

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 95 OF 2025 & IA No. 429 OF 2025

Dated: 27th March, 2025

Present: Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

Punjab State Power Corporation Limited, ... Appellant(s)

Versus

NV Distilleries and Breweries Private Limited & Anr. Respondent(s)

Counsel on record for the Appellant(s) : Anand K. Ganesan
Swapna Seshadri
Amal Nair
Shivani Verma
Devyani Prasad
for App. 1

Counsel on record for the Respondent(s) : Tajender K. Joshi
Rampal Kohle
for Res. 1

ORDER

The 1st Respondent herein filed the Petition, (in which the order impugned in this appeal was passed) before the Punjab State Electricity Regulatory Commission ("PSERC" for short) under Section 86(1)(f) of the Electricity Act, 2003 read with Rules 10, 69, 71 and 73 of the PSERC (Conduct of Business) Regulation 2005 read with Section 94 of the Electricity Act, 2003, to set aside/ quash the letter dated 11.12.2024 issued by the Appellant terminating the PPA dated 11.07.2012 and the Supplementary PPA dated 18.04.2023. In the said Petition filed by them, the 1st Respondent herein had sought the following reliefs: (1) to quash/set aside the impugned notice of termination dated 11.12.2024 issued by the Appellant whereby the PPA dated 11.07.2012 and STPA-

1 dated 18.04.2023, signed between the Appellant and the 2nd Respondent for sale of surplus power up to 6 MW power to the Appellant from the company's non-fossil fuel based 10 MW co-generation power project, was terminated; (2) to direct the Appellant to pay fixed charges and carrying cost to the 1st Respondent by taking notional generation of power during the period the PPA was terminated by the Appellant in the interest of justice; and (3) to award costs in favour of the 1st Respondent.

An ex parte ad-interim order was passed by the PSERC on 19.02.2025 without issuing notice to the Appellant herein. After taking note of the facts stated in the Petition filed by the 1st Respondent, and while issuing notice to the Appellant herein to file its reply within two weeks, the PSERC also noted the submission urged on behalf of the 1st Respondent that, after termination of the PPA, the Appellant was not purchasing power from them which was resulting in irreparable loss and injury being caused to them; they had sought a direction to the Appellant to purchase power from the project as per the terms of the PPA pending adjudication of the petition; and, keeping in view the facts of the matter, the operation of the letter dated 11.12.2024 issued by the Appellant was stayed till the next date of hearing. As noted hereinabove, the letter issued by the Appellant dated 11.12.2024 was a letter terminating the subject PPA. Aggrieved thereby, the present appeal.

Mr. Anand K. Ganesan, Learned Counsel for the Appellant, would submit that the PSERC has not assigned any reason for the grant of an ex parte ad-interim order; this order, passed by the PSERC, falls foul of the proviso to Order 39 Rule 3 CPC; it is only for just and valid reasons, which ought to be recorded in the order, that an ex parte ad-interim order can be passed, that too in cases where awaiting service of notice, in the IA for interim relief, would cause irreparable injury to the petitioner-applicant; the interim relief granted by the PSERC to the 1st Respondent

amounts to granting the main relief sought for in the Petition; such a relief could not have been granted at the interlocutory stage of the proceedings; and, in such circumstances, the impugned order necessitates being set aside.

On the other hand, Mr. Tajender K. Joshi, Learned Counsel for the 1st Respondent, would submit that the Petition, filed by the 1st Respondent before the PSERC, was not only under Section 86(1)(f) but also under Section 94 of the Electricity Act, 2003; the powers conferred on the PSERC, under Section 86(1)(f) and Section 94, is extremely wide; it is because the Appellant was not procuring power from the 1st Respondent for the past four months that such an order was passed by the PSERC; and, the order of the PSERC is in terms of the law laid down by the Constitution Bench of the Supreme Court in **High Court Bar Association Allahabad vs. State of U.P [Judgment in Criminal Appeal No. 3589 of 2023 dated 29.02.2024]**.

I. EX-PARTE AD-INTERIM INJUNCTION OUGHT NOT TO BE GRANTED AS A MATTER OF COURSE:

An injunction is an equitable relief. The ad interim injunction which is provided for in Order 39 of the Civil Procedure Code is a discretionary relief and has to be exercised with caution. An ex-parte ad-interim injunction is an extra-ordinary relief and ought not to be granted unless the circumstances are extra-ordinary, and unless the suit may become infructuous if such relief is refused. Granting of such an interim injunction even without according an opportunity to the respondent of being heard is an order which is harsh and can be approved only in very extra-ordinary unusual and pressing circumstances. **(Vishwanath Sugars Ltd. v. Karnataka Power Transmission Corp. Ltd., 2008 SCC OnLine APTEL 83 : [2008] APTEL 83)**

Exceptional circumstances apart, an *ex-parte* ad-interim injunction order should not, ordinarily, be passed. As a principle, ex parte injunction can be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are- (a) whether irreparable or serious mischief will ensue to the plaintiff; (b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve; (c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented; (d) the court will consider whether the plaintiff had acquiesced for some time and, in such circumstances, it will not grant ex-parte injunction; (e) the court would expect a party applying for ex-parte injunction to show utmost good faith in making the application; (f) even if granted, the ex parte injunction would be for a limited period of time; (g) general principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court; and (h) whenever an ex-parte injunction is passed the court is required to record reasons for passing such an injunction. **(Morgan Stanley Mutual Fund v. Kartick Das, (1994) 4 SCC 225; Bloomberg Television Production Services India (P) Ltd. v. Zee Entertainment Enterprises Ltd., (2025) 1 SCC 741 : 2024 SCC OnLine SC 426; Vishwanath Sugars Ltd. v. Karnataka Power Transmission Corp. Ltd., 2008 SCC OnLine APTEL 83 : [2008] APTEL 83; Municipal Corporation of Hyderabad, Hyderabad v. Philomena Education Foundation of India, Hyderabad, 2007 SCC OnLine AP 819 : (2008) 2 ALD 1)**

II. REASONS SHOULD BE RECORDED FOR GRANTING AN EX-PARTE AD-INTERIM INJUNCTION ORDER:

Order 39 Rule 3 CPC relates to the requirement of the Court issuing notice to the opposite parties before granting injunction and, thereunder,

the Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party. Under the proviso thereto, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record reasons for its opinion that the object of granting injunction would be defeated by the delay, and require the applicant — (a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with — (i) a copy of the affidavit filed in support of the application; (ii) a copy of the plaint; and (iii) copies of documents on which the applicant relies, and (b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.

The proviso to Rule 3 of Order 39 of the Code was introduced to provide a condition, where the court proposes to grant an injunction without giving notice of the application to the opposite-party, being of the opinion that the object of granting injunction itself shall be defeated by the delay. The condition so introduced is that the court “shall record the reasons” why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex-parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why, instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the court for grant of an order of restraint against a party, without affording an

opportunity to him of being heard, must satisfy the court about the gravity of the situation and the court has to consider briefly these factors in the ex-parte order. Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex-parte orders have far-reaching effect, and as such a condition has been imposed that the court must record reasons before passing such an order. If it is held that compliance with the proviso is optional and not obligatory, then the introduction of the proviso by Parliament shall be a futile exercise, and that part of Rule 3 will be a surplusage for all practical purposes. The proviso to Rule 3 of Order 39 of the Code, attracts the principle that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. This principle was approved and accepted in well-known cases of **Taylor v. Taylor: (1875) 1 Ch D 426 : 45 LJ Ch 373; Nazir Ahmed v. Emperor: AIR 1936 PC 253 (2) : 63 IA 372; and Ramchandra Keshav Adke v. Govind Joti Chavare: (1975) 1 SCC 559 : AIR 1975 SC 915. (Shiv Kumar Chadha v. Municipal Corpn. of Delhi, (1993) 3 SCC 161).**

Whenever a court considers it necessary, in the facts and circumstances of a particular case, to pass an order of injunction without notice to the other side, it must record reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex-parte order is not passed. **(Shiv Kumar Chadha v. Municipal Corpn. of Delhi, (1993) 3 SCC 161).**

While the obligation cast on the PSERC, in granting an ex parte order of injunction, is to record reasons for its opinion that the object of granting an injunction would be defeated by the delay caused in issuing and effecting service of notice on the respondents, the impugned order

does not record any reason as to how refusal to grant the ex-parte interim order would result in defeating the very object of granting such an interim order.

In **High Court Bar Association, Allahabad vs. State of U.P. (SC)** on which reliance is placed on behalf of the 1st Respondent, the Supreme Court observed thus: -

*“34. At the same time, we cannot ignore that once the High Court stays a trial, it takes a very long time for the High Court to decide the main case. To avoid any prejudice to the opposite parties, while granting ex-parte ad-interim relief without hearing the affected parties, the High Courts should normally grant ad-interim relief for a limited duration. After hearing the contesting parties, the Court may or may not confirm the earlier ad-interim order. Ad-interim relief, once granted, can be vacated or affirmed only after application of mind by the concerned Court. Hence, the Courts must give necessary priority to the hearing of the prayer for interim relief where ad-interim relief has been granted. **Though the High Court is not expected to record detailed reasons while dealing with the prayer for the grant of stay or interim relief, the order must give sufficient indication of the application of mind to the relevant factors.***

35. An interim order passed after hearing the contesting parties cannot be vacated by the High Court without giving sufficient opportunity of being heard to the party whose prayer for interim relief has been granted. Even if interim relief is granted after hearing both sides, as observed earlier, the aggrieved party is not precluded from applying for vacating the same on the available grounds. In such a case, the High Court must give necessary priority to the hearing of applications for vacating the

stay, if the main case cannot be immediately taken up for hearing. Applications for vacating interim reliefs cannot be kept pending for an inordinately long time. The High Courts cannot take recourse to the easy option of directing that the same should be heard along with the main case. The same principles will apply where ad-interim relief is granted. If an ad-interim order continues for a long time, the affected party can always apply for vacating ad-interim relief. The High Court is expected to take up even such applications on a priority basis. If an application for vacating ex-parte ad interim relief is filed on the ground of suppression of facts, the same must be taken up at the earliest.”

(emphasis supplied)

It is clear from the aforesaid judgment of the Supreme Court that the Court, which passes an ex parte ad-interim order, is required to give sufficient indication of its application of mind to the relevant factors which, in terms of the proviso to Order 39 Rule 3 CPC, is to record reasons as to why failure to grant an ex-parte at interim order would defeat the very purpose for which such an interim relief is required to be granted. As noted earlier in this order, without recording reasons, the PSERC could not have granted the 1st Respondent herein the ex-parte ad-interim relief, that too without putting the Appellant on notice and without giving them an opportunity of being heard.

III. INTERIM RELIEF, WHICH WOULD AMOUNT TO GRANTING THE MAIN RELIEF, CAN BE GRANTED ONLY IN EXCEPTIONAL CIRCUMSTANCES:

Yet another reason why the impugned order must be set aside is that the PSERC has granted the 1st Respondent relief, that too ex-parte,

which it could have only granted if the main relief sought for in the petition had been granted. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. In such cases the availability of a very strong prima facie case — of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if it is satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously, such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent. **(Deoraj v. State of Maharashtra, (2004) 4 SCC 697).**

It is well settled that a relief which can be granted only at the final hearing of the matter, should not ordinarily be granted by way of an interim order. **(State of U.P. v. Desh Raj, (2007) 1 SCC 257).** The final relief, sought in a petition, should not, ordinarily, be granted at an interlocutory stage, more so without considering the issues involved in the case. **(Union of India v. Modiluft Ltd., (2003) 6 SCC 65).**

Relying on its earlier decisions, in **CCE v. Dunlop India Ltd. (1985) 1 SCC 260, State of Rajasthan v. Swaika Properties (1985) 3 SCC 217, State of U.P. v. Visheshwar (1995 Supp (3) SCC 590), Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa (1995 Supp (2) SCC 593), Shiv Shankar v. Board of Directors, U.P.**

SRTC (1995 Supp (2) SCC 726) and Commr/Secy to Govt. Health and Medical Education Deptt. Civil Sectt. v. Dr. Ashok Kumar Kohli (1995 Supp (4) SCC 214), the Supreme Court, in **State of U.P. and others v. Ram Sukhi Devi, (2005) 9 SCC 733**, held that time and again the Supreme Court had deprecated the practice of granting interim orders which practically give the principal relief sought in the petition.

What was under challenge before the PSERC is the termination of the PPA by the Appellant herein. It is only when the main appeal is finally heard and allowed could the letter, whereby the PPA was terminated, have been set aside. Such an order could not have, ordinarily, been granted at the interlocutory stage of the proceedings. As the PSERC could not have granted the 1st Respondent, the final relief sought by them in their petition, at the interlocutory stage, the PSERC was wholly unjustified in granting them the interim relief referred to hereinabove, that too without putting the respondents on notice. We deem it appropriate, in such circumstances, to set aside the impugned order.

Mr. Tajender K. Joshi, Learned Counsel for the 1st Respondent, expresses urgency and requests this Tribunal to fix a timeframe for the PSERC to pass an interim order afresh, and in accordance with law. Learned Counsel further states that an IA for interim relief would be filed before the PSERC within one week from today. Mr. Anand K. Ganesan, Learned Counsel for the Appellant, on instructions, states that the Appellant has filed its reply to the Petition, before the PSERC, on 25.03.2025.

In the light of the urgency expressed on behalf of the 1st Respondent, and as Mr. Anand K. Ganesan, Learned Counsel for the Appellant has no objection for such an order being passed, we request the PSERC to consider taking up the IA, on its being filed by the 1st Respondent, and pass orders therein in accordance with law within three

weeks from the date on which the 1st Respondent files the IA for interim relief.

The Appeal and the I.A therein stand disposed of accordingly.

Seema Gupta
Technical Member (Electricity)

Justice Ramesh Ranganathan
Chairperson

tpd/dk