

**COURT-II**  
**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
**(APPELLATE JURISDICTION)**

**ORDER IN APPEAL NO. 74 OF 2018 & IA NO. 144 OF 2018 AND**  
**APPEAL NO. 113 OF 2018 & IA NO. 54 OF 2018**  
**ON THE FILE OF THE**  
**APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**

Dated: **8<sup>th</sup> March, 2019**

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member  
Hon'ble Mr. Ravindra Kumar Verma, Technical Member

**APPEAL NO. 74 OF 2018 &**  
**IA NO. 144 OF 2018**

**In the matter of:**

**Mawana Sugars Ltd.**

Siel Chemical Complex

Through its Authorised Representative

Mr. Surinder Nath Karnail

Vill Khadoli, Rajpura, District- Patiala

Punjab

..... Appellant

***VERSUS***

**1. Punjab State Electricity Regulatory Commission**

Through its Secretary

SCO: 220-221, Sector: 34-A,

Chandigarh

**2. Punjab State Power Corporation Ltd.**

Through Managing Director

The Mall, Patiala

Punjab

..... Respondents

Counsel for the Appellant (s) : Mr. Sanjay Sen, Sr. Adv.  
Ms. Shikha Ohri

Counsel for the Respondent(s) : Mr. Sakesh Kumar  
Ms. Gitanjali N. Sharma for R-1

Mr. Anand K. Ganesan for R-2

**APPEAL NO. 113 OF 2018 &**  
**IA NO. 54 OF 2018**

**In the matter of:**

**Northern India Textiles Mills Association**

Through its Authorized Representative

Shri Anish Bansal

PHD House, Sector-31 A

Chandigarh-160031

..... Appellant

***VERSUS***

**1. Punjab State Electricity Regulatory Commission**

Through its Secretary

SCO: 220-221, Sector: 34-A,

Chandigarh

**2. Punjab State Power Corporation Ltd.**

Through Managing Director

The Mall, Patiala

Punjab

..... Respondents

Counsel for the Appellant (s) : Mr. Praveen Kumar

Counsel for the Respondent(s) : Mr. Sakesh Kumar  
Ms. Gitanjali N. Sharma for R-1

Mr. Anand K. Ganesan for R-2

**The Appellant has sought the following reliefs:**

**In Appeal No. 74 of 2018:**

- (i) Set aside the impugned order dated 23.10.2017 passed in Petition No. 90/2017 as reviewed and merged with the order dated 09.11.2017 by the Hon'ble Punjab State Electricity Regulatory Commission, while determining the Annual Revenue Requirement and Tariff for the Multi Year Tariff Control Period from FY 2017-18 to FY 2019-20 of PSPCL, to the extent challenged in the present appeal;

- (ii) Pass such other order or orders as the nature and circumstances of the case may deem fit, may kindly be passed.

**In Appeal No. 113 of 2018:**

- (i) To set aside the order dated 09.11.2017 passed by the Respondent No. 1 State Commission;
- (ii) To direct the Respondents to charge tariff as per the tariff provided in Tariff Order dated 23.10.2017;
- (iii) To pass such other or further orders as this Hon'ble Tribunal may deem appropriate.

**ORDER**

**PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER**

1. In Appeal No. 74 of 2018, Mawana Sugars Ltd., Punjab (in short, the "**Appellant**") is questioning the legality and validity of the impugned Order dated 23.10.2017 of Punjab State Electricity Regulatory Commission, Chandigarh (in short, the "**first Respondent**") passed in Petition No. 90 of 2017, as amended/reviewed on 09.11.2017 which has now been merged with Tariff Order dated 23.10.2017.

2. In Appeal No. 113 of 2018, North India Textile Mills Association, Chandigarh (in short, the "**Appellant**") is questioning the legality and validity of the impugned Order dated 09.11.2017 passed by Punjab State Electricity Regulatory Commission, Chandigarh (in short, the "**first**

**Respondent**”) in Petition No. 90 of 2016 and 33 of 2017 whereby Tariff Order dated 23.10.2017 has been amended.

3. The Appellants have presented the instant Appeals for considering the following Questions of Law:

**In Appeal No. 74 of 2018:**

- A. Whether the Respondent Commission has abused the process of law by passing the impugned review order without conducting a public hearing, in complete violation of the principle of natural justice and the procedure prescribed under section 64(3) of the Electricity Act, 2003 and Regulation 41 of The Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005?
- B. Whether the Respondent Commission has arbitrarily passed the impugned order without following the basic principles of tariff determination and the manner in which the cost details have to be considered for determination of tariff?
- C. Whether the Respondent Commission has violated the provisions of law by pronouncing tariff order at the end of a financial year and , further, giving the tariff order retrospective effect to the grave prejudice of all consumers including Appellant?
- D. Whether the Respondent Commission has exceeded its jurisdiction to determine and regulate tariff, by making it applicable retrospectively from 01.04.2017?
- E. Whether the Respondent Commission has acted in contravention to the provisions of Section 64 of Electricity Act, 2003 and Regulation 41 of the

Punjab State Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005 whereby the appropriate commission is obligated to determine the tariff for any FY within 120 days from the moving of tariff application by the distribution licensee?

- F. Whether the Respondent Commission has passed the impugned order in violation of the provisions of Regulation 51 and 52 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005?
- G. Whether the Respondent Commission has erroneously passed the impugned orders without following the provisions of National Tariff Policy and the directives of this Hon'ble Tribunal on the issue of introduction of two part tariff?
- H. Whether the Respondent Commission has violated the principles of transparency and non-discrimination while passing the impugned order?
- I. Whether the Respondent Commission has erroneously burdened the consumers with excessive costs of GNDTP station, stranded capacity and ill planning of Respondent No. 2?
- J. Whether the Respondent Commission has acted in contravention of the provisions of Regulation 52 (3) of PSERC (Conduct of Business) Regulations, 2005?

**In Appeal No. 113 of 2018:**

- A. Whether the Impugned Order is Bad in law for it violates the Doctrine of natural justice which is fundamental of any quasi-judicial action?
- B. Whether the State Commission is not required to follow the same procedure for amendment of Tariff order as for Determination of tariff?

- C. Whether the State Commission in exercise of Inherent powers give a go by to the Procedure for determination of tariff?
  - D. Whether the State Commission by virtue of Regulation 72 of Conduct of Business Regulations not required to record reasons for not following procedure established by the Regulations and notify the consumers of any such action?
  - E. Whether no ground was made for review of order dated 23.10.2017 as there was no error apparent on record, there was no new material and there was no other sufficient cause shown?
  - F. Whether the State Commission has erred in exercising inherent powers as no ground for exercise of inherent powers is made out as there is no abuse of process of commission or ends of justice was not at stake?
  - G. Whether the Respondent No. 1 is right in exercise of Inherent powers when the Electricity Act, 2003 prescribes for a procedure for determination and amendment of Tariff order?
  - H. Whether the Respondent No.1 is right in entertaining a review petition on the basis of Letter dated 06.11.2017 without complying with the requirements of Regulation 64 of Conduct of Business Regulations?
4. The learned senior counsel, Mr. Sanjay Sen, appearing for the Appellant in Appeal No. 74 of 2018, at the outset, submitted that, the statements made in the Memo dated 28.01.2019 filed on behalf of the Appellant, Mawana Sugars Ltd., in Appeal No. 74 of 2018, may kindly be taken on record and the instant appeal, being Appeal No. 74 of 2018, may be disposed of with direction to the first Respondent/State Commission to

pass an appropriate order afresh in accordance with law after affording reasonable opportunity of hearing to the Appellant, Respondents and the interested parties in the light of the statements made in the Memo dated 28.01.2019 filed on behalf of the Appellant, Mawana Sugars Ltd., in Appeal No. 74 of 2018 in the interest of justice and equity.

5. The learned counsel, Mr. Anand K. Ganesan, appearing for the second Respondent/PSPCL, submitted that, in the light of the statements made in the Memo dated 08.03.2019 filed on behalf of the second Respondent and for the reasons stated therein, the instant appeal, being Appeal No. 74 of 2018, may be disposed of issuing the appropriate direction to the first Respondent/State Commission to pass an appropriate order afresh in accordance with law after affording reasonable opportunity of hearing to the Respondents, Appellant and the interested parties in the light of the statements made in the Memo dated 08.03.2019 filed on behalf of the Appellant.

6. The learned counsel, Mr. Praveen Kumar, appearing for the Appellant in Appeal No. 113 of 2018, submitted that, in the light of the statements made in the Memo dated 28.01.2019 filed on behalf of the Appellant, Mawana Sugars Ltd., in Appeal No. 74 of 2018, and also in the light of the statements made in the Memo dated 08.03.2019 filed on behalf of the second Respondent, Punjab State Power Corporation Ltd., in Appeal No. 74 of 2018 and for the reasons stated therein, the instant appeal, being

Appeal No. 113 of 2018, may also be disposed of with direction to the first Respondent/State Commission to pass an appropriate order afresh in accordance with law after affording reasonable opportunity of hearing to the Appellant, Respondents and the interested parties in the light of the statements made in the Memo dated 08.03.2019 filed on behalf of the second Respondent/PSPCL, in Appeal No. 74 of 2018, in the interest of justice and equity.

7. Submissions of the learned counsel for the Appellants and the Respondent Nos. 1 and 2, as stated supra, are placed on record.

8. We have heard learned senior counsel, Mr. Sanjay Sen, for the Appellant in Appeal No. 74 of 2018 and the learned counsel, Mr. Praveen Kumar for the Appellant in Appeal No. 113 of 2018 and the learned counsel, Mr. Sakesh Kumar for the first Respondent/State Commission and Mr. Anand K. Ganesan, for the second Respondent/PSPCL in both the appeals.

9. After careful consideration of the submissions of the learned counsel for both the parties and the statements made in the Memo dated 28.01.2019 filed on behalf of the Appellant, Mawana Sugars Ltd., and Memo dated 08.03.2019 filed on behalf of the second Respondent/PSPCL in Appeal No. 74 of 2018 and for the reasons stated therein, we are of the considered view that keeping in view the facts and circumstances of the



cases in hand and in the light of the statements made in the memos filed by the Appellant and the second Respondent in Appeal No. 74 of 2018, as stated supra, it would suffice for this Tribunal to pass an appropriate order to meet the ends of justice and also keeping in view the interest of the Appellants and the Respondents.

10. The statement made in the Memo dated 28.01.2019 filed on behalf of the Appellant, Mawana Sugars Ltd., in Appeal No. 74 of 2018 are as under:

*“MEMO ON BEHALF OF THE APPELLANT*

- 1. The Appellant has challenged the impugned tariff order dated 23.10.2017 as amended/reviewed on 09.11.2017 by the Hon’ble Punjab State Electricity Regulatory Commission (hereinafter referred to as the “Commission”) while determining the Annual Revenue Requirement and Tariff for the Multi Year Tariff (MYT) Control Period from FY 2017-18 to FY 2019-20 for Punjab State Power Corporation Ltd. (PSPCL), inter alia, on the following grounds:*
  - i. Delay in issuance of tariff order;*
  - ii. Violation of principles of natural justice;*
  - iii. Introduction of two part tariff viz a viz the already existing single part tariff; and*
  - iv. Allowance of components of fixed costs in relation to Guru Nanak Dev Thermal Power Station for the period FY 2017-18 to FY 2019-20 although the distribution licensee has not projected any generation from the said generating station.*
- 2. At this stage the Appellant submits that the present appeal can be disposed off upon consideration of only two grounds namely;*
  - a. Violation of principles of natural justice; and*

- b. Allowance of components of fixed costs in relation to Guru Nanak Dev Thermal Power Station for the period 2017-18 to 2019-20 although the distribution licensee has not projected any generation from the said generating station.*
- 3. The Appellant is not urging the other grounds.*
- 4. On the first issue the Hon'ble Tribunal may consider issuance of a guideline to the Commission to following appropriate procedure for modification/amendment of tariff order so as to ensure that notice is issued to the affected party and not proceed to modify/amend a tariff order or any components thereof solely on the basis of a letter issued by the distribution licensee, in the manner that has been done in the present case.*
- 5. As regards the second issue, the Appellant submits that the Hon'ble Commission may permit the Appellant to file an appropriate petition/application before the Commission whereby the Commission will undertake a cost benefit analysis of the said Guru Nanak Dev thermal power plant without being influenced by the findings in this regard as recorded in the impugned order dated 23.10.2017, and review order dated 09.11.2017.*
- 6. The Appellant prays that the appeal can be disposed off in terms of the aforesaid."*

11. The statement made in the Memo dated 08.03.2019 filed on behalf of the second Respondent, Punjab State Power Corporation Ltd., in Appeal No. 74 of 2018 are as under:

*"MEMO ON BEHALF OF THE RESPONDENT NO.2, PUNJAB STATE POWER CORPORATION LIMITED ON THE ISSUE OF OPERATION OF THE GNDTP GENERATING STATION*

- 1. In the present appeal, one of the issues raised by the Appellant is that when the GNDTP generating station was under permanent shut-down, PSPCL should not have been entitled to the tariff for the generating station as no service is rendered to the consumers.*
- 2. It is firstly submitted that the above issue was not raised before the State Commission. In any event, the issue raised is not factually correct.*
- 3. The GNDTP generating station was, for the year 2017-18, available and has in fact generated and supplied electricity for the benefit of the consumers at large. The generating station had supplied a total of 301.301 MUs during the year 2017-18, primarily in the paddy season when the state is under shortage of electricity. During other seasons, the State is in surplus and many generators are backed down, which included GNDTP. However, the generating station was available and is entitled to fixed charges based on the availability.*
- 4. Therefore, for the year 2017-18, the GNDTP generating station has been allowed the fixed cost for the availability.*
- 5. The plant has been permanently shut-down with effect from 01.01.2018. The generator is in the process of being dismantled and assets scrapped. PSPCL has not claimed fixed cost for the year 2018-19 and 2019-20, but only the essential costs for maintaining the security, deployment of the employees etc.*
- 6. In terms of the Indian Accounting Procedures, the assets of GNDTP amounting to Rs. 492.59 crores were impaired on 31.03.2018, which is accounted for in the depreciation as per the accounting principles for the year 2017-18.*
- 7. There is no depreciation is projected for the year 2018-19 onwards. The Petition filed by PSPCL for true up for the year 2017-18, Annual Performance Review for 2018-19 and Revised Estimates for 2019-2020 is pending before the State Commission.*

8. *As against the total fixed cost of Rs. 850.92 crores for the year 2017-18, the fixed cost for 2018-19 and 2019-20 are only Rs. 74.01 crores and 74.23crores respectively, which is less than 10% of the fixed cost for 2017-18. This is only for essential maintenance and other essential expenses till the time the assets are scrapped, manpower is thereafter re-deployed etc.*
9. *In the above circumstances, the basic premise that the GNDTP generating station was under shut-down for the year 2017-18 is factually erroneous.”*

12. In view of the submissions of the learned counsel for the Appellants and the Respondents and in the light of the statement made in Memo dated 28.01.2019 filed on behalf of the Appellant, Mawana Sugars Ltd., and also the statement made in the Memo dated 08.03.2019 filed on behalf of the second Respondent, Punjab State Power Corporation Limited, in Appeal No. 74 of 2018 and in terms and for the reasons stated in the aforesaid memos, as stated supra, the instant two appeals, being Appeal No. 74 of 2018 and 113 of 2018, are hereby disposed of with the direction to the first Respondent/State Commission to reconsider the matter afresh and in the light of the statements made in the Memos dated 28.01.2019 filed by the Appellant and dated 08.03.2019 filed by the second Respondent in Appeal No. 74 of 2018 and for the reasons stated therein, pass an appropriate order afresh in accordance with law after affording reasonable opportunity of hearing to the Appellants, Respondents and the interested parties as expeditiously as possible.

13. All the contentions of the Appellants and the Respondents are left open.

14. With these observations, the instant two appeals, being Appeal No. 74 of 2018 and Appeal No. 113 of 2018 filed by the Appellants on the file of the Appellate Tribunal for Electricity, New Delhi stand disposed of.

**IA NO. 144 of 2018 & In Appal No. 74 of 2018 and  
IA NO. 54 of 2018 & In Appal No. 113 of 2018**

In view of the Appeal No. 74 of 2018 and Appeal No. 113 of 2018 on the file of the Appellate Tribunal for Electricity, New Delhi being disposed of, the reliefs sought in IA No. 144 of 2018 and 54 of 2018 do not survive for consideration and, hence, the instant IAs stand disposed of as having become infructuous.

Parties to bear their own costs.

Order accordingly.

**(Ravindra Kumar Verma)**  
**Technical Member**

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

*vt/ss*