

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 38 of 2022

Date of Order: 30.11.2022

Petition under Section 142 of the Electricity Act, 2003 for initiation of appropriate action against the Respondents for willful contravention of the directions rendered by the Commission contained in the order dated 26.06.2019 passed in Petition No.49 of 2017 (M/s Singhania International Limited vs PSPCL).

AND

In the matter of:

Kanin Industries Private Limited, Registered office Block-A, Plot No. 46, Mathura Road, Mohan Cooperative Industrial Estate Ltd, New Delhi-110044 and also at 2nd Km Milestone GT Road, Doraha, Ludhiana-141421 through its Authorised Representative Sh. Pawan Diwan, aged 49 years, son of Sh. Sham Lal Diwan, Adhar No. 783960720329.

...Petitioner

Versus

1. Punjab State Power Corporation Limited, PSEB Head office, The Mall, Baradari Patiala, Punjab-147001 through tis Chairman-cum- Managing Director.
2. Chief Engineer (Commercial), Punjab State Power Corporation Limited, PSEB Head Office, The Mall, Baradari, Patiala, Punjab-147001.
3. Superintending Engineer, Doraha Sub Station, Punjab State Power Corporation Limited, Khanna, Punjab- (Exercising the Powers of Assessing Authority under Section 126 of the Electricity Act, 2003.

...Respondents

Commission: Sh. Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

Petitioner: Sh. Shehkar Verma, Advocate

PSPCL: Sh. Naveen S. Bhardwaj, Advocate

Order

Kanin Industries Private Limited has filed the present petition raising the grievance that the Petitioner has been proceeded against under Section 126 of the Electricity Act, 2003 on a misconceived assumption that electroplating process is included in Power Intensive Unit industries.

1. The submissions of the petitioner are as under:

i) That the petitioner has an electricity connection with a connected load of 1.25 MW at Doraha, Ludhiana for manufacturing of carbon steel 'STAPLES' and 'STITCH WIRES' however at the time of finishing of the products, galvanising process is carried out using zinc metal to avoid rusting and the said galvanising process can be carried out using the following methods.

a. Hot Dip – Galvanising Process

b. Electroplating – Galvanising Process

ii) That the Petitioner applied for 'Continuous Process' for continuous electricity supply for its Unit on 20.12.2021 to meet the business challenges and market pressure and duly explained the manufacturing process mentioning therein 'Electro Galvanising Process' and there is no concealment on the part of the petitioner.

iii) That on 04.06.2021, 02.08.2021, 13.01.2022 and 31.03.2022, the officials of PSPCL visited the factory premises for inspection

and they did not notice or report any use of any power intensive appliances/rectifiers connected to PSPCL load.

iv) That on 27.04.2022, the officials of PSPCL came for site inspection and reported that Rectifiers were connected to the load. It is a conceded position that on the said date (27.04.2022), there were no industrial operations as regards galvanizing process. The alleged Rectifiers were not connected to the PSPCL Load or to the industrial process. Galvanising process followed by the Petitioner is in the nature of 'in-house consumption' for finishing of its own goods and as such, the Petitioner is not an 'Electrolysis Process Industry'.

v) That on 02.05.2022, the petitioner was served with provisional assessment under Section 126 of the Electricity Act, 2003 for alleged unauthorised use of electricity and a provisional demand of Rs. 66,86,484/- was served upon the Petitioner in a completely arbitrary and illegal manner. The provisional assessment order was served upon the Petitioner beyond the statutory period of 48 hours.

vi) That Electrolysis process is a generic process and it is essentially a chemical process where a substance in its molten state or in an aqueous solution is decomposed by the passage of electric current. The process of electrolysis has many applications.

vii) On 02.05.2022, the Petitioner filed detailed statutory objections to the provisional assessment order dated 29.04.2022 served on 02.05.2022. The Petitioner demonstrated on record that power charges for general load and Power Intensive Units are the same and it has no reason to use electricity supply in an unauthorised manner. Inter-alia, the Petitioner further demonstrated on record that, assuming it indulged in unauthorised use of electricity, the alleged financial benefit would be of only a few thousand rupees, whereas, it is paying a monthly electricity bill of

Rs. 22.00 Lacs. Therefore, allegation of unauthorized use of electricity defies logic. On 26.05.2022, PSPCL passed a cryptic final assessment order without even considering the objections filed by the Petitioner.

viii) That the entire proceedings under Section 126 of the Electricity Act, 2003 have been carried out notwithstanding the fact that the PSPCL is not clear as to whether electroplating industries/process are to be considered as Power Intensive Units or not. PSPCL has already approached the Commission vide Petition No. 62 of 2021 to seek clarification as to whether electroplating industries would be covered under Power Intensive Unit Industries or not in consonance with the directions passed by the Commission in Petition No. 49 of 2017 in which, vide order dated 26.06.2019 following directions have been passed:-

“...PSPCL is also directed not to charge any industry as PIU which is not included in the list of declared PIU industries. However, as the technology is changing fast, there may be some new/existing Large Supply Industrial connection applicants/consumers whose process/technology may be similar to PIU but with different name than that declared as PIU by the Commission. Licensee may file petition with the Commission to include such processes under PIU category. Such industries shall be charged general tariff with the undertaking from the applicant that it will be charged applicable tariff from the date of release of connection/extension in load as per the decision of the Commission in this regard.”

PSPCL has carried out the proceedings under Section 126 of the Electricity Act, 2003 in an illegal and arbitrary manner and without following due process of law and for the latter grievance, the Petitioner reserves its rights to avail appropriate remedy in accordance with law in terms of Order II, Rule 2 C.P.C. 1908, if so required.

ix) The Petitioner never availed any amnesty scheme of the Government to avoid or defer its financial liabilities. On 12.05.2022, under coercion, the Petitioner has applied for bifurcation of its load to avoid any further arbitrary and illegal action on the part of the Respondents which shall be subject to the final decision in the present petition. It is also in consonance with the directions passed by the Commission in Petition Number 49 of 2017, wherein, it has been held that pending clarification as to whether an industrial process is to be considered as PIU or not. The Petitioner is ready and willing to give an undertaking in the aforesaid terms, that is, till such time the issue involved in Petition No. 62 of 2021 and in the present case is not adjudicated upon, it shall continue to pay general electricity connection charges and, in case, the Petitioner is liable to pay Power Intensive Tariff, it shall pay the same prospectively from the date of the decision of the Commission. The Petitioner is willing to comply with any other direction as may be imposed by the Commission in the interest of justice, equity and fair play.

x) The petitioner has prayed to the Commission for grant of the following relief:

a. To accept the petition under Section 142 of the Electricity Act, 2003 for appropriate action against the PSPCL for willful contravention of the directions of the Commission in the order dated 26.06.2019 in Petition No. 49 of 2017.

b. Further, order or issue direction in exercise of powers under Section 61 and all other enabling provisions of the Electricity Act, 2003 read in conjunction with Regulation 69 of PSERC (Conduct of Business) Regulations, 2005 and Condition No. 23 of General Conditions of Tariff to hear and adjudicate the issue as regards

clarification regarding applicability of the power intensive unit tariff on the Petitioner, an issue, which is also subject matter of Petition No. 62 of 2021 filed by the Respondents for clarification under Regulation 69, 70, 71 and 72 of Chapter XIII of the Conduct of Business Regulations 2005.

- c. In case the industrial process of electroplating is declared or clarified to be PIU, the same be held effective prospectively from the date of declaration/clarification by the Commission as previously held in Petition 49 of 2017.
 - d. During the pendency of the present petition, in exercise of powers under Regulation 69 of PSERC (Conduct of Business) Regulations, 2005, all penal and coercive actions against the Petitioner in terms of the order dated 26.05.2022 may kindly be stayed.
 - e. Any other appropriate order or direction as may be deemed fit and appropriate by the Commission in the facts and circumstances of the present case.
3. The Commission admitted the petition vide Order dated 19.07.2022 and PSPCL was directed to file its reply within two weeks.
 4. PSPCL submitted its reply vide letter No. 7523 dated 10.10.2022.
The submissions of PSPCL in brief are as under:
 - a) That the petition is totally misconceived and not maintainable in the eyes of law as the grievance emanates from the fact that the petitioner has been proceeded against under Section 126 of the Electricity Act, 2003. There is alternative efficacious remedy of appeal under Section 127 of the Electricity Act, 2003 available to the petitioner for redressal of the same.

- b) That the petition is misconceived and fails to disclose the cause of action of the petitioner to approach the Commission. The petitioner has failed to bring any cogent material or evidence to prove that electroplating is not an electrolyte process industry. In the absence thereof, the petitioner cannot seek exemption from its liability to pay PIU tariff and cannot claim violation of any order of the Commission merely on account of pendency of petition No.62 of 2021. PSPCL has sought clarification regarding electroplating being PIU. This does not mean that PSPCL cannot claim the said PIU tariff from the petitioner.
- c) That no cause of action survives for consideration by the Commission as the petitioner has admitted and acknowledged that its industrial operations involve electroplating which is an electrolytic process already classified under PIU tariff category by the Commission.
- d) That the petition is also bad & misconceived since the petitioner itself has pleaded that the issue regarding clarification is already subject matter of petition No. 62 of 2021. Once the issue is already being examined by the Commission, the present petition is merely duplicating the same.
- e) That the dispute is with respect to recovery of charges by the licensee which falls within the meaning of 'Consumer Grievance' as defined under Regulation 1.5 (g) of the PSERC (Forum and Ombudsman) Regulations, 2016, The appropriate alternative efficacious remedy is available to the petitioners to approach Consumer Grievance Redressal Forum in terms of the mandate of Regulations 2016.
- f) That Section 42 of the Electricity Act enjoins PSPCL to supply electricity strictly in accordance with the provisions of the Act.

Further, Section 45 of the Act provides that the charges for electricity supplied by a distribution licensee shall be fixed in accordance with the methods and principles as may be specified by the Commission. The Commission in exercise of its power under the Electricity Act 2003 issues Tariff Order, inter alia determining the tariff for retail supply of electricity within State of Punjab from time to time. PSPCL is bound by statute to comply with such Tariff so determined. However, the petitioner has sought to impress upon the Commission that PSPCL is treating the petitioner as an additional category other than approved by the Commission as PIU.

g) That the petitioner is intentionally and deliberately misreading and misinterpreting the provisions of Supply Code as also the tariff order. PSPCL has not created any additional category of consumers other than the ones approved for tariff. Since certain general category consumers had installed PIUs without intimation/permission of PSPCL as such, draft notice for regularization of such PIU load (if any) was issued to all LS consumers. Subsequently, as per the tariff order 2019-20, only billet heaters having capacity less than 100 kVA were exempted from being considered under PIU. No other machinery having load below 100kVA was ever exempted for a large supply consumer. If the large supply consumer having load sanctioned more than 100KVA under general category only, is found using power intensive load below 100kVA (only billet heaters up to 100 kVA exempted), then such consumers are penalized for doing Unauthorized Use of Electricity under Section-126 of EA 2003.

h) That PSPCL received numerous representations from various industries and industrial associations wherein it is mentioned that some of their units are involved in operation of electroplating work

and accordingly it was requested to clarify regarding applicability of PIU tariff to Electroplating Industries. Further, it has also been pointed out that the Commission has declared Electrolytes process industries as PIU industries through its Tariff order. However, it nowhere mentioned that Electroplating Industries are not to be covered under PIU tariff.

- i) That although, it is the categoric stand of PSPCL that Electroplating Industries, being electrolytes process based industry, would be covered under PIU tariff category, however, in order to rule out any inadvertent error or misunderstanding, PSPCL approached the Commission. In response, the Commission vide letter dated 19.01.2021 conveyed that the mentioning of “Electrolytes process industries” under PIU category in Scheduled of Tariff annexed with the annual Tariff Orders is not a new phenomenon. The said industry continues to be covered in PIU since the PSEB era. Further, the Commission advised that the PSPCL may file a petition, in case any clarifications/amendment to the Schedule of tariff is required.
- j) That PSPCL filed petition No.62 of 2021 seeking clarification regarding applicability of Power Intensive Unit (PIU) tariff to various industries including electroplating industries which was admitted on 15.11.2021.
- k) That as there are innumerable industrial units which carry out electroplating operations in their industrial activities and are covered under PIU tariff, being electrolytes process industry, yet the concerned consumers have been avoiding payment thereof and have been resorting to raising frivolous disputes for want of proper clarity. PSPCL would be deprived of its rightful dues from such consumers and difference between general tariff vis-à-vis PIU tariff

would run into crores of rupees, if PSPCL would not consider them under PIU tariff. Also, PSPCL may not be able to recover the entire arrears, even if the Commission eventually holds the electroplating process industry as covered under electrolytes process industries, given the myriad possibilities of default owing to disconnection, surrender of connection, closure/winding up of the units, creation of 3rd party rights and may further lead to unproductive multiplicity of litigation, besides the huge loss of revenue. As such, the Electroplating process ought to/is covered under PIU tariff being electrolytes process industry and the answering respondent has already approached the Commission for appropriate provisions in this regard.

- l) That the petitioner has intentionally concealed that the petitioner is LS industrial consumer having connected load of 1.25 MW (1250 kW and CD 1300kVA). The premises of the petitioner were inspected for verification of load/process on 27.04.2022 in which 7 rectifiers for electrolysis process found connected with PSPCL system. Since, Electrolytes process is already declared under PIU Industry as per tariff order for financial year 2020-21 issued by the Hon'ble Commission vide its order dated 01.06.2020 read with Commercial Circular No. 27/2020 dated 03.06.2020. Accordingly, provisional demand of Rs.66,86,484/- was served upon the petitioner for unauthorized use of electricity. The petitioner submitted its responses on 02.05.2022, which were duly considered and were discarded being devoid of any merit. The final assessment order was issued on 26.05.2022 reiterating the findings contained in the provisional assessment order. Aggrieved thereof, the petitioner had appealed before the Appellate Authority cum Director Technical, PSTCL which is pending and the same is fixed for its

next hearing on 13.10.2022. Without disclosing the said material aspects, the petitioner has filed this petition before the Commission.

- m) That the petitioner is well aware of its status and situation yet the petitioner is intentionally abusing the process of law by deliberately availing a remedy which is not available to it under the law. In fact, the petition has been founded on misreading of the statutory framework and mis-appreciating the provisions of Electricity Supply Code and Electricity Supply Instructions Manual.

PSPCL prayed that the petition may be dismissed with costs in the facts and circumstances of the case and in the interest of justice and fair play.

5. After hearing the parties on 12.10.2022, Order was reserved.

6. **Observations and Decision of the Commission**

The petitioner has filed the present petition under section 142 of the Act for initiating action against PSPCL for willful contravention of the orders of the Commission dated 26.06.2019 in Petition No. 49 of 2017.

Vide Order dated 26.06.2019 in Petition No. 49 of 2017 the Commission issued the following directions: -

“...PSPCL is also directed not to charge any industry as PIU which is not included in the list of declared PIU industries. However, as the technology is changing fast, there may be some new/existing Large Supply Industrial connection applicants/consumers whose process/technology may be similar to PIU but with different name than that declared as PIU by the Commission. Licensee may file petition with the Commission to include such processes under PIU category. Such industries shall be charged general tariff with the undertaking from the applicant that it will be charged applicable tariff from the date of release of

connection/extension in load as per the decision of the Commission in this regard.”

The petitioner alleged that on one hand PSPCL has filed petition No. 62 of 2021 seeking clarification regarding the applicability of Power Intensive Unit (PIU) tariff to various industries including electroplating industry and on the other hand has booked the petitioner under UUE on the misconceived assumption that it is using PIU process for electroplating process. We have gone through the Provisional Assessment Order dated 29.04.2022 and observed that in para 2 of this assessment order it has been mentioned that;

2. During the above inspection, the following acts of unauthorized use of electricity were noticed.

“ਤੁਹਾਡੇ ਵੱਲੋਂ ਪੀਯੂ ਲੋਡ ਬਾਏਫਰਕੇਟ ਨਹੀਂ ਕਰਵਾਇਆ ਗਿਆ ਅਤੇ ਖਪਤਕਾਰ ਦਾ ਸਾਰਾ ਆਈ. ਲੋਡ ਹੀ ਜਨਰਲ ਘੋਸ਼ਿਤ ਕਰਕੇ ਮੰਜੂਰਕਰਵਾਇਆ ਗਿਆ। ਜਿਸ ਨਾਲ ਕਿ ਇਹ ਬਿਜਲੀ ਐਕਟ ਦੀ ਧਾਰਾ ਮੁਤਾਬਿਕ ਅਣਅਧਿਕਾਰਤ ਵਰਤੋਂ ਦਾ ਕੇਸ ਬਣਦਾ ਹੈ 126”

“ਤੁਹਾਡੇ ਅਹਾਤੇ ਉਪਰ ਹੇਠ ਲਿਖੇ ਅਨੁਸਾਰ *PIU* ਕੈਟਗਰੀ ਦਾ ਲੋਡ ਕੁਨੈਕਟਡ ਪਾਇਆ ਗਿਆ ਜੋ ਕਿ ਇਲੈਕਟ੍ਰੋਲਾਈਟ ਪ੍ਰੋਸੈਸ ਜ਼ਿੰਕ ਗੈਲਵੇਨਾਈਜ਼ਿੰਗ ਕਰਨ ਲਈ ਵਰਤਿਆ ਜਾ ਰਿਹਾ ਹੈ।

ਰੈਕਟੀਫਾਇਰ T/F 60 KW=3 No.

ਰੈਕਟੀਫਾਇਰ T/F 18 KW=3 No.

ਰੈਕਟੀਫਾਇਰ T/F 24 KW=1 No.

ਉਪਰੋਕਤ *PIU* ਲੋਡ ਬਿਜਲੀ Act 2003, ਦੀ ਧਾਰਾ ਅਨੁਸਾਰ 126UUE ਦਾ ਕੇਸ ਹੈ।”
[Emphasis added]

The words used while describing the industrial process of the petitioner in the Provisional Assessment Order dated 29.04.2022 are “Electrolytic process Zinc Galvanising” and not “Electroplating”. The

same have been reiterated in the Final Assessment Order dated 26.05.2022. The “Electrolytic process” is already included in the list of Power Intensive Units as per Schedule Sl.3.2 of the Schedule of Tariff for LS Industrial Power. Thus there is no willful contravention of the Orders of the Commission dated 26.06.2019 in P. No. 49 of 2017 by PSPCL in the instant case which warrants action under section 142 of the Act. We have examined the submissions of the parties in the present petition only to see if there is any willful contravention of the orders or directions of the Commission by PSPCL. We have not gone in to the merits of the case and the petitioner is entitled to seek remedy from the competent authority/court as per law.

The Petition is disposed of accordingly.

Sd/-

(Paramjeet Singh)
Member

Chandigarh

Dated: 30.11.2022

Sd/-

(Viswajeet Khanna)
Chairperson