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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 37/2019**

**Date of Registration : 25.06.2019**

**Date of Hearing : 10.09.2019**

**Date of Order : 17.09.2019**

**Before:**

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

**In the Matter of:**

 Satia Synthetics Ltd.,

 Village Lubanianwali,

Mukatsar-Ferozepur Road,

Sri Mukatsar Sahib

. ...Petitioner

 Versus

 Addl. Superintending Engineer,

DS, Division, PSPCL,

Sri Mukatsar Sahib

 ...Respondent

**Present For:**

Petitioner : 1. Sh. R.S. Dhiman ,

 Petitioner’s Representative (PR).

 2. Sh. M.R. Singla,

 Petitioner’s Representative (PR).

Respondent : 1. Er.Sukhdev Singh Bhullar,

 Addl.S.E., DS Division,

 PSPCL, Sri Mukatsar Sahib.

 2. Er.Ajay Kumar,

 Addl. S.E., TL Division,

PSPCL, Bathinda.

 3. Er. Jasprit Singh Sra,

 Addl. S.E., Grid Construction Division,

PSTCL, Moga

Before me for consideration is an Appeal preferred by the Petitioner against the decision dated 15.05.2019 in Case No. CGP-06 of 2019 of the Consumers Grievances Redressal Forum (Forum), Patiala stating as under:

*“Excess amount to the tune of Rs 4,90,254/- deposited by the Petitioner over and above the expenditure actually incurred for the release of extension is refundable to the Petitioner”.*

**2. Facts of the Case:**

 The relevant facts of the case are that:

**(i)** The Petitioner having Large Supply Category connection at supply voltage of 11 kV applied on 08.02.2008 for extension in load from 3483 kW to 8000 kW and contract demand from 2490 kVA to 6500 kVA.

1. A Demand notice for extension in load at 66 kV supply voltage was

issued after Feasibility Clearance and sanction of estimate vide Memo No.1478 dated 21.07.2008 asking the Petitioner to deposit Rs 1,25,85,323/- which was deposited by the Petitioner on 23.07.2008 taking into consideration a sum of Rs 18,98,060/- already deposited on account of Advance Consumption Deposit (ACD), now known as Security (Consumption). The details of amount payable i.e Rs 1,25,85,323/- were as under:-

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 1. | Contract Demand in kVA | 2900 | 4010 | 6500 | ACD @ 1180/- kVA | 41,31,800/- |
| 2. | Connected Load in kW | 3483 | 4517 | 8000 | SCC@750/-kW | 33,87,750/- |
| 3. | Bay Charges For 66 kV | As per regulation 51.2.3.4 |  | 30,00,000/- |
| 4. | Special Charges | As per FCC |  | 1,95,833/- |
| 5. | Pro rata Charges From 132 kV S/S Mukatsar to 66 kV S/S Lubanianwali | 8000 kW x 30,00,000/- x 13.2 km |  | 31,68,800/- |
| 6. |  | Total | 1,44,83,383/- |
| 7. |  | ACD already deposited by Firm | 18,89,060/- |
| 8. |  | Net Payable | 1,25,85,323/- |

1. The additional demand included cost of 66 kV line, 66 kV bay and

proportionate cost of Backup system.

1. The extension in load at 66 kV supply voltage was released on

 09.12.2008.

1. The Petitioner, vide its letter dated 24.04.2017 and 12.06.2017**,**

requested the Respondent to refund the excess amount of Security (Works) deposited in excess of expenditure actually incurred on erection of 66 kV line. But, no action was taken by the Respondent.

1. Thereafter, the Petitioner filed a Petition in the Zonal Dispute

Settlement Committee (ZDSC) who, after hearing, decided on 03.08.2018 as under:-

*“Representative of Petitioner demanded the details of expenditure incurred on lines amounting to Rs 37,61,820/- along with detail of Bay charges incurred amounting to Rs 30,09,437/-. Detail of expenditure incurred on line amounting to Rs 37,61,820/- provided by Addl.SE/TL Division, Bathinda and detail of expenditure incurred on Bay was provided by the officer of Sub Division under the Grid Construction Division, which was incomplete. This was seriously taken by the Committee. The Committee directed the Grid Construction Division to complete detail of expenditure be sent to the SE/Operation Circle, Sri Mukatsar Sahib without any further delay.*

*SE/Operation Circle, Sri Mukatsar Sahib intimated the Committee that actual expenditure incurred on this line & bay is more than the amount deposited by the Petitioner, therefore amount of Rs 3,83,507/- was now recoverable from the Petitioner. But Petitioner in terms of excess expenditure shown by Respondent filed a case for refund of Rs 16 Lac. Therefore, this is not a refund case instead a dispute case. As this amount is more than the limit of the Committee, so by considering it a dispute case, this case required to be dealt with in the CGRF.*

*In view of above, the Committee decided that this case be filed before CGRF who was the competent authority to adjudicate the same. Besides this, SE/Operation Circle, Sri Mukatsar Sahib was directed to supply the information as desired by the Petitioner after obtaining the same from the concerned office.”*

1. As per the decision of the ZDSC, the Petitioner filed a Petition dated

11.01.2019 in the CGRF, Patiala, who, after hearing, passed the order dated 28.05.2019. ( Reference Page-2, Para-1).

1. Aggrieved with the decision of the CGRF, Patiala, the Petitioner

preferred an Appeal in this Court and prayed that orders be passed directing the Respondents to refund the amount of Rs 4,11,840/- recovered from the Petitioner by levying departmental charges wrongly on the proportionate cost of back up line and also regarding payment of interest on the total refundable amount in accordance with Regulation 19.7 of Supply Code- 2007.

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

Before undertaking analysis of the case, it is necessary to go through 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 alongwith material brought on record by both the sides.

1. **Submissions of the Petitioner:**

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

1. The Petitioner was running an industrial unit and having an

electricity connection of the unit, bearing Account No. Y67- LB01-00001 with sanctioned load of 8000 kW/contract demand as 6500 kVA and was being fed at 66 kV supply voltage.

1. Prior to 2008, the Petitioner’s sanctioned load was 3483 kW/2490

kVA fed at 11 kV. It applied for extension of load and CD to 8000 kW/6500 kVA. The total load was to be fed at 66 kV for which, a new 66 kV line was to be erected.

1. A Demand Notice for the said extension was issued by the AEE,

Lubanianwala, vide Memo No.1478 dated 21.07.2008, asking thereby the Petitioner to deposit a sum of Rs 1,25,85,323/-. The Petitioner deposited the said amount on 23.07.2008 in addition to Rs 18,98, 060/- already deposited on account of ACD. The additional demand included the cost of 66 kV line, 66 kV bay, proportionate cost of back-up system etc. The extension of load was released on 09.12.2008 and total load was fed on 66 kV.

1. As per provisions of Regulation 19.7 of Supply Code-2007, the

Respondent-PSPCL mandated to compute the actual expenditure incurred on erection of 66 kV line and bay and adjust the same against the Security (Woks) deposited by the Petitioner within 60 days of release of extended load. Excess amount of Security (Works), if any, was to be refunded in the subsequent monthly energy bills of the Petitioner. In case of delay in doing so, interest was also payable to the Petitioner as provided in the same Regulation.

1. Necessary action to refund excess amount of Security (Works) was

to be taken by the Respondent suo motu. But nothing happened despite repeated requests and several visits the office of the Respondent by the Petitioner.,

1. Disgruntled and dissatisfied, the Petitioner submitted its grievance

before the Zonal Level Refund Committee of West Zone at Bathinda on 31.07.2017, but the Committee , after keeping the matter pending for over one year, finally disposed it off by stating that the dispute fell in the purview of the CGRF. Accordingly, a Petition was filed before the Forum who passed Order dated 28.05.2019. The Petitioner was not satisfied with the decision of Forum and filed the present Appeal seeking indulgence of this Court for justice.

1. The Forum, in its order, ignored vital issues and passed the order in

utter violation of instructions/ regulations.

1. Departmental charges @ 16% levied wrongly by the Respondent on

the total amount had been upheld by the Forum, which was incorrect. In fact, Departmental Charges were not leviable on the proportionate cost of back up system amounting Rs 25,74,000/-. Thus, a sum of Rs 4,11,840/- (Rs 25,74,000x16%= Rs 4,11,840/-) was also refundable to the Petitioner in addition to the refund already allowed by the Forum in its order ibid.

1. Excess amount of Security (Works) was required to be refunded

within 60 days of release of connection/extension of load as per provisions of Regulation 19.7 of Supply Code-2007, as per which, in case of delay, interest was payable on the refundable amount for the period of delay beyond 60 days at the rates prescribed in the Regulation ibid. No order was passed with regard to this statutory provision of law by the Forum.

1. In view of the submissions made above, the Petitioner prayed that

the Respondent may be directed to refund the amount of Rs 4,11,840/- recovered from the Petitioner by levying Departmental charges wrongly on the proportionate cost of back up system and also regarding payment of interest on the total refundable amount in accordance with the provisions of Regulation 19.7 of Supply Code-2007.

(**b) Submissions of the Respondent:**

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

1. The Petitioner applied for extension in load to 8000 kW and contract

demand (CD) as 6500 kVA on 08.02.2008 and conversion of supply Voltage from 11 kV to 66 kV for which a separate 66 kV line was to be erected.

1. In response, a Demand Notice was issued, vide letter No.1472 dated

21.07.2008 asking the Petitioner to deposit a sum of Rs 1,25,83,383/- which, in turn, was deposited by the Petitioner on 23.07.2008. The said amount included Service Connection Charges (SCC) Rs 33,87,750/-, Bay Cost Rs 30,00,000/- pro rata charges of the backup system Rs 31,68,000/- and Special Charges as Rs 1,95,833/-.

1. The Petitioner represented in the year 2017 that it had deposited Line

and Bay Cost in excess of actual expenditure. The work on 66 kV Line feeding the connection of the Petitioner was got executed by the Transmission Line Division, Bathinda and work of the construction of Bay was got done by the Grid Construction Division, Moga.

1. The Petitioner filed a Petition for resolution of its dispute in the

CGRF, Patiala wherein the details of expenditure incurred and supplied by the TL Division, Bathinda and Grid Construction Division, Moga were brought on record.

1. The Forum, vide Order dated 28.05.2019, issued directions for

refund of Rs.4,90,254/- to the Petitioner who was not satisfied with this decision and preferred an Appeal in this Court.

1. As initial Works Register, containing the figures of expenditure on

execution of the works of the Petitioner, was finalised by the TL Division, Bathinda, and Grid Construction Division, Moga, hence, was the requisite information was obtained from them and accordingly the expenditure incurred was given to Forum.

**4. Analysis**

 The issue requiring adjudication is the legitimacy of the refund of the amount recovered from the Petitioner by levying Departmental Charges wrongly on the proportionate cost of backup system and payment of applicable interest on the delayed refund.

 *The points emerging in the present dispute are deliberated and analysed as under:*

1. As the work of 66 kV Transmission Line/ 66 kV Sub-station at

Lubanianwali ( under DS Division, Sri Mukatsar Sahib) were got executed by TL Division, Bathinda / Grid Construction Division, Moga, Addl. Superintending Engineers of the said Divisions were directed to attend ( with relevant records) this Court on the date of hearing i.e. 10.09.2019 vide this office Memo No.852/853/OEP/A-37 dated 04.09.2019.

1. Accordingly, a hearing was held on 10.09.2019 which was attended

by the said Representatives of the Respondent as well as those of the Petitioner. During the course of hearing on 10.09.2019, Petitioner’s Representative (PR) argued that the Forum, in its order, ignored vital issues and passed the order in utter violation of instructions/ regulations. Departmental charges @ 16% levied wrongly by the Respondent on the total amount had been upheld by the Forum, which was incorrect. In fact, Departmental Charges were not leviable on the proportionate cost of back up system amounting to Rs 25,74,000/-. Thus, a sum of Rs 4,11,840/- (Rs 25,74,000x16%= Rs 4,11,840/-) was also refundable to the Petitioner in addition to the refund already allowed by the Forum in its order ibid.

 The Addl.S.E, TL Division, Bhatinda submitted the details of expenditure actually incurred on the execution of the work relating to Petitioner’s connection as under:

|  |  |  |
| --- | --- | --- |
| Description | Amount Deposited by Firm (in Rs) | Details of Amount spent by Licensee (in Rs) |
| Line Charges | 31,71,257 | 30,03,761 (A) |
| Bay Cost | 30,00,000 | 29,78,800 (B) |
|  | 67,71,257 |  |
| Proportionate Cost of back up system | 31,68,000 | 25,74,000 (C) |
|  |  99,39,257 (X) |  A+C= 55,77,761 |
| Establishment Charges under Instruction No. 39.3 of ESIM @16%  | 8,92,442 |
|  |  | 64,70,203 (D) |
|  |  | C+D= 94,49,003 (Y) |
|  | Amount Refundable: X-Y= Rs 99,39,257/- Rs 94,49,003/- =Rs 4,90,254/- |

 During the course of the said hearing, the Addl. S.E, TLSC Division, Bhatinda brought on record of this Court a copy of Memo No.2031 dated 29.07.2008 addressed to Dy.Chief Engineer, TLSC Circle, Jalandhar forwarding an estimate for Rs.63,71,349/- before taking up the work of erection of 66 kV line feeding the Petitioner’s connection. The said estimate was prepared and sent to the Dy.Chief Engineer, TLSC Circle, Jalandhar after which the Petitioner had deposited a sum of Rs 1,25,85,323/- in response to Demand Notice dated 21.07.2008. While examining the records of DS Division, Sri Mukatsar Sahib, the Addl.S.E. TLSC Division, Bhatinda noticed that the back up system charges levied in the estimate prepared initially by the DS Division, Sri Mukatsar Sahib was based on connected load of 8000 kW against the actual contract demand of 6500 kVA. A scrutiny of the records further revealed that the above omission was rectified by preparing and getting sanctioned a revised estimate on 18.08.2008 (based on the contract demand of 6500 kVA), amounting to Rs 63,44,626/-.

 I find that through the estimate ibid was revised, the consumer was not informed accordingly and difference in the figures of initial estimated amount and revised estimated amount was not reflected in Accounts/IWR.

 I have also examined the contention of the Petitioner’s Representative questioning the levy of Departmental Charges on proportionate cost of back up system which included Departmental Charges @ 16% and found that Departmental Charges were not actually recovered (as contended by the Petitioner’s Representative), instead, Establishment Charges @ 16% were recovered in terms of Commercial Circular No.27/1991 dated 16.04.1991 and Instruction No.39.3 of ESIM which reads as under:

“ ***39.3 Establishment Charges****:*

*Establishment Charges @ 16% of the cost of estimate i.e. cost of material and labour etc., are recoverable from the consumer when the works are carried out by PSPCL at the cost of consumer and thereafter remain the property of the PSPCL for being operated/maintained by PSPCL. The cost of estimate will also include Storage charges, Transportation charges & contingencies as pr rates applicable from time to time. Establishment charges are leviable on the works such as:*

1. *Laying of independent feeders for giving supply to new/existing consumers.*
2. ***Where the consumers are required to pay actual cost of works as per Regulation-9 of the Supply Code****.*
3. *The works where the consumers opt for connection from Urban/Industrial feeder instead of nearest UPS feeder.*
4. *Where the cost of link line is to be borne by the consumer. The above works are quite different from departmental works or works required for shifting of lines etc. Estt. Charges will be leviable on the total estimated amount, which will include cost of material labour charges, storage charges, transportation charges & contingencies etc.”.*

 I observe that the plea of the Petitioner’s Representative (PR) for additional refund of Rs 4,11,840/- i.e. in addition to refund of Rs.4,90,254/- allowed by the Forum on account of the the amount got deposited in excess from the Petitioner is not sustainable due to the reason that the Establishment Charges are recoverable, as the work was done as per Regulation 9 of Supply Code-2007 (applicable in this case), as such Establishment Charges @ 16 % are recoverable as per provisions contained in Instruction No. 39.3 of ESIM on back up system.

(iii)Petitioner’s Representative (PR) contended that the amount of

Security (Works) in excess of actual expenditure was refundable after completion of the work. Accordingly, interest was payable on the refundable amount in case of delay in effecting adjustment after completion of the work. This statutory provision had not been kept in view by the Forum in its order. In fact, no speaking order had been passed with regard to payment of interest. Petitioner’s Representative added that the Petitioner had requested, vide letters dated 24.04.2017 and 12.06.2017 for payment of interest on the amount got deposited.

The Respondent contested the claim of the Petitioner’s Representative (PR) by stating, during hearing in this Court, that the Petitioner had not submitted any request for refund and payment of interest after completion of the work about 11 years ago.

 I find that though the Respondent is responsible for not finalizing the accounts of the Petitioner in time, the Petitioner, being a Large Supply Category Consumer, was expected to be conversent with the rules / regulation and ought to have requested and pursued the matter with the Licensee at appropriate time instead of keeping mum for so many years i.e. from 2008 to 2017.

 *I observe that since a letter dated 12.06.2017( giving therein previous reference dated 24.04.2017) has admittedly been received in the office of the Respondent, interest as per Supply Code Regulations-2014, as amended from time to time is required to be paid to the Petitioner from 12.06.2017 till the date of refund of the amount deposited in excess.*

**5. Conclusion**

From the above analysis, it is concluded that:

1. The amount of Rs 4,11,840/-, claimed by the Petitioner, in addition to refund of Rs.4,90,254/- on the execution of the work for release of extension to the Petitioner, (worked out and decided by the CGRF, Patiala) is not refundable and instead, the amount of Rs 4,90,254/- is only refundable.
2. Interest is required to be paid to the Petitioner from 12.06.2017 till the date of making refund as at Sr. No (i) above, as per Supply Code Regulations-2014, as amended from time to time.

**6.** **Decision:**

**As a sequel of above discussions, the order dated 15.05.2019 of the CGRF, Patiala in Case No. CGP- 06 of 2019 is modified in terms of conclusion arrived at in Para-5 above. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short after adjustment, if any.**

7**.** The Appeal is disposed of accordingly.

**8**. In case, the Petitioner or the Respondent 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)

 September 17, 2019 Lok Pal (Ombudsman)

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