

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**ORDER IN APPEAL NO. 259 OF 2015 &  
ON THE FILE OF THE  
APPELLATE TRIBUNAL FOR ELECTRICITY NEW DELHI**

**Dated: 19<sup>th</sup> January, 2018**

**Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member  
Hon'ble Mr. S.D. Dubey, Technical Member**

**In the matter of:**

**Punjab State Power Corporation Ltd.**

The Mall, Patiala-147001,  
Punjab

..... Appellant(s)

***Versus***

**Punjab State Electricity Regulatory Commission**

SCO NO 220-221, Sector-34-A,  
Chandigarh-160022

..... Respondent(s)

Counsel for the Appellant(s) : Mr. M. G. Ramachandran  
Ms. Ranjitha Ramachandran  
Ms. Anushree Bardhan  
Ms. Poorva Saigal  
Mr. Shubham Arya

Counsel for the Respondent(s) : Mr. Sakesh Kumar for R-1

**The Appellant has sought the following reliefs in Appeal No. 259 of 2015:**

- (a) "Allow the appeal and set aside the orders dated 01.09.2015 passed by the State Commission in Petition No.13 of 2015 and direct the State Commission to decide the dispute on merits.

- (b) Pass such other order(s) and this Hon'ble Tribunal may deem just and proper”.

**The Appellant has presented in this Appeal for consideration under the following Question of Law:**

- (a) “Whether in the facts and circumstances of the case the State Commission was right in rejecting the servicing the recovery of the deposit of Rs.391,46,36,262/-made by the Appellant along with interest thereon being a necessary and legitimate expenditure incurred by the Appellant for securing allotment of the Pachwara Central Coal Block, subject to adjustments, upon refund, if any?
- (b) Whether the requirement for depositing the ‘additional levy’ at Rs.295/- per MT as compensation for extraction of coal from the Pachwara Central Coal Block pursuant to the orders dated 25.08.2014 & 24.09.2014 passed by the Hon'ble Supreme Court and implemented by way of the Coal Mines (Special Provisions) First and Second Ordinance, 2014 by 31.12.2014 was a mandate of law and resultantly any deposit made was a legitimate expense, recoverable from the retail supply tariff to be charged from the consumers?
- (c) Whether the non-transfer of the 26% equity shareholding held in Panem Coal Mines Ltd. to the Appellant by the Government of Punjab at the time of the re-organization of the erstwhile Punjab Electricity Board in terms of the transfer scheme notified under Section 131 of the Electricity Act, 2003 disentitled the Appellant from claiming recovery of the deposit made along with interest as expenditure for procurement of coal.

- (d) Whether the nature of deposit made by the Appellant being refundable or not changed the character and treatment of such expenditure for recovery as part of the revenue requirement from the retail supply tariff to be charged from the consumers in the state of Punjab, when the Appellant had duly agreed to the adjustment in revenue requirement if and when the amount deposited was refunded by the Ministry of Coal, Government of India?”.

### **ORDER**

Punjab State Power Corporation Limited, the Appellant herein, has filed the instant Appeal, being Appeal No. 259 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 1.9.2015 passed in Petition No. 13 of 2015 on the file of the Punjab State Electricity Regulatory Commission, Chandigarh and to direct the State Commission to decide the dispute on merits 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.

2. The learned counsel appearing for the Appellant, Mr. M.G. Ramachandran, has filed a Memo on 19.01.2018 and the same was take on record. The submissions made in the Memo reads as under:-

1. *“The Appellant, Punjab State Power Corporation Limited (herein after referred to as ‘PSPCL’) has filed the above appeal challenging the decision dated 1.9.2015 passed by the Punjab State Electricity Regulatory Commission in Petition No.13 of 2015.*
2. *The matter in issue relates to the issue whether the Appellant is entitled to seek the pass through in the Tariff the amount of Rs.391,46,36,262 {Rs. 391.46 cores} paid to the nominated authority of the Central Government, in terms of the Coal Mine (Special Provisions) Second Ordinance, 2014.*
3. *In the Impugned order the State Commission has decided against the Appellant on the ground that refundable amount {and the interest thereon} cannot be treated as expenditure revenue requirements of the Appellant and is not chargeable to the consumers of the state through Tariff {Page 64 para G}. In the earlier part the State Commission had observed that the refundable payment made by the Appellant to the Ministry of Coal, Government of India cannot be treated as payment towards the cost of material {Coal} and the same cannot be treated as expenses in accounting and for Tariff determination.*
4. *Without prejudice to the Appellant’s rights and contention on merits, it is respectfully stated that till date the Appellant has not been given any refund of the amount by the Government of India and the Appellant has not been able to recover any amount towards the above either from PANEM Coal Mines Limited, despite efforts made. In the circumstances the*

*basis on which the impugned decision has been made has not fructified till date and it seems that refund may not be possible at all.*

5. *In the circumstances it is respectfully submitted that the State Commission may be directed to consider the case of the Appellant afresh in the light of the above developments and the Appellant be given an opportunity to place all the relevant material in support of its claim. The Appeal may be disposed o in terms of this Memo”.*

3. We have heard the learned counsel, Mr. M.G. Ramachandran, appearing for the Appellant and the learned counsel, Mr. Sakesh Kumar, appearing for the Punjab State Electricity Regulatory Commission.

4. The learned counsel appearing for the Appellant submitted that the statement made in the memo dated 19.01.2018, as stated above, may be placed on record and the instant Appeal may be disposed of in terms of the statement made in the Memo dated 19.01.2018 in the interest of justice and equity.

5. ***Per-contra***, the learned counsel appearing for the Punjab State Electricity Regulatory Commission, *inter-alia*, contended and submitted that, the statement made in the Memo dated 19.01.2018 filed by the

learned counsel appearing for the Appellant, as stated above, may be placed on record. Further, he submitted that the Appellant may be directed to impleadment of State of Punjab as necessary party to adjudicate the matter effectively. Therefore, he submitted that appropriate direction may be issued to implead the State of Punjab also one of the proposed Respondent in addition to impleading, PANEM Coal Mines Limited, EMTA Limited. Accordingly, the appeal filed by the Appellant may be disposed of and all the contentions of the parties may be left open.

6. In the light of the submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent and the statement made in the Memo dated 19.01.2018, as stated above, the instant Appeal, being Appeal No. 259 of 2015, filed by the Appellant, stands disposed of in terms of the Memo dated 19.01.2018 in the interest of equity and justice.

7. The Punjab State Electricity Regulatory Commission is directed to dispose of the matter in accordance with law after offering reasonable opportunity of hearing to the Appellant and the Respondent including proposed Respondent as expeditiously as possible at any rate within a

period of six months from the date of appearance for the Appellant personally or through his Counsel.

8. The Appellant, herein, Punjab State Power Corporation Limited is directed to appear before Punjab State Electricity Regulatory Commission through the Counsel on 06.02.2018 at 11.30 A.M. to collect the next date of hearing.

All the contentions of the Appellant and Respondents are left open.

9. Having regard the facts and circumstances of the case, as stated above, the instant Appeal filed by the Appellant, stands disposed of. Order accordingly.

**(S.D. Dubey)**  
**Technical Member**

**(Justice N.K. Patil)**  
**Judicial Member**

*pr/js*