

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 258 OF 2015

Dated: 03rd January, 2018

**Present: HON'BLE MR. N.K. PATIL, JUDICIAL MEMBER
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

IN THE MATTER OF

- 1. Punjab State Power Corporation Limited**
Through its Chairman-cum-Managing Director,
The Mall, Patiala
- 2. Assistant Executive Engineer**
City Sub-Division, Banga,
District Nawanshahar, Punjab **Appellants**

VERSUS

- 1. M/s G.N. General Mills**
Garshankar Road, Banga,
District Nawanshahar, Punjab 144 505
Through its Partner
Sh. Shyamal Dua s/o Sh. Arun Kumar Dua
- 2. Punjab State Electricity Regulatory Commission**
Through its Secretary
SCO 220-221, Sector 34-A,
Chandigarh 160 022, Punjab **Respondents**

Counsel for the Appellant ... Mr. Karunakar Mahalik

Counsel for the Respondent(s)... Mr. Tajender K. Joshi
Mr. Krishna Kant for R-1

Mr. Sakesh Kumar for R-2

(I) The Appellant has sought the following reliefs in Appeal No. 258 of 2015:

- (a) To set aside the order dated 13.07.2015 passed by the Hon'ble Punjab State Electricity Regulatory Commission in Petition No. 69 of 2014; and
- (b) To pass such other and further order or orders as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the present case and in the interest of justice

(II) Presented this Appeal for consideration under following Question of Law:

- (I) Whether the Hon'ble State Commission has committed grave error in condoning the delay of 10 days for giving option by the Respondent in exercising its inherent power?
- (II) Whether the Hon'ble State Commission ought not to have considered the delay for submitting option by the Respondent and directing the Appellants to consider the load of the Respondent under general industrial category in view of the fact that the last date of submission of option was well within the knowledge of the Respondent and gross negligence and carelessness of the Respondent in submitting the option within stipulated time could not have been condoned?
- (III) Whether the impugned order passed by the Hon'ble State Commission is liable to be set aside as it would become a bad precedent and similarly situated consumers who have failed to submit their option on 30.09.2014 may claim the same relief which has been granted by the Respondent?

J U D G M E N T**PER HON'BLE JUSTICE N.K. PATIL, JUDICIAL MEMBER**

1. **Punjab State Power Corporation Limited, Patiala**, the Appellant herein, has filed the instant Appeal, being Appeal No. 258 of 2015, under Section 111 of the Electricity Act, 2003, on the file of the Appellate Tribunal for Electricity, New Delhi, questioning the legality and validity of the Impugned Order dated 13.07.2015 passed in Petition No. 69 of 2014 on the file of the **Punjab State Electricity Regulatory Commission, Chandigarh** (in short, the State Commission) and to pass such other and further order or orders as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the present case and in the interest of justice and equity.

BRIEF FACTS OF THE CASE IN NUTSHELL AS FOLLOWS:

2. **M/s G.N. General Mills**, Respondent No.1 herein, has filed a Petition No. 69 of 2014 on the file of the Punjab State Electricity Regulatory Commission, Chandigarh for removing of difficulty in grant of general category status to the Respondent No.1 according to the Commercial Circular No. 44/2014 dated 27.08.2014 and sought other reliefs and contended that the Respondent No.1 is running a mixed load industry having electricity connection bearing A/C NO. LS-180 engaged in the business of rice shelling and mushroom cultivation having rice sheller load (seasonal load) of 513.994 kW and mushroom cultivation unit load (general load) of 322.846 kW. Thus, the total

sanctioned load of the Respondent No.1 is 836.840 kW with a sanctioned contract demand of 800 kVA.

3. The Appellant, vide Memo No. 1471 dated 05.09.2014, brought to the notice of the Respondent No.1 the Commercial Circular No. 44/2014 dated 27.08.2014 issued by the Chief Engineer/Commercial, Punjab State Power Corporation Limited, Banga vide which seasonal industry consumers have been given an option to be covered under general industrial category for which they have to exercise the option by 30.09.2014.

4. Accordingly, Respondent No.1 has submitted its option in the office of Assistant Executive Engineer/City Sub-Division, Banga on 10.10.2014 i.e. after the due date on 30.09.2014. The Assistant Executive Engineer/City Sub-Division, Banga refused to accept the option on the plea that it has been submitted beyond the scheduled date. The delay in submission of option was due to late receipt of the information from the office of Punjab State Power Corporation Limited. On account of refusal of acceptance of the option submitted by the Respondent No.2 from Assistant Executive Engineer/City Sub-Division, Banga, he constrained to seek appropriate relief with direction to Punjab State Power Corporation Limited to accept the option submitted by the Respondent No.1 on 10.10.2014 for considering the Respondent No.1 under general industrial category.

The said matter has come up for consideration before the Punjab State Electricity Regulatory Commission, Chandigarh in Petition No. 69 of 2014 on 13.07.2015, and after hearing both the parties and considering the materials on record and submissions made by the learned counsel for both the parties, the Punjab State Electricity Regulatory Commission, Chandigarh, by using its inherent powers to make such orders as may be necessary for meeting the ends of justice and powers to relax, condoned the delay of 10 days in exercising the option by the Respondent No.1 as per clause 18.4 of the General Conditions of Tariff applicable for FY 2014-2015 and directs Punjab State Power Corporation Limited to consider the load of the Respondent No.1 under general industrial category and charge the relevant applicable industrial tariff as per the relevant provision of the Tariff Regulations. The Appellant herein, being aggrieved by the impugned order dated 13.07.2015 passed in Petition No. 69 of 2014 by the Punjab State Electricity Regulatory Commission, Chandigarh, has filed the instant Appeal before this Appellate Tribunal.

SUBMISSIONS OF THE LEARNED COUNSEL APPEARING FOR THE APPELLANT:

5. The learned counsel for the Appellant submitted that the claim of the Respondent No.1 that the intimation from Assistant Executive Engineer/City Sub-Division, Banga was received by him on 19.09.2014 is incorrect. Even if it is assumed that the letter was delivered to the Respondent No.1 on 19.09.2014, even then the

Respondent No.1 has sufficient time to submit his option by 30.09.2014. Further, during the course of hearing before the State Commission, the Respondent No.1 sought time to file rejoinder to the reply of the Punjab State Power Corporation Limited and the State Commission directed the Respondent No.1 to file rejoinder. Accordingly, the Respondent No.1 filed rejoinder and written arguments and without considering the statement made in the written arguments and rejoinder, the State Commission has passed the impugned order and condoned the delay of 10 days in submitting the option by the Respondent No.1 to run its industry category and directed the Appellant to consider the load of the Respondent No.1 under general industrial category and charge the relevant applicable industrial tariff contrary to the material on record. Therefore, he submitted that the impugned order passed by the State Commission is liable to be set-aside and petition filed by the Respondent No.1 may be dismissed.

SUBMISSIONS OF THE LEARNED COUNSEL APPEARING FOR THE RESPONDENT:

6. ***Per-contra***, the learned counsel appearing for the Respondent No.1 substantiated that, the impugned order passed by the State Commission is in accordance with law. After considering the case made-out by the Respondent No.1, the State Commission has rightly justified in passing the impugned order. To substantiate the

submissions quick to point out that the instant order passed by the State Commission in view of the submission made by both the parties. The State Commission, by using its inherent powers, has passed the impugned order condoning the delay of 10 days as per Clause 18.4 of the General Conditions of Tariff applicable for Financial Year 2014-15 and has also rightly justified in issuing direction to the Punjab State Power Corporation Limited to consider the load of the Respondent No.1 under General Industrial Category and charge the industrial tariff is strictly in consonance with the relevant provisions of the Electricity Act and Rules & Regulations. Therefore, interference by this Tribunal does not call for. Hence, the instant Appeal filed by the Appellant may be dismissed as devoid of merits.

7. After careful consideration of the submissions made by the learned counsel for both the parties, and after perusal of the impugned order passed by the State Commission, what has emerged that, the only issue for consideration is:

Whether the impugned order passed by the State Commission is sustainable in law.

8. After careful perusal of the impugned order passed by the State Commission what has emerged is that, the State Commission has taken into consideration the case made out by the Respondent No.1 and also stand taken by the Appellant, it has rightly justified in passing the impugned order, keeping in view the facts and

circumstances of the case and meeting the ends of justice and also taking into consideration the only prayer sought by the Respondent No.1 to condone the delay of 10 days in filing the option for considering the Respondent No.1's industry having mixed load (seasonal as well as general load) as general industry for the seasonal period for the Financial Year 2014-15 as per clause 18.4 of the General Conditions of Tariff. The argument of Punjab State Power Corporation Limited, the Appellant herein, is that since the Respondent No.1 has submitted its option after the due date of 30.09.2014, the option given by the Respondent No.1 cannot be entertained.

9. Further, it is observed that the General Conditions of tariff were updated & amended and made a part of the Tariff Order for Financial Year 2014-15. As per new Clause 18.4 inserted in the General Conditions of Tariff to facilitate the seasonal industrial consumers to opt for running the seasonal load during any year under general industrial category in which case relevant industrial tariff shall be applicable, a minimum period of one month has been provided to the consumers to submit the option before the start of the season. The Tariff Order for the Financial Year 2014-15 was issued on 22.08.2014. So, for the season starting w.e.f. 01.09.2014, the consumers were provided a period of one month from the date of issue of the Tariff Order to assess their requirements and exercise the option as per their convenience within the permissible period.

10. As per the above Clause, the consumer is surrendering the benefits available to seasonal industry by opting to run its industry under general industry category for the entire year. It provides flexibility to a consumer to use electricity connection as per his business needs without causing any financial loss to the licensee. The period of one month has been provided to check misuse of this clause by some consumers. Even if it is assumed that the notice regarding exercising option was received by the consumer in this case on 19.09.2014, even then the consumer has exercised his option within a month i.e. 10.10.2014. Since this clause has been inserted for the first time, it can be assumed that probably the consumers were not aware of this change in the General Conditions of Tariff. Therefore, the Appellant has not contested the assertion of the Respondent No.1 that no loss will be caused to Appellant if a delay of 10 days in submitting the option is condoned by the State Commission, no injustice will be caused to the Appellant and in view of the submissions made by the learned counsel for the parties, the State Commission has taken judicial note of the facts and circumstances of the case in exercising its inherent powers as envisaged under the relevant provisions of the Electricity Act and Regulations and has rightly justified for power to relax and condone the delay of 10 days in submitting the option of the Respondent No.1 as per clause 18.4 of the General Condition of the Tariff applicable for the Financial Year 2014-15 and, further, justified

in issuing appropriate direction to the Punjab State Power Corporation Limited to consider the load of the Respondent No.1 under general industrial category and charge the relevant applicable industrial tariff.

ORDER

11. In view of the aforementioned factual and legal aspects, as stated supra, we are of the opinion that the State Commission has rightly justified in considering the petition filed by the Respondent No.1 and granting relief just and reasonable. We do not find any arbitrariness, illegality or perversity in the impugned order and, therefore, interference by this Tribunal does not call for.

12. For the foregoing reasons, as stated supra, the instant Appeal, being Appeal No. 258 of 2015, filed by the Appellant on the file of the Appellate Tribunal for Electricity, New Delhi is dismissed as devoid of merits.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

js/vt