

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

Appeal No. 83 of 2008 and IA No. 111 of 2008

Dated: March 06 , 2009.

Present: - Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Shri H.L. Bajaj, Technical Member

M/s Nahar Sugar and Allied Industries Ltd.
Now known as Nahar Industrial Enterprises
Ltd.(Sugar Unit) Amloh,
Distt. Fatehgarh Sahib (Pub)Appellant

Versus

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
Punjab
4. The Assistant Executive Engineer
Sub-Division, Amloh
Distt. Fatehgarh Sahib
PunjabRespondents

Counsel for the appellant(s) : Mr. Neeraj Kumar Jain
Mr. Sanjay Singh
Mr. HD.Sanghal
Mr. Ram Parkash,
Representative
Mr. Bharat Singh
Mr. Sandeep Chaturvedi

Counsel for the respondent(s): Ms Jayshree Anand for
Resp.Nos. 3&4
Mr. Rohit Kumar Yadav
Mr. Sakesh Kumar for R-1
Er. J.P. Singh, Dy.CE/PSEB
Er. Kulwinder Singh DD/PEB
Mr. J.C Shukla,Registrar,PSEB

Judgment

Per Hon'ble Mr. H.L. Bajaj, Technical Member.

This appeal challenges the order dated April 01, 2008 in Petition No. 8 of 2003 passed by the Punjab State Electricity Regulatory Commission, Chandigarh (PSERC or the Commission in short).

2. Facts to the extent relevant in this appeal, are given below:

3. The appellant is engaged in manufacturing sugar and generates electricity as a by-product by using sugarcane waste known as 'baggase'. Punjab Energy Development Authority has identified, confirmed and issued policies for such power generation by the sugar mills from baggase. The appellant decided to set up Thermal Generation (TG) sets for running the

entire plant and machinery of the sugar mill by the power being generated by the appellant only during the season when sugarcane is available i.e. from mid November to March by installation of two numbers Turbine Generators (TG) of the capacity of 3125 kVA each and two numbers D.G. sets of the capacity of 320 kVA and 300 kVA, total capacity of 6870 kVA. Punjab State Electricity Board, Patiala vide its letter No. 25/27 dated December 22, 1994 granted permission for setting up the said generating facilities subject to certain terms and conditions mentioned therein. The relevant conditions are quoted below:

" i) TG sets shall run in isolation with the PSEB supply system and no interflow of PSEB supply and TG generation shall be permitted.

ii) No changeover switch/arrangement for interflow power shall be allowed

iii) In case of detection of a change over switch/arrangement/bus coupler for using PSEB supply for TG sets/load, load surcharge shall be charged for the entire load fed from TG sets.

iv) Permission fee @ Rs. 1/- per kVA shall be recovered for the TG sets capacity"

4. Appellant has a residential colony for its staff members, a repair workshop and drinking water facility for employees, for

which PSEB power is being used through a 750 kVA Transformer for which the appellant has a sanctioned load of 700 kW with contract demand of 750 kVA. Power required for running the sugar plant is about 7000 kVA.

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

6. Appellant planned to install additional TG sets of the capacity of 3+6 MW and for that purpose sought permission of the PSEB in the year 2002. The Chief Engineer/Commercial vide his letter No. 46932/33 dated September 12, 2002 informed the appellant that new terms and conditions mentioned in commercial circular No. 26/2002 would apply and further granted permission subject to the condition that for the entire load fed from TG set, the appellant company is liable to pay ACD (Advance Consumption Deposit/Security) and also Parallel Operation Charge @ 200 per kVA of the 7-½% of the installed capacity of the TG set.

7. PSEB by commercial circular No. 26 of 2002, dated June 10, 2002 introduced provision for payment of extra Advance Consumption Deposit (ACD) for loads connected to TG. It also provided that co-generators shall pay permission fee and parallel operation charges. Subsequently, PSEB issued circular No. 60 of 2002, whereby the provisions of the earlier circular were partially amended.

8. Invoking the circulars, the PSEB required the appellant to pay ACD and parallel charges. Thereupon, the appellant filed a petition before PSERC whereby it questioned the demand raised by PSEB in respect of the ACD and parallel charges. The appellant challenged the validity of the circulars before PSERC who did not find any fault with the circulars of PSEB and accordingly dismissed the petition.

9. Dissatisfied with the order of PSERC, the appellant filed an appeal before the Punjab and Haryana High Court. By order, dated November 08,2004, the High Court allowed the appeal and set aside the order of PSERC, dated

July 23, 2004, and directed PSERC to pass a fresh order after looking into all aspects of the matter.

10. Aggrieved by the order passed by the High Court, the PSEB filed a Special Leave Petition before the Hon'ble Supreme Court who vide 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 appeal No. 7 of 2007 in this Tribunal.

11. This Tribunal by its judgment dated July 26, 2007 remitted the matter to PSERC to determine whether or not the appellant was using supply from PSEB for its sugar plant. The Commission was directed to consider the Inspection 'Report' of the XEN Ludhiana and Senior XEN, Patiala and the ramifications the report will have with reference to various circulars. This Tribunal's judgment gave liberty to PSERC to consider other relevant material as on record. PSERC was to take view after hearing the parties.

12. Pursuant to this Tribunal's judgment, the Commission in its order dated April 01, 2008 concluded that there is no impact of the Inspection Report on the levy/deposit of Advance Consumption Deposit (ACD), parallel operation charge and permission fees because these are as per the then prevailing Sales Regulations of the Board which were made a pre-condition while granting permission. The Commission has also stated in its order that Existing Sales Regulations were ordered to be continued by the Commission for 2003-04 and thereafter. As for levying of load charges is concerned the Commission had observed that these charges have been levied after decision of the petition by the appellant who can seek redressal of its grievance through the Special Mechanism available. Aggrieved by this order of the Commission dated April 01, 2008 the appellant has filed this appeal.

13. Learned counsel Mr. Neeraj Kumar Jain appearing for the appellant has contended that as there has been no flow of electricity of PSEB to the appellant's sugar plants, the ACD and parallel charges should not be levied by PSEB. He

contended that the Changeover Switches and the reverse power relay provided will not enable the flow of current from PSEB side to the sugar factory and, therefore, the TG plants are working in isolation. He contended that in view of this the ACD and parallel operation charges are not payable by the appellant.

14. Learned counsel for the appellant pleaded that Trivector Meter installed by the PSEB was recording consumption of electricity which inter alia indicated Maximum Demand (MD) from 1998 onwards. It would have recorded inflow of electricity from PSEB side for running of the load of TG sets. It has not recorded any flow of electricity from PSEB side to the TG set load, which conclusively proves that PSEB power was never utilized for running load of TG sets.

15. At this point it will be necessary to advert to the paras 3,4 and 5 of the order dated April 01, 2008 of the Commission which are extracted below:

3. The Commission notes that the petitioner had earlier been granted permission on December 23, 1994 to install two TG sets (3125 KVA each) and two DG sets of 320 kVA

and 300 KVA capacity. The petitioner also has an electric connection from PSEB for its colony, auxiliary load, workshop etc. with a sanctioned contract demand of 750 kVA with a transformer capacity also of 750 kVA. The auxiliary load of the TG sets could be fed from the Board or DG/TG sets. The Commission further observes that keeping in view the limited transformer capacity of the consumer (750 kVA) and capacity of metering equipment the load of the sugar mill and other industries of the petitioner normally fed from TG sets could not be fed from PSEB supply. This fact can also be inferred from the inspection report of May 06, 2004 and substantiated by the down loaded data from the metering equipment of the consumer furnished by the Board.

4. The main issue now to be decided is whether the petitioner is still liable to deposit ACD and other charges leviable as per Sales Regulations. The Commission observes that relevant circular No. 26/2002 under which charges were levied was effective from June 10, 2002. Permission to install 2 TG sets of 9 MW for co-generation was granted by the Board through letter No. 46932/33 dated September 12, 2002 subject to the conditions of circular No. 26/2002 and deposit of the following charges:

- (i) Permission fee @ Rs. 50/- per kVA*
- (ii) ACD charges for the load connected to TG over and above the load already sanctioned and released from PSEB system.*
- (iii) Parallel operation charges @ Rs. 200/- per kVA of 7.5% of the installed capacity of TG set in kVA.*

As submitted by the Board, the petitioner deposited the permission fee and when asked to deposit ACD and other charges, obtained a stay order on June 14, 2003 from the local civil court on the condition that the matter may be decided by the Commission and till that time bank guarantee equivalent to 50% of these charges shall be

rendered by the petitioner. Thereafter, this petition was filed on July 01, 2003.

The petitioner has now argued that since PSEB supply was not being used as per the Inspection Report, ACD and other charges could not be levied by the Board. To support this contention, petitioner had referred to letter dated December 23, 2994 through which PSEB allowed the petitioner to install two TG sets (3125 kVA each) and two DG sets of 320 kVA and 300 kVA capacity. The Commission observes that the present petition is regarding charges etc. pertaining to TG sets permitted to be installed by the Board in letter dated September 12, 2002. This permission was granted by the Board subject to the conditions of circular No. 26/2002 and deposit of the charges specified in the permission letter. There is no dispute that the charges have been levied according to the said circular and its subsequent amendments. There is no impact of the Inspection Report on the levy/deposit of ACD parallel operation charges and permission fees because these are as per the then prevailing Sales Regulations of the Board which were made a pre-condition while granting permission. Hence, even after considering the inspection report the petitioner was still liable to deposit ACD etc. under the then Sales Regulations. It is also relevant to reiterate that all existing Sales Regulations were ordered to be continued by the Commission for 2003-04 and thereafter. In respect of the argument that the charges were continued without obtaining objections from the public, it is observed that no appeal was filed against their continuance. For all these reasons, the Commission reiterates its earlier conclusions that PSEB's Sales Regulations/Commercial Circulars remain legally valid until they are revised. As these charges were payable, the question of their refund does not arise and the petitioner can not take retrospective advantage of the commercial circular No. 51/2006 in respect of discontinuation of ACD and the subsequent order of the Commission regarding Parallel Operation Charges which are both applicable only with prospective effect.

5. *In so far as the payment of load surcharge is concerned, the Commission observes that it was not part of the petition. The petitioner for the first time, in the submissions dated June 15, 2004 filed with reference to the inspection dated May 06, 2004, prayed that the Board may be debarred from levying load surcharge. As the load surcharge had not been levied till that time, the Commission did not pass any order in this respect in its order dated July 23, 2004 as cause of grievance on this account did not exist. The Commission further, observes that the load surcharge has been levied after the decision of the petition and is in the nature of a grievance. There is a special mechanism for the redressal of grievances in respect of charges levied by the Board and the petitioner is free to seek redress through this specifically laid down procedure. In these circumstances the Commission refrains from passing any order in respect of the levy of load surcharge.*

16. Learned counsel for the respondent PSEB submitted that the permission granted to the appellant explicitly provides for the condition that no Changeover Switch Arrangement for inter-flow of power shall be allowed and that in case of detection of Changeover Switch/arrangement/bus Coupler for utilizing PSEB supply for TG sets load, load surcharge shall be charged for the entire load from TG sets. He contends that the moment these conditions are violated the appellant is liable to pay the charges as stipulated in the conditions imposed and duly accepted by the appellant while granting permission.

17. Learned counsel appearing for the respondents contended that the PSEB commercial circular letter No. 26/2002 which has not been challenged and has been held as a valid circular by the Commission also, stipulates the following three categories of captive power plants:

" 3.1 Category-I

For those CPP owners who are interested to install power plants on standalone basis without any connection from PSEB.

3.2 Category-II

Captive Power Plant owner who are our consumers and also want to have interfacing with the PSEB system shall be eligible for utilizing power for their self use and shall have option to run their plants in synchronization with PSEB system.

3.3 Category -III

In this classification Power Plant Owner who are not PSEB consumers and are willing to get power from PSEB system during breakdowns, maintenance and failure of their power plants."

18. Learned counsel submitted that the appellant clearly comes under category II and therefore all charges payable by the category II consumers have to be paid by it. He said that as the appellant is a consumer of PSEB it cannot claim to be

having captive plant on standalone basis. He reminded that the appellant himself has given the following undertaking :

"That we will run our Turbo Generator sets load in isolation and not interfere PSEB supply and Turbo Generation shall not be allowed in any circumstances.

That we will not use any Changeover Switch for this purpose.

That in case we have found to have deployed COB/arrangement/Bus Coupler for using PSEB supply for TG sets load, we will be bound to pay load surcharge as per instructions of PSEB".

19. He contended that the appellant having violated the conditions under which the permission was given cannot escape the payment of charges payable by Category II consumers.

20. Learned counsel also asserted that the interflow of load was also established from the printouts of load survey downloaded data (DLD) from the meter. During the crushing season power requirement for the staff colony, repair workshop and drinking water facility for employees, drawal of power from PSEB supply is expected to be maximum but it may be seen that even during crushing season 2003-04 the

petitioner has been utilizing PSEB fed load almost at zero level most of the time which establishes i) interflow of power and ii) utilization of PSEB supply as a standby source.

Analysis and decision

21. The entire issue revolves around the question as to whether the appellant comes under Category I or Category II as defined vide PSEB circular No. 26/2002 dated June 01, 2002(Supra). Whereas the appellant claims that he comes under Category I, it is the contention of the respondent PSEB that the appellant falls under Category II. Admittedly Changeover Switches have been installed by the appellant and therefore, there is clear violation of undertaking mentioned in para 18 by the appellant. It is also evident that there has been interflow of power between the captive plant and the PSEB supply area of township of the appellant. It has been alleged by the respondent PSEB that the consumer who was given permission for running TG sets in complete isolation without the payment of one time ACD has violated the conditions governing the permission to his advantages. We agree with

the inference of the respondent PSEB from the printout of load survey downloaded report from the meter wherein even during the crushing session of 2003-04 appellant had been using PSEB fed load at zero level at most of the time establishes interflow of power and utilization of PSEB supply as a standby source. Permission for installation of two number additional TG sets of 3 MW and 6 MW was accorded by the PSEB vide Memorandum No. 46932 dated December 12, 2002 with the stipulation of payment of one time ACD on normally TG fed load and the monthly parallel charges. Agreement between the appellant and PSEB for supply of electricity to the extent of 750 kVA load with permission for TG sets is valid and hence terms and conditions of supply as amended vide circular Nos. 26 of 2002 and 60 of 2002 become applicable to the consumer insofar as the co-generation by the appellant is concerned.

22. The Commission has observed in the impugned order that the present petition is regarding charges etc. pertaining to TG sets permitted to be installed by the Board in letter dated

September 12, 2002 and that the permission was granted by the Board subject to the conditions of circular No. 26/2002 and deposit of the charges specified in the permission letter and that there is no dispute that the charges have been levied according to the said circular and its subsequent amendments.

23. We note that all existing Sales Regulations were ordered to be continued by the Commission for 2003-04 and thereafter and that no appeal was filed against their continuance. The appellant has violated the conditions of contract with PSEB by installing Changeover Switch/bus coupler and interflow of power has taken place from appellant's co-generation plant to PSEB supplied township and, therefore, the appellant cannot be categorized on 'standalone' basis.

24. We agree with the conclusion of the Commission that there is no impact of the Inspection Report on the levy/deposit of ACD parallel operation charges and permission fees because these are as per the then prevailing Sales Regulations of the Board which were made a pre-condition while granting

permission and therefore, even after considering the inspection report the petitioner was still liable to deposit ACD etc. under the then Sales Regulations.

25. In view of the foregoing discussion we decide not to interfere with the decision of the Commission and therefore the appeal is dismissed.

26. IA No. 111 of 2008 is also disposed of.

27. No order as to costs.

28. Pronounced in open court on this **06th day of March, 2009**

(H.L. Bajaj)
Technical Member

(Mrs. Justice Manju Goel)
Judicial Member