**IN THE COURT OF OMBUDSMAN, ELECTRICITY PUNJAB,**

**66 KV GRID SUBSTATION, PLOT NO: A-2, INDL AREA PHASE-I,**

**SAS NAGAR, (MOHALI).**

**APPEAL No: 41 / 2016** Da**te of Order: 03 / 11 / 2016**

**M/S AVANI TEXTILES LIMITED,**

**RURAL FOCAL POINT,**

**VILLAGE BHINDRAN,**

**PATIALA ROAD,**

**SANGRUR. ………………..** PETITIONER

Account No: S46-SG-01-0042

*Through:*

Sh. Krishan Kumar Authorized Representative.

VERSUS

**PUNJAB STATE POWER CORPORATION LIMITED.**

**………..….** RESPONDENTS

*Through*

Er. Tarsem Chand Jindal,

Addl. Superintending Engineer, (Operation),

Operation Division

PSPCL, SANGRUR.

Petition No. 41 / 2016 dated 08.07.2016 was filed against order dated 03.06. 2016 of the Grievances Redressal Forum (Forum) in case no: CG- 42 of 2016 upholding the decision dated 11.02.2016 of the Circle Level Refund Committee (CLRC) that no interest is payable on refunded amount in view of Engineer-in-Chief/Commercial’s clarification. .

2. Arguments, discussions and evidences on record were held on 03.11.2016

3. Sh. Krishan Kumar, the authorized representative attended the court proceedings on behalf of the petitioner. Er. Tarsem Chand Jindal, Addl. Superintending Engineer / Operation Division, PSPCL, Sangrur, appeared on behalf of the respondent, Punjab State Power Corporation Limited (PSPCL).

4. Sh. Krishan Kumar, the petitioner’s counsel stated that the Petitioner is having an Large Supply category electricity connection bearing Account no: S 46 – SG – 01 - 0042 with sanctioned load of 8880 KW and Contract Demand (CD) of 9866 KVA at 66 KV supply voltage under Asstt .Executive Engineer / DS Sub-urban Sub-Division, PSPCL, Sangrur. The petition was filed by them against the order dated 11.02.2016 of the Circle Level Refund Committee, Sangrur vide which, it was decided that no interest is payable on the amount refunded to them which had been wrongly recovered towards one time Contract Demand charges. The power connection was released to the petitioner’s unit at 66 KV supply voltage and Rs. 9,86,500/- were recovered towards one time Contract Demand charges, which were deposited on 04.11.2008. Since as per Regulation no: 51.2.7.4 of Electricity Supply Regulation, Large Supply consumers getting supply at 33 KV and above were exempted from the payment of one time CD charges, hence, as per their request, these charges were refunded to them through adjustment in the energy bill for the month of March, 2010. Although as per instructions prevailing at that time, the amount wrongly recovered should have been refunded alongwith applicable interest. But from the perusal of the energy bill for 03 / 2010, it was observed that only principal amount of Rs. 9,86,500/- had been adjusted. The matter was taken with AEE / Sub Urban Sub-Division, PSPCL, Sangrur for the payment of interest charges on this amount but nothing materialized. Various letters were also written and the case was sent by the field office to Accounts Officer / Field on whose advice, the case was referred to and considered by the Circle Level Refund Committee (CLRC). The CLRC in its meeting held on 11.02.2016 decided that in view of the clarification given by Engineer-in-Chief / Commercial, no interest is payable on the amount refunded as the consumer had claimed interest after a period of five years. But the CLRC in its decision had not given any reference to the Rules / Regulations under which, the interest is not payable. However, the decision of the Committee was biased and not acceptable to the petitioner.

He further stated that an appeal was filed before the Forum which uphold the decision dated 11.02.2016 of the Circle Level Refund Committee. Even natural justice demands that if an amount has been wrongly recovered then while refunding the amount, interest is also liable to be paid on the recoverable amount. The wrongly recovered amount of Rs. 9,86,500/- was refunded to the Petitioner through adjustment in the energy bill for the month of March, 2010 which was paid by them on 18.04.2010 whereas this amount was deposited on 04.11.2008 and as such, the amount remained with PSPCL for about 17 months. As per Sales Regulation no: 147 and instruction No. 114 of the Electricity Supply Instructions Manual, the PSPCL is required to pay the interest on this wrongly recovered amount from the date of deposit upto the date of refund which works out to be Rs. 1,82,522/-. As this amount was paid on 18.04.2010 thus the respondents PSPCL is also required to pay interest on the interest amount from 18.04.2010 till the date of payment. Roughly, total amount as on 31.03.2016 works out to be Rs. 3,50,725/-.

Justifying the delay in claiming interest, he argued that the matter was taken up with the AEE / Sub-Urban Sub-Division, PSPCL, Sangrur for payment of applicable interest on the refunded amount. The case was sent by him to AO / Field for pre-audit of payable interest who vide his Endst no: 434 dated 12.08.2013 advised that in terms of CC No. 46 / 2010 and instruction No. 106 of the ESIM, the case needs to be referred to the Refund Committee. Accordingly, number of references were made to the CLRC which took about two years to list the case and finally decided in its meeting held on 11.02.2016.

He further stated that the Forum in its judgment has observed that as per clause-147 of the Sales Regulations, the interest is admissible, if as a result of review or appeal, the consumers becomes entitled to refund the amount deposited by him at the time of reconnection of supply or while filing appeal. But in their case, the amount of Rs. 9,86,500/- was wrongly recovered from the petitioner towards one time contract demand charges at the time extension of load on their request, the same was refunded without interest through adjustment in the energy bill for March, 2010. Hence, the wrongly recovered amount should have been refunded in the first instance itself alongwith applicable interest. Lot of their time and energy has been wasted in pursuing their case and demanding justice that interest should be paid on this amount which was wrongly recovered on 04.11.2008 and remained with the respondent upto 18.04.2010 i.e. about 17 months. Since the interest which worked out to be Rs. 1,82,522/- as on 18.04.2010 was not paid alongwith the refunded principal amount, as such, further interest on this amount also becomes due, upto the date of payment which works out to be Rs. 3,50,725/- upto 31.03.2016. In the end, he prayed to allow the petition in the interest of justice.

5. Er. Tarsem Chand Jindal, Addl. Superintending Engineer / Operation, Division, PSPCL, Sangrur on behalf of the respondents submitted that M/S Avani Textiles, Rural Focal Point, Bhindran bearing Account No: L-42 is having sanctioned load of 8880 KW and Contract Demand 9866 KVA. The firm M/S Avani Textiles deposited Rs. 9,86,500/- vide B.A. 16 No: 86 / 44118 dated 04.11.2008 as one time Contract Demand charges in compliance to Demand Notice issued by AEE (S) Sub-urban, Sub-Division Sangrur vide Memo No: 3229 dated 03.11.2008 at the time of extension of load from 4450 KW to 8880 KW and CD from 3500 KVA to 9866 KVA. The consumer requested for refund of above said amount on 28.01.2010 as per Regulation 51.2.74 of Electricity Supply Regulations as these charges were not recoverable. The request made by the consumer was considered by the S.E. Sangur & allowed to refund the same vide Memo No. 8626 dated 26.08.2010 addressed to Addl. S.E. Sangrur. However, in the request made by the consumer on 28.01.2010, the consumer did not make any claim regarding interest on the above said amount. But the consumer requested for claim of interest on 14.06.2012 through letter addressed to AEE (s) Sub-urban Sub-Division, Sangrur after expiry of more than two years.

He further contested that the case of refund of interest was considered by Circle Level Refund Committee in its meeting held on 11.02.2016 and decided that no interest was payable to the consumer on the above said amount. After that, an appeal was filed before the Forum, which upheld the decision of the CLRC. The respondents PSPCL affirmed that amount of Rs. 9,86,500/- was deposited on 04.11.2008 and thereafter the consumer requested for refund of above said amount on 28.01.2010 which was considered by the S.E. Sangrur vide Memo No. 8626 dated 26.03.2010 addressed to Addl. S.E. Sangrur who allowed to refund the same. Thus, no undue delay was done after making the request by the consumer. The respondents PSPCL affirmed that it took more than two year to list the case by Refund Committee and this case was considered by the CLRC and decided on 11.02.2016 that no interest was payable to consumer which was received by the consumer from Sub-urban Sub-Division, PSPCL, Sangrur. In the end, he requested to dismiss the appeal of the petitioner.

6. The brief relevant facts of the case are that the Petitioner is having a Large Supply Connection being catered at 66 KV Supply Voltage, who applied for extension in load from 4450 KW to 8880 KW and contract demand from 3500 KVA to 9866 KVA against which a Demand Notice (DN) dated 03.11.2008 was issued to him. In compliance to the DN, the consumer deposited Rs.9,86,500/- as one time contract demand charges on 04.11.2008. After about fifteen months of the date of deposit, the Petitioner requested the Respondents for refund of above amount on 28.01.2010 as per provisions contained in Electricity Supply Regulation (ESR) Clause No. 51.2.7.4, as these charges were not payable because the Petitioner is catered at 66 KV Supply Voltage. The refund was allowed by SE / DS on 26.03.2010 and amount was refunded in the bill dated 18.04.2010. Thereafter, the Petitioner vide letter no: 56 dated 14.06.2012, requested to the Respondents for interest on above delayed payment as per their rules. The Respondents referred the case of interest to Accounts Officer (Field) on 24.07.2013 for pre-audit but A.O. (F) vide letter dated 12.08.2013 advised that action is required to be taken as per provisions contained in CC No. 46 / 2010. Accordingly, the matter was referred to the Circle Level Refund Committee (CLRC), which in its meeting held on 11.02.2016, decided that no interest is payable on refundable amount in view of clarification given by Engineer-in-Chief (Commercial) vide Memo no: 34 dated 22. 01.2016, as the same is time barred being claimed by the Petitioner after lapse of five years. The Petitioner agitated the above decision of CLRC in CGRF (Forum) who upheld the decision dated 11.02.2016 of CLRC.

The Petitioner in his prayer had raised single issue that the Petitioner is entitled for interest on wrongly recovered amount which remained with the Respondents for about 17 months which should be paid to the Petitioner from the date of deposit to the date of payment and thereafter on the amount of interest so calculated as on 18.04.2010 till date. It was argued that the Petitioner was not aware that the said amount of Rs. 9,86,500/- has been wrongly charged in DN as it was not required to be charged since his supply voltage being on 66 KV and as per provisions contained in Regulation 51.2.7.4 of ESR, the Petitioner, at the time of extension in Load / Demand, was exempted from the payment of one time CD charges. Though, the wrongly charged amount was refunded through energy bill dated 18.04.2010, as per request dated 28.01.2010 but no interest on refunded amount was given in view of provisions contained in Regulation no: 147 of SR / instruction no: 114 of ESIM inspite of written request on 14.06.2012 to pay the interest on refunded amount as per applicable rules / regulations of PSPCL. It was further argued that after rejection of case by Circle Level Refund Committee, the Forum also observed that Clause 147 of ESR and instruction no: 114 of ESIM are not applicable and rejected the case of interest, whereas the Petitioner argued that since the amount remained with the Respondents for about 17 months, hence, the Petitioner is entitled for interest on that amount upto date of refund (18.04.2010) and thereafter interest on interest amount from 18.04.2010 till the date of payment of Principal interest and prayed to allow the appeal.

The Respondents argued that in compliance to the Demand Notice (DN) dated 03.11.2008, the Petitioner had deposited one time contract demand charges at the time of extension in Load / Contract Demand which otherwise were not applicable or recoverable in the case of the Petitioner as per Clause 51.2.7.4 of ESR. The Petitioner requested for refund of these charges on 28.01.2010, which was refunded to him through energy bill dated 18.04.2010. The refunded amount was accepted by the Petitioner without raising any objection regarding payment of interest. He lodged his claim of interest on 14.06.2012 for the first time, which is after the expiry of more than two years. His claim of interest was referred to Circle Level Refund Committee (CLRC) as per advice of A.O. (Field) which rejected the case in view of clarification given by Engineer – in – Chief / Commercial. While deciding the Petitioner’s appeal against the decision of CLRC, the Forum also upheld the decision of CLRC, because it opined that Clause no: 147 of ESR and Instruction no: 114 of ESIM referred to by the Petitioner for interest, were not applicable. The decision of Forum is correct and is in accordance with the applicable Rules. The appeal filed by the Petitioner is totally void of merits and is required to be dismissed.

I have gone through the written submissions made in the petition, written reply of the respondents and oral arguments of the petitioner and the representative of PSPCL as well as other materials brought on record. The only issue requires adjudication in the present case is whether or not the Forum is justified to reject the case of the petitioner for interest on delayed refund as per provisions contained in Clause no: 147 of SR (to be read as clause no: 147.1 of ESR) / instruction no: 114 of ESIM ?. It is an established fact that while issuing DN for extension of Load / Demand, the Respondents had demanded one time contract demand charges at the time of extension in Load / Demand from the Petitioner, inspite of the fact that these charges were not recoverable as per Clause no. 51.2.7.4 of ESR being the connection fed from 66 KV Supply Voltage, which were paid by the Petitioner in compliance to the DN. On the basis of request dated 28.01.2010 made by the petitioner, these charges were refunded through energy bill dated 18.04.2010 but no interest was paid on delayed refund of payment. Another request dated 14.06.2012 to allow the interest on delayed payment was rejected by the CLRC on 11.02.2016 on the basis of clarification given by Engineer-in-Chief / Commercial vide memo no: 34 dated 22. 01.2016, which was upheld by the CGRF.

The levy / payment of interest is regulated as per provisions made in Clause 147.1 of ESR and Instruction 114 of ESIM. As such, before adjudication of the present case, the reproduction of relevant portion of these clauses is not out of place to mention here:

***ESR 147.1: Interest on Refund of amount deposit by Consumers***

*“Interest shall be recoverable at prime lending rates of the Banks on the amount decided finally as per the decision of the case by Circle level / Zonal Level Dispute Settlement Committee / Dispute Settlement Committees / Dispute Settlement Authority / BLRC. The existing lending rates are 9% per annum. In case the disputed charges are decided to be not recoverable, then PSEB will pay interest charges at the prime lending which is 9% at present on the amount deposited from the date of its accrual and for the period the amount remained under adjudication.”*

***ESIM 114: Regarding interest on refund/recoverable amount provides as under:-***

*“Interest shall be recoverable at the short-term PLR of the SBI prevalent on Ist of April of the relevant year on the amount decided finally as recoverable by the DSC / Forum / Ombudsman / Appellate Authority / Designate Authority. In case the disputed amount is finally upheld, then the interest shall be recoverable on the amount not deposited in the first instance i.e. the pending amount. In case the disputed amount is decided to be not recoverable or partly recoverable, then PSPCL will pay interest at the short-term PLR of the SBI prevalent on 1st of April of the relevant year on the refund amount for the period the amount remained under adjudication. CAO / Revenue shall issue instructions every year regarding the short-term PLR in the month of April, which shall be made applicable during the entire forthcoming financial year. For the year 2010-11 the rate of interest is 11.75% per annum.”*

Though, the above provisions of ESR / ESIM are clear that the Petitioner is absolutely entitled for interest on delayed payment which was wrongly charged by the Respondents from the Petitioner, even then I have gone through the Engineer-in-Chief / Commercial memo no: 34 dated 22.01.2016 rejecting the interest case of the Petitioner as the CLRC & Forum’s decisions are based on it. The only view aired in this letter seems to be based just on the surmises that neither the petitioner claimed any interest at the time of submitting application for refund nor has refused to take the refund amount without interest; hence, claiming of interest after five years is legally time-barred and no interest is required to be payable; no reference to any Regulation behind this logic, however, has been made therein. Thus I am not convinced either with the decision dated 11.02.2016 of CLRC or the decision dated 03.06.2016 of the CGRF in case No. CG - 42 of 2016 for rejecting the claim of interest to the Petitioner on the delayed payment and thus both decisions are set-aside in the interest of justice. Accordingly, the Petitioner is held entitled for simple interest on excess deposit for the period and at the rate as per directions below.

Now coming back to the issue of period and rate for calculation of interest, it is an established fact that the amount of Rs. 9,86,500/- was wrongly demanded through DN which was deposited by the Petitioner on 04.11.2008 and thereafter refunded, on demand from the Petitioner, through energy bill dated 18.04.2010. There is no denying fact that the Petitioner vide his request dated 28.01.2010 has not sought refund with interest but in my view the Petitioner’s request for refund without mentioning “interest” therein, does not confer any right on the Respondents to forfeit or disallow “interest” which otherwise is payable to the Petitioner in accordance with the applicable Rules. Accordingly, it is held that the Petitioner is entitled for interest on Rs. 9,86,500/- deposited by Petitioner against wrong demand raised by Respondents from 04.11.2008 (date of deposit) to 10.04.2010 (date of refund by adjustment) as per Clause147.1 of ESR @ 9% per annum.

Next issue is regarding the Petitioner’s claim for payment of additional interest on the delayed payment of interest for the period from 10.04.2010 till date. The Respondent’s sole argument in defense is that the Petitioner has not claimed any interest at the time of making request for refund of Principal amount on 28.01.2010 and had further accepted the refund of Principal amount without any protest on 10.04.2010 and thereafter keep mum for a period of more than two years when he, on 14.06.2012, demanded interest for the first time from the date of deposit (04.11.2008). I find some merit in the arguments of the Respondents that no protest was ever lodged by him for refund of his Principal amount without interest prior to 14.06.2012. Moreover, during oral arguments held on 03.11.2016, the Petitioner could not properly justify the delay for lodging of his claim. No doubt, the Petitioner is entitled for interest on the delayed payment of interest but appropriately from the date of his request (14.06.2012) to the date of actual payment. Accordingly, it is held that the Petitioner is entitled for interest on the amount of interest from 14.06.2012 (date of request) to the date of actual payment as per provisions contained in instruction no: 114 of ESIM.

As a sequel of above discussions, it is directed that interest on Principal amount of refund and thereafter on the amount of interest (so calculated) should be worked out and paid to the Petitioner as under:

1. Simple interest @ 9% on refund amount of Rs. 9,86,500/- for the period from 04.11.2008 to 18.04.2010, as per provisions contained in Clause 147.1 of ESR.
2. Simple interest on the rates, as per provisions contained in instruction no: 114 of ESIM, on the amount of interest {Calculated as per a) above} from 14.06.2012 to the date of actual payment

7. The petition is partly allowed.

(MOHINDER SINGH)

Place: SAS Nagar. Ombudsman,

Dated: 03.11.2016 Electricity Punjab,

SAS Nagar, (Mohali)