09.12.2022, Order was reserved

The Commission has examined the submissions made by the petitioners. The issue raised in the present Review petitions is similar to the issue decided by the Commission in petition No. 36 of 2016 and in petition No. 12 of 2020 vide Orders dated 03.11.2016 and 17.07.2020 respectively. The same have also been upheld by the Hon'ble APTEL vide Order dated 01.11.2022 in Appeal No. 215 of 2017 and order dated 31.10.2022 in Appeal No. 04 of 2021, 189 of 2022 & 369 of 2022.

PSPCL filed petition No. 7 of 2009 seeking authorization to impose power cuts, peak load hour restriction and other Regulatory measures for the Year 2009-10, wherein conditional approval was granted vide Order dated 27.05.2009. Condition No.6 (vi) and (vii) of the order stipulated as under:-

- “vi) The Board will not withdraw peak load exemptions where already granted while imposing power restrictions during peak load hours. It will also review its own policy regarding grant of such exemptions and seek the approval of the Commission for the same.*
- vii). The Board would seek prior approval of the Commission in adopting any other power regulatory measure.”*

However, in disregard to the Order dated 27.05.2009 PSEB/PSPCL issued Circular No. 23 of 2009 dated 27.06.2009 whereby Peak Load exemption allowed to category-IV LS consumers was reduced to the extent of 50% from 28.06.2009 onwards and PSEB raised demand towards penalty for violation of peak load exemption for the period of 28.06.2009 to 08.10.2009. National Fertilizers Limited (NFL) filed petition No. 36 of 2016 against PSPCL for setting aside the Circular No. 23 of 2009 for quashing the demand raised by PSPCL. The Commission while disposing of the petition vide Order dated 03.11.2016 held that the Board withdrew Peak Load Exemption allowed to NFL to the extent of 50% vide PR Circular No. 23/2009. This was in clear violation of the Order of the Commission wherein it was Ordered that peak load exemptions where already granted while imposing power restrictions during peak load hours will not be withdrawn. Also, no approval of the same was taken by the Board before issuing Circular No. 23/2009. Accordingly, the Commission set aside the PR Circular No. 23/2009 as mentioned in the Order and the demand raised towards penalty for peak load violations was also set aside. This Order of the Commission was challenged by PSPCL before the Hon'ble APTEL. The Hon'ble APTEL in its recent judgment dated 01.11.2022 in PSPCL's Appeal No. 215 of 2017 upheld the Order of the Commission and ruled that the utility PSPCL could not assume regulatory powers on its own and pass orders which are the sole domain of the Commission.

The issue in petition No. 12 of 2020 (Suo-Motu) was that the Govt. of Punjab issued directions that fixed charges for medium supply (MS) and Large Supply (LS) Industrial consumers be exempted for 2 months from 23.03.2020 and Energy Charges may be fixed commensurate with reduction in fixed charges (single rate). The Commission referred to Regulation 29 of the Supply Code which stipulates as under:

“29. RECOVERY OF ELECTRICITY CHARGES FROM CONSUMERS

- 29.1 *A distribution licensee may recover from a consumer any charges in respect of the supply of electricity as per General Conditions of Tariff and Schedules of Tariff*
- 29.2
- 29.3
- 29.4 *The Fixed Charges shall be payable by a consumer even if no electricity is actually consumed*”

While dealing the guidelines issued by Govt. of Punjab under Section 108 for exempting fixed charges for 2 months due to closures on account of the Covid Pandemic, the Commission instead decided to recover the pending amount of the fixed charges. However, by relaxing the provision of Regulation 29 read with Regulation 31 of the Supply Code, recovery of the pending amount of the fixed charges of 2 months for Medium Supply/Large Supply Industrial and Non-Residential Supply consumers was deferred and allowed to be recovered in 6 equal monthly installments. This decision of the Commission too was upheld by the Hon’ble APTEL vide Order dated 30.10.2022 in Appeal Nos. 04 of 2021, 189 of 2022 & 369 of 2022. The Hon’ble APTEL decided that even the directions issued by the Govt. under Section 108 are also in the nature of guidance and the Regulatory Powers to decide on such directions remains with the Commission since even the Govt. cannot assume the Regulatory Powers through Section 108 of the Electricity Act 2003.

In view of the facts mentioned above it is observed that this is a covered matter in which legal position has already been settled by this

Commission by way of Order(s) dated 03.11.2016 & 17.07.2020 in Petition No. 36 of 2016 and in Petition No. 12 of 2020 respectively. Thereafter the said Order(s) got upheld by Order(s) of the Hon'ble APTEL vide judgment dated 31.10.2022 and 01.11.2022 in Appeal No. 04 of 2021, 189 of 2022 & 369 of 2022 and Appeal No. 215 of 2017 respectively. The settled legal position is to be followed and honoured to avoid unnecessary and protracted litigation.

Further, power of review is to be exercised on the discovery of any new and important matter or evidence which, after the exercise of due diligence, was not earlier within the knowledge of the Court or could not produced before the Court at the time when the order was made; or an error apparent on the face of record; or on account of some mistake; or to be exercised on any analogous ground. In the absence of any such ground, finality attached to the order cannot be disturbed. It is well settled that review petition has to be strictly confined to the ambit and scope of Regulation 64 of PSERC (Conduct of Business) Regulations, 2005 read with order 47 Rule 1 of Code of Civil Procedure.

Having considered the matter, Commission finds that no ground of review is made out. Therefore, the instant Review Petitions do not merit admission and are accordingly dismissed.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh

Dated: 21.12.2022