IN THE COURT OF THE LOKPAL (OMBUDSMAN),

 ELECTRICITY, PUNJAB,

66 KV GRID SUB-STATION, PLOT NO. A-2,

INDUSTRIAL AREA, PHASE-1, S.A.S NAGAR (MOHALI)

Appeal No. 71 / 2017 Date of Order : 14.12.2017

Account No. LS-122

P.R. Alloys,

Village: Bullepur,

G.T. Road,

Khanna.….Petitioner

*Through*

Shri R.S. Dhiman, Petitioner’s Representative (PR)

Versus

Punjab State Power Corporation Limited

 ....Respondent

*Through*

Er. Ravinder Singh,

Additional Superintending Engineer,

DS Division,

PSPCL, Khanna.

 Before me for consideration is the order dated 20.09.2017, passed by the Hon’ble Punjab & Haryana High Court in CWP No. 20629 of 2013, received in this Court on 25.10.2017, deciding that :

*“Impugned order passed by the Ombudsman, Electricity, Punjab is set-aside. Matter is remitted to same authority for decision afresh after affording opportunity of hearing to the parties.”*

 The order ibid requires this Court to review the order dated 21.05.2013 of this Court in Appeal No. 05 of 2013 deciding that :

 *“Additional demand raised on account of*

*variable charges is held not recoverable.”*

1. Arguments, discussions and evidences on record were held on 28.11.2017 and 14.12.2017.
2. The case was initially fixed for hearing on 28.11.2017 when Shri R.S. Dhiman, Petitioner’s Representative (PR) alongwith Shri Poshkar Pal, Partner of the Petitioner’s firm, attended the Court proceedings on behalf of the Petitioner while Er. Ravinder Singh, Addl. Superintending Engineer alongwith Er. Sukhwinder Singh, Assistant Engineer, DS Division, PSPCL, Khanna, appeared on behalf of the Respondent - Punjab State Power Corporation Limited (PSPCL).

4. Shri R.S. Dhiman, (PR) submitted that apart from the submissions made in Appeal No. 05 of 2013, a fresh point required consideration of this Court was to decide the case in terms of provision contained in Section 46 of Electricity Act- 2003 which reads as under:

*“The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.”*

PR contended that in terms of provisions ibid, the Licensee could not claim even per kW/kVA charges, but could claim actual expenditure incurred for giving the supply to the Petitioner. PR added that the criteria of charging Service Connection Charges (S.C.C.) laid down in Regulation 9.1.1 (b) of Supply Code-2007 was amended as laid down in Regulation 9.1.1 (a) (ii) of Supply Code-2014 applicable from 01.01.2015, notified by the Hon’ble PSERC, which reads as under:

**“9.1.1 For New Connection**

1. Domestic, Non-Residential, Industrial, Bulk Supply and

 Compost plants/solid waste management plants for

 municipalities/urban local bodies categories

 *ii) Supply for Load/Demand Exceeding 100kW/100kVA*

*Where load/demand required for above mentioned categories exceeds 100kW/100kVA, the applicant shall be required to pay the actual expenditure incurred by the distribution licensee for release of connection. For 11kV consumers, the expenditure shall include the cost of the individual service line and proportionate cost of the common portion of main line upto the feeding substation including breaker as per the cost data approved by the Commission. For 33kV & higher voltage consumers, the expenditure shall include the cost of the individual service line and proportionate cost of the common portion of main line upto the feeding substation including bay as per the cost data approved by the Commission. If the service line is emanating from the feeding sub-station, the applicant shall bear the entire expenditure along with cost of breaker/bay. However, creation of new grid sub-station or augmentation of existing grid sub-station, if required, shall be carried out by the licensee at its own cost as per regulation 9.2.*

*In such cases, the distribution licensee shall prepare an estimate based on Standard cost data approved by the Commission and applicant shall be required to deposit such amount as Security (works) before start of work. A final bill shall be prepared by the distribution licensee after completion of work and necessary recovery or refund shall be made as per regulation 9.3.”*

PR stated that it proved that the provisions ibid of Supply Code-2007 were ambiguous/defective and hence amended by the Hon’ble PSERC to limit the recovery of expenditure actually incurred for giving supply to the Consumer.

PR contended that, in view of the above, the decision dated 21.05.2013 of this Court in Appeal No. 05 of 2013 needed to be reviewed and amended suitably by taking into account the actual expenditure incurred instead of per kW/kVA charges. During the course of oral arguments on next hearing held on 14.12.2017, PR also stated that the Cost Data, on the basis of which Service Connection Charges (SCC) had been fixed and circulated by the Respondent were not notified by the Hon’ble PSERC. So, these charges had no legal validity and were not recoverable.

5. Er. Ravinder Singh, Additional Superintending Engineer, defending the case on behalf of the Respondent, stated that apart from written submissions made in Appeal No. 05 of 2013, the variable charges were also recoverable as per Cost Data approved by Hon’ble PSERC in terms of Regulation 10 of Supply Code-2007, as also decided by this Court in Appeal No. 20 of 2014 and Appeal No. 24 of 2014.

 During the course of oral arguments on dated 28.11.2017, the Respondent was directed to supply the actual expenditure, duly audited, for giving the supply to the Petitioner. In response, the Respondent sent e-mail dated 29.11.2017 giving the requisite expenditure figures. The Respondent further requested to have also the views of Engineer-in-Chief/Commercial, PSPCL, Patiala, in regard to fresh point raised by the PR during oral arguments referred to in Para 4 above. Accordingly, a fresh date of hearing was fixed for 14.12.2017, when the Representatives of the Petitioner as well as the Respondent appeared in this Court. In addition, Er. H. K. Trehan, Deputy Chief Engineer (Regulation) alongwith Er. Ajay Bansal, Additional Superintending Engineer (Regulation), PSPCL, Patiala, attended the Court proceedings on 14.12.2017, on behalf of Engineer-in-Chief/Commercial of the Respondent in response to specific directions issued for attending the proceedings.

Defending the case further on behalf of the Respondent, Er. H. K. Trehan, Deputy Chief Engineer (Regulation) contested the contention of the PR in regard to notification of the Standard Cost Data and stated that the Cost Data was not required to be notified by the Hon’ble PSERC because Regulation 10 of Supply Code-2007 laid down that the Licensee was to get approved the Standard Cost Data from Hon’ble PSERC within three months of the notification of the Supply Code. Accordingly, the Cost Data was not required to be notified. It was further contended that the Cost Data, approved by the Hon’ble PSERC, included variable charges also as required for calculating the demand for S.C.C. as per Commercial Circular (CC) No. 68/2008 and that such charges also included the cost of Service Line up to 250 metres. Besides, the charges considered by the Hon’ble PSERC are averaged out on the basis of estimated cost for the various categories of the Consumers for giving the Power Supply and hence, the plea made by the Petitioner that only actual expenditure be charged was not valid and also not tenable under Supply Code-2007.

**Decision**

6. The relevant facts of the case are that the Respondent – PSPCL filed a CWP No. 20629 of 2013 challenging the decision of this Court vide order dated 21.05.2013 in Appeal No. 05/2013, inter-alia on the ground that the same authority (Ombudsman Electricity, Punjab), had passed the order dated 04.09.2014 (Appeal No. 20/2014) and also dated 24.09.2014 (Appeal No. 24/2014) in connected Petition i.e. CWP No. 23683 of 2012, in favour of the Corporation despite the factual and legal aspects being entirely similar. The Respondent further stated in the Hon’ble High Court that this Court had, while deciding the Appeal No. 05 of 2013 on 21.05.2013, held that the additional demand raised on account of variable charges was not recoverable while in similar other two cases vide Appeal No. 20/2014 and 24/2014, decided on 04.09.2014 and 24.09.2014 respectively, this Court decided that variable charges raised by the Respondent vide supplementary bills were justified and recoverable. In view of the above, Hon’ble Punjab and Haryana High Court remitted back Appeal No. 05/2013 to this Court for decision afresh after affording an opportunity to the parties.

 I have gone through the written submissions made by the Petitioner and written reply given by the Respondent in Appeal case No. 05 of 2013 (being heard afresh) as well as oral arguments of the Representatives of the Petitioner and Respondent alongwith material placed on record by both the parties.

 *My findings on the points emerged and deliberated are as under:*

1. I find that the Petitioner has raised a fresh point requiring adjudication i.e. by referring to provisions contained in Section 46 of Electricity Act-2003 which were neither referred to in the Appeal No. 05 of 2013 filed in this Court (being heard afresh) nor in CWP No. 20629 of 2013 in the Hon’ble High Court.

I consider that with a view to meet the ends of justice it is fair to consider this point and decide the case on merit.

1. I have gone through Regulation 10 of Supply Code-2007, which was notified by Hon’ble PSERC on 29.06.2007, according to which, the Licensee has to submit the Standard Cost Data within three months of the notification of Supply Code.

I find that the Respondent submitted the Cost Data on the basis of which Hon’ble PSERC, vide its letter No. 3981/PSERC/DTJ-50 dated 05.12.2008, approved the Service Connection Charges for various categories of Consumers as per provisions contained in Regulation 10.1 (b) of Supply Code-2007 (notified by Hon’ble PSERC) on the basis of which, Commercial Circular (CC) No. 68/2008 was issued by the Licensee. Hence, I do not find merit in the contention of the PR that these charges were required to be notified.

iii) I find that Section 50 of Electricity Act-2003 provides that:

“The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges etc………”.

 In compliance to the above provision, the Hon’ble PSERC notified, vide Notification No. PSERC/ Secy/Regu /31 dated 29.06.2007, Supply Code-2007, effective from 01.01.2008, wherein Regulation 9.1 entitled the Licensee to recover expenditure for new connection or extension in its load as stated hereunder:

**“9.1** Subject to the provisions of the Act and these Regulations and subject further to such directions, orders or guidelines which the Commission may issue, every Licensee is entitled to recover from an applicant requiring supply of electricity or additional load/demand, any expenses that the Licensee may incur in providing the facility. The expenditure recoverable by the Licensee will be computed as detailed in Regulation 9.1.1, 9.1.2 and 9.1.3.”

 For new connections, exceeding 500kW/500kVA, Regulation 9.1.1 (b) is applicable which read as under:

**“9.1.1(b)** Where load/demand required exceeded 500kW/500kVA, the Applicant was required to pay per kW/kVA charges as approved by the Commission or the actual expenditure for release of connection, whichever was higher as per provisions contained in Regulation 9.1.1(b) ibid of Supply Code-2007”.

I have gone through Section 46 of Electricity Act-2003 which states:

“The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses **reasonably incurred** in providing any electric line or electrical plant used for the purpose of giving that supply.”

 Thus, as per this Section 46 of Electricity Act-2003, the reasonability of expenses incurred was to be determined by the Hon’ble PSERC which notified the Supply Code-2007 vide Notification dated 29.06.2007 and laid down in Regulation 9.1.1 (b) that:

**“9.1.1 For new connection**

b) Where load / demand required exceeds

500KW/500KVA, the applicant will be required to pay per KW/KVA charges as approved by the Commission or the actual expenditure for release of connection, whichever is higher.”

 No doubt that Hon’ble PSERC revised this reasonability to limit the recovery of charges to the expenditure actually incurred in Supply Code-2014, applicable w.e.f 01.01.2015, vide its Regulation 9.1.1 (a) (ii), but the case of the Consumer is covered under the regulations laid in Supply Code-2007, applicable and in force at that time, wherein it is laid that where load/demand required exceeds 500kW/500kVA, the applicant will be required to pay per kW/kVA charges as approved by the Commission or the actual expenditure for release of connection, whichever is higher.

I observe that Hon’ble PSERC, vide memo No. 3981/PSERC/DTJ-50 dated 05.12.2008, approved the Standard Cost Data in compliance to provisions contained in Regulation 10 of Supply Code-2007 as per which, such charges approved for Large Supply connection having load above 500kVA, were as under:

per kW charges ( in rupees) = 900/- per kVA

variable charges ( rupees) per metre = 320/-

I observe that the Respondent contended that the Cost Data approved by the Hon’ble PSERC included variable charges also as required for calculating the demand for Service Connection Charges (SCC) as per CC No. 68/2008 and that such charges also included the cost of Service Line up to 250 metres. However, no reference to rules/regulations in support of its said contention of inclusion of cost of Service Line up to 250 metres, was placed on record of this Court.

I find that connections for load exceeding 500kW/500kVA, had been treated differently by the Hon’ble PSERC under Regulation 9.1.1 (b) and there was no limit of length of service line and also there was no provision for payment of additional variable charges for service line. In the present category of connections, there is a provision for recovering the actual expenditure for release of connection, in case it is higher than the approved per kW/kVA charges. Hence, additional expenditure on the extra length of the service line is automatically covered in the actual expenditure, in terms of Regulation 9.1.1 (b) of Supply Code-2007. I am of the view that the provisions ibid have not been interpreted correctly by the Licensee for the levy of variable charges.

I have perused the Initial Works Register (IWR) supplied by the Respondent vide e-mail dated 29.11.2017 and found that the actual expenditure for giving the supply to the Petitioner was Rs. 4,26,998/- (which do not include labour charges, as the work was got done from Regular Staff), whereas the charges paid by the Petitioner based on kW/kVA were Rs. 22,50,000/- which should cover all expenditure of the Respondent in releasing this connection.

 *As a sequel of above discussions, it is held that the additional variable charges amounting to Rs. 6,04,480/- raised by the Respondent, based on the Internal Audit Party’s report, are not recoverable from the Petitioner. At the same time, the fresh request of the Petitioner to limit the recovery of expenses by the Respondent to ‘actual expenditure’ (Rs. 4,26,998/- plus labour charges) cannot be allowed by this Court as this case is covered under Supply Code-2007 notified by the Hon’ble PSERC thereby laying the reasonability of recovery of expenses as per Regulation 9.1.1 (b). Disturbing this ‘reasonability’ at this stage will open a padora’s box and emburden all other consumers by hundreds of crores of rupees which may have to be passed on to them for recovery through ARR (Annual Revenue Requirement)/Tariff over coming financial years.*

7. In case, the Petitioner or the Respondent (Licensee) is not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate Bodies in accordance with Regulation 3.28 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations - 2016.

 ( VIRINDER SINGH)

 LokPal (Ombudsman)

Place: S.A.S. Nagar (Mohali) Electricity, Punjab,