

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 7 of 2007

Dated : July 26, 2007

Present:

**Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member**

Nahar Sugar & Allied Industries Ltd.

-Appellant

V/s.

- 1. Punjab State Electricity Regulatory Commission,
SCO No. 220-221, Sector 34-A, Chandigarh**
- 2. State of Punjab through Secretary (Power)
Punjab Mini Secretariat, Sector -9,
Chandigarh.**
- 3. Punjab State Electricity Board,
The Mall, Patiala.**
- 4. The Punjab Energy & Development Agency (PEDA)
SCO No. 54 – 56, Sector 17-A, Chandigarh
Through its Secretary**

-Respondents

Counsel for the Appellant : Mr. Neeraj Kr. Jain

**Counsel for the Respondents : Mr. M.G. Ramachandran with Mr. Anand
K. Ganesan for PSERC – Resp.1
Mr. Vinay Kr. Shailendra, Mr. Abhishek
Agrawal,
Mr. Ajay Dahiya & Mr. Suruchi Suri for
PSEB – Resp.3
Mr. Ambika Luthra for PEDA – Resp.4**

JUDGMENT

(Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson)

This appeal is directed against the Order of the Punjab State Electricity Regulatory Commission (for short 'PSERC'), dated July 23,

2004, whereby it has dismissed the petition of the appellant challenging the demand raised by the Punjab State Electricity Board (for short 'PSEB') on account of Advance Consumption Deposit (for short 'ACD') for the load connected to Turbine Generating (TG) sets installed by the appellant and monthly parallel charges based on the capacity of TG sets connected in parallel with PSEB system. The impugned order also holds that the charges levied by the PSEB are in order.

The facts giving rise to the appeal are as under:

1. The appellant has set up a plant for manufacture of sugar from sugarcane. It uses baggase to generate electricity as a by-product.
2. On December 22, 1994, the PSEB granted permission to the appellant to install 2 Nos. TG sets of capacity 3125 KVA each and 2 Nos. DG sets of capacity 320 KVA and 300 KVA, subject to the following conditions:-
 - i) *TG sets shall run in isolation with the PSEB supply system and no interflow of PSEB supply generation shall be permitted.*
 - ii) *No change over switch/arrangement for interflow of power shall be allowed.*
 - iii) *In case of detection of a change over switch/arrangement/ bus coupler for using PSEB supply for TG set/s load, load surcharge shall be charged for the entire load fed from TG sets.*
 - iv) *Permission on fee @ Rs.1/- per KVA shall be recovered for the TG sets capacity.*

3. Pursuant to the grant of permission by the PSEB, the appellant established a generating plant of 6870 KVA.

4. It is not in dispute that the appellant has been drawing power from the PSEB for its colony and workshop etc. and for this purpose it has a sanctioned contract demand of 750 KVA.

5. The PSEB by commercial circular No. 26 of 2002, dated June 10, 2002 introduced provision for payment of extra ACD for load connected to TG. It also provided that co-generator shall pay permission fee and parallel operation charges. Subsequently, the PSEB issued Circular No.60 of 2002, whereby the provisions of the earlier circular were partially amended.

6. Invoking the circulars, the PSEB required the appellant to pay ACD and parallel charges. Thereupon, the appellant filed a petition before the PSERC, whereby it questioned the demand raised by the PSEB in respect of the ACD and parallel charges. The appellant challenged the validity of the circulars before the PSERC. PSERC, however, did not find any fault with the circulars of the PSEB and accordingly dismissed the petition. It also needs to be mentioned that the appellant before the PSERC did not dispute that the charges were levied as per the aforesaid

Circulars, which were issued by the PSEB under the Electricity Supply Act, 1948.

7. Dissatisfied with the order of the PSERC, the appellant filed an appeal before the Hon'ble Punjab and Haryana High Court. By Order, dated November 8, 2004, the High Court allowed the appeal and set aside the order of the PSERC, dated July 23, 2004, and directed the PSERC to pass a fresh order after looking into all aspects of the matter.

8. Aggrieved by the order passed by the High Court, the PSEB filed a Special Leave Petition before the Hon'ble Supreme Court. The Supreme Court by its order, dated October 9, 2006, set aside the order of the High Court and directed the parties to approach this Tribunal with an appropriate application. Thereupon, the appellant filed the instant appeal.

9. The learned senior counsel for the appellant has challenged the validity of the circulars. It has also contended that the appellant is not using any supply from the PSEB for the TG set(s) load and, therefore, it is not liable to deposit the advance ACD under the circulars. He pointed out that the plant of the appellant was inspected by the senior XEN Ludhiana and Senior XEN Patiala on May 6, 2004. The learned counsel submitted that the **Report** is indicative of the fact that the appellant is not using any supply from the PSEB for the TG set(s) load. He also

pointed out that for a TG set load of 6870 KVA, it is not possible to use sanctioned load of 750 KVA.

10. On the other hand, the learned counsel for the respondents submitted that the appellant had only disputed the validity of the Circulars before the PSERC but it did not dispute the fact that the charges were levied as per the Circulars. The learned counsel contended that the appellant ought not to be permitted to raise any contention other than the contention raised before the PSERC.

11. At the outset, we wish to point out that the appellant cannot raise the plea regarding the validity of the Circulars issued by the PSEB, in view of our decision in ***Neyveli Lignite Corporation Ltd., vs. Tamil Nadu Electricity Board & Ors***, Appeal Nos. 114 & 115 of 2005.

12. The foremost issue which requires examination is whether the appellant was not using supply from the PSEB for the sugar plant, as contended by it. In case answer to the question is in the affirmative, the next issue for determination will be whether the appellant is still liable to deposit ACD under the circulars. The second issue relates to the applicability of the circulars. This is a question of law. Any concession on a question of law does not bind the party making it.

13. As already pointed out it was brought to our notice that the plant of the appellant was inspected on May 6, 2004 by Sr. XEN Enf.-2, Ludhiana and Sr. XEN MMTS, Patiala. The report is revealing. The report to the extent relevant reads as under:

“While checking RPR in the presence of PSEB team the observations as noted below. When PSEB supply was switched on and by providing special loop to change over switch (TG & PSEB supply) the supply reached the control panel inter connecting the TG Bus and the auxiliary bus on putting the load on TG bus the reverse power relay existing on the inter connecting panel operated and switched off the supply then the supply could not reached the TG load. Inter connecting breaker could be switched on when it was tried to inject supply from TG side but the said breaker could not be closed and supply was available from PSEB side.”

The existence of the report has not been disputed by the learned counsel for the respondents. The impact of the report, which was on record, was not considered by the PSERC. The principles of fair play and justice demand that the report, dated May 6, 2004 ought to have been considered by the PSERC, with reference to the relevant circulars. The PSERC ought to have decided whether or not the appellant was using PSEB supply for running its sugar plant. It is only after the question is answered, the impact of the same with reference to the circulars can be determined.

14. In the circumstances, therefore, we remit the matter to the PSERC to determine the questions detailed in para- 12 above and to consider the **'Report'** and its impact, with reference to the relevant circulars. For this purpose, it will also be open to the PSERC to consider other relevant material as on record. The PSERC shall take a view after hearing the parties.

15. With the aforesaid observations and directions, the appeal is allowed to the extent indicated above.

(Justice Anil Dev Singh)
Chairperson

(H.L. Bajaj)
Technical Member

Dated: July 26, 2007