**COURT OF THE LOK PAL (OMBUDSMAN),**

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 57/2018**

**Date of Registration : 11.09.2018**

**Date of Hearing : 18.12.2018**

**Date of Order : 27.12.2018**

**Before:**

 **Er. Virinder Singh, Lok Pal (Ombudsman) Electricity**

**In the Matter of :**

 Kahlon Rice Mills,

 Village Kotala Bet, P.O. Charion,

Machhiwara, Distt. Ludhiana.

 ...Petitioner

 Versus

 Addl. Superintending Engineer,

DS Division,

PSPCL, Samarala.

 ...Respondent

**Present For:**

Petitioner : 1.Sh. Satinderjit Singh, Petitioner

 2.Sh. Bhupinder Singh, Petitioner

 3.Sh. Sukhminder Singh,

 Petitioner’s Representative (PR).

Respondent : Er. K.P.S. Sidhu,

Addl. Superintending Engineer,

DS Division,

PSPCL, Samrala.

Before me for consideration is an Appeal preferred by the Petitioner against the order dated 18.07.2018 in Case No. CG-166 of 2018 of the Consumers Grievances Redressal Forum (Forum) deciding as under:

“*The balance Service Connection Charges amounting to Rs.5,01,255/- charged to the Petitioner as per provisions of Regulation 9.1.1 (ii) of Supply Code-2014 is justified and recoverable without interest.”*

2. **Condonation of Delay:**

At the outset, the issue of condonation of delay in fling the Appeal was taken up. The Petitioner, in its representation dated 11.09.2018, cited the late delivery of the decision of the Forum as the reason for the delay in filing the Appeal and requested to condone the delay to give it an opportunity to defend the case for redressal of its grievance.

 The Respondent did not raise any objection to the Petitioner’s request for condonation during the hearing.

I have gone through Regulation 3.18 (ii) of the PSERC (Forum and Ombudsman) Regulation-2016,which reads as under:

 “*No representation to the Ombudsman shall lie unless the representation is made within one month of the date of receipt of order of the Forum.*

 *Provided that the Ombudsman may entertain a representation beyond one month on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of one month”.*

*I observe that though the Petitioner has given reasons for not filing the Appeal within the stipulated period, it has not brought on record of this Court, the documentary evidence in support of its having actually received the decision of the Forum late.*

 *I also observe that non-condonation of delay would deprive the Petitioner of the opportunity, required to be afforded, to seek remedy and would also not meet the ends of ultimate justice. Thus, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court is condoned and the Petitioner is afforded an opportunity to present the case on merits.*

**3. Facts of the Case:**

The relevant facts of the case are that:

1. The Petitioner was having a Large Supply Category connection with sanctioned load of 180 kW and contract demand (CD) of 180 kVA.
2. The Petitioner, vide Application and Agreement no. 9075 dated 15.05.2017, applied for new connection.
3. For giving the connection, an Estimate no. 7300056/2017-18, amounting to Rs. 6,99,135/- was prepared and sanctioned by the Addl. SE/DS Division, PSPCL, Samrala.
4. A Demand Notice, bearing no. 394 dated 17.05.2017, was issued to the Petitioner to deposit Rs. 93,166/- which were deposited by the Petitioner on 19.05.2017.
5. The connection to the Petitioner was released on 07.08.2017 from 11 kV Guga Maari feeder emanating from 66 kV Sub-station Hedon Bet by extending existing feeder with 1.66 km, 11KV line.
6. Audit Party, vide its Half Margin (HM) no. 03 dated 01.02.2018, charged the Petitioner, a sum of Rs. 5,88,792/- on account of balance Service Connection Charges (SCC).
7. A Supplementary Notice was served to the Petitioner, vide no. 124 dated 07.02.2018, to deposit Rs. 5,88,792/- .
8. Aggrieved with the supplementary notice for deposit of Rs. 5,88,792/-, the Petitioner filed a Petition in the Forum, who, after hearing, passed the order dated 18.07.2018 (Reference: Page 2, Para 1).
9. The Petitioner was not satisfied with the decision of the Forum and preferred an Appeal in this Court and requested to set aside the decision of the Forum and allow the Appeal in the interest of justice.
10. **Submissions made by the Petitioner and the Respondent:**

 Before undertaking analysis of the case, it is necessary to go through the written submissions made by the Petitioner and reply of the Respondent as well as oral submissions made by the Representatives of the Petitioner and the Respondent along with material brought on record by both the sides.

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

 The Petitioner made the following submissions for consideration of this Court:

1. The Petitioner applied for a Large Supply (LS) Category connection with load of 180 kW and contract demand (CD) of 180 kVA, vide Application and Agreement No. 9075 dated 15.05.2017.
2. The demand notice was issued on 17.05.2017, and the Petitioner was directed to deposit Rs.93,166/- as estimated cost for release of connection, which was paid on 19.05.2017 and the connection was released on 07.08.2017, vide Service Connection Order (SCO) dated 26.07.2017.
3. The energy bills raised by the department, after the release of connection, were also paid. However, after a gap of six months from the date of release of connection, AEE/DS, PSPCL, Machhiwara, vide memo no. 124 dated 07.02.2018, raised a demand of Rs.5,88,792/- on account of balance amount of Service Connection Charges (SCC) which was unjustified.
4. The Petitioner requested the Forum for review of the case, but, the Forum did not consider the genuine pleadings of the Petitioner and decided to recover the balance Service Connection Charges (SCC) amounting to Rs. 5,01,255/- as per provisions of the Regulation 9.1.1 (a) (ii) of the Supply Code-2014, without interest.
5. Initially, AEE, DS, PSPCL, Machhiwara had issued Demand Notice dated 17.05.2017 to the Petitioner to deposit Rs. 93,166/- as estimated cost for release of connection as per the following details :

*a) Back up Cost of Line (180 x 162 x 2.006) = Rs.58,496 = 00*

*b) Back up Cost of Breaker (180 x 79) = Rs.14,220 = 00*

*c) Cost of Estimate for Individual Service*

 *Line = Rs.20,450 = 00*

 *Total Rs.93,166 = 00*

**(vi)** From the above calculation, it was clear that Cost of Estimate for Individual Service Line was Rs.20,450/- only whereas the backup Cost of Line and Back up Cost of Breaker was Rs.58,496/- and Rs. 14,220/- respectively. Thus, all the cost(s) were considered at the time of issue of Demand Notice for Rs. 93,166/-. The Petitioner had no knowledge about the estimate of Rs.6,60,565/- (Rs.6,99,135/- minus Rs.38,570/- cost of Metering Equipment). About six months after the release of connection, it was not justified to ask the consumer to deposit Rs.5,88,792/- as balance amount of Service Connection Charges (SCC). Thus, the demand, so, raised was illegal, as such liable to be withdrawn.

**(vii)** Every Entrepreneur always considered the cost of its project while establishing any new unit. This also included the cost of obtaining Power. **The consumer confirmed the charges for release of connection, tariff rates** etc. and deposited the same with Respondent - PSPCL, on demand. The Petitioner was not aware whether the estimate of Rs. 6,60,565/- was prepared for improvement of supply system in normal case or for release of connection. The Petitioner was also not aware whether the 4,040 Meter of ACSR Conductor and 540 Meter XLPE Cable and other material, as per estimate, had been used for release of the connection.

**(viii)** The Respondent provided copy of IWR during proceedings of the case before the Forum. The expenditure said to be incurred for release of connection (as per IWR finalized by the Respondent) was Rs.5,31,587/-. The amount of proportionate cost of common line and proportionate cost of breaker (as considered in the Half Margin of Audit) was Rs. 7,173/- and Rs.14,220/-, respectively. Thus, the expenditure incurred for release of the connection came to Rs. 5,52,980/- (Rs.5,31,587/- + Rs.7,173/- + Rs.14,220/-). The Petitioner had already deposited Rs.93,166/- as per Demand Notice. As such, if the balance amount of Service Connection Charges (SCC) was recoverable as per actual expenditure, even then, the balance amount worked to Rs. 4,59,814 (Rs.5,52,980 - Rs.93,166) instead of Rs.5,01,255/- even as per detail provided by the Respondent – PSPCL .

**(ix)** It was important to ascertain as to how the Cost of Estimate for Individual Service Line of Rs. 20,450/- was worked out initially (at the time of issue of Demand Notice) and why the Petitioner was not informed about the estimate of Rs. 6,60,565/- before release of connection. The situation warranted that additional cost (if any) recoverable as Service Connection Charges (SCC), may be recovered from the delinquent officials of the PSPCL, instead of from the consumer at this stage.

**(x)** After coming into force of Electricity Act-2003 and the Supply Code 2007 (revised w.e.f. 01.01.2015), every penal action on the consumer should be supported by rules/regulations because it was the Petitioner who had to pay the difference due to less billing of previous period and it should be informed under which rule/regulation, the Petitioner was being penalized. The Chief Engineer/Commercial, vide CC No. 53/2013 and CC No.59/2014, issued instructions (on the basis of order dated 26.09.2013 passed by Hon’ble Punjab and Haryana High Court, in CWP No.10644 of 2010, that while initiating proceedings against any consumer, the competent authority of PSPCL must quote the relevant regulations of the Supply Code or any other regulations framed by the competent authority under the Electricity Act - 2003. These instructions had been again reiterated vide CC No.30/2015 dated 05.08.2015 for strict compliance as Hon’ble PSERC had taken serious view of non-compliance of these instructions.

**(xi)** The Respondent - PSPCL had asked the Petitioner to deposit Rs.5,88,792/ - as balance amount of Service Connection Charges (six months after release of connection) which was not supported by any rule/regulation of the Supply Code or Electricity Act-2003. As such, the amount charged to the Petitioner was liable to be quashed being illegal.

**(xii)** The Forum was fully aware that Hon’ble PSERC had given clear directions for discussing all the pleadings of the Petitioner and decision should be speaking one. As such, Forum was supposed to discuss each and every pleadings of the Petitioner and all the commercial/legal/technical aspects before arriving at any conclusion. However, the Forum did not discuss pleadings of the Petitioner and totally relied on the submissions made by the Respondent - PSPCL. The Forum even did not bother to verify the position/contention with regard to actual expenditure incurred for release of connection. Even as per IWR, the expenditure said to be incurred for release of connection (as per IWR finalized by the Respondent - PSPCL), was Rs.5,31,587/-. The amount of proportionate cost of common line and proportionate cost of breaker (as considered in the Half Margin of Audit) was Rs.7,173/- and Rs.14,220/- respectively. Thus, the expenditure incurred for release of connection (as per details provided by the Respondent - PSPCL) came to Rs.5,52,980/- (Rs.5,31,587/- + Rs.7,173/- + Rs.14,220/-). The Petitioner had already deposited Rs.93,166/- as per Demand Notice. As such (for the sake of arguments), if the balance amount of Service Connection Charges (SCC) was recoverable as per actual expenditure, even then the balance amount comes to Rs. 4,59,814/- (Rs.5,52,980/- - Rs.93,166/-) instead of Rs.5,01,255/- even as per detail provided by the Respondent – PSPCL . However, the Forum just relied on the submissions of the Respondent and ignored facts and actual figures while arriving at the conclusion that Service Connection Charges amounting to Rs.5,01,255/- charged to the Petitioner as per provisions of Regulation 9.1.1 (a) (ii) of the Supply Code-2014 was justified and recoverable. Further, the Forum also did not discuss and confirm from the Respondent - PSPCL, as to how the Cost of Estimate for Individual Service line amounting to Rs.20,450/- was prepared out initially (at the time of issue of Demand Notice) and why the Petitioner was not informed about the estimate for Rs.6,60,565/- before release of connection. Thus, the decision of the Forum did not require any further arguments about its being wrong, biased and non-speaking and the same was liable to be set aside.

**(xiii)** In view of the submissions made above, the demand of balance amount of Service Connection Charges (SCC) raised was wrong and unjustified. As such, the decision of the Forum may be set aside, the Appeal be allowed and the refund of 40% amount deposited by the Petitioner be authorised, in the interest as per natural justice and fairness.

1. **Submissions of the Respondent:**

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

1. The Petitioner applied for a Large Supply (LS) Category connection vide Application and Agreement No. 9075 dated 15.05.2017 for a load of 180 kW with contract demand (CD) of 180 kVA.
2. An estimate No. 7300056/2017-18 for Rs. 6,99,135/- was sanctioned for release of connection and the Demand Notice was issued vide memo no. 394 dated 17.05.2017 and the connection was released vide SCO No. 24/1067 dated 07.08.2017.
3. The connection to the Petitioner was released from 11 kV Guga Maari feeder emanating from 66 kV Sub-station, Hedon -Bet by extending existing feeder.
4. On scrutiny of the case, Audit Party, vide Half Margin No. 03 dated 01.02.2018, charged the Petitioner balance Service Connection Charges (SCC) amounting to Rs. 5,88,792/- on account of cost of Estimate for Rs.. 6,99,135/- minus Cost of CT/PT and HT Energy Meter amounting to Rs. 38,570/- plus proportionate cost of common Lines for Rs. 7,173/- plus proportionate cost of breaker Rs.14,220/- minus already recovered amount Rs. 93,166/- as per Demand Notice dated 17.05.2017.
5. A supplementary Demand Notice dated 07.02.2018 was issued to the Petitioner to deposit Rs.5,88,792/- on account of balance Service Connection Charges (SCC) as pointed out by the Revenue Audit Party vide Half Margin No. 03 dated 01.02.2018, but, instead of depositing the amount, the Petitioner filed a Petition in the Forum by depositing Rs. 1,17,758/- (20% of the disputed amount), on 30.04.2018.
6. The Forum decided on 18.07.2018 that instead of depositing Rs. 5,88,792/-, the Petitioner was required to deposit the amount of Rs. 5,01,255/- incurred as per IWR and proportionate cost of line and breaker and as per provisions of Regulation 9.1.1 (a) (ii) of the Supply Code-2014.
7. In compliance to the decision of the Forum, a notice dated 14.08.2018 was issued to deposit the remaining amount, but the Petitioner filed an Appeal against the order of the Forum in this Court.
8. Due to clerical mistake, the concerned office issued Demand Notice for Rs. 93,166/- but, the Revenue Audit Party, intimated the concerned office regarding this mistake and had raised a Half Margin No. 03 dated 01.02.2018 pointing out the omission whereafter the concerned Sub Division issued the supplementary demand for Service Connection Charges (SCC) vide memo no. 124 dated 07.02.2018
9. The demand of Rs. 5,01,255/- had been raised as per order of the Forum and per provisions of Regulation 9.1.1 (a) (ii) of the Supply Code-2014.
10. In view of the submissions made above, the Appeal of the Petitioner deserved to be dismissed.
11. **Analysis**

The issue requiring adjudication is the legitimacy of the amount charged to the Petitioner by issuing a Supplementary Notice, vide Memo. No. 124 dated 07.02.2018, on account of balance Service Connection Charges as per observations of Revenue Audit Party vide Half Margin No. 03 dated 01.02.2018 modified vide notice dated 14.08.2018 as per decision of the Forum.

 *The points emerged are deliberated and analysed as under:*

1. During the course of hearing, the Petitioner’s Representative (PR) argued that the balance amount of Service Connection Charges amounting to Rs. 5,01,255/-, held recoverable against the Petitioner by the Forum was incorrect and unjust. PR added that the Petitioner was not apprised of the amount of sanctioned estimate before release of connection and was also not informed about the actual expenditure on execution of its work as per Initial Works Register (IWR).

The Respondent, in its defence, stated that due to clerical mistake, the concerned office issued Demand Notice of Rs. 93,166/-, but the Revenue Audit Party, noticed and pointed out the mistake by raising an observation, vide Half Margin No. 03 dated 01.02.2018 whereafter, the concerned Sub Division issued the supplementary demand for Service Connection Charges (SCC) vide memo no. 124 dated 07.02.2018. Subsequently, the demand was modified as Rs. 5,01,255/- as per order of the Forum and as per provisions of Regulation 9.1.1(a) (ii) of the Supply Code-2014. Since the work had been completed, the Respondent worked out the actual expenditure incurred as per Initial Works Register (IWR), placed in CGRF file, as Rs. 5,01,255/-. The Regulation 9.1.1 (a) (ii) of the Supply Code-2014, for new connection, where the demand exceeded 100 kVA, reads as under:

*“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 11 kV consumers, the expenditure shall include the cost of the individual service and proportionate cost of the common portion of the main line up to the feeding Sub-station including breaker as per the cost data approved by the Commission.*

*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.”*

During the course of hearing, the Respondent informed that due to non-posting of Revenue Accountant and other subordinate staff, ibid omission took place.

1. During the course of hearing, reference to the provisions contained in Regulation 6.8.3 (f) of the Supply Code-2014, providing as under, was also deliberated:

 *“The terms and conditions specified in the Demand Notice once issued shall not be altered except when necessitated by change in applicable Laws/Regulations or in case of genuine arithmetical calculation mistake.”*

PR was, then, asked by the Court to quote any citation of Competent Court of Law or any rule/regulation in support of its contention of not raising the demand correctly in the first instance and demanding the left out Service Connection charges (SCC) subsequently vide supplementary demand notice. In response, PR requested for grant of some time to enable it to do so, accordingly, it was allowed to send its response by e-mail latest by 24.12.2018. A communication in this regard was also sent in the shape of proceedings of the hearing vide this office letter No.1816/1817 dated 18.12.2018 addressed to the Petitioner under intimation to the Respondent.

1. Petitioner’s Representative (PR), vide e-mail dated 24.12.2018, reiterated mainly the submissions made in the Appeal and also during he course of hearing and did not refer to any citation/rule/regulation in support of its submissions claiming that the Petitioner could not be charged balance/left out amount of Service Connection charges (SCC) due after raising the demand in the first instance, due to arithmetical mistake.

*I am of the view that there is no change in Law in so far as adjudication of the present dispute is concerned. Though the estimated cost of execution of the work of the Petitioner was Rs. 6,99,135/-, the Respondent erred in raising a demand at the time of considering the case for release of Large Supply Category connection to the Petitioner. At the same time, the Petitioner cannot absolve itself of the responsibility of not applying its mind that Service Connection Charges demanded from it for providing a Large Supply Category connection were quite nominal and as a good citizen should have pointed out this fact to the Respondent specifically when it admitted in its Petition that it confirmed the charges for release of connection (Reference Page 7, Para (vii).*

*However, I agree with the submissions of the Petitioner that the total amount of SCC was Rs. 5,52,980/- as per details given below:*

1. *Actual cost of Individual Service Line, as per IWR = Rs. 5,31,587/-*
2. *Proportionate cost of common portion of main*

*Line up to feeding Sub-station, as approved by*

*Hon’ble PSERC (0.246 meter x Rs.162 x 180 kVA) = Rs. 7,173/-*

1. *Proportionate cost of breaker of feeding*

*Sub-station (Rs. 79 x 180 kVA) = Rs. 14,220/-*

 *Rs. 5,52,980/-*

From the above analysis, the legitimacy of the recovery of the left out/balance amount of Service Connection Charges as per provisions of Regulation 9.1.1 (a) (ii) of the Supply Code-2014, proves beyond doubt as decided by the Forum who also rightly decided not to charge interest from the Petitioner keeping in view the omission on the part of the Respondent in not demanding and recovering the legitimate dues at the right moment. However, the Forum erred in deciding the recovery of the balance amount correctly and actually recoverable on account of Service Connection Charges (SCC).

1. **Decision:**

**As a sequel of above discussions, the order dated 18.07.2018 of the Forum in Case No. CG-166 of 2018 is modified to the extent that balance/left out Service Connection charges (SCC) amounting to Rs. 5,52,980/- is recoverable, as per provisions contained in Regulation 9.1.1 (a) (ii) of the Supply Code-2014. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment without interest.**

1. The Appeal is disposed of accordingly.
2. In case, the Petitioner or the Respondent (Distribution 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 the Regulation 3.28 of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations – 2016.

 (VIRINDER SINGH)

December 27, 2018 LokPal (Ombudsman)

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