

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO.220-221, SECTOR 34-A, CHANDIGARH.

Petition No.65 of 2015

Date of Order: 13.01.2016

Present: Smt. Romila Dubey, Chairperson
Shri Gurinder Jit Singh, Member.

In the matter of: Petition under clause 44 of Punjab State Electricity Regulatory Commission (Electricity Supply code and Related Matters) Regulations, 2014 (hereinafter to be called Supply Code, 2014) read with clause 47 of Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters), Regulations, 2007 (hereinafter to be called Supply Code, 2007) for interpretation of clause 14 and 17 of Supply Code, 2007 and section 47 of the Electricity Act, 2003 to the effect that a consumer is entitled to get interest on the initial security even for the period the connection was not released; with further prayer to take appropriate action under Sections 142 and 146 of the Electricity Act, 2003, against the respondent and its officials for issuing the impugned demand letter dated 04.11.2015, asking the petitioner to deposit the interest amount already given to the petitioner on the initial security, being in violation of the clause 14 and 17 of Supply Code, 2007 and section 47 of the Electricity Act, 2003 and Order of this Commission in Petition No. 45 of 2014, titled as GNA Udyog Limited Versus PSPCL;

any other Order or direction which this Commission may deem fit and proper may also be passed in favour of the petitioner.

AND

In the matter of: Madhav Alloys Pvt. Ltd., Talwara Road, Sirhind Side, Mandi Gobindgarh, District Fatehgarh Sahib, through its authorized representative Shri K.D.Parti.

.....Petitioner

Versus

Punjab State Power Corporation Limited (PSPCL), through its Chairman-cum-Managing Director, The Mall, Patiala.

.....Respondent.

ORDER:

1.0 The present petition has been filed by Madhav Alloy Pvt. Ltd., Mandi Gobindgarh through its authorized representative Shri K.D.Parti. The petitioner made the following submissions:

1.1 The petitioner applied for the electricity connection with load of 27000 kW with a Contract Demand of 30000 kVA and deposited ₹ 45,00,000/- as initial security on 07.07.2010. The Feasibility Clearance Committee granted feasibility clearance vide letter dated 28.12.2010. Thereafter, the petitioner submitted A&A form and also deposited remaining

security amount of ₹ 4,05,00,000/- on 25.02.2011 and thus made a total deposit of ₹ 4,50,00,000/- as initial security.

- 1.2 The respondent issued demand notice and asked the petitioner to deposit ₹ 3,22,33,750/- as Service Connection Charges, which was deposited on 14.09.2011.
- 1.3 The electricity connection was released on 24.03.2012 and as per clause 14 of the Supply Code 2007, the initial security of ₹ 4,50,00,000/- deposited was adjusted as Security (Consumption) at the time of release of connection. As per Clause 17 of the Supply Code, 2007, a person/consumer is entitled to get interest on his security (consumption).
- 1.4 The Electricity Act, 2003 came into force with effect from 10.06.2003 and section 47 deals with power of a licensee to seek security from consumers and pay the interest on the security amount to the consumer. As per section 47 of the Electricity Act, 2003, a distribution licensee is liable to pay interest on the security amount taken from a consumer and the petitioner was entitled to get interest on the security amount from the date it was deposited with the distribution licensee. Accordingly, PSPCL in the first bill issued on 02.05.2012 for the month of April, 2012, granted interest of ₹ 46,12,500/- for FY 2011-12.
- 1.5 The petitioner received a letter No.1488 dated 04.11.2015 wherein it was mentioned that the Audit Party of PSPCL had indicated that the petitioner has been paid excess interest of ₹ 45,11,404/- on ACD. It was mentioned that initial security of ₹ 4,50,00,000/- was converted to Security (Consumption) on 24.03.2012, when the connection was released and as such the petitioner is not entitled to get any interest on this

amount of initial security till this was converted to Security (Consumption) and the interest to the tune of ₹ 45,11,404/- , was wrongly granted to the petitioner in bill dated 02.05.2012. The petitioner was directed to deposit the above said amount of ₹45,11,404/- with the PSPCL within seven days failing which necessary action would be taken as per the instructions of the Corporation.

- 1.6 PSPCL lost sight of the fact that section 47.4 of the Electricity Act, 2003, speaks about the payment of interest on the security amount mentioned in section 47.1. So the distribution licensee is liable to pay interest as per section 47.4 on the amount as mentioned in section 47.1 of the Electricity Act, 2003. There is no difference in the period before grant of electricity connection or after grant of electricity connection as per section 47 of the Electricity Act, 2003. Thus, the petitioner was rightly granted interest by the PSPCL vide bill dated 02.05.2012.
- 1.7 The Commission in a similar matter in petition No.45 of 2014 titled as GNA Udyog Limited V/s PSPCL held that a consumer is entitled to get interest on the amount deposited as initial security from the date it was deposited with the Distribution Licensee.
- 1.8 The petitioner made the following prayers:
 - (i) To set aside letter No.1488 dated 04.11.2015 vide which the petitioner has been directed to deposit the interest amount already given to the petitioner on the initial security for FY 2011-12.
 - (ii) To take action under section 142 and 146 of the Electricity Act, 2003, against the respondent and its

officials for issuing the impugned demand letter dated 04.11.2015.

(iii) To stay the operation of the impugned letter dated 04.11.2015 during the pendency of the present petition.

2.0 The petition was admitted and the Commission vide Order dated 04.12.2015 directed PSPCL to file reply by 11.12.2015 with a copy directly to the petitioner. The demand raised by PSPCL vide letter dated 04.11.2015 was also stayed and PSPCL was directed not to disconnect the electricity supply of the petitioner on this ground. The petition was fixed for hearing on 15.12.2015.

3.0 PSPCL vide Chief Engineer/ARR & TR Memo No.5252 dated 15.12.2015 sought extension in time of two weeks to file reply. The Commission vide Order dated 18.12.2015 directed PSPCL to file reply by 28.12.2015 with a copy to the petitioner and the petition was fixed for hearing on 29.12.2015 which was later on postponed to 01.01.2016.

4.0 During hearing on 01.01.2016, PSPCL vide Chief Engineer/ARR & TR Memo No.5372/DD/TR-5/732 dated 31.12.2015 submitted reply and handed over a copy to the petitioner. Following arguments were made by PSPCL in its reply:

4.1 A consumer under section 17.1 of the Supply Code is entitled for interest on the Security (consumption) deposited by him from the date of release of connection to him.

4.2 It has not been specifically mentioned in section 47 of Electricity Act that interest is to be paid to the consumer from the date of deposit of security or from the date of release of connection. However, as per clause No.14.2 and 17.1 of Supply Code approved by the Commission, interest is not payable on initial security.

- 4.3 Interest of ₹ 41,51,250/- (₹ 46,12,500 – ₹ 4,61,250 (TDS)) was credited wrongly for FY 2011-12 by the Computer Section (Billing) having default command to allow the interest whereas interest was payable from 24.03.2012 (Date on which initial security was converted to Security (consumption)] to 31.03.2012 only.
- 4.4 The decision of the Commission in petition No.45 of 2014 (M/S G.N.A. Udyog Limited, Jalandhar V/S PSPCL) has been challenged in Hon'ble Appellate Tribunal for Electricity, New Delhi in Appeal No.298 of 2014.
- 4.5 In a similar case No.14/2015 of M/S. R.P. Multimate's Pvt.Ltd. V/s PSPCL, the Court of Ombudsman, Electricity Punjab, in its Order dated 18.06.2015 has denied the interest on security from the date of deposit of ACD (Advance Consumption Deposit).
- 4.6 PSPCL submitted that if the defaulting consumer do not obey the instructions as laid down in the Notice No.1488 dated 04.11.2015 then the PSPCL is at liberty to disconnect the connection of the petitioner.
- 4.7 PSPCL argued that petition is not maintainable and petitioner has no cause of action to file the suit. As such, petition be dismissed with cost.
- 5.0 During hearing on 01.01.2016, the Commission heard the arguments of both the parties and closed the hearing of the case with liberty to both the parties to file written submissions, if any, by 05.01.2016. The Commission vide Order dated 04.01.2016 reserved the Order.
- 6.0 The petitioner submitted the written arguments dated 01.01.2016 (received on 11.01.2016) wherein the submissions made in the

petition were reiterated. However following additional arguments were advanced:

6.1 In the appeal no. 298 of 2014 filed by the PSPCL before the Hon'ble APTEL, no stay had been granted against the order passed by this Commission. It is settled principle of law that mere pendency of the appeal would not give any right to the respondent to disobey the order passed by this Commission.

6.2 Hon'ble High Court decided C.W.P No.16262 of 2011 titled as M/s Ranjeev Alloys V/s PSPCL and held that the petitioner is entitled to get interest on the ACD amount from 2003 to 2008. PSPCL went in appeal against this order and filed LPA before the Hon'ble High Court which is pending. M/s Ranjeev Alloys filed contempt petition bearing No. COCP No. 3326 of 2013 and the Hon'ble High Court held that merely because LPA has been filed would be no ground to keep the Orders of the writ court in abeyance and directed the PSPCL to comply with the order and the PSPCL has complied with the orders of the Hon'ble High Court.

6.3 The Ombudsman Electricity has crossed its jurisdiction. The power to interpret a regulation lies with this Commission only. An Order passed by this Commission interpreting any rule or regulations is binding on Ombudsman Electricity and as such Ombudsman Electricity has wrongly passed the Order in case no. 14 of 2015 titled as M/s S.P Multimetals Pvt. Ltd. V/S PSPCL ignoring the Order of the Commission in petition no. 45 of 2014.

7.0 Findings and Decision of the Commission

The Commission has gone through the submissions and arguments made by both the parties The only issue to be settled in

the present petition is whether interest on initial security deposited by an applicant/consumer as per regulation 14 of the Supply Code, 2007 is payable before the initial security is converted into Security (consumption) after release of connection/extension in load.

The relevant regulations 14 & 17 of the Supply Code, 2007 reads as under:

“14. Initial security

- 14.1 *The applicant seeking supply of electricity as per Regulation 5 of these Regulations will be required to pay to the Licensee an amount as specified in the Schedule of General Charges approved by the Commission, as initial security towards supply of electricity.*
- 14.2 *The initial security will after release of connection be adjusted against Security (consumption) required to be deposited in accordance with Regulation 15.1.*
- 14.3 *The applicant seeking sanction of additional load/demand will be required to deposit initial security computed only for the additional load/demand.”*

“17. Interest on Security (consumption)

- 17.1 *The Licensee will pay interest on Security (consumption) at the SBI's Base Rate prevalent on first of April of the relevant year plus 2%, provided that the Commission may at any time by notification in official Gazette of the State specify a higher rate of interest.*
- 17.2 *The Licensee will indicate the amount becoming due to a consumer towards interest on the Security (consumption) in the first bill raised after thirtieth of April every year.*
- 17.3 *The interest will be credited to the account of a consumer annually on first day of April each year and will be adjusted on first May of every year against the outstanding dues and/or any amount becoming due to the Licensee thereafter.*
- 17.4 *In the event of delay in effecting adjustments due to the consumer as per Regulation 17.3, the Licensee will for the actual period of delay pay interest at twice the SBI's Base Rate prevalent on first of April of the relevant year plus 2%.”*

Thus as per regulation 14 of the Supply Code, 2007, an applicant/consumer requiring new connection or extension in load/demand is required to pay initial security which is adjusted against Security (consumption) after release of the connection. Payment of interest on security is governed by Regulation 17.1 of the Supply Code, 2007 which provides for interest on Security (consumption) at SBI's base rate prevalent on 1st of April of the relevant year plus 2%. This interest shall be credited to the account of a consumer annually on first day of April each year and will be adjusted on 1st May of every year against the outstanding dues and/or any amount becoming due to the licensee thereafter as per Regulation 17.3 of the Supply Code, 2007.

Since two different terms i.e 'Initial Security' (required to be deposited by the consumer at the time of seeking electricity connection/extension in load) and 'Security (consumption)' (required to be maintained by the consumer after release of connection according to its consumption pattern) have been used in the Supply Code, 2007 for security deposit so the Commission in its Order dated 17.09.2014 in petition no. 45 of 2014 examined the issue in totality and in accordance with regulation 47 read with regulation 49 of the Supply Code 2007, interpreted the matter as per the provisions of section 47 of the Electricity Act, 2003.

The relevant regulations 47 & 49 of the Supply Code, 2007 are reproduced below for reference.

“47. Interpretation

47.1 These Regulations will be read and construed in all respects as being subject to the provisions of the Act, and the provisions of any other law for the time being in force.

47.2 Nothing contained in these Regulations will abridge or prejudice the rights of the Licensee and the consumer under the Act or any Rules or Regulations made there under.”

“49. 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 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.”

From the above, it is evident that Supply Code regulations are subject to the provisions of the Electricity Act, 2003 & if any difficulty arises in the implementation or interpretation of these regulations, the Commission may by Order direct the licensee to take action consistent with the Act.

The relevant section 47 of the Act reads as under:

“47.Power to require security:

(1)Subject to the provisions of this section a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him-

- a) in respect of the electricity supplied to such person; or*
- b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter,*

and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

- (2) Where any person has not given such security as is mentioned in sub section (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.*
- (3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.*
- (4) The distribution licensee shall pay interest equivalent to the bank rate of more, as may be specified by the concerned State Commission, on the security referred to in sub section (1) and refund such security on the request of the person who gave such security.*
- (5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.”*

The matter was deliberated in detail in Order dated 17.09.2014 in petition no. 45 of 2014 wherein it has been held that interest on initial security deposited as per regulation 14 is payable as per the provisions of section 47 of the Act. It will be suffice to reproduce

the relevant part of this Order of the Commission to settle the issue. The relevant portion of the Order of the Commission dated 17.09.2014 in petition no. 45 of 2014 is as under:

“All these regulations of the Supply Code are required to be read in conjunction with Section 47 of Electricity Act, 2003 (Act). Sub section (1) of Section 47 of the Act, empowers the distribution licensee to recover security from the person requiring supply of electricity for payment which may become due in respect of electricity supplied to such person and also for any electric line/plant or meter which is to be provided for supplying electricity to such person. Sub section (2) of Section 47 further empowers the distribution licensee to recover additional security through a notice if the security deposit has become invalid or insufficient. Sub section (4) of Section 47 provides for payment of interest on security by the distribution licensee at the rates as may be specified by the Commission on security amount recovered from the person. So the security recovered from the person both under sub section (1) and sub section (2) of Section 47 of the Act qualifies for interest as per sub-section (4) of section 47. Thus the Act is very clear that interest is payable on security whether the same has been recovered from the person before release of connection or thereafter during review while determining the adequacy of the amount of security deposited by the consumer. Moreover, it is an established law that regulations framed by the Commission under an Act of the Parliament are sub-ordinate legislation and in case of any ambiguity or in-consistency, the Act shall prevail.

Though as per Regulation 14 of the Supply Code, this amount recovered from the applicant has been termed as “Initial Security” but it is a security amount recovered as provided in Section 47 (1) of the Act and interest on such initial security is also payable. Since as per regulation 17.3 of the Supply Code, the interest is to be adjusted in the bills against the outstanding dues or any amount becoming due to licensee thereafter, so in case of a new connection although interest is payable from the date of deposit of such amount but is actually paid to the consumer after release of connection through bills. However, for the existing consumers requiring additional load, the interest on Security (consumption) and the additional security deposited as initial security for additional load/demand, can be paid to the consumer as and when the same becomes due as per Supply Code even before the release of extension in load/demand.”

Thus section 47 of the Act mandates payment of interest on initial security deposit irrespective of the time of its deposit. Thus interest on initial security recovered under regulation 14 of the Supply Code, 2007 is payable in accordance with regulation 17 of the Supply Code, 2007. **As such, AEE/PSPCL Bhadson notice vide Memo No. 1488 dated 04.11.2015 for recovery of ₹45,11,404/- paid as interest is set aside.**

However before disposing of this petition, we would take like to comment on two pleadings made by PSPCL in its reply. First is the justification given by PSPCL for non compliance of Commission’s Order dated 17.09.2014 in petition no.45 of 2014 by stating that the Order of the Commission has been challenged by PSPCL before the Hon’ble APTEL in Appeal No.298 of 2014. It is evident

that the Order of the Commission referred to above has neither been stayed nor set aside till date by any competent Court or the Hon'ble APTEL. Any Orders of the Commission clarifying any provision of Supply Code or laying down the rules for their implementation, are applicable to all similarly placed consumers. Non compliance of the Order dated 17.09.2014 in petition No. 45 of 2014 of the Commission under these circumstances is punishable under section 142 and 146 of the Act. ***However, before imposing any penalty, we would like to give another opportunity to PSPCL to grant interest on 'Initial Security' amount recovered from all applicants/consumers under regulation 14 of the Supply Code 2007 as per Order of the Commission dated 17.09.2014 in petition no. 45 of 2014.*** PSPCL shall submit its compliance report within three months from the date of issue of this Order.

Further, it has been mentioned in PSPCL reply that in similar case Ombudsman Electricity, Punjab in its Order dated 18.06.2015 in case No.14/2015 has denied the interest on initial security before release of connection/extension in load. We have gone through the Order and observed that the complainant/petitioner had brought the Order of the Commission in petition no. 45 of 2014 to the notice of the Ombudsman and same has duly been recorded in the proceedings but the interpretation rendered by the Commission on the provisions of the Supply Code regulations was set aside/overruled by Ombudsman which is against all judicial propriety. As pointed out above, Supply Code regulations are subject to the provisions of the Act as per regulation 47 and regulation 49 of the Supply Code 2007 empowers the Commission to interpret the regulations and to direct the licensee by an Order to

take appropriate action consistent with the Act. Such interpretation shall remain in force unless it is set aside by a superior Court/Tribunal. All such Orders of the Commission are required to be followed by all Consumer Grievances Committees/Forums and Ombudsman constituted under the regulations framed by the Commission. In this regard, we may refer to rule 7(3) of the Electricity Rules 2005 which reads as under:

*“The Ombudsman shall consider the representations of the consumers consistent with the provisions of the Act, the Rules and Regulations made hereunder or **general orders or directions given by the Appropriate Government or the Appropriate Commission in this regard before settling their grievances.**”*
[Emphasis Supplied]

We hope that in future, the above observations of the Commission shall be kept in view by all the concerned authorities. Secretary, PSERC is directed to bring the above observations of the Commission to the notice of all the concerned authorities.

The petition is disposed of accordingly.

Sd/-
(Gurinder Jit Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 13.01.2016