

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

**APPEAL NO. 189 OF 2022  
APPEAL NO. 369 OF 2022  
APPEAL NO. 4 OF 2021**

Date : 31.10.2022

**Present: Hon'ble Mr. Justice R. K. Gauba, Officiating Chairperson  
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

APPEAL NO. 189 OF 2022

In the matters of:

**Steel City Furnace Association,**  
*Through its Authorized Representative*  
*Shri Gopal Krishan Singhi,*  
General Secretary,  
R/o Old Central Bank Street,  
Loha Bazar, Mandi Gobindgarh - 147301.  
Punjab.

.... Appellant

***Versus***

1. **Punjab State Electricity Regulatory Commission,**  
*Through its Secretary,*  
Plot No. 3, Sector 18-A,  
Madhya Marg, Chandigarh – 160018  
Punjab
2. **Punjab State Power Corporation Limited**  
*Through its Chairman,*  
The Mall, Patiala,  
Punjab – 147001.
3. **Punjab Energy Development Agency (PEDA)**  
*Through its Chairman,*  
Solar Passive Complex, Plot No. 1 & 2,  
Sector – 33D, Chandigarh – 160020  
Punjab.
4. **Government of Punjab**

*Through its Secretary,*  
Department of Power,  
R/o Room No. 219, 2<sup>nd</sup> Floor,  
Punjab Civil Secretariat – 2,  
Sector-9, Chandigarh – 160009.

.... Respondent(s)

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

Counsel for the Respondent(s) : Ms. Renu Thakur for R-1

Mr. Anand K. Ganesan  
Mr. Amal Nair  
Ms. Sugandh Khanna for R-2

Mr. Sunil Fernandes  
Mr. Divyansh Tiwari for R-4

## APPEAL NO. 369 OF 2022

1. **Mandi Gobindgarh Induction Furnace Association (Registered),**

*Through its President*  
*Shri Mohinder Gupta,*  
Grain Market,  
Mandi Gobindgarh,  
District Fatehgarh Sahib,  
Punjab – 147301.

2. **Steel Furnace Association of India (Registered) (Punjab Chapter)**

*Through authorized representative*  
*Mr. Sanjeev Singla,*  
C/o Upper India Steel Mfg. & Engg. Co. Ltd.,  
Dhandari Industrial Focal point,  
Ludhiana - 141010.

.... Appellant(s)

### ***Versus***

1. **Punjab State Electricity Regulatory Commission,**

*Through its Secretary,*  
Plot No. 3, Sector 18-A,  
Madhya Marg, Chandigarh – 160018  
Punjab

2. **Punjab State Power Corporation Limited**  
*Through its Chairman-cum-Managing Director,*  
The Mall, Patiala,  
Punjab – 147001. .... Respondent(s)

Counsel for the Appellant(s) : Mr. Aditya Grover

Counsel for the Respondent(s) : Ms. Renu Thakur for R-1  
Mr. Anand K. Ganesan  
Mr. Amal Nair  
Mr. Sugandh Khanna for R-2

APPEAL NO. 4 OF 2021

**Punjab State Power Corporation Limited,**  
The Mall, Patiala,  
Punjab – 147001 .... Appellant

***Versus***

1. **Punjab State Electricity Regulatory Commission,**  
*Through its Secretary,*  
Site No. 3, Sector 18-A,  
Madhya Marg, Chandigarh – 160018  
Punjab.

2. **Punjab Energy Development Agency**  
*Through its Managing Director,*  
Solar Passive Complex, Plot No. 1 & 2,  
Sector – 33D, Chandigarh – 160020  
Punjab. .... Respondent(s)

Counsel for the Appellant(s) : Mr. Anand K. Ganesan  
Mr. Amal Nair  
Ms. Sugandh Khanna

Counsel for the Respondent(s) : Ms. Renu Thakur for R-1  
Mr. Aditya Grover for R-2/PEDA

## J U D G E M E N T

### PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. The pandemic conditions brought about by the spread of Covid-19 coronavirus played havoc with the normal social and economic activity across the globe, also affecting India, sometime from March 2020 onwards. The governmental agencies, including Disaster Management Control Authority, imposed lockdown, this having impacted adversely, commercial as well as industrial establishments. Against this backdrop, the Government of State of Punjab, treating the situation as *force majeure*, had promulgated an order No.1/4/2020-EB (PR)/194 dated 07.04.2020 under Section 108 of the Electricity Act, 2003, directing the respondent *Punjab State Electricity Regulatory Commission* ("the State Commission") to give certain reliefs '*in larger public interest*' to industrial consumers.

2. The State Commission thereupon took out suo-motu proceedings (registered as petition No. 12 of 2020) and passed an order thereupon on 17.07.2020. The Appellants in the first two captioned appeals represent the interest of industrial consumers and are aggrieved, contending that the relief to the extent granted by the Commission is deficient, they having been arbitrarily treated, when compared to the relief which has been extended to the distribution licensee – respondent *Punjab State Power*

*Corporation Limited* (“PSPCL”). The State distribution licensee (PSPCL) has also brought its own appeal (the third captioned matter) on the contention that the direction of the State Government under Section 108 of the Electricity Act, 2003 has not been fully abided by, the Commission having failed to bear in mind that the relief was granted permitting PSPCL to recover fixed charges for the period of two months in six equal monthly installments granted after elapse of substantial part of the said period starting from 23.03.2020, such benefit having been extended also to *Non-Residential Supply* (“NRS”) consumers, and was bound to create confusion in as much as payments had already been collected from a large number of consumers falling in the said category.

**3.** The order of the State Government promulgated on 07.04.2020, in exercise of power conferred upon it by Section 108 of the Electricity Act, reads as under:

*“No.1/4/2020-EB (PR)/184 – Whereas restrictions have been imposed on movement of public and opening of offices and establishments etc. by the Government of India as well as Government of Punjab to control the spread of the COVID-19 pandemic in the country. In this time of crisis, the Government of Punjab is committed to provide uninterrupted 24x7 supply to all Health Care Institutions such as Medical Colleges, Hospitals, Dispensaries and other Medical Establishments and Quarantine Centres across the States for their smooth functioning. Besides, uninterrupted power supply is also being given to all consumers. Despite the lockdown, whole workforce of the power sector (Generation, Transmission, Distribution and System Operations) is working round the clock to keep all homes and establishments energized.*”

*Whereas, due to the unprecedented situation which is likely to continue for some time the consumers are unable to pay their dues to the State Discom Punjab State Power Corporation Limited (PSPCL). The PSPCL too has extended due date of electricity bills up to 15<sup>th</sup> April, 2020 of all the Domestic & Commercial consumers having current monthly & bimonthly bills up to Rs.10000/- and current electricity bills of Small Power Industrial consumers with due date falling on or after 20<sup>th</sup> March, 2020 without levy of late payment surcharge. There will be no disconnection of Small and Medium supply Industrial consumers up to 15.4.2020 on account of non-payment current electricity bills.*

*Whereas, in view of the force majeure situation arising due to severe restrictions placed on movement of public in the State and continue supply of electricity being an essential service, the government of Punjab in exercise of powers conferred upon it under Section 108 of the Electricity Act, 2003 issues following directions to the Punjab State Electricity Regulatory Commission in larger public interest:-*

(1) *Industrial Consumers:*

*Fixed Charges for Medium Supply (MS) and Large Supply (LS) Industrial Consumers be exempted for next 2 months from 23.3.2020 and Energy Charges may be fixed to commensurate with reduction in Fixed Charges (single rate). Revised Energy Charges will be paid by consumers and not to be considered for subsidy.*

(2) *Renewable Purchase Obligation (RPO) for the year 2019-20 and 2020-21 may be reduced by 1.50% and 2.00% respectively.”*

**4.** We may mention here that the impugned order passed by the Commission on 17.07.2020 dealt with subjects both of *fixed charges* as well as *Renewable Purchase Obligation (RPO)*. There is no challenge by any quarter to the impugned order to the extent the relief was granted to the distribution licensee vis-à-vis RPO targets.

**5.** On the issue of ‘exemption of fixed charges’, the Commission has reached thus:

**“9.1.5 Commission’s Decision:**

*The GoP directions state that Fixed charges for Medium Supply (MS) and Large Supply (LS) Industrial Consumers be exempted for 2 months from 23.03.2020 and Energy Charges may be fixed commensurate with reduction in Fixed Charges (single rate). The GoP direction also states that, the revised Energy Charges will be paid by consumers and are not to be considered for subsidy. PSPCL has stated that the Conversion of Fixed Charges to Energy Charges is not implementable and has suggested that Fixed Charges be recovered as arrears. The objectors have also opposed the conversion of Fixed Charges to Energy Charges. The Commission agrees with PSPCL’s submission that it would not be possible to recover the total fixed charges through the energy charges of these two months, as actual consumption of these consumers (MS & LS) was minimal or almost nil during that period. The Commission finds merit in the objectors’ view that a uniform formula is not suitable for recovery of fixed charges through Energy Charges as different consumers have different utilization factors. Therefore, the Commission is of the view that recovery of the fixed charges for these two months through energy charges is not an implementable proposition.*

*The Commission refers to the following provisions of the Supply Code:*

**“29. RECOVERY OF ELECTRICITY CHARGES FROM CONSUMERS**

*29.1 A distribution licensee may recover from a consumer any charges in respect of the supply of electricity as per General Conditions of Tariff and Schedules of Tariff .....*

*29.2 .....*

*29.3 .....*

*29.4 The Fixed Charges shall be payable by a consumer even if no electricity is actually consumed .....*

**31. PAYMENT OF ELECTRICITY BILLS**

*31.1 Payment of the bills by different categories of consumers shall be effected within a period of:*

- (a) ten (10) days from date of delivery of the bills in the case of Large Supply, Medium Supply, Small Power supply industrial consumers and DS/NRS*

*consumers covered under spot billing & where monthly bills are issued;*

*(b) twenty one (21) days from date of delivery of the bills in case of Railway Traction, Large/Bulk Supply connections of Railways; and*

*(c) fifteen (15) days from date of delivery of the bills in case of all other categories of consumers.”*

*Further, Regulation 46 of the Supply Code provides as under:*

**“46. POWERS TO REMOVE DIFFICULTIES**

*If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may do or undertake things or by a general or special order, direct the distribution licensee, to take suitable action, not being inconsistent with the Act, which appears to the Commission to be necessary or expedient for the purpose of removing difficulties.”*

*Keeping in view the above and in view of the difficulties faced by the LS/MS/NRS Consumers due to lockdown, the Commission in exercise of its power conferred under Regulation 46 (Powers to Remove Difficulties) of the PSERC (Electricity Supply Code and Related Matters) Regulations, 2014 relaxes the provisions of Regulation 29 (Recovery of Electricity Charges From Consumers) read with Regulation 31(Payment of Electricity Bills) of the Supply Code and decides to defer the payment of pending amount of the fixed charges of two months starting from 23.03.2020 for Medium Supply/Large Supply industrial and Non-Residential Supply consumers and to allow the recovery of these deferred fixed charges in six equal monthly installments without any Late Payment Surcharge (LPS). The first installment will be raised in the bill of September 2020 and the last in the bill of February 2021. In case, any scheduled installment is not paid by the due date, LPS at the normal rates shall be applicable. However, no connection shall be disconnected for non-payment of these arrears till 31.03.2021, thereafter action will be taken as per the provisions of the Supply Code Regulations.*

*PSPCL shall issue notices to these categories of consumers intimating the arrears and the installments along with the schedule of payment within two months of issue of this Order.”*



6. It was argued that the Commission was bound by the order issued by the State Government '*in public interest*' in exercise of powers vested in it by Section 108 of the Electricity Act. We may quote the statutory provision, it reading thus:-

*"108. Directions by State Government. – (1) in the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.*

*(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final."*

7. We must observe that it is not even an issue before us whether the order was promulgated by the State Government in a matter of policy involving 'public interest'. Given the conditions created by the pandemic, there can be no doubt that the concerns of public interest impelled some palliative measures to be adopted. We cannot, however, subscribe to the view being propagated that the directions of the State Government under Section 108 of the Electricity Act would bind the State Commission. That is not the mandate of the statute. *The law* only says that the State Commission '*shall be guided*' by such directions as may be issued by the State Government in matters of public interest.

8. To buttress the above view, we may contrast the provision contained in Section 108 with the provision in Section 11 of the Electricity Act, 2003

wherein an appropriate government is vested with the power '*in extraordinary circumstances*' to specify that the generating companies shall operate and maintain their generating stations '*in accordance with the directions*' of the government. The expression "*extraordinary circumstances*" is defined by the explanation to mean such circumstances as may arise out of threat to the security of the State, public order or a natural calamity or "*such other circumstances arising in the public interest*". Given the language employed in Section 11, there can be no debate that the generating companies are *bound* to act '*in accordance with*' the directions of the government issued to deal with the situation arising out of such extraordinary circumstances as mentioned above, the caution, of course, being – as provided by sub-section (2) – for such measures also to be adopted as would "*offset the adverse financial impact of the directions*" for the generating companies. In contrast, Section 108 of the Electricity Act only expects the State Commission to "*be guided by*" the directions of the State Government.

**9.** The State Government had commended exemption to be granted for a period of two months for Medium Supply (MS) and Large Supply (LS) industrial consumers and for energy charges to be fixed commensurate with reduction in fixed charges. There was debate before the State Commission on the subject of possible measures that could be adopted,

the Commission having agreed with the stakeholders that a uniform formula for recovery for fixed charges through energy charges was '*not suitable*'. It is in these circumstances that the Commission fell back upon its power to remove difficulties, as available in Regulation 46 of the Supply Code. It did not grant total exemption, and in our view rightly so, in as much as the adverse impact of the pandemic has also been suffered by the distribution licensee(s), they being obliged to pay the requisite charges under the Power Purchase Agreement to the generating companies, it being not fair to expect such entities to bear the burden on their own. There is nothing arbitrary or discriminatory in the approach vis-à-vis the distribution licensee.

**10.** In above facts and circumstances, the decision of the Commission not to grant full exemption but only to defer the recovery of fixed charges of two months permitting the same to be collected in six equal monthly installments, without late payment surcharge, is just, fair and proper solution.

**11.** While we do not accept the challenge by the industrial consumer to the impugned order, we also do not find any substance in the contention of the distribution licensee (PSPCL) vis-à-vis the direction for deferred recovery to be made in six monthly installments. We pointedly asked the learned counsel for PSPCL and he fairly conceded that no claim for refund

has been received from any of the consumers falling in the relevant category as may have already paid the charges before the impugned order was brought into force. In these circumstances, the issue raised by PSPCL is rendered merely of academic interest and of no consequence.

**12.** Thus, the appeals must fail. Accordingly, they are dismissed.

**PRONOUNCED IN OPEN COURT ON THIS 31<sup>st</sup> DAY OF  
OCTOBER, 2022**

**(Sandesh Kumar Sharma)**  
Technical Member

*tpd/*

**(Justice R.K. Gauba)**  
Officiating Chairperson