**COURT OF THE LOKPAL (OMBUDSMAN),**

 **ELECTRICITY, PUNJAB,**

**PLOT NO. A-2, INDUSTRIAL AREA, PHASE-1,**

 **S.A.S. NAGAR (MOHALI)**

**Appeal No. 86/2017**

**Date of Registration : 20.11.2017**

**Date of Hearing : 12.04.2018 and 10.05.2018**

**Date of Order : 18.05.2018**

**Before:**

**Er. Virinder Singh, LokPal (Ombudsman) Electricity**

**In the matter of:**

Senior Divisional Electrical Engineer,

Northern Railways, Ambala Division,

Ambala Cantt. ...Petitioner

Versus

 Senior Executive Engineer,

 DS Division, PSPCL,

 Sri Anandpur Sahib.

 ...Respondent

**Present For:**

Petitioner: 1. Shri Jaideep Verma, Advocate, Petitioner's Counsel (PC)

2. Shri Manoj Kumar,

 ADEE, Northern Railways, Sirhind.

Respondent : 1. Er. Harvinder Singh,

 Senior Executive Engineer,

 2. Er. Om Parkash,

 Assistant Engineer.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 11.09.2017 in Case No. CG-97 of 2017 of the Consumers Grievances Redressal Forum (Forum) deciding that:

1. *MMC charged for period from 29.12.2000 to 25.02.2001 is correct and recoverable.*
2. *RBS No. 24/2016 dated 13.06.2016 for Rs. 25,48,712/- on account of PF and Demand Surcharge has already been issued by the respondent, so, there remains no dispute on this account.*
3. *An amount of Rs.1,10,76,607/-, which was added in the bill of 10/2009 issued on 04.11.2009 and continuously is being shown in their regular bills as arrear on account of enhancement of consumption by 10.96% from 24.01.2002 to March, 200,6 is correct and recoverable.*
4. *Late payment surcharge levied to Railways amounting to Rs.2,27,27,459/- is correct and recoverable.*
5. *Amount charged by the Respondent from “Petitioner on account of Octroi is correct and recoverable.”*

A hearing in this case was initially held on 12.04.2018 wherein Shri Manoj Kumar, ADEE/Sirhind alongwith Shri Jaideep Verma, Advocate on behalf of the Petitioner and Er. Harvinder Singh, Sr. Executive Engineer and Er. Om Parkash, AE/DS Sub Division, PSPCL, Sri Anandpur Sahib, on behalf of PSPCL were present.

 After deliberations, it was decided that:

1. *As the Petition submitted by the Petitioner was not self-contained and also not supported by relevant documentary evidence, another hearing will be held on 10.05.2018 at 12 Noon.*
2. *The Petitioner will submit a revised application to the Respondent latest by 26.04.2018 with a copy to this Court giving all the requisite details in the tabular form as per format supplied to it by this Court, accompained by copies of all the required documents as discussed in the hearing ibid.*
3. *The Respondent will submit a rejoinder to the Petition in this Court and also send a copy thereof to the Petitioner latest by 03.05.2018.*

2**. Facts of the case:**

 **The relevant facts of the Case are that:**

1. The Petitioner was having Railway Traction Category connection being fed from 132kV Sub-station, Sri Anandpur Sahib, with the Sanctioned Load of 7MVA.
2. The connection was released/Transmission Line was charged on 29.12.2000 on the request made vide letter dated 22.12.2000 by the Chief Project Manager, Northern Railways, Ambala Cantt.
3. The Railways charged the Traction Sub-station (TSS) on 25.02.2001 and put its load on the Respondent’s Utility System on 27.02.2001 after receipt of the requisite sanction vide letter No. 230/Elect./TRD 13 (L) dated 20.02.2001 from the Competent Authority viz. Electrical Inspector to the Govt. of India (EIG).

**(iv)** The 3 Phase 4 Wire, L&T Make Energy Meter was installed at Petitioner’s end on 27.02.2001.

**(v)** The Energy Meter installed did not reflect MD and PF correctly. The connection was checked by MMTS on 25.07.2001 when it was noticed that the polarity of CTs was reverse. After setting right the connections on 08.08.2001, the Energy Meter was recording high MD and low Power Factor.

**(vi)** The said Energy Meter was replaced with 3 Phase 3 Wire “Secure” make Energy Meter on 24.01.2002. However the Petitioner insisted for testing the removed L&T Make Energy Meter in series with “Secure” make Energy Meter.

**(vii)** On testing, it was observed that the Secure make 3 Phase 3 Wire Energy Meter was recording less energy by 10.96% as compared to L&T 3 Phase, 4 Wire Energy Meter.

1. The PF and MD recorded by Secure make Energy Meter was, however, higher as compared to PF and MD of L&T Energy Meter.
2. The matter was discussed with the suppliers viz. L&T and Secure and it was recommended by L&T that 3 Phase 4 Wire Energy Meter shall record correct energy measurement provided PT has a common point and connected to neutral of the Energy Meter and CT polarities were corrected. Secure also recommended the use of 3 Phase 4 Wire Energy Meter with correct polarities of CTs for traction purpose.
3. The Respondent decided to overhaul the bills based on the result of testing. But this was not agreeable to the Petitioner, who then met and submitted a representation to the Chairman of the erstwhile PSEB (Petitioner). The Chairman, PSEB, constituted a High Powered Committee comprising of the Chief Engineer “OP” (South), Chief Engineer, Commercial, Chief Engineer/Metering and Chief Engineer/ Enforcement to sort out the issue.
4. This High Powered Committee, constituted by the Chairman/PSEB, held its meeting on 05.03.2009 and deliberated the various testing results, the pleas of the Petitioner and the contents of earlier meetings. The said Committee submitted its recommendations to the Whole Time Members (WTMs) comprising the Chairman and Members of the erstwhile PSEB, as under:

*“(****a)*** *The consumption of 3 phase 3 wire meter shall be enhanced by 10.96% on account of difference of consumptions between 3 phase 4 wire and 3 phase 3 wire meter during the period 24/01/2002 to billing cycle of 03/2006.*

1. *As during the period 29/12/2000 to 24/1/2002 the meter was incorrectly recording the export energy, as such export energy charges billed to consumer are not leviable and refund if any needs to be given to the consumer.*
2. *During the period 29/12/2000 to 24/1/2002 the meter was defective and it was recording low power factor, as such, charges on account of low power factor recorded by defective meter are not recoverable.*
3. *On account of defective meter for the period from 29/12/2000 to 24/1/2002, demand surcharge is not leviable to consumer.*
4. *The refund on account of the difference of consumption between 3 phase 4 wire and 3 phase 3 wire meters during the period 29/12/2000 to 24/1/2002 as demanded by the consumer is not justified as kWh part of 3 phase 4 wire meter installed during the period was recording correct energy.*
5. *As per existing instructions, Octroi is leviable. However, if required, the consumer may take up the matter with the State Govt. for exemption from payment of Octroi.*
6. *The demand of the consumer for waival of late payment surcharge may be considered sympathetically in order to resolve the issue.”*
7. The Chief Engineer/Commercial put up the memorandum no. 24/DB-43 dated 29.06.2009 to WTMs, for consideration of recommendations. The WTMs in its meeting held on 07.07.2009, approved the recommendations (as per Sr. No. (xi) above) except that of waival of late payment surcharge on part payment of bills for the months of June 2001 and August 2001.
8. In compliance to the decision of the WTMs, Centralized Billing Cell (CBC), PSEB/PSPCL - Respondent, issued the following Revised Billing Statements (RBSs):
9. *RBS No. 53 dated 19.08.2009 for charging amount of Rs.1,10,82,210/- relating to enhancement of consumption by 10.96%.. However, audit department of the respondent has recalculated this amount to be Rs.1,10,76,607/-.*
10. *RBS 2 dated 24/09/2001 for refund of amount of Rs.78,29,836/- relating to incorrect charging of consumption recorded in Export Mode for the period from 29.12.2000 to 24.01.2002.*
11. *RBS 54 dated 17.09.2009 for refund of Rs.1,60,47,268/- relating to Power Factor Surcharge and Demand surcharge for the period 08/2001 to 03/2006 .*
12. *RBS No. 24/2016 dated 13.06.2016 for Rs. 25,48,712/- relating to Power Factor and Maximum Demand Surcharge for the period from 29.12,2000 to 31.05.2001.*
13. The above Revised Billing Statements were audited by Accounts Officer/Field, Ropar and finalized for Rs.3.58 crore upto 10/2010. The Petitioner was informed accordingly vide letter no 247 dated 21/03/2011 issued by the office of Respondent viz. AE "OP" Sub Division, Sri Anandpur Sahib, but the Petitioner objected to deposit the said amount and commented that unilateral decision of the WTMs was not acceptable.
14. Subsequently several meetings were held by the Petitioner with the Respondent (PSEB authorities) at Chandigarh and Sri Anandpur Sahib from time to time to resolve the issue.
15. The Petitioner filed a Petition in the Forum which decided the case vide order dated 11.09.2017 (Reference: Page 2, Para 1).
16. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court and prayed to set-aside the order dated 11.09.2017 passed by the Forum and allow the relief detailed below in the interest of justice and fair play:
17. *Refund of MMC for the period 29.12.2000 to 25.02.2001.*
18. *Refund of Power Factor and Demand Surcharge for the period 16.03.2001 to 31.05.2006.*
19. *Write off the charges levied due to enhancement of consumption by 10.96% from 24.01.2002 to March, 2006.*
20. *Write off the late/delayed payment surcharge for the months of June, 2001 and August 2001.*

***(e)*** *Refund of incorrectly recovered Octroi Charges upto 08/2012 for Sri Anandpur Sahib and Kurali TSS.*

**3. Submissions made by the Petitioner and the Respondent:**

As per deliberations held, during the course of hearing dated 12.04.2018, the Petitioner made written submissions afresh and the Respondent submitted its reply to this Court with a copy to the Petitioner. These written as well as oral submissions made by the Representatives of the Petitioner and the Respondent alongwith material brought on record by both the sides are summed up as under:

**(a) Submissions of the Petitioner:**

The Petitioner submitted the following for consideration of this Court.

1. The Railways Traction Sub-Station (TSS) was commissioned on 29.12.2000. But, it could not be charged as neither the work of the Transmission Line was completed nor it was test - charged.
2. The Chief Electrical Engineer, Northern Railways in his capacity as Electrical Inspector to govt. of India (EIG), accorded sanction for energization of 132kV TSS at Sri Anandpur Sahib as conveyed vide Northern Railways Headquarters office letter dated 20.02.2001.
3. The TSS was charged on 25.02.2001 and put on load on 27.02.2001.
4. A 3 Phase 4 Wire L&T make Energy Meter was installed on 27.02.2001 by the Distribution Licensee (Respondent).
5. The first bill was received on 22.03.2001 for Rs. 25,64,863/- wherein MMC were charged from 29.12.2000 to 15.03.2001 (78 days) including non-functional period of TSS from 29.12.2000 to 24.02.2001 (58 days).
6. The Petitioner deposited the entire amount under protest and took up the matter with the Respondent for correction of the bill and refund of Rs. 19 lac vide letter bearing number 230/ Elect / TRD / UMB/14/5/2001 dated 12.04.2001.
7. In the present dispute, the Respondent intentionally concealed the date of completion of five Kilometre Transmission Line.
8. The 3 Phase 4 Wire L&T make Energy Meter installed by the Distribution Licensee, reflected PF and MD on lower side. Hence, the Energy Meter was replaced on by installing 3 Phase 3 Wire Energy Meter on 24.01.2002. Thereafter, the Energy Meter started showing correct PF and MD readings.
9. In February, 2002, the Respondent raised the arrears of Rs. 3.12 crore approximately on account of:
10. Surcharge for not paying low PF and MD.
11. Surcharge and Export Energy Charges.
12. The Petitioner protested against the aforesaid amount, vide letters dated 08.07.2002 and 22.07.2002, to the Respondent and requested to waive off the arrears raised by it.
13. In order to resolve the dispute in readings, joint testing was carried out on 23.12.2002 and joint readings were taken for the period from 23.10.2002 to 10.12.2002. On the basis of joint testing/readings, the Petitioner claimed a sum of Rs. 14,42,000/- from the Respondent.
14. The Respondent desired to carry out another joint checking to which the Petitioner agreed. Accordingly, joint readings were taken for the period from 12.12.2003 to 06.01.2004. The Petitioner, claimed refund of Rs. 16,86,000/- on the basis of joint testings/readings. Though, the Respondent did not agree with the same, it agreed to another proposal of the Petitioner to conduct joint testing for the third time.
15. The Respondent had installed 3 Phase 4 Wire Energy Meter in series with existing 3 Phase 3 Wire Energy Meter without taking the prior consent of the Petitioner who had strongly opposed it, vide letter dated 30.05.2005, mentioning that the Respondent had broken all the joint seals.
16. The Respondent unilaterally started billing on the basis of 3 Phase 4 Wire Energy Meter from 30.01.2006, which was strongly protested by the Petitioner vide letter dated 02.03.2006.
17. The Petitioner was genuinely interested to resolve the issue. Hence, after consultation with the RDSO, Lucknow, billing was shifted to new 3 Phase 4 Wire Energy Meter with effect from 01.04.2006. In this regard, letter dated 08.02.2007 was written to the Respondent.
18. The Petitioner received the decision dated 07.07.2009 passed by the WTMs of the erstwhile PSEB as per which, a sum of Rs. 3,00,92,783/-, on account of overhauling of its account on the basis of new 3 Phase 4 Wire Energy Meter from January, 2002 to March, 2006, was recoverable from the Petitioner.
19. The decision taken by the WTMs was apparently unilateral and against the principle of natural justice without affording any opportunity to the Petitioner of being heard. Thus, the decision dated 07.07.2009, taken by the WTMs, was apparently unjust, improper and illegal, hence, liable to be set aside being not sustainable in the eyes of law.
20. Several meetings were held between the Petitioner and the Respondent authorities. But, nothing fruitful happened.
21. The Respondent failed to give the basis of calculations for 10.96% enhancement of consumption. The letters dated 30.05.2005 and 08.02.2007, written by the Petitioner to the Respondent may be referred to in this regard.
22. The Respondent raised the electricity bill for Rs. 40,74,430/- in the month of June, 2001. Admittedly, the Energy Meter was defective during this period for which the amount charged on account of PF and MD was based on wrong readings.
23. The Petitioner calculated the amount of Rs. 22,42,530/- **after deducting the incorrectly charged amount for Deemand and Power Factor surchage**  and submitted a Demand Draft no. 435887 dated 26.07.2001 for Rs. 22,42,530/- to the Respondent through letter to Assistant Engineer “OP” Sub Division, PSEB, Sri Anandpur Sahib who returned the demand Draft alongwith the covering letter dated 27.07.2001.
24. Aggrieved, the Petitioner sent the aforesaid demand draft through registered post to the Respondent who accepted the same. Thus, the Petitioner had submitted the demand draft to the Respondent viz. Assistant Engineer "OP" Sub Division, Sri Anandpur Sahib well within the time. It was only after its refusal to accept the same that the demand draft was sent through registered post which was duly accepted by the same office of the Respondent.
25. Similarly, the Petitioner had submitted Demand Draft no. 435894 dated 20.09.2001 for Rs. 39,35,640/- to the Respondent’s Assistant Engineer "OP" Sub Division, Sri Anandpur Sahib. However, only after the refusal of the Sub Divisional Office, the Demand Draft was sent through registered post on 26.09.2001, which was also duly accepted by the same office. Therefore, there was no delay in this regard on the part of the Petitioner. Rather, delay was caused due to non-acceptance of Demand Draft by the Respondent – AE “OP” Sub Division, Sri Anandpur Sahib. Hence, the Respondent wrongly charged the surcharge on the plea of late payment.
26. Article 287 of the Constitution of India, states as under:

*“Exemption from taxes on electricity Save in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorize the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons ) which is*

1. *consumed by the Government of India, or sold to the Government of India for consumption by that Government.”*

In view of the above, the Petitioner was not liable to pay the Octroi. However, the Respondent wrongly charged the Octroi from the Petitioner which was strongly protested by the Petitioner vide letters dated 12.04.2001 and 23.05.2001. Even, the Hon’ble Punjab and Haryana High Court, vide its decision in CWP No. 9101 of 2012 as well as the Respondent (PSPCL), vide Commercial Circular (CC) No. 27/2012 dated 31.08.2012, passed the orders not to charge the Octroi from the Petitioner and refund the amount of Octroi charged previously by way of adjustment in future bills. But, the Respondent was not ready to comply with its own instructions ibid.

1. The Petitioner prayed to allow the Appeal in view of the submissions made above.

**(b) Submissions made by the Respondent:**

The Respondent submitted the following, in its defence, for consideration:

1. Transmission Line of the Railways Traction Sub-station was ready for commissioning, as approved by the Chief Electrical Inspector, Punjab, Patiala as intimated by the office of the Senior Executive Engineer, TLSC Division, Jalandhar vide its office Memo. No. 8420-21 dated 17.11.2000. The Petitioner’s department had itself submitted the test report on dated 22.11.2000 vide Memo No. DUL/RE/UMB/EL/TSS as per which, its Chief Project Manager, Northern Railways, Ambala Cantt. requested the Respondent viz. Assistant Engineer “OP” Sub Division, PSEB, Sri Anandpur Sahib for release of the electricity connection. Accordingly, the **connection was released on 29.12.2000** by the AE “OP” Sub Division, PSEB, Sri Anandpur Sahib vide SCO No. 20/3757 dated 04.12.2000. The Petitioner was also informed about this by the Respondent viz. Assistant Engineer “OP” Sub Division, Sri Anandpur Sahib vide memo no. 2912 dated 29.12.2000 and also vide memo no. 106 dated 17.01.2001.
2. Though, the Chief Electrical Inspector, Punjab, approved the line as per Sr. Executive Engineer, TLSC Division, PSEB, Jalandhar’s Memo No. 8420-21 dated 17.11.2000, the Petitioner did not put its load on the Utility system till receipt of sanction dated 20.02.2001 of Chief Electrical Engineer, Northern Railways in his capacity as Electrical Inspector to Govt. of India (EIG).
3. Apparently, the onus for not arranging timely sanction of the Competent Authority rested with the Petitioner.
4. Since, the Transmission Line was charged/restored on 29.12.2000 as informed to the Petitioner by the Respondent’s Assistant Engineer “OP” Sub Division, PSEB, Sri Anandpur Sahib’s Memo. No. 2912-13 dated 29.12.2000, Monthly Minimum Charges (MMC) claimed for the period from 29.12.2000 to 24.02.2001 were justified and correct. Besides, the connection was released to the Petitioner on 29.12.2000. An electric supply Energy Meter was installed at 132kV Sub-station, Sri Anandpur Sahib for giving electricity supply. So, the first bill, issued for the period from 29.12.2000 to 15.03.2001 (for 76 days), was correct as per Regulation No. 33 of the Sales Regulation.
5. The Respondent had refunded the wrongly charged amount of Rs. 25,48,712/- as Power Factor and Demand Surcharge on 27.07.2017 as per decision dated 07.07.2009 of the WTMs which did not make any recommendation regarding interest on the said amount. The Petitioner should not claim interest as the Respondent also did not charge the interest on the amount of Rs. 4.20 crore, which was the amount due from the Petitioner since, 2006.
6. The 3 Phase 4 Wire Energy Meter was showing less PF and MD, hence, the same was replaced with 3 Phase 3 Wire Energy Meter on 24.01.2002 vide MCO No. 78/53898 dated 22.01.2002 and refund for the same was issued vide RBS No. 24/2016 dated 13.06.2016 by the CBC, PSPCL, Ludhiana.
7. Vide RBS No. 24/2016 dated 13.06.2016, a sum of Rs. 25,48,712/- relating to Power Factor and Maximum Demand surcharge for the period from 29.12.2000 to 31.05.2001 was refunded. Besides, RBS No. 54/2009 for Rs. 1,60,47,268/- relating to Power Factor and Maximum Demand surcharge for the period 08/2001 to 03/2006 was also issued by the CBC, PSEB, Ludhiana.
8. Consumption Charges on the basis of energy recorded in Export mode, were wrongly claimed by the Respondent which were never deposited by the Petitioner and were also waived off by the WTMs vide order dated 07.07.2009 after considering the deliberations of all the meetings held between the Petitioner and the Respondent. Therefore, it was incorrect on the part of the Petitioner, to contend that the WTMs took the decision at its own level/ unilaterally. Based on the said decision, RBS No. 53/2009 dated 19.08.2009 for charging the amount relating to enhancement of consumption by 10.96%, RBS No. 54/2009 dated 17.09.2009, on account of PF and MD surcharge for the amount of Rs. 78,85,008/- and Rs. 38,19,700/- respectively was issued by Dy. Director, CBC, Ludhiana, but the Petitioner did not deposit the amount and later WTMs decided that this amount was wrongly charged. Accordingly, the Respondent did not recover this amount. Further, RBS No.24/2016 dated 13.06.2016 for Rs. 25,48,712/- relating to refund of Power Factor and Demand Surcharge claimed by the Petitioner for the period from 29.12.2000 to 31.05.2001, had been accepted by the Respondent and RBS No. 24/2016 was issued by the CBC, PSEB, Ludhiana. The Petitioner accepted these RBSs and now it is demanding the interest on the RBS No. 24/2016. Thus, the Petitioner should accept the decision dated 07.07.2009 of the WTMs, which was just and fair for both the Respondent and the Petitioner.
9. The Petitioner had not only made delayed payments of the bills raised but also made part payment of the Energy Bill for the months of 06/2001 and 08/2001. Against an amount charged by the Respondent for Rs. 39,95,784/-, the Petitioner deposited only the amount of Rs. 39,35,640/- on dated 03.10.2001, thus, short payment of Rs. 60,144/- was made. In the month of January, 2002 and February, 2002, short payment of Rs. 5,10,208/- and Rs. 39,4000/- respectively was made as shown in calculation sheet already provided to the Petitioner. So, late payment surcharge was charged to the Petitioner, as per Regulation No. 95 of Sale Regulation approved by the Distribution Licensee, by treating the payment made by the Petitioner as part payment of the bill.
10. Since the Petitioner itself agreed to the suitability of 3 Phase 4 Wire Meter, vide its letter no. 230 dated 07.03.2006 w.e.f. 01.04.2006, the refund of Rs. 16.86 lac, claimed by the Petitioner was wrong and not justified.
11. As per recommendations of the High Powered Committee constituted by the erstwhile PSEB, to install 3 Phase 4 Wire Energy Meter in series with existing 3 Phase 3 Wire Energy Meter for monitoring of Railways Traction, Sri Anandpur Sahib on dated 18.05.2005, a reference was made by the Respondent vide office Memo No. 4530-37 dated 03.05.2009, to Shri Sanjay Kubba, SR. DEE, Northern Railways, Ambala Cantt., alongwith others, but the Petitioner did not associate with the Respondent, for the same. The Energy Meter was installed in series in the presence of the High Powered Committee, constituted by the Chairman, PSEB (Respondent), Patiala.
12. The billing, based on the readings of 3 Phase 4 Wire Energy Meter, had been started by the office of the Respondent’s. Assistant Engineer “OP” Sub Division, Sri Anandpur Sahib as per instructions of the Chief Engineer, “OP” (South), PSEB, Patiala vide Memo No. 289 dated 23.01.2006, addressed to the SE “OP” Circle, PSEB, Ropar. A copy of the said letter was sent to the Respondent’s DS office vide SE, Operation Circle, PSEB, Ropar endst. no. 1720 dated 25.01.2006 to implement the decision of the CE/Commercial, (Billing Section), PSEB, Patiala’s Memo No.51 dated 17.01.2006. Further, the Petitioner itself agreed to the suitability of 3 Phase 4 Wire Energy Meter as the Petitioner had started to pay bills from the month of 04/2006 based on consumption shown as per reading of this 3 Phase 4 Wire Energy Meter. But, the Petitioner did not deposit the bills for the months of 01/2006 to 03/2006 on the basis of reading of 3 Phase 4 Wire Energy Meter.
13. As per decision dated 07.07.20009 of WTMs, 3 Phase 3 Wire Energy Meter recorded 10.96% less energy than 3 Phase 4 Wire Meter. Therefore, after overhauling the account of the Petitioner from 24.01.2002 to 03/2006, this amount was chargeable.
14. Since the Demand Draft for Rs. 22,42,530/- submitted by the Petitioner for part payment of the billed amount of Rs. 40,74,430/- for the month of 06/2001 was not acceptable to the Respondent, a sum of Rs. 22,37,183/- ( Rs. 40,74,430 - Rs. 22,42,530 plus surcharge Rs. 4,05,283/- ) was pending. Similarly, the Demand Draft of Rs. 39,35,640/- relating to the bill for the month of 08/2001 was for the part amount and thus not accepted. As part payment of the current bill could not be accepted before the due date, the amount charged to the Petitioner as surcharge was justified. The Respondent never refused to accept payment of the whole current energy bill. Alternatively, the Petitioner could deposit the amount under protest but they did not do so.
15. It was correct that the State of Punjab can not imposed or authorize the imposition of a tax on the consumption or sale of electricity which was consumed by the Govt. of India for its operations as per Article 287 of the Constitution of India. But, the Distribution Licensee charged the Octroi to the Petitioner, upto 08/2012, as per prevailing Regulation No. 93 of Sales Manual and subsequently discontinued charging the same as per Commercial Circular No.27/2012 dated 31.08.2012. The Respondent had deposited the Octroi collected from the consumer with the State Govt. Therefore, if the Petitioner wished to get the refund on this account, it should take up the matter with the State Govt. as already advised.
16. The Appeal may be dismissed in view of the submissions made above.

**4. Analysis:**

The issues requiring adjudication are the legitimacy of the relief claimed by the Petitioner as under:

1. Refund of MMC charged to the Petitioner for the period from 29.12.2000 to 25.02.2001 despite the fact that 132kV Transmission Line remained non-functional from 29.12.2000 to 24.02.2001 (58 days) and not charged.
2. Interest on refund of Power Factor (PF) and Maximum Demand (MD) surcharge of Rs. 25,48,712/- charged excess from the Petitioner for the period from 16.03.2001 to 31.05.2001 and refunded on 27.07.2017.
3. Waival/write off charges levied upon the Petitioner, due to enhancement of consumption by 10.96% from 24.01.2002 to the billing month of 03/2006, amounting to Rs. 1,10,76,607/- in the bill dated 04.11.2009 (for 10/2009) which continued to be shown in their regular bills as arrear.
4. Waival of surcharge based on the plea of delayed/part payment of the bills by the Petitioner, for the months of June 2001 and August 2001, due to which, this Surcharge accumulated to Rs. 2,27,27,459/-.
5. Refund of Octroi charges levied incorrectly upto 08/2012 by the Respondent since commissioning of Sri Anandpur Sahib and Kurali Railway Traction Sub-stations upto 08/2012.

*These issues are deliberated and analysed, ad-seriatum, as under:*

1. PC stated that Sri Anandpur Sahib (ANSB) Railway Traction Sub-station (TSS) was located in the Section of UHL – RPAR and was fed from 132kV Grid Sub-station, Sri Anandpur Sahib through an approximately five kilometer transmission line. PC also stated that the TSS was charged on 25.02.2001 (date of test charging) and put on load on 27.02.2001. The TSS was commissioned by RE/UMB (a Railways entity) on 29.12.2000 but could not be charged as neither the work of the transmission {done by the Respondent (erstwhile PSEB) as a Deposit Work} was completed nor test charged. PC added that the first bill (for the period from 29.12.2000 to 15.03.2001) dated 22.03.2001 amounting to Rs. 25,64,863/-, for the said TSS included the MMC amounting to Rs. 19 lac even for the non-functional period of TSS from 29.12.2000 to 24.02.2001 (58 days). The Petitioner (Railways) deposited the entire amount raised, in the bill ibid, under protest and represented to the Distribution Licensee for correction of the bill (due to MMC wrongly charged) vide letters dated 12.04.2001, 25.04.2001, 02.05.2001, 14.5.2001 and 23.05.2001.

 The Respondent, in its defence, stated that Transmission Line of the Railways Traction Sub-station was ready for commissioning as approved by the Chief Electrical Inspector, Punjab, Patiala as intimated by the office of the Senior Executive Engineer, TLSC Division, Jalandhar vide its office Memo. No. 8420-21 dated 17.11.2000. The Petitioner's department had itself submitted the test report of its TSS on dated 21.12.2000 vide Memo No. DUL/RE/UMB/EL/TSS dated 22.12.2000 as per which, its Chief Project Manager, Ambala Cantt requested the Respondent's Assistant Engineer“OP”Sub Division, Sri Anandpur Sahib for release of the connection. Accordingly, the connection was released on 29.12.2000 by the Respondent's Assistant Engineer “OP”Sub Division, PSEB, Sri Anandpur Sahib vide SCO No. 20/3757 dated 04.12.2000. The Petitioner was also informed about this by the Respondent viz. Assistant Engineer“OP”Sub Division, PSEB, Sri Anandpur Sahib vide Memo No. 2912 dated 29.12.2000 and also vide memo No. 106 dated 17.01.2001. Though, the Chief Electrical Inspector, Punjab, approved the line as per Sr. Executive Engineer, TLSC Division, PSEB, Jalandhar Memo No. 8420-21 dated 17.11.2000, the Petitioner did not put its load on the Respondent's system due to non-receipt of the sanction for energization from Chief Electrical Engineer, Northern Railways in his capacity as Electrical Inspector to Govt. of India (EIG). The Respondent argued that the said sanction was of no relevance for not charging MMC, as the connection was released to the Petitioner on 29.12.2000 on its specific request. Since, the Transmission Line was charged on 29.12.2000 vide Respondent's Assistant Engineer,“OP”Sub Division, PSEB, Sri Anandpur Sahib's Memo. No. 2912-13 dated 29.12.200, charges levied were justified and correct. Besides, the connection was released to the Petitioner on 29.12.2000, and the Energy Meter was installed at 132kV Sub-station, Sri Anandpur Sahib for giving electricity supply. So, the first bill was issued, for the period from 29.12.2000 to 15.03.2001 for 76 days, was correct as per Regulation No. 33 of the Sales Regulations.

 *I observe that the Respondent has rightly contended that the Petitioner had submitted the Test Report dated 21.11.2000 ( vide Chief Project Manager, Railway Electrification, Ambala Cantt. letter dated 22.11.2000) and requested the Respondent's Assistant Engineer “OP”PSEB, Sri Anandpur Sahib for release of the connection which, in turn, was released by the Respondent – Utility on 29.12.2000 and an Energy Meter was installed at132kV Sri Anandpur Sahib Sub-station for measurement and thus, the supply of electricity was made available by the Respondent to the Petitioner on 29.12.2000. I observe that the Petitioner was informed accordingly by the Respondent's Assistant Engineer "OP" Sub Division, PSEB, Sri Anandpur Sahib vide memo no. 2912-13 dated 29.12.2000. Thus, there is merit in the contention of the Respondent that the onus for the delay in putting the Load on its Utility System lies with the Petitioner as evidenced from perusal of letter no.230-/Elec/TRD/13 (L) dated 20.02.2001 from the Chief Electrical Engineer, Northern Railways, New Delhi (addressed to the Chief Project Manager, Railway Electrification, Ambala Cantt. in response to its letter no. DUL/RE/UMB/2160 Pt. II dated 01.02.2001) stating as under:*

*“Chief Electrical Engineer, Northern Railway, in his capacity as an Inspector to govt. of India has accorded his sanction for energization of 132kV/25kV TSS at Sri Anandpur Sahib in Sirhind-Nangaldam – Una Section.”*

*It thus proves beyond doubt that though the Respondent - Distribution Licensee had made power supply available on 29.12.2000, the Petitioner did not take timely precautions to put its load thereon by arranging the requisite sanction of the competent Authority for energization of 132kV TSS. As such, the Petitioner has no locus-standi to claim the refund, due to its having defaulted in arranging internal sanction of its Competent Authority, for the period from 29.12.2000 to 24.02.2001 (58 days).*

1. PC next contended that the Respondent had wrongly charged a sum of Rs. 25,48,712/- (PF Surcharge of Rs. 17,06,712/- + Demand Surcharge of Rs. 8,42,600/-) for the period from 16.03.2001 to 31.05.2001 which was finally refunded on 27.07.2017 by the Respondent after persistent protests by the Petitioner (Railways), but no interest from 31.05.2001 to 26.07.2017 was paid to the Petitioner by the Respondent on the amount refunded.

The Respondent, in its defence, stated that the Petitioner should not claim interest as the Respondent had also not charged interest on the amount due from the Petitioner since 2006. The Respondent added that the Petitioner (Railways) had accepted the payment of Rs. 25,48,712/- as per the decision dated 07.07.2009 of the Whole time Members (WTMs) which did not make any recommendation for payment of interest, so, the decision of the WTMs was just and fair for both the sides.

*I agree with the Respondent that the relief claimed for payment of interest by the Petitioner on this account is not just and fair.*

1. Another issue raised by the PC is the waival / write off a sum of Rs. 1,10,76,607/- alongwith surcharge claimed thereon till date due to enhancement of consumption by 10.96% from 24.01.2002 to March 2006 billing month with retrospective effect. PC argued that the Respondent installed 3 Wire 4 Phase Energy Meter of L&T make on 27.02.2001. As the said Energy Meter reflected lower side PF, the Respondent replaced it on 24.01.2002 by installing a new 3 Phase 3 Wire Energy Meter of Secure make which, in turn, started to show correct PF and meter readings. In February 2002, the Respondent raised the arrears of Rs. 3.12 crore approximately which, apart from surcharge for not paying lower PF and MD.

The Respondent, in its defence, stated that the representation of the Petitioner in this regard was decided by the WTMs, of the Respondent (erstwhile PSEB), on 07.07.2009, as under:

1. *The consumption of 3 Phase 4 Wire Energy Meter shall be enhanced by 10.96% on account of difference of consumption of 3 Phase 4 Wire Energy Meter and 3 Phase 3 Wire Energy Meter for the period from 24.01.2002 to the billing cycle of 03/2006.*
2. *Considering that the Energy Meter incorrectly recorded the export energy during the period from 29.12.2000 to 24.01.2002, the charges billed to the consumer were not leviable and refund needs to be given to the consumer.*

The Respondent submitted that pursuant to the said decision of the WTMs, the Centralised Billing Cell, issued RBS No.53 dated 19.08.2009 for Rs.1,10,82,210/- pre-audited to Rs. 1,10,76,607/-.

The Respondent also submitted that the export energy charges incorrectly charged to the Petitioner were not deposited by it and were waived off in compliance to the decision dated 07.07.2009 of the WTMs.

*After perusing the facts, relating to this issue, I agree with the Respondent that WTM’s decision is just and fair for both the Petitioner and the Respondent and that it is not fair on the part of the Petitioner to accept the decision of WTMs regarding export energy charges which was favourable to it while not agreeing to the decision regarding enhancement of consumption by 10.96% which was not in favour of the Petitioner.*

1. PC also raised the issue of accumulated surcharge amounting to Rs. 2,27,27,459/- on account of so called late/delayed payment by the Petitioner of the bills for the months of June 2001 and August 2001. PC submitted that:
2. The Petitioner calculated the amount of Rs. 22,42,530/- after deducting the amount charged for Maximum Demand and Power Factor and then submitted a demand draft bearing no. 435887 dated 26.07.2001 for Rs. 22,42,530/- to the Assistant Engineer “OP” PSEB, Sri Anandpur Sahib who returned the draft alongwith the covering letter dated 27.07.2001 due to the reason that part payment of current bill was not acceptable.
3. Aggrieved, the Petitioner sent the aforesaid Draft through registered post to the Respondent who accepted the same. Thus, the Petitioner had submitted the draft to the Respondent viz Assistant Engineer “OP” Sub Division, Sri Anandpur Sahib well within time. It was only after its refusal to accept the same that the demand draft was sent through registered post which was duly accepted by the same office of the Distribution Licensee.
4. Similarly, the Petitioner had submitted Demand Draft no. 43594 of Rs. 39,35,640/- to the Respondent's Assistant Engineer "OP” Sub Division, Sri Anandpur Sahib. When the Respondent refused to accept the demand draft for part payment, it was sent through registered post on 26.09.2001, which was accepted by the said office of the Respondent.
5. There was no delay on the part of the Petitioner. Rather, delay was caused due to non-acceptance of Demand Draft by the Respondent – AE "OP" Sub Division, Sri Anandpur Sahib. Hence, the Respondent had wrongly charged the surcharge on the plea of late payment.

The Respondent contested the plea of the Petitioner and stated in its defence that since the Demand Draft for Rs. 22,42,530/- submitted by the Petitioner for part payment of the billed amount of Rs. 40,74,430/- for the month of 06/2001 was not acceptable to the Respondent, a sum of Rs. 22,37,183/- ( Rs. 40,74,430 - Rs. 22,42,530 plus surcharge Rs. 4,05,283/- ) was pending. Similarly, the Demand Draft of Rs. 39,35,640/- relating to the bill for the month of 08/2001 was for the part amount and thus not accepted. As part payment of the current bill could not be accepted before the due date, the amount charged to the Petitioner as surcharge was justified. The Respondent never refused to accept payment of the whole current energy bill. Alternatively, the Petitioner could deposit the amount under protest but they did not do so.

*I find that the dispute in regard to this issue is on account of payment of the billed amounts, made by the Petitioner for the months of June 2001 and August 2001 after deducting PF and MD charged in the bill. I observe that the Respondent has admitted that its WTMs has already given relief to the Petitioner for the amount wrongly charged on account of PF and MD for the said two months. Thus, the legitimacy of the payments made by the Petitioner in regard to the billed amounts for the months of June 2001 and August 2001, after deducting the incorrectly charged amount for the low PF and MD, proves beyond doubt. As a natural consequence, the Petitioner can not be made liable to pay the surcharge due to part payments made, for the said months (by means of Demand Draft sent by Registered Post) when the Petitioner has since been absolved of the liability to pay the disputed amount of PF and MD as per the decision dated 07.07.2009 of the WTMs. Evidently, the plea of the Respondent in regard to levy of accumulated surcharge on the delayed/part payments of bills for the months of June 2001 and August 2001, is not sustainable.*

**(v)** PC also raised the issue of Octroi Charges levied incorrectly and paid by the Petitioner since commissioning of Sri Anandpur Sahib and Kurali TSS.

I find that the Respondent stated that out of Octoi charges paid by the Petitioner for Rs. 1,09,43,670/- , only an amount of Rs. 37,18,974/- related to this connection of the Petitioner at Sri Anandpur Sahib TSS and rest of the amount relates to Kurali TSS. The Octroi amount was correctly charged and recovered from the Petitioner (Railways) upto 08/2012 as per Instruction No. 74 of ESIM. The levy of Octroi was stopped thereafter as per Commercial Circular (CC) No. 27/2012.

I have perused the Commercial Circular (CC) No. 27/2012, issued by the Chief Engineer/Commercial, PSPCL, Patiala vide Memo No. 1741/45 dated 31.08.2012 which reads as under:

*“In CWP 9101 of 2012, Garrison Engineers Military Station (MES), Faridkot V/S PSPCL and Others, Hon’ble Punjab and Haryana High Court has passed an order dated 16.05.2012 and adjudicated therein that speaking order on this matter may be issued by CMD, PSPCL in No. 46/DB-73 dated 24.07.12 have been issued and decided there-upon ‘not to charge Octroi on Electricity consumed by MES formation in Electricity Bills raised in future and previous charged amount of Octroi shall be refunded in future by way of adjustment.’ Further, on similar lines, it has been decided to exempt Octroi on the electricity consumed by the establishment/offices of the Govt. of India. Meticulous compliance of the above instructions be ensured.”*

*I am of the view that meticulous compliance of the above instructions was not ensured in the instant case and should be ensured now by the Respondent in cordination with the Government of Punjab.*

From the above analysis, it is concluded that:

1. Though the Respondent made the Power Supply available on 29.12.2000, the Petitioner defaulted in putting the Load thereon due to its inability to arrange timely sanction for energization from its Competent Authority. As such, the plea of the Petitioner for refund of MMC charged for the period from 29.12.2000 to 25.02.2001, is not justified.
2. The WTMs of the Respondent decided on 07.07.2009 to allow refund of PF and Demand Surcharge paid in excess by the Petitioner for the period from 16.03.2001 to 31.05.2001. However, the claim of the Petitioner for payment of interest on he said amount is not just fair and sustainable as no interest has been charged from the Petitioner for its liability to pay the sums due to the Respondent as per decision of Respondent’s WTMs.
3. The WTMs of the Respondent rightly decided to order enhancement of the consumption by 10.96% from 24.01.2002 to 03/2016 on account of difference in consumption of 3 Phase 3 Wire Energy Meter and 3 Phase 4 Wire Energy Meter.
4. Levy of late payment surcharge on the wrongly charged amount of PF and MD in the bills for the months of June 2001 and August 2001, not deposited by the Petitioner, is not sustainable as the Petitioner has since been absolved of the liability to pay the sums charged incorrectly by the Respondent’s WTMs.
5. Levy of Octroi on the electricity consumed by the Petitioner upto 08/2012 is not in order in view of the Article 287 of the Constitution of India and CC No. 27/2012 dated 31.08.2012.
6. The Petitioner and the Respondent are providing services to the Public. Interest charges levied on either shall only burden the general public who shall ultimately bear the brunt of all such charges. In the public interest, no interest charges need to be levied on the Petitioner and the Respondent.

**5. Decision:**

 **As a sequel of above discussions, it is held that:**

1. **MMC charged for the period from 29.12.2000 to 25.02.2001 is not to be refunded to the Petitioner by the Respondent.**
2. **No interest is to be paid by the Respondent on the charges levied incorrectly for low Power Factor and Maximum Demand for the period from 16.03.2001 to 31.05.2001 charged in excess and refunded to the Petitioner.**
3. **The charges levied, on account of enhancement of consumption by 10.96% for the period from 24.01.2002 to 03.2016 are recoverable, without interest from the Petitioner.**
4. **No late payment surcharge is to be recovered from the Petitioner on the amounts not deposited by it relating to the bills for the months of June and August 2001, already held not recoverable by the Respondent’s WTMs.**
5. **Octroi charges, paid upto 08/2012 by the Petitioner are to be refunded, in coordination with the Government of Punjab, without interest, by way of adjustment in ten equal instalments in the subsequent bills as laid down in CC No. 27/2012 dated 31.08.2012.**

**Accordingly, the Respondent is directed to re-calculate the demand and recover/refund the amount found short/excess after adjustment, if any, without any interest and after getting the same duly pre-audited.**

**6.** The Appeal is disposed off accordingly.

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

 (VIRINDER SINGH)

May 18, 2018 LokPal (Ombudsman)

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