

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

**(APPELLATE JURISDICTION)**

**ORDER ON IA NO. 315 OF 2018**

**IN**

**APPEAL NO. 50 OF 2018**

**Dated: 06<sup>th</sup> April, 2018**

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

**IN THE MATTER OF**

**Talwandi Sabo Power Limited**

Village Banawala

Mansa – Talwandi Sabo Road

Dist. Mansa, Punjab - 151302

.... Appellant(s)

***VERSUS***

**1. Punjab State Electricity Regulatory Commission**

SCO 220-221, Sector 34A,

Chandigarh-160022

(Through its Secretary)

**2. Punjab State Load Despatch Centre**

Chief Engineer,

SLDC Building, near 220KV Grid Substation

PSTCL, Ablowal, Patiala-147001

**3. Punjab State Power Corporation Limited**

Chief Engineer (PP & R),

Punjab State Power Corporation Limited,

Shakti Vihar, Shed No. T1,

Patiala-147001 (Punjab)

**4. State Grid Code Review Committee**

SLDC Building, near 220 KV Grid Substation,

Punjab State Transmission Corp. Ltd., Ablowal,

Patiala-147001

(Through its Chairperson)

.... Respondents

Counsel for the Appellant (s) : Mr. K. Venugopal, Sr. Adv.  
Mr. Deep Rao  
Mr. Divyanshu Bhatt

Counsel for the Respondent(s) : Mr. Buddy A. Ranganadhan  
Ms. Aanchal Arora for R-1

Mr. M. G. Ramachandran  
Ms. Ranjitha Ramachandran  
Mr. Shubham Arya  
Ms. Anushree Bardhan  
for R-2 & R-3

### **ORDER**

Talwandi Sabo Power Limited, the Applicant/Appellant herein, has filed the instant Application, respectfully praying that this Hon'ble Tribunal may be pleased to stay the Impugned Order dated 26.02.2018 passed by the Punjab State Electricity Regulatory Commission ( in short, '**the State Commission**') in Petition no. 61 of 2017 and has further sought directions to restrain the third Respondent, Punjab State Power Corporation Limited (**PSPCL**) from acting in furtherance of the Impugned Order thereby deducting any alleged penalty from amounts owed to the Applicant or taking any coercive action and pass ex-parte ad interim orders in respect of above prayers and pass such further order or orders as this Tribunal may deem just and proper in the circumstances of the case and in the interest of justice and equity.

2. The Appellant is a generating unit. The subject-matter in issue involved in the instant Appeal relates to the misdeclaration of capacity by the Appellant from its generating units on four occasions during the month of January, 2017.

The action of the Appellant in declaring the capacity and the extent to which it shall generate electricity was over-stated and in excess of what the Appellant could actually generate from its generating units. It is the case of the Appellant that irreparable loss and material injustice would be caused to the Appellant in case the interim relief, as prayed for in the instant Application, is not granted by this Hon'ble Tribunal on the ground that the Appellant has an average monthly payment obligation towards its fuel suppliers, fuel transporters, contractors, employees and other miscellaneous expenses to the extent of approximately Rs. 361 crores (the monthly payments owed to the Applicant's lenders is in addition to this).

3. To substantiate the interim prayer sought in the instant Application, the third Respondent's consistent conduct of carrying out deductions made by the third Respondent from the amount of tariff payable to the Appellant is evident from the following table comparing the approximate difference in the amounts billed by the Appellant and actually paid by the third Respondent from January, 2017 to January, 2018 :

<b>Month</b>	<b>Amount Billed By TSPL (Rs. Crs)</b>	<b>Amount Paid by PSPCL (Rs. Crs)</b>
Jan-17	366.28	59.44*

Feb-17	358.99	302.96
Mar-17	332.35	294.01
Apr-17	206.98	173.58
Jun-17	108.45	88.61
Jul-17	476.97	411.43
Aug-17	428.90	365.09
Sep-17	425.68	360.50
Oct-17	512.11	367.16
Nov-17	453.89	349.44
Dec-17	443.81	336.70
Jan-18	459.25	363.89
<p>Note: Amount Paid is the gross amount passed by PSPCL for Payments.</p> <p>*Out of Rs.59.44 Crores, Rs. 50 Crores was Released after Hon'ble Supreme Court's Order</p>		

4. The following table depicts the approximate average monthly expenses to be mandatorily incurred by the Appellant in order to generate power on a continuous basis:

<b>Particulars</b>	<b>Amount in Rs. Crs.</b>
Indian Railways Freight	185
Coal Cost	151
Average Monthly Interests on Loan (Avg. FY 2017-18)	65
Services & Salaries ( TSPL Employees & 1800 Contract Manpower)	15
Cost of Spares	5
Secondary Fuel Oil Cost	3
Administration Cost	2
<b>Total Cost</b>	<b>426</b>

5. It is submitted that the Appellant's ability to meet the above financial obligations has been consistently impaired by the targeted deductions made by PSPCL. This being the case, if PSPCL is allowed to further withhold the penalty amount allegedly owed by the Appellant to it, the continued operation of the

Appellant's power plant will become an unsustainable proposition. The consumers of Punjab also stand to be adversely affected as the Appellant supplies a daily average of approximately 25.39 MUs to PSPCL and in 2017-18 has supplied approximately 6399 MUs.

6. Further, it is the case of the Appellant that out of the total penalty amount of Rs. 127,31,99,939/-, an amount of Rs. 77,86,41,825/- has already been deducted by the third Respondent, viz., more than 60% of the penalty amount. If the interim order is not granted, they would deduct remaining about 40% of the penalty amount. If the same is permitted, it would be very difficult for the Appellant to run the generating units. Therefore, he submitted that the Appellant supplies power worth approximately Rs. 400 crores to the third Respondent on a monthly basis, for which the third Respondent has 30 days thereafter to pay. Therefore, the third Respondent is secured at any point in time with 2 months' tariff. The Appellant's PPA is valid till 2041. The Appellant has invested approximately Rs. 12,000 Crores in establishing its thermal power project over a land of 2200 acres. It is not a fly by night operator. Should the Appellant be unsuccessful in the instant Appeal, the third Respondent would be in a position to deduct the amounts directed by the Hon'ble Tribunal at such a stage from the Appellant's monthly bills and no prejudice would be caused to it. Hence, there is no case whatsoever for the urgent recovery of the penalty amounts by the third Respondent at present.

7. It is the case of the Appellant that the balance of convenience is in the Appellant's favour as it has an operational Power Purchase Agreement (PPA) with the third Respondent valid up to the year 2041. Further, at any given point of time, the third Respondent has an unpaid amount of at least 37 days' worth of electricity dues averaging about Rs. 400 Crores. In the event of the Appellant being unsuccessful in the instant Appeal, the third Respondent would be in a position to deduct the amounts directed by this Hon'ble Tribunal at such a stage and no prejudice would be caused to it. Therefore, the Interim Order as prayed for may kindly be granted in the interest of justice and equity.

8. *Per contra*, it is the case of the third Respondent that the Appellant misdeclared the capacity from its generating units on four occasions during the month of January, 2017. The action of the Appellant in declaring the capacity and the extent to which it shall generate electricity was over-stated and in excess of what the Appellant could actually generate from its generating units. The Appellant has, therefore, undertaken to declare the capacity, knowing full well that it will not be able to generate the required capacity, taking advantage of the fact that at the relevant time, the third Respondent may schedule a lesser capacity in response to the quantum of declared capacity. The Appellant had, therefore, taken advantage of the situation to make an unlawful gain at the expense of consumers in the State of Punjab by declaring a higher capacity and

claiming Deemed Fixed Charges in regard to the said higher capacity, knowing full well that the generating units were not in a position to meet/generate the declared capacity.

9. Therefore, the action of the Appellant is an aspect which is specifically dealt with in Regulation 11.3.13 of the Punjab State Grid Code notified by the State Commission in exercise of its powers under Section 86 (1) (h) of the Electricity Act, 2003. Regulation 11.3.13 of the State Grid Code, inter alia, reads as under:

*“11.3.13 The SGS shall be required to demonstrate the declared capability of its generating station as and when asked by the SLDC. In the event of the SGS failing to demonstrate the declared capability, the capacity charges due to the generator shall be reduced as a measure of penalty. The quantum of penalty for the first mis-declaration for **any duration/block in a day** shall be the charges corresponding to two days fixed charges. For the second mis-declaration, the penalty shall be equivalent to fixed charges for four days and for subsequent mis-declarations, the penalty shall be multiplied in the geometrical progression over a period of a month.”*

10. As per the above provision of the State Grid Code, it is unambiguous, clear and categorical that the Appellant is required to demonstrate the declared capacity of its generating units as and when required by the Punjab State Load



Despatch Centre, Respondent No. 2 herein. If the Appellant as a generator fails to demonstrate the declared capacity, the capacity charges payable by the third Respondent to the Appellant are reduced as a measure of penalty. The quantum of penalty is also provided for. The penalty is provided to ensure that the Appellant duly and faithfully declares availability only to the extent of the capacity, which the Appellant is in a position to generate and supply to the third Respondent and that the Appellant does not take advantage of the situation when the third Respondent is scheduling a lesser quantum of electricity than the declared capacity. The Appellant cannot take advantage of the above prevalent situation and declare capacity when the Appellant is not in a position to demonstrate such capacity.

11. The failure by the Appellant is to be treated as misdeclaration for the relevant duration/block in a day. Further, the other aspects to be considered is whether such misdeclaration during the month is the first misdeclaration or the second or third or the fourth and so on so forth. The quantum of penalty provided for each subsequent misdeclaration is a progressively increasing amount. The Generators in the State such as the Appellant plead ignorance to the provisions of the State Grid Code. It is not open to the generator to state that it has failed to demonstrate the declared capability and should not be levied with the penalty prescribed in Regulation 11.3.13.

12. It is the case of the third Respondent that in the instant Application of stay, the Appellant has sought to refer to number of irrelevant and extraneous matters including pendency of the appeals etc. before the Hon'ble Supreme Court in other aspects. These are no basis whatsoever for consideration of the present case on the ground that the impugned Order has dealt with only the mis-declaration aspect in the present Appeal. Therefore, it is not open to the Appellant to bring in the present case the issues of status and proceedings in other matters pending adjudication before the Hon'ble Supreme Court.

13. It is submitted that the fourth Respondent had come to a clear finding on the misdeclaration made by the Appellant, in particular, for the four occasions in the month of January 2017. The Hon'ble High Court of Punjab and Haryana had directed the State Commission to consider the same. In the impugned Order, the State Commission has considered each of the contention of the Appellant and has found with reason that –

- (a) the Appellant had declared a specific quantum of capacity for generation on 15.01.2017, 17.01.2017, 24.01.2017 and 31.01.2017 (4 days) as per the declaration of the capacity given in accordance with the applicable procedure. This aspect has not been denied by the Appellant;

- (b) The Appellant was asked by the Punjab State Load Despatch Centre, Respondent no. 2 to demonstrate the said declared capacity. This aspect has also not been disputed by the Appellant;
  
- (c) Factually, the Appellant did not demonstrate the capability of its generating units as per the declared capacity i.e. the quantum of declared capacity. As a matter of fact this has not been disputed by the Appellant;
  
- (d) The extent of misdeclaration qua the declared capacity during the demonstration of declared capacity was in excess of the quantum allowed and, therefore, the Appellant had failed to demonstrate the declared capacity in accordance with Regulation 11.3.13.

14. It is further the case of the third Respondent that there were sufficient reasons for the Punjab State Load Dispatch Centre to hold that there was misdeclaration on 15.01.2017 based on the verification of data, which confirmed the deviation of 4 MW. There is no provision in the State Grid Code for any deviation in cases of demonstration of capacity, even by 1 MW. The Appellant had four time blocks to achieve the capacity as declared by it and in fact the said

time was more than required as per the ramp rate also declared by the Appellant. Therefore, the Appellant cannot claim that the deviation was minimal.

15. The Appellant cannot take advantage of the prudent act on the part of the Punjab State Load Despatch Centre, the second Respondent and the third Respondent to have waited for the SEM Data before finalising the misdeclaration related to the event of 15.1.2017. The State Commission has fully considered these aspects in the impugned Order.

16. Taking all these facts into consideration as stated above, there is no case much less any prima facie case in favour of the Appellant. The Appellant has no case to succeed in the matter. The Appellant had deliberately misdeclared the capacity to seek unlawful gain. The penalty has been imposed as provided under the statutory Regulation. The State Commission has given valid and detailed reasons for reaching the conclusion that there were misdeclaration on four occasions in the month of January 2017.

17. The third Respondent said that it is facing serious financial problems and even the ability to discharge the essential expenditure such as payment of terminal benefits contribution of the employees, payment to creditors and the banks are required to be deferred. At this stage, if the third Respondent is required not to adjust the amount, the same will cause irreparable prejudice to

the third Respondent. Therefore, the Interim Application filed by the Appellant may be rejected with cost in the interest of justice.

18. The learned Senior Counsel, Shri Krishnan Venugopal, appearing for the Appellant vehemently submitted that an amount of Rs. 77,86,41,825/- has already been deducted by the third Respondent which is more than 60% penalty and if the interim stay is not granted, as prayed for in the Interim Application, the remaining about 40% will be deducted by the third Respondent. If the said amount is deducted, it would be very difficult for the Appellant to meet the financial obligations as stated supra, in the table. If the third Respondent is allowed to further withhold the penalty amount allegedly owed by the Appellant to it, the continued operation of the Appellant's power plant will become an unsustainable proposition. The consumers of Punjab also stand to be adversely affected as the Appellant supplies a daily average of approximately 25.39 MUs to the third Respondent and in 2017-18 has supplied approximately 6399 MUs. When they have already deducted more than 60% of penalty amount, the balance of convenience is in favour of the Appellant on the ground that if the said amount has not been paid by the third Respondent, they would be unable to meet their monthly payment obligations. To the extent a further penalty recovery is made by the third Respondent, the Appellant's evidently grave crisis of cash flows would be exacerbated and jeopardize day to day operations of the Appellant's generating station, which is on the brink of unviability.

Ultimately, not just the Appellant but also the electricity consumers of Punjab would suffer irreparable injury as a result of such a recovery of penalty by the third Respondent if electricity cannot be generated at the Appellant's generating station. It will not only adversely affect the interest of the Appellant but also the consumer in particular.

19. Therefore, he vehemently submitted that the third Respondent, the PSPCL may be restrained from acting in furtherance of the Impugned Order thereby deducting any alleged penalty from the amounts owed to the Appellant or taking any coercive action thereunder pending disposal of the instant Appeal. Taking into consideration the case made out by the Appellant, ex party ad interim orders may be passed in the interest of justice and equity.

20. *Per contra*, the learned Counsel, Shri M. G. Ramachandran, appearing for the third Respondent, inter-alia, contended and substantiated that the Impugned Order passed by the State Regulatory Commission is strictly in consonance with the relevant provision of the Electricity Act, 2003. The Appellant has not made out any case to consider the interim relief as sought for in the instant Application on the ground that the issue relates to the misdeclaration of the capacity by the Appellant from its generating units on four occasions during the month of January, 2017. This action of the Appellant is an aspect which is specifically dealt with in Regulation 11.3.13 of the Punjab State

Grid Code notified by the State Commission in exercise of its powers under Section 86 (1) (h) of the Electricity Act, 2003.

21. The above provision of the State Grid Code is unambiguous, clear and categorical and it is the bounden duty of the Appellant to demonstrate the declared capacity of its generating units as and when required by the PSLDC, the second Respondent herein. If the Appellant as a generator fails to demonstrate the declared capacity, the capacity charges payable by the third Respondent to the Appellant are reduced as a measure of penalty. The failure by the Appellant is to be treated as misdeclaration for the relevant duration/block in a day.

22. Therefore, it is not open to the generator to state that it has failed to demonstrate the declared capability and should not be levied with the penalty prescribed in Regulation 11.3.13 and knowing full well, the Appellants have sought to refer to number of irrelevant and extraneous matters including pendency of the appeals etc. before the Hon'ble Supreme Court in other aspects.

23. In the circumstances mentioned above, there can be no dispute whatsoever that the Appellant had failed to demonstrate the declared capacity on four occasions i.e. on 15.01.2017, 17.01.2017, 24.01.2017 and 31.01.2017 as required under Regulation 11.3.13 and, therefore, is subject to the payment of

penalty provided in the said Regulation. This aspect has been looked into and considered and appreciated by the fourth Respondent and has rightly justified in passing the Order. Therefore, interference by this Court for considering the prayer sought in the Application at this stage is not justiciable.

24. After careful consideration of the averments made in the reply filed on behalf of the third Respondent herein, as stated above, and after careful consideration of the submissions of the learned Counsel appearing for the Appellant and the learned Counsel appearing for the third Respondent, what has emerged is that the subject matter in the instant case relates to the misdeclaration of the capacity by the Appellant for its generating units on four occasions during the month of January, 2017 as stated supra.

25. From the note filed on behalf of the Appellant in response to the reply of the third Respondent dated 7.3.2018 in para 17 & 18, what has emerged is that the amount paid is the gross amount passed by the third Respondent for payment out of Rs. 59.44 crore, Rs. 50 crore was released after the Hon'ble Supreme Court's Order, as stated in the table in para 17. And as per Para 18, the table depicts an average monthly expenditure to be mandatorily incurred by the Appellant in order to generate power on a continuous basis to the tune of Rs. 426 crore.



26. After taking this aspect of the matter into consideration, prima facie, we find that the balance of convenience is in the Appellant's favour as it has an operational power purchase agreement with the third Respondent valid upto the year 2041 and it is not in dispute that the third Respondent has already deducted a sum of Rs. 77,86,41,825/- which is more than 60% of the penalty out of Rs. 127,31,99,939/-. If the hardship is to be taken into consideration and if the remaining about 40% amount is stayed as not recovered, it would, in no way, be prejudicial to the rights and obligations of the third Respondent. Therefore, the said amount stayed will be subject to the outcome of the result of this Appeal, which would safeguard the interest of the Appellant and the third Respondent as well. In the event, the Appellant failed in the Appeal, the third Respondent is entitled to recover the remaining 40% penalty amount being the due amount.

27. Having regard to the facts and circumstances of the case as stated above:

- (a) We thus, stay the operation/execution of the Impugned Order dated 26.02.2018 passed in Petition No. 61 of 2017 on the file of the Punjab State Electricity Regulatory Commission, Punjab to the extent of recovery of remaining penalty amount until further orders in the interest of justice and equity.

- (b) It is needless to clarify that in the event the Appellant makes any attempt of misdeclaration of his capacity from its generating units during the pendency of this Appeal, the liberty has been reserved to the third Respondent to file necessary application for vacating or modifying the interim Order.

PRONOUNCED IN THE OPEN COURT ON THIS 06<sup>TH</sup> DAY OF APRIL, 2018.

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

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

*Bn*