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

**66 KV GRID SUBSTATION, PLOT NO. A-2, INDL. AREA,**

**PHASE-I, SAS NAGAR ( MOHALI).**

APPEAL No: 19 / 2017 Date of order 15/05/2017

**M/S. A.R. CASTING PRIVATE LIMITED,**

**R.G. MILL ROAD,**

**MANDI GOBINDGARH.** ……………..PETITIONER

**Account No. K-21/GB-11-61342 (New 3002309515)**

Through:

Sh. PARSHOTAM LAL SINGLA, ADVOCATE

VERSUS

PUNJAB STATE POWER CORPORATION LIMITED.

………..…. RESPONDENTS

Through:

Er. A.S. Gill,

Addl. Superintending Engineer

Operation Division ( Special),

P.S.P.C.L. MANDI GOBINDGARH.

Petition No. 19/2017 dated 17.04.2017, registered on 18.04.2017, was heard out of turn on 12.05.2017 and 15.05.2017 as per orders dated 10. 03.2017 of the Hon’ble Punjab & Haryana High Court in CWP no: 21715 of 2012 in which the petitioner has been relegated to avail the remedy before the Ombudsman. It was also ordered that if the petitioner approaches Ombudsman, the period already spent in the Hon’ble High Court of Punjab & Haryana, shall be deemed to be condoned and also directed this court to dispose of the matter within one month from the date of receipt of certified copy of the order.

2. Accordingly, in compliance of the orders of the Hon’ble High Court, the matter was heard / arguments, discussions and evidences on record were held on 12.05.2017 and 15.05.2017.

3. Sh. Parshotam Lal Singla, Advocate, the petitioner’s Counsel attended the court proceedings on behalf of the petitioner. Er. A. S. Gill, Addl. Superintending Engineer / Special Division PSPCL, Mandi Gobindgarh alongwith Sh. Manjit Singh, AAO appeared on behalf of the respondent.

4. Presenting the case on behalf of the Petitioner, his Counsel, Shri Parshotam Lal Singla stated that the petitioner is private Limited company dealing in manufacturing of alloy steel, mild steel, forging steel operating under the name & style of M/S A.R. Castings Pvt. Ltd. The petitioner applied for the electricity connection in the year 1999 and load of 2463.840 KW was obtained from the 66 KV line and accordingly, Rs. 33,90,358/- were deposited for the total cost of service line. The cost of the service line was in excess from the prescribed charges of Service Connection Charges. Thereafter, the petitioner company got the load extended by 400 KW in the year 2002 and in the same year, the petitioner company again applied for the extension of load by 3100 KW.

He further submitted that for the extension of load by 3100 KW, the Demand Notice (DN) No. 988 dated 24.03.2004 was issued by the AEE / Commercial Sub-Division, Mandi Gobindgarh. In compliance to the Demand Notice, the petitioner deposited Rs. 10,82,642/- on account of Service Connection Charges and accordingly, the extension in load was granted.

The petitioner company, considering the fact that no extra cost has been incurred by the department on the service line and the power is being supplied to the petitioner company through the line for which the cost has already been borne, filed an application for refund of Rs. 10,82,642/- to the then Chief Engineer/ Commercial, Punjab State Electricity Board (PSEB),Patiala. However, the existing service line was having the capacity to bear the load which was extended.

The Counsel of the petitioner stated that the CE/Commercial, vide its Memo No. 99755 dated 23.12.2004, ordered to refund the amount of Rs. 10,82,642/- by imposing the condition that if other consumers approach the Board (PSEB) for extension in load, the this expenditure (relating to augmentation) shall be borne by all three existing consumers on pro-rata basis. This decision of the CE/Commercial was ratified by the Punjab State Electricity Board in its meeting held on 03.03.2005. Accordingly, the amount was refunded to the petitioner’s company and was adjusted in its electricity bills.

He contested that, however, on the basis of Audit objection, the then AEE / Commercial, Sub Division, Mandi Gobindgarh again raised the demand for payment of Rs. 7,77,120/- vide Memo No. 3686 dated 13.10.2009 on account of Service Connection Charges (SCC). The petitioner’s company replied that the matter regarding charges of SCC has already been settled by the Chief Engineer / Commercial, PSEB, Patiala and ratified by the Board of PSEB.

The Counsel further submitted that the Electricity Regulatory Commissions Act was enacted in 1998 and created the Central Electricity Regulatory Commission and accordingly, the Legislature thought to enact a new comprehensive legislation for regulating the electricity supply industry in the country by replacing the existing laws and new act that is Electricity Act - 2003 was enacted and it came into force with effect from 10.06.2003, except Section 121. Moreover, after the enactment of Electricity Act-2003, the (Electricity Supply Code and Related Matters)-Regulations-2007 and Electricity Supply Instructions Manual (ESIM) were formulated. With effect from 16.04.2010, the Punjab State Power Corporation Limited (PSPCL) was floated for the conduct of power generation and supply and other acts and business was entrusted to PSPCL. For the control of transmission and purchase of power, the second company was floated under the name of Punjab State Transmission Corporation Limited (PSTCL).

He next submitted that the respondents, being unable to meet the power requirements/consumption in the State, have come up with “Open Access” arrangements whereby consumer is entitled to buy electricity from the private sources through registered member of power exchange and as such, the petitioner company, to meet its power requirement, also availed the benefit of this arrangement/scheme. Hence, for the purchase of power from registered member, the Sr. Xen, Special Division, Mandi Gobindgarh issued no dues certificate to the petitioner firm vide its memo No. 2229/CBR-548 dated 18.08.2010. The system for purchase of power from the outside source continued to the petitioner company till 31.08.2012.

The Counsel of the petitioner further stated that as per the prevailing system, he again applied on 30.08.2012 for the purchase of power under “Open Access Scheme” to the PSTCL vide application dated 25.08.2012 with effect from 01.09.2012 to 31.08.2013 for grant of short term Open Access. But the Chief Engineer / SLDC (Open Access), Ablowal, Patiala vide its memo dated 04.10.2012 informed the petitioner company that as per the intimation of Addl. SE / PP&R, PSPCL, Patiala, an amount of Rs. 7,77,120/- is pending against the petitioner and as such, Open Access facility can not be granted .

Being aggrieved with this decision, the petitioner challenged the impugned Demand Notice in the Hon’ble Punjab and Haryana High Court, Chandigarh vide Civil Writ Petition (CWP) No. 21715 of 2012. The Hon’ble High Court was pleased to issue a notice of motion for 10.01.2013 and notice to re-stay vide order dated 02.11.2012.

The counsel submitted that during the pendency of writ petition, the Hon’ble High Court was pleased to pass the interim directions vide order dated 31.05.2013 to the petitioner to deposit the impugned demand with the Power Corporation without prejudice his claim in the writ petition and in the event of deposit of aforesaid amount, the petitioner was allowed “Open Access” for purchase of power from outside source and this arrangement was ordered to remain subject to final outcome of the Writ Petition.

Now, the Hon’ble High Court disposed of the writ petition vide order dated 10.03.2017 wherein the petitioner was relegated to avail the remedy before the court of Ombudsman. In this context, it is submitted that the demand of Rs. 7,77,120/- on account of SCC were raised due to the audit objections, vide memo No. 3686 dated 13.10.2009, memo No. 4213 dated 19.11.2009, memo No. 132 dated 17.01.2011 and refusal to grant of short term Open Access for the purchase of power vide memo No. 10260 dated 04.10.2012 by the respondent authorities is totally illegal, void, arbitrary against the provisions of law and not sustainable and are liable to be set aside.

He contested that since the Chief Engineer / Commercial has waived the SCC for extension in load from the petitioner company and decision has been ratified by the Punjab State Electricity Board, hence the raising of demand on the basis of audit report is not justified. The audit party can not sit over the decision of the Board. Moreover, the audit party can not decide in term of law and it can only check the calculations etc. Moreover, the demand raised by the AEE / Commercial, Mandi Gobindgarh vide memo dated 13.10.2009 is not recoverable and its recovery is barred by section 56(2) of the Electricity Act-2003 and as such, is in contravention of this section. The Section 56 (2) of the Electricity Act-2003 is reproduced as under:-

**“Section-56 - Disconnection of Supply in Default of payment:-**

1. *Where any person neglects to pay any charges for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission, or distribution or wheeling of electricity to him, the license or the generating company may, after giving not less than 15 clear days notice in writing to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose, cut all disconnect any electric supply line or other works being the properly of such licensee or generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expense incurred by him in cutting off and reconnecting the supply are paid, but no longer; provided that the supply of electricity shall not be cut off, if such person deposits, under protest;-*
2. *An amount equal to the sum claimed from him, or*
3. *The electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, which ever is less, pending disposal of any dispute between him and the licensee.*

*2. “Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”*

In the present case, the demand was raised vide Demand Notice dated 24.03.2004 on account of Service Connection charges and the same was refunded by the Chief Engineer / Commercial, Patiala vide order dated 23.12.2004. However, the demand was again raised by the AEE / Commercial, Sub-Division, Mandi Gobindgarh vide memo No. 3686 dated 13.10.2009 and as such, the raising of demand on the basis of audit objection by AEE/Commercial, Sub-Division, Mandi Gobindgarh is barred by limitation and it is not recoverable as per section 56(2) of the Electricity Act - 2003.

The Counsel of the petitioner further argued that the Section 56 (2) of the EA-2003 was considered by the Hon’ble High Court of Gauhati in CWP No. 3154 of 2004 decided on 16.02.2009 wherein it was held that “no sum due from any consumer, under this section, shall be recoverable after the period of two years from the date, when such sum became *‘first’ due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supply and the licensee shall not cut off the supply of the electricity”.*

Accordingly, as per the section narrated above, the raising of demand first on 24.03.2004 and again on 13.10.2009 is not recoverable from the petitioner.

The counsel of the petitioner referred to the judgment reported as AIR 1979 SC 1960, in which, the Three Judges Bench of the Hon’ble Apex Court has held that the Audit Party does not possess the power to so pronounce on the law. The opinion rendered by the audit party in regard to law cannot, for the purpose of such belief, add to or colour the significance of such law. The Audit Party has raised the objections under the old law which is not applicable in the present case because it stands repealed by Section 185 of the Electricity Act-2003 with effect from 10.06.2003. The raising of demand on 13.10.2009 as per the audit objection under the old instructions is totally bad because neither the old provisions exists at the time of making the demand nor these provisions were applicable when the demand was made.

He further argued that the decision of the Board is not liable to be reviewed by the Audit Party which can not raise the demand when the matter has been settled and decision of the Board was final. However, the present petition is maintainable in the court of Ombudsman under Section 42 (6) of the Electricity Act - 2003 as per the relegation order passed by the Hon’ble High Court.

In the end, he prayed that the respondents may kindly be directed to refund the impugned demand deposited by the petitioner in compliance to interim order dated 31.05.2013 passed by the Hon’ble High Court and also prayed to keep in operation this order during the pendency of present petition in the court of Ombudsman.

5. Er. A.S. Gill, Superintending Engineer representing the respondents submitted that it is correct that the petitioner made a representation regarding waiving off condition of levying Service Connection Charges (SCC) and on such representation, the said information was sought from the SE/Operation Circle vide its memo No. 02.08.2004. However, a letter No. 99754 dated 23.12.2004 issued by Chief Engineer/Commercial, PSPCL, Patiala was only a letter of instructions regarding charging of SCC in different situations and not a letter of refund of Rs. 10,82,642/-, as being claimed by the petitioner.

He stated that the instructions does not apply to the present petitioner for the reason that the petitioner got extended load beyond 100% of original load where as the instructions contained in para 1 to 3 relates to extension of load equal to 100% of original load. Rather para (iv) of the instructions is the relevant instructions for the present matter, which is being extracted below for the facility of ready reference.

*“Para (iv): SCC at normal rate or actual cost in case of the augmentation shall be recovered for the extension in load applied over and above 100% of the original load”.*

Since the petitioner had got extended his load beyond 100% of original load, therefore, the petitioner is liable to pay for the extended load over and above 100% of original load, which comes out to be Rs. 7,77,120/-.

He next submitted that the refund was wrongly made by making the wrong interpretation of Chief Engineer / Commercial letter No. 99754 dated 23.12.2004 which was brought in the notice of answering respondents by the Audit Party. He contested that neither the Chief Engineer/Commercial, PSEB, Patiala (now PSPCL) ordered to refund the SCC nor the Board ratified such instructions. It was submitted by the respondents that nobody can exercise its powers against the rules/instructions. Audit Party has its duty to point out short assessment and issue instructions to dealing office to recover the amount, as per rules of the Board. As such, the demand raised by the AEE/Commercial, Sub-Division, Mandi Gobindgarh on the basis of Audit Report is legal & valid and the Service connection charges amounting to Rs. 7,77,120/- are recoverable from the petitioner’s company.

The respondents pleaded that the NOC was issued to the petitioner regarding availing of Open Access facility for purchase of Electricity in 2011, which was due to oversight of dues recoverable from the petitioner. But when the petitioner further applied for Open Access facility, these dues were intimated to him but the petitioner failed to clear such dues till date and when ‘NOC’ was not issued by Distribution office, the petitioner wrongly and with the wrong intention, prepared fake NOC by himself and started consuming open access from 03.08.2012 to 28.09.2012, which was stopped when the matter came to notice of their office. The case was filed by S.E., Open Access, Patiala in the Court of the PSERC, Chandigarh which decided the matter on 27.08.2013 as under:-

*“In the hearing of the Petition on 20.08.2013, the Commission decided to issue separate notification with regard to the amendments to PSEC (Terms and Conditions for Intra-State Open Access), Regulations-2011, after considering the comments received from the objector. Regarding any amendment (s), in the existing procedure for Intra State Short Term Open Access as prayed in the Petition,. PSTCL may separately come to the Commission with the draft of the proposed amendment(s) in the procedure after consultation with IEX and PXIL.”*

Further the respondents submitted that the Chief Engineer / Commercial clarified on the matter vide their office memo No. 170 / Ind – 130 / Khanna / Vol. 2 dated 29.01.2013 that the charges as intimated through the notices are recoverable. Hence, the amount demanded in the letter No. 3686 dated 13.10.2009 is recoverable as it is not debarred under Section 56(2) of Electricity Act-2003, as such sum has been shown continuously recoverable from the petitioner. Moreover, in the present case, amount was raised vide demand notice dated 24.03.2004, which was initially deposited by the petitioner but was wrongly refunded. As such, this amount is not a fresh amount which is being raised first time.

He contested that the judgment relied upon by the petitioner does not apply to the facts of the present case and is, therefore, distinguishable. He again re-iterated that the Audit Party has rightly declared the amount chargeable as per old rules, as new rules regarding Service Connection Charges (SCC) came into force with effect from January 01,2008 with the publication of Electricity Supply Code and Related Matters Regulations - 2007, as notified by the PSERC vide notification No. PSERC / Secy. / Regulation-31 dated June 29, 2007 and published in Govt. of Punjab Gazette dated July 27,2007 under the powers conferred to PSERC by Electricity Act, 2003. Whereas the petitioner is governed under Regulations-51 of Sales Regulations amended vide CC No. 36/04 dated 15.06.2004. In the end, he requested that the amount is correctly recoverable under the rules and in the interest of Justice, therefore, the petition may kindly be dismissed with costs .

6. The relevant facts of the case are that the petitioner, running a manufacturing unit, applied for the electricity connection in the year 1999 and load of 2463.840KW was obtained from the 66KV Line and a sum of Rs. 33,90,358/- were deposited for the total cost of the Service Line. Thereafter the Petitioner got the load extended by 400KW in the year 2002. He again applied for extension of load by 3100KW in same year i.e. 2002 and the same was granted after he deposited Rs. 10,82,642/- against demand notice dated 24.03.2004 on account of Service Connection Charges, making total load as 5963.840KW and Contract Demand as 6777KVA. The Petitioner then filed an application for refund of Rs. 10,82,642/- on the plea that initially Service line was erected at his cost and no extra cost was incurred at the time of extension of load and the existing Service Line had the capacity to bear the extended. The Chief Engineer, Commercial, PSEB (now PSPCL), Patiala, after having comments from the Superintending Engineer “OP” Circle, PSEB (now PSPCL), Khanna issued clarification dated 23.12.2004 after getting the approval of Whole Time Members and imposed the condition that if other consumers approach the (erstwhile) P.S.E.B., for extension in load, the expenditure (relating to augmentation) shall be borne by all the three existing consumers on prorate basis. Accordingly, the aforesaid amount was refunded to the Petitioner by way of adjustment in his subsequent electricity bills. However, the Petitioner was directed, vide AEE / Commercial, PSEB (now PSPCL, Mandi Gobindgarh’s Memo. No. 3686 dated 13.10.2009, to deposit Rs. 7,77,120/- on account of Service Connection Charges by stating that Audit had pointed out that because extension of load applied (3500KW) was more than 100% of the original load (2400KW), the amount of Rs.7,77,120/- was liable to be recovered in terms of Chief Engineer, Commercial, Patiala’s letter dated 23.12.2004. The Petitioner contested the demand raised by stating that the Chief Engineer, Commercial’s decision, about the amount not being recoverable, had been ratified by the Board in its meeting held on 03.03.2005. The Petitioner received another notice dated 17.01.2011 for recovery of Service Connection Charges amounting to Rs. 7,77,120/-. The Petitioner availed the benefit of the arrangement of purchase of power from private sources i.e. registered members of Power Exchange by getting No Due Certificate from Sr. XEN, “OP” (Special Division), PSPCL, Mandi Gobindgarh’s letter dated 18.08.2010 and the arrangement continued till 31.08.2012. But when he again applied on 30.08.2012 for purchase of power under Open Access Scheme for the subsequent period from 01.09.2012 to 31.08.2013, he was informed by the Chief Engineer/ SLDC (Open Access), Ablowal, Patiala vide letter dated 04.10.2012 that Open Access can not be granted as a demand of Rs. 7,77,120/- was pending against him. Aggrieved by this amount, the Petitioner filed CWP No. 21715 of 2012 on 29.10.2012 before Hon’ble Punjab & Haryana High Court, Chandigarh which, vide interim orders dated 31.05.2013, directed the Petitioner to deposit the demand whereafter the Respondents will allow Open Access for purchase of Power from outside source till the final outcome of the decision. Again, vide order dated 10.03.2017, Hon’ble High Court relegated the Petitioner to avail the remedy before the Ombudsman, Electricity, Punjab, Mohali. As such, the present petition was filed by the Petitioner on 17.04.2017, registered on 18.04.2017.

The Counsel of the Petitioner apart from averments in written submissions, argued that the demand of Rs. 7,77,120/- on account of Service Connection Charges are illegal as Rs. 10,82,642/- deposited as Service Connection Charges were refunded to him in view of Chief Engineer, Commercial decision / orders dated 23.12.2004 which was ratified by the Full Board of P.S.E.B., in its meeting dated 03.03.2005. He stated that after the above decision, Audit has no power to order for deposit of Service Connection Charges on account of extension of load in electricity connection and that Audit can not decide in terms of Law and can only check the calculation etc. He further stated that recovery is barred by Section 56 (2) of the Electricity Act 2003 as the demand was raised on the basis of Audit objection after the issue was decided / settled by the Board. The Counsel also argued that the action of the Respondent in withholding No Due Certificate required for grant of Short Term Open Access for purchase of Power on the plea of pendency of demand of Rs. 7,77,120/- is illegal as the demand is not recoverable in view of provisions contained in Section 56 (2) of Electricity Act 2003. It was also argued that raising of demand on 13.10.2009 as per Audit objection under the old instructions (i.e. prior to enactment of Electricity Act 2003 applicable from 10.06.2003) is totally bad. The Counsel prayed to allow the appeal by setting aside the demand notice for Rs. 7,77,120/- and not to withhold No Due Certificate and grant Open Access for purchase of Power from outsources.

The Respondents, in their defence, argued that the entire amount of Service Connection Charges (SCC) amounting to Rs. 10,82,642/- had already been charged to the Petitioner (due to extension in load beyond 100% of original load) were wrongly refunded by the office of AEE / Commercial, PSPCL, Mandi Gobindgarh by wrong interpretation of Chief Engineer / Commercial letter dated 23.12.2004. He stated that actually, an amount of Rs. 3,05,520/- ( Rs. 10,82,642 – Rs. 7,77,120) were required to be refunded. The Respondents also stated that neither the Chief Engineer (Commercial), PSEB, Patiala ordered to refund the Service Connection Charges nor the Board ordered so. Besides, it was the duty of the Audit Party to point out short assessment and issue instructions for its recovery from the petitioner and they pointed out recovery rightly as per old Rules applicable at that time. The Respondents further argued that the amount demanded vide letter dated 13.10.2009 is recoverable as it is not barred under Section 56 (2) of Electricity Act 2003 as the amount initially raised vide demand notice dated 23.10.2004, was deposited by the Petitioner but was wrongly refunded. Accordingly, the amount is not a fresh amount which has been raised for the first time and has been shown continuously recoverable from the Petitioner. Moreover the Hon’ble Punjab & Haryana High Court in LPA No. 605 of 2009 decided on 09.09.2011 has observed that Section 56 of electricity Act does not wipe off the recovery of arrears more than two years. The recovery of arrears by way of suit has been specifically protected. The PSPCL has also issued CC No. 05/2012 of dated 14.03.2012 in this regard.

The Respondents submitted that NOC was issued to the Petitioner for availing Open Access facility for purchase of Electricity in 2011 due to oversight of dues recoverable but when he further applied for Open Access facility, dues were intimated which were not cleared by the Petitioner leading to withholding of NOC. The Respondents also stated that the Petitioner is liable to be punished for giving fake NOC to get Open Access and should not be allowed Open Access in future. The Respondents prayed to dismiss the appeal.

Written submissions made in the petition, written reply of the Respondents as well as oral arguments made by the Counsel and the representative of the PSPCL alongwith the evidences placed on record were perused, the parties were heard at length after giving due opportunity of hearing and further, all the points raised by both the parties were considered objectively in order to reach at just and proper conclusion. The Petitioner, in his petition, apart from raising the issue of legality / tenability of demand dated 13.10.2009 for Rs. 7,77,120/- also raised other issues i.e. of review of decision of the Board by the Audit, raising of demand settled by the Board consequent upon Audit objection, validity of the said demand notice as per provisions of Section 56 (2) of Electricity Act 2003, application of old Electricity Laws / Rules after enactment of Electricity Act 2003 and declining Open Access in violation of Article 14 of the Constitution of India.

The first contention of the Petitioner is that service line was erected on the cost of the Petitioner, no extra cost had been incurred by the department at the time of extension of load and power was being supplied to him through the line for which the cost has already been incurred and also that the existing service line was having the capacity to bear the extended load. I noted that the Respondents contested the contention of the Petitioner and stated that the entire cost was not borne by the Petitioner who had deposited in the year 2001 the cost of proportionate 66KV line which emanated from 220kV Grid Sub-station G-1,Mandi Gobindgarh on which two other consumers M / s Bansal Alloys (3682KVA) and M/s Jyoti Concast (4996KVA) were already running since 1999 and they had paid their portion of 66KV Jyoti Bansal line.

The next contention of the petitioner was that the Chief Engineer / Commercial, PSEB, Patiala vide Memo. NO. 99755 dated 23.12.2004, allowed his application and ordered refund of Rs. 10,82,642/- by imposing the condition that if other consumers approach the Board for extension in load, this expenditure (relating to augmentation) shall be borne by all the three existing consumers on prorate basis.

The Petitioner strongly contended that the above decision of the Chief Engineer for refund of Rs. 10,82,642/- was put up before the PSEB, in its meeting held on 03.03.2005 at Chandigarh ratified the same leading subsequently to the refund of the said amount and adjustment in electricity bills. In this connection, I noted the arguments of the Respondent who placed on record a copy of proceedings of 23/2004 meeting of WTMs held on 16.11.2004 in which the following decision was taken:-

*“After deliberations, the Whole Time Members approved in the proposal as brought out in Para 4 of memorandum No. 178 / Indl. / 130 dated 15.11.2004 with exception that if other two members approach the Board for extension of load then this expenditure shall be borne by all the three consumers on prorate basis. Suitable undertaking be taken from the firm to this effect. The decision be got ratified from the Board in its next meeting. The Punjab State Electricity Board, in its 02 / 2005 meeting held on 03.03.2005 at Chandigarh ratified the decision. As per this decision SR 51.3 was amended to the following extent:-*

1. *Industrial and Bulk Supply consumers availing connection for load exceeding1MW have to pay the entire cost of the service line laid for them or service connection charges of Rs.750/- per KW or part thereof whichever is higher. By virtue of paying the entire cost of the line involved in releasing the contention, the consumer is entitled to avail extension in load upto 100% of the original load for which the line had been erected provided that the line so erected is capable of taking the total load i.e. the original load and the extension in loadshall be limited to the capacity of the line. In such an event, the consumer is not required to pay service connection chares for the extension in load.*
2. *No difference of charges shall be charged upto 100% extension in load.*
3. *The extension in load may be allowed to consumers on first come first served basis after reserving 100% of the original sanctioned load of other consumers, if any, upto the capacity of the line without recovering any service connection charges from the consumer seeking extension in load.*
4. *SCC at normal rate or actual cost in case of augmentation may be recovered for the extension in load applied over & above 100% of the original load.”*

I find merit in the contention of the Respondent that the Petitioner was not entitled to the refund of Rs. 10,82,642/- in terms of Board’s decision dated 03.03.2005 due to extension in Load / Demand as the Line was not erected independently for the Petitioner whereas in this case, the consumer / Petitioner paid only prorate cost of 66KV line (constructed for three consumers including this particular consumer/petitioner) and not the cost of independent line. Besides, extension in load being more than 100% of original load, the Petitioner had to pay per KW / KVA charges as per SR 51.3.1.

I, fully agree with the Respondents that refund was wrongly made by wrong interpretation of Chief Engineer, Commercial’s letter dated 23.012.2004. The Respondent has also rightly argued that the amount actually required to be refunded, was Rs. 3,05,520/- as detailed below:-

Original load = 2463.840KW

Extension in load applied = 3500 ( 400 + 3100) KW

Extension in load over

and above 100% of original = 1036.160KW(3500 –463.840)KW

load

SCC recoverable = Rs.7,77,120/- (1036.160x Rs.750)

Amount refundable = Rs.3,05,520/-

(Rs. 10,82,642 – 7,77,120)

The next contention of the petitioner was about raising of demand of Rs. 7,77,120/- on account of Service Connection Charges vide Memo. No. 3686 dated 13.10.2009 by the then AEE / Commercial Sub Division, PSPCL, Mandi Gobindgarh statedly on the basis of Audit Objection. The Petitioner has, in the petition and during the course of arguments, raised his eyebrows on review of the decision of Board by Audit which finally settled the issue of raising of demand for Service Connection Charges. He has also cited the judgment of Hon’ble Supreme Court reported as AIR 1979 SC 1960 that the Audit party does not possess the power to so pronounce on law. In this context, I find that the Respondent rightly argued that the Audit Party simply did its duty and commented as per Regulation 51.3 of Salesp Regulation / the decision dated 03.03.2005 of the Board which had, in turn, been wrongly implemented by refunding Rs. 10,82,642/- on account of Service Connection Charges in contravention of provisions of SR 51.3 amended by the board in its meeting dated 03.03.2005. I also agree with the contention of the Respondent that neither the Chief Engineer (Commercial), PSEB, Patiala ordered to refund the Service Connection Charges nor the Board ordered as such.

Another issue raised by the Petitioner was about raising of the demand on 13.10.2009 as per Audit objection under the old rules / regulations which are not applicable. With effect from 10.06.2003, new Electricity Act 2003 is applicable and new regulations as well as instructions have been framed as per Electricity Act 2003. In my considered view, the Audit Party has rightly pointed out the amount as chargeable as per old rules i.e. Regulation 51 of Sales Regulations amended vide CC No. 36 / 2004 dated 15.06.2004 whereas new rules regarding Service Connection Charge came into force with effect from January, 2008 with the publication of Electricity Supply Code and related matter Regulations as notified by PSERC on dated June, 29th, 2007 and published in Govt. of Punjab Gazette dated July 27th, 2007.

The next contention of the petitioner is that raising of the demand vide letter dated 13.10.2009 on the basis of Audit objection is barred by limitation and is not recoverable as per Section 56 (2) of the Electricity Act 2003 since the demand was initially raised vide demand notice dated 24.03.2004 and the amount deposited as per above notice was refunded in accordance with decision dated 23.12.2004 of Chief Engineer / Commercial which was ratified by the Board on 03.05.2005. In this regard, a reference is made to Section-56 (2) of the Act which reads as under:-

*“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”*

The expression “sum became first due” have been interpreted by the Appellate Tribunal for Electricity in order dated 14.11.2006 in the case of Ajmer Vidyut Vitran Nigam Limited V/S M/S Sisodia Marble & Granites Private Limited and others. In Para-17 of this order, it has been held;

*“Thus, in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section-56 (2) of the Electricity Act ,2003 shall start running.”*

This decision of the Appellate Tribunal has been upheld by the Hon’ble Supreme Court of India in Civil Appeal No. D 13164 of 2007. The order reads;

*“We do not find any ground to interfere with the impugned order. The civil appeal is, accordingly dismissed”.*

In view of this order of the Hon’ble Supreme Court, the charges become due for payment only after a bill or demand notice for payment is sent by the Licensee to the consumer. In the present case, undisputedly, the demand notice for the recoverable Service Connection Charges was sent on13.10.2009 and period of limitation for recovery of the dues under Section 56 (2) of the Act starts from this date. Therefore, argument put forth on behalf of the petitioner in this regard is not maintainable.

Another contention of the Petitioner was non-furnishing of No Due Certificate called for by Superintending Engineer, Open Access, PSTCL. Rather, the Addl. S.E., Power Purchase, PSPCL informed Addl. S.E. PP&R PSTCL, Patiala that a sum of Rs. 7,77,120/- was pending against him. The Petitioner argued that this action of showing pendency of dues as per Audit objection, led to his request being declined for grant of Open Access for purchase of power from outsource for the period from 1.8.2012 to 31.7.2013. I agree with the argument of respondent that the aforementioned dues were recoverable as per demand raised vide dated 13.10.2009 and were shown continuously in the arrears. I also noted that the Petitioner has relied on judgments of Hon’ble High Courts. The Petitioner referred to CWP No. 10754 of 2011 of Hon’ble Bombay High Court wherein the issue adjudicated was of energy charges whereas this petition relates to dispute for the Service Connection Charges (SCC). Another judgment referred to by the Petitioner is in Writ Appeal No. 550 of 2009 dated 13.10.2011 of Hon’ble Madhya Pradesh High Court (Gwalior Bench) wherein the dispute decided pertains to the Currency of Electricity Act - 1948 whereas the present dispute is of the period after enactment of Indian Electricity Act – 2003. Thus I agree with the Respondent that these judgments are not relevant to the facts and circumstances of this case. Moreover, as already discussed above, Hon’ble Supreme Court of India in Civil Appeal No. D13164 of 2007, has upheld the decision of Appellate Tribunal stating that the sum became first due for payment was only after a bill or Demand Notice is sent by the Licensee to the consumer.

As a sequel of above discussions, I hold that the Respondents are within their right to recover pending dues and thus raise demand of Rs. 7,77,120/- for recovery of Service Connection Charges at normal rates in this case as the extension of load was over and above 100% of original load applied in accordance with the regulations applicable during the period of dispute and in terms of Sales Regulations 51.3 amended vide CC No. 33/2004 dated 15.06.2004.

7. The appeal is dismissed.

8. The Respondents are directed to take appropriate disciplinary action in accordance with their Service Rules against the delinquent officials for not exercising due vigilance resulting into erroneous refund of Rs. 10,82,642/-

9. In case, the Petitioner or the Respondents (Licensee) is not satisfied with the above decision, he is at liberty to seek appropriate remedy against this order from the appropriate Body in accordance with Regulation 3.28 of Punjab State Electricity Regulatory Commission (Forum & Ombudsman) Regulations – 2016.

Place: SAS Nagar (Mohali) (MOHINDER SINGH) Ombudsman

Dated 15.05.2017 Electricity Punjab

S.A.S. Nagar (Mohali)