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

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

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

**APPEAL NO. 42/2019**

**Date of Registration : 17.07.2019**

**Date of Hearing : 07.10.2019, 29.10.2019 and 05.11.2019**

**Date of Order : 21 .11.2019**

**Before:**

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

**In the Matter of :**

Bajwa Developers Limited,

Sector- 125,5th & 6 th Floor,

New Sunny Enclave,

Kharar.

...Petitioner

Versus

Addl.Superintending Engineer,

DS Division ,

PSPCL, Kharar.

...Respondent

**Present For:**

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

Petitioner’s Representative (PR).

2. Rajesh Gupta,

Petitioner’s Representative (PR).

**Respondent :** 1. Er.Harwinder Singh,

Addl.Superintending Engineer,

DS Division, PSPCL,Kharar.

2. Er.Bachitar Singh,

Assistant Engineer/City-I,

PSPCL,Kharar.

3. Er.Satpreet Singh Bajwa,

Assistant Engineer/Sub urban,

PSPCL,Kharar

Before me for consideration is an Appeal preferred by the Petitioner against the order dated 11.06.2019 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No.CGP-26 of 2019 deciding that :

“*LD system of the Petitioner may be taken over after the clearance of the disputed amount as per the conditions laid down in the report of the high powered Committee.*

*Further the said amount may be recovered in 18 equal*

*monthly installments without charging any interest/ surcharge if the Petitioner accepts the decision of this Forum and gives an undertaking not to go for an Appeal before any other authority/ Court”.*

**2**. **Facts of the Case:**

The relevant facts of the case are that:

1. The Petitioner was a Company engaged in the development of Residential Colonies and Commercial Complexes. The Petitioner was having a Single Point connection of electricity in its Colony named Sunny Enclave at Kharar. The connection was released in 2004. The LD System in the Colony was laid down by the Petitioner in accordance with the No Objection Certificates of the Respondent- PSPCL.
2. The Petitioner availed various extensions in load as per details given below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| S.No | Extension No | SJO No. | Date | Load in kW |
| 1 | (II) | 35/37802 | 23.09.2005 | 880 |
| 2 | (III) | 043/41226 | 05.10.2006 | 340.531 |
| 3 | (IV) | 128/41226 | 17.12.2007 | 738.01 |
| 4 | (V) | 70/2004 | 27.11.2007 | 898 |
| 5 | (VI) | A&A No. 38847 | 27.11.2007 | 2686.50 |

1. As per the rules and regulations prevalent at that time, an Agreement

was executed between the Petitioner and Respondent in accordance with ESR 44.8.3and 44.9. In terms of the provisions contained in this Agreement, the Petitioner was required to pay for the difference of consumption recorded by its Single Point Energy Meter and the sum total of consumption recorded by Energy Meters of the Individual dwellers of the Colony leaving 20% an account of losses. The Respondent itself paid for the electricity consumed by it to Respondent as per the Energy Meters installed by the Respondent at their premises.

1. The distribution licensee (Respondent) issued CC No.50/2007

whereby, ESR No.44.8.3 and 44.9 were struck off.

1. As per the aforesaid Circular, the LD system duly laid by the

Developers as per specifications and guidelines of the Respondent was to be taken over by the PSPCL and connections released to the residents of the Colony like any other consumer in the State.

1. In pursuance of CCNo.50/2007, the Petitioner also raised the issue

of removal of its Single Point connection with the Respondent authorities at different levels, but to no avail.

1. Having failed to achieve any tangible result, the Petitioner made a

representation to the Chief Engineer/DS (South) and then to CMD, PSPCL, requesting for immediate takeover of the Petitioner’s LD System and removal of Single Point Meter.

1. On this, a Committee of some senior Officers was constituted by

Dy.Chief Engineer/Sales-II,PSPCL, Patiala vide Office Order No.577 dated 17.11.2014.

1. The said Committee vide its report dated 29.04.2015, recommended

to take over the LD System after fulfillment of certain conditions and also to overhaul the account of the Petitioner for last two years from the date of application of the Petitioner.

1. The account was overhauled and credit of Rs.10,85,123/- was given

to the Petitioner.

1. The Petitioner was making regular payments of electricity dues till

10/2014. However, no bill was served to the Petitioner for the period 10/2014 to 10/2017 due to implementation of SAP Billing System.

1. Subsequently, a bill of Rs.1,16,94,156/- for the period from 10/2014

to 10/2017 was prepared, after giving the credit of Rs.10,85,123/- and issued to. the Petitioner vide a Notice, bearing No.468 dated 21.03.2018**. .**

1. The Petitioner contested the said amount by filing a Petition dated

25.01.2019 in the CGRF, Patiala who, after hearing, passed the order dated 11.06.2019 ( Reference Page-2,Para-1).

1. Aggrieved with the decision of the Forum, the Petitioner preferred

an Appeal in this Court and prayed that the demand of Rs.1,06,09,033/- raised against it, vide AE, City, Kharar Memo No.468 dated 21.03.2018, be set aside and the Respondents be restrained from raising any further charges on this account. Besides, Charges illegally recovered from the Petitioner from 17.09.2007 to 11/2014 on account of difference of consumption recorded by the Single Point Supply Meter and sum total of the consumption of residents of the Colony be refunded with interest and LD system of the Petitioner be deemed to have been taken over by the PSPCL w.e.f. 17.09.2007 and Single Point Supply Meter removed immediately.

**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 along with 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 a Company engaged in the development of

Residential Colonies and Commercial Complexes. The Petitioner was having a Single Point connection of electricity in its Colony named Sunny Enclave at Kharar. The connection with sanctioned load of 4960 kW was released vide Sundry Job Order No.92.36553 dated 19.7.2004 as per provisions contained in Commercial Circular No.39/2003 dated 13.06.2003. The LD System in the Colony was laid down by the Petitioner in accordance with the No Objection Certificates issued by the distribution licensee.

1. As per the rules and regulations prevalent at that time, an Agreement

was executed between the Petitioner and the Respondent in accordance with ESR 44.8.3 and 44.9. In terms of the provisions contained in this Agreement, the Petitioner was required to pay for the difference of consumption recorded by its Single Point Energy Meter and the sum total of consumption recorded by Energy Meters of the Individual dwellers of the Colony leaving 20% an account of losses. The Petitioner paid for the electricity consumed by it to Respondent as per the Energy Meters installed by the Respondent at their premises.

1. Developers and Colonizers of the State were not comfortable with

this dual control system which was creating numerous problems for the Developers and causing huge financial losses to them. As such, they raised their voice against it and pressed upon the Respondent to free them from the responsibility of paying for the difference of consumption, especially when the Respondent was dealing with the residents through separate and independent agreements.

1. Keeping in view the genuine problems of the Developers, the

Respondent issued revised instructions vide CC No. 50/2007 whereby, ESR 44.8.3 and 44.9 were struck off

1. As per the aforesaid Circular, the LD system duly laid by the

Developers as per specifications and guidelines of the Respondent was to be taken over by the Licensee and connections released to the residents of the Colony like any other consumer in the State.

1. The earlier requirement of signing an Agreement for Single Point

Supply at 11 kV was also scrapped.

1. After issuance of CCNo.50/2007, the Colonizer was not responsible

for any energy losses as Respondent-PSPCL was now free to carry out checking for any kind of violation.

1. In pursuance of CCNo.50/2007, the Petitioner also raised the issue

of removal of its Single Point connection with the Respondent authorities at different levels, but to no avail.

1. Having failed to achieve any tangible result, the Petitioner made a

representation to the Chief Engineer/DS (South) and then to CMD, PSPCL, requesting for immediate takeover of the Petitioner’s LD System and removal of Single Point Meter.

1. On this, a Committee of some senior Officers was constituted by

Dy.Chief Engineer/Sales-II,PSPCL, Patiala vide Office Order No.577 dated 17.11.2014.

1. The said Committee submitted its report on 29.4.2015

recommending to take over of the LD System after fulfillment of certain conditions, but no action was taken by the Respondent despite the Petitioner complied with the same.

1. In spite of it, the AE/City Sub-division, PSPCL, Kharar issued a

Notice, bearing MemoNo.468 dated 21.3.2018 asking the Petitioner to deposit a sum of Rs.1,06,09,033/-.

1. The Petitioner did not agree with the Notice and filed a

Petition in the CGRF, Patiala who , after hearing, decided on 11.06.2019 to upheld the totally unjustified and untenable charges.

1. Aggrieved with the decision of the Forum, the Petitioner preferred

an Appeal in this Court with the sanguine hope of justice.

1. With the issuing of CCNo.50/2007, the ESR 44.8.3 and 44.9 had

ceased to exist w.e.f. 17.09.2007 as mention in the said Circular. As such, the agreement of Single Point Supply based on ESR 44.8.3and 44.9 became null and void w.e.f.17.09.2007. It was enjoined upon the Respondent to remove the Single Point Supply Energy Meter and take over the LD System of the Petitioner immediately after 17.09.2007, as the said Agreement was no longer enforceable after this date.

1. Any shortcoming in the LD System should have been got recovered

from the Petitioner or by the Respondent encasing the Bank Guarantee furnished by the Petitioner. Since no short coming was noticed/ pointed out by the Respondent after the issuance of CC No.50/2007, the LD System should be deemed as taken over by the Respondent w.e.f.17.09.2007.

1. No charges could be raised/levied against the Petitioner after

17.09.2007 on the basis of an Agreement which had defunct on 17.09.2007. Therefore, not only the charges raised from 11/2014 to 10/2017 needed to be set-aside, the charges illegally recovered from the Petitioner from 09/2007 to 11/2014 were also required to be refunded to the Petitioner with interest.

1. The Respondent should be restrained from charging difference of

consumption beyond 10/2017 as stated in the Notice dated 21.03.2018. Directions to Respondent for immediate removal of the Energy Meter of defunct Single Point Supply connections were also required to be issued.

1. Constitution and proceedings of the High Powered Committee were

ultra vires of CC No.50 of 2007 and other commercial instructions. As such, no cognizance was required to be taken of the findings/recommendations of the Committee as it had no mandate to bypass the rules and regulations of the Respondent-PSPCL or to act illegally.

1. The Forum had clearly held the Respondent accountable for

deficiency in performance of its duty, but had chosen to penalize the Petitioner on the basis of wrong and illegal findings of the Committee which had no power to change the rules and regulation then in force.

1. In view of the submissions made above, the Appeal may be allowed.
2. **Submissions of the Respondent:**

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

1. The Petitioner was having a Single Point Supply category

connection, bearing Account No.CL-01, with sanctioned load of 4960 kW ( as per NOC issued by CE/Commercial). The connection was released vide Sundry Job Order No.92/36553 dated 19.07.2004 as per provisions contained in Commercial Circular (CC) No.39/2003 dated 13.06.2003.

**(ii)** The Petitioner continuously deposited the energy bill of difference

between Main Meter consumption and Internal Meter consumption as per Agreement with the Respondent.

(iii) In the month of 11/2014,SAPSystemwas introduced in the office of PSPCL City Kharar.

(iv) Due to implementation of new SAP System, energy bill of difference between Main Meter consumption and Internal Meter consumption was not generated.

(v) In this case, energy bill of difference between Main Meter consumption and Internal Meter consumption was generated from 10/2014 to 10/2017amounting to Rs.1,16,94,156/- and it was pre-audited by the Accounts Officer(Field), PSPCL, Roapr vide its Memo No.394 dated 19.03.2018.

(vi) A High Powered Committee was also constituted, vide order No.577 dated 17.11.2014, comprising Chief Engineer/Commercial, Chief Engineer(South),Superintending Engineer (Enforcement), Superintending Engineer DS Circle, Ropar and Dy.Chief Auditor ,PSPCL, as Members.

(vii) The Committee decided to cancel the amount charged of Main Meter consumption and Internal Meter consumption on the basis of NRS tariff to DS tariff and refund of Rs.10,85,123/- was given to the Petitioner and net amount chargeable was Rs.1,06,09,033/-.

(viii) The Petitioner had not even complied with clause (i) of CC No.50/2007 as per which, work was to be completed/carried out strictly as per approved sketch from the Respondent-PSPCL, so, there was no lapse on the part of Respondent-PSPCL.

(ix) No Bank Guarantee was deposited by the Petitioner till date. So, incomplete HT/LD System could not be taken over by the Respondent-PSPCL.

(x) The Petitioner had never come forward to hand over Colony after completing the System as per NOC issued by the Respondent-PSPCL, so it could not be deemed to have taken over the HT/LD System of the Petitioner.

(xi) Besides, the Petitioner was charging money from the residents residing in its Colony after installing its own private Energy Meters.

1. In view of the submissions made above, the Appeal may be

dismissed.

**4.** **Analysis:**

The issue requiring adjudication is the legitimacy of :

1. demand of Rs.1,06,09,033/- on account of payment of energy bills for difference between Main Meter Consumption and Internal Consumption from 10/2014 to 10/2017 raised by the AE, City, Kharar vide Memo No.468 dated 21.03.2018.
2. refund of recovery from the Petitioner, on account of difference of consumption recorded by the Single Point Supply Meter and sum total of the consumption of the residents of the Colony for the period from 17.09.2007 to 11/2007, with interest.
3. Taking over of the LD System of the Petitioner by the PSPCL with effect from 17.09.2007 and immediate removal of Single Point Supply Meter.

*The above issues are deliberated and analyzed as under*:

1. The first hearing in this case was held on 07.10.2019 when the Representatives of both the Petitioner and Respondent reiterated mainly the written submissions already made by them in the Appeal and Reply thereto respectively.

During the course of deliberations, Petitioner’s Representatives supplied the copy of letters written to PSPCL during the year 2015 for taking over the LD System of the Colony but no reply was statedly received from the Respondent till date. The copies of these letters were handed over to the Court as well as to the Respondent.

On the conclusion of the proceedings, the Respondent was directed orally as well as vide E-mail dated 09.10.2019 to supply, by 25.10.2019, the document relating to:

1. LD system of the Colony approved by the Chief Engineer/Commercial, PSPCL, Existing LD system on site duly authenticated by Sr.Xen and the consumer and

discrepancies noticed in this regard as per site condition.

Apart from these, the Respondent was directed to Authenticate receipt of letters dated 221/07-227/07 and 261 dated 18.09.2015 in Divisional Office as well as to other officers of PSPCL.

1. Next hearing was held on 29.10.2019 when the Respondent was again directed orally and also vide this office letter No.1045/OEP/A-42/2019 dated 30.10.2019 to bring the documents, mentioned vide proceedings dated 07.10.2019 (sent vide e-mailed dated 09.10.2019), on the next date of hearing.
2. On 05.11.2019, the issues involved in the present dispute were

deliberated at length on the basis of material brought on record of this Court. At the end of deliberations, the Respondent was directed orally and also, vide e-mail dated 05.11.2019 to provide, by 13.11.2019, the details in the format given below in respect of 49 Electricity connections installed unauthorisedly under area being fed by Electricity Meter having A/c No.CL-1:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| S.No. | Name of consumer | Date of installation by PSPCL | Connected load in kW | Defaulting amount calculated |

1. In response to the directions of this Court, the Senior Executive Engineer, DS Division, PSPCL, Kharar sent, vide e-mailed dated 15.11.2019, the checking report of 12 out of 49 connections ( checked by different agencies).
2. Written as well as oral submissions as well as the evidence brought on record by both the sides have been gone through. The connection of the Petitioner was released on 19.07.2004 as per the provisions of CC.39/2003 dated 13.06.2003 and Clause No 44.8.3 of Electricity Supply Regulation as per which

*"PSEB shall recover billing at single point metering to be done at 11KV. However the Manager / Contractor shall be authorized to collect the consumption charges as per individual billing also to be done by PSEB. However consumption recorded at single point shall be reduced maximum by 20% in case of outsourcing to private colonies to account for distribution losses, handling charges and some incentive for minimizing incidence of theft of energy and 18% in case of single point metering by PSEB in respect of upcoming colonies. All the changes in existing system and metering at11KV shall be provided by PSEB"*.

1. In the Meeting held on 29.04.2015 in the Chamber of

Chief Engineer/ Operation (South), PSPCL, Patiala by the Committee, constituted, vide Dy. CE/Sales-2, PSPCL, Patiala office order No.577/S-6/DSC-63(General) dated 17.11.2014, for deciding about adjustment of difference in energy consumption of the main meter and individual consumer meters from Single Point Supply of the Petitioner (M/s Bajwa Developer Ltd. Kharar),it was decided as under:-

*"M/s Bajwa Developers Ltd. Kharar has submitted his representation to Dy. CE/DS, PSPCL, Ropar on 25.3.2014 in protest of application of NRS tariff to the difference of consumption of main check meter (A/C No.CL-01) and sum of consumptions of individual meters inside his colony naming Sunny Enclave Kharar and regarding taking over of LD system of his colony by PSPCL.ASE/DS Divn. Kharar has submitted a office note no. 6357 dt.12.6.2014 in this regard which was forwarded by Dy. CE/DS Ropar and subsequently by CE/DS South, Patiala to CE/Commercial, PSPCL, Patiala. In the meantime, the consumer submitted his representation to Hon'ble CMD, PSPCL, Patiala and accordingly above committee was constituted for redressal of consumer grievances vide CE/Commercial office order No. 447 dated 17.11.2014. The committee deliberated the matter in its meetings held on 1.12.2015, 5.1.2015, 26.2.2015 and 16.3.2015. The view of concerned DS Sub Division and DS Division Kharar were heard during the meetings and consumer was also given hearing during meeting held on 16.3.2015. After going through the facts and deliberation on the matter the committee has decided as under:-*

1. *As already decided in the committee meeting held on*

*16.3.2015, the account of consumer main check meter bearing A/C No. CL-01 may be overhauled w.e.f. 2 years prior to the date of representation of the consumer i.e. 25.3.2014on the basis of yearly consumption of main check meter and sum of the consumptions of the internal meters instead of bi-monthly billing to mitigate the issue of non-credit of negative billing . Also the consumer should be given credit of amount due left over units of the internal consumption, wrong credit of units given to the consumer should be charged further consumer should be charged for the units of transformers shifted outside of main check meter. All the calculation should be pre-audited from the audit organization.*

1. *As there were no clear cut instructions in CC No.*

*39/2003 and 76/2003 for application of tariff to difference of consumption of main check meter and sum of internal meter consumption of mixed load connection (e.g.DS, NRS and industrial) and the concerned DS Sub Divn. City Kharar applied NRS tariff to the consumption difference of main check meter and internal consumption w.e.f. release of connection to the colony which is continuing till date. The connections running inside colony area of mixed load comprising of DS NRS and industrial load and the most of the load is of DS category. Since all the consumers inside the colony are being billed by PSPCL on the basis of relevant tariff and cash realization is also being done by the PSPCL. Also after reviewing the consumption pattern of all internal connections w.e.f. 2004 to till date it has been observed that the ratio of NRS and DS consumption is approx. 10% and 90% respectively according the application of NRS tariff to whole of the consumption difference of main check meter and sum of consumption of internal meter is not justified. In view of ambiguity. In commercial circular, the committee has decided to apply the prorate NRS and DS tariff to the consumption difference based on the ratio of NRS and DS consumption of internal meters of the colony. As per regulation of 93.2 of ESIM of PSPCL there is limitation of period for which the a/c of any consumer can be overhauled, accordingly this pro rata, NRS/DS tariff may be applied w.e.f. 2 years prior to the date of representation of the consumer i.e. 25.3.2014.*

1. *As per CC No. 39./2003 allowing losses the difference*

*of Single Point Meter units and sum total of individual meter unit shall be worked out. The consumption of DS/NRS categories shall be separately worked out. The difference of units already worked out in proportion of DS/NRS consumption accounts should be overhauled annually basis w.e.f. 2 years prior to the date of representation of the consumer i.e. 25.3.2014. Any defaulting amount of individual consumer will be adjusted while overhauling the account. If any, amount regarding theft of energy UUE is pending against any individual consumer may also be adjusted by overhauling the account. The load of Street Light, STP, Water Supply and others common loads may be treated under NRS category. Difference of consumptions chargeable shall be calculated on the basis of highest slab of DS/NRS category.*

1. The LD system of the consumer should be taken over

fter compliance of following by the developers:-

1. *Completion of LD system strictly as per various NOC issued by CE/Commercial or after deposit of bank guarantee @ 150% of the cost of remaining LD system.*
2. *Clearance of any defaulting amount of main connection CL-01*

*or any other connection of consumer.*

1. *100% metering of all the users of developer inside the colony*

*including common services and street light etc. Developer raised the issue that immediate action be taken to take over the LD system under CL-01 because the present quality of control is causing a lot of confusion and unnecessary heavy loses to him. As he has already been requesting in all his previous letters that he was ready to install/or pay for any further transformers required in the area to meet the demand of the present/new consumers left, if any.*

1. *The main check meter of the consumer may be removed after taking over of the LD system of the colony as the instructions for the same stand issued vide CE/Commercial office order No. 2049/53 dated 13.10.2011."*
2. Chief Engineer/Commercial, PSPCL, Patiala Memo No.2049-2057 dated 13.10.2011 decided ***"In terms of Removal of the existing Single Point Meters installed in the colonies"*** as under:-

*"M/s Aastha Enclave, Barnala and some other developers vide their representation have intimated that they had obtained 11 kV Single Point Electric connection and individual meters have also been got installed by the residents of the colony directly from PSPCL by depositing requisite service connection charges and ACD. They have further intimated that difference of consumption recorded by 11 kV Single Point Metering and total sum of the individual meters got installed by the residents is being charged to them more than permissible rebate. It has been requested by the developers for removal of Single Point Supply meter.*

*In the above context, clause 8.5 of Conditions of Supply provides that individual connections to the residents / occupants in the residential colonies not opting for one point supply, can be released.*

*In view of the above, further action regarding removal of the Single Point Meter may be taken subject to compliance of provisions of clause 8.5 of Conditions of Supply. A suitable undertaking may also be obtained from the developer that they will not claim any refund on account of 11 kV infrastructure laid by them in fulfillment of instructions prevalent at the time of release of connection. Requisite steps may also be taken to ensure that there is no pilferage/ theft of electricity in these colonies."*

1. The Petitioner released different connections inside the

colony area on its own and 49 connections were found to be given by the developer for various utility services as well as to individual consumers against the violations of the spirit of agreement entered with Respondent at the time of availing connection/extensions and revenue from these connections was being collected by the developer/Petitioner.

Also the Petitioner had not developed the LD system inside the colony as per the NOC issued to the developer for 7 no. extensions and 4 no. colonies inside the premises being fed from the main meter of the Petitioner bearing Account NO. CL-01. Even the petitioner in its reply dated 08.03.19 have stated that LD system for 6 no extensions namely S-1 to S-6 was complete at that time however Petitioner is silent about the LD system feeding extension No. S-7 and 4 no. colonies namely ( Sunny City, Sunny Villa, Honey Villa and Paradise Apartments ).As such forum observed that the Petitioner had not fulfilled the conditions of completion of LD system as per various NOCs issued by the PSPCL and also 100% metering of all the users inside the colony area as on 11/2014 due to which the LD system of the Petitioner could not be taken over by the Respondent at that time.

1. AE, City Sub Division, Kharar, vide its Memo No. 820 dated

27.06.2017, intimated to the Petitioner after the pre-audit of calculation of connection bearing No. CL - 01 of Sunny Enclave as under:-

*"The account has been overhauled for the period April 2012 to March 2014 and from March 2014 to November 2014 as per decision dated 29.04.2015 of the High Powered Committee comprising of Chief Engineer/ DS (South Zone), Chief Engineer/ Commercial, SE (Enforcement), SE/DS (Ropar) and Dy. CAO/ Patiala.*

*The bills for the above said period have been overhauled and pre-audit by our Audit Department. As per the audit calculation sheet, there is a net refund of Rs 10,85,123/- for the above said period.*

*As you are aware, no bills have been issued after November, 2014 due to implementation of SAP System. This office is in the process of finalizing the bills after November 2014 till date and any refund will be made only after finalization of those bills.*

*Your request for removal of the CL-01 meter will be done after finalization of the bill from period of November 2014 to July 2017.*

*This is for your information and necessary action at your end."*

1. SDO/City Sub Division, PSPCL, Kharar issued a notice vide its

Memo No. 468 dated 21.03.2018 to the Petitioner as under:-

*"From the implementation of SAP System in the month of 10/2014, energy billing of A/c No. CL-01 could not be made. Now, energy billing for the period 11/2014 to 10/2017 has been got pre-audited by AO/Field, Ropar and an amount of Rs 1,06,09,033/- has been generated which is required to be paid by you (Petitioner). Therefore, you (Petitioner) are requested to deposit the said amount so that as per your request, Sunny Enclave A/c No. CL-01 system may be taken over by this office. From the month 11/2017 to till the date of system take over, energy billing amount is to be paid you (Petitioner)."*

1. As per evidence on record, while calculating the difference in energy consumption of the Single Point Supply Energy Meter of the Petitioner’s connection (Bajwa Developer, Kharar) and individual consumer meters being fed from this main meter energy consumption of the Single Point Supply Energy Meter of M/s Sunny Enclave (Bajwa Developer, Kharar) was first reduced by 18% / 20% to account for distribution losses, handling charges and some incentive for minimizing incidence of theft of energy as per the provisions of CC No. 39/2003 and Petitioner was charged only if there was a further difference in energy consumption of the single point supply energy meter of M/s Sunny Enclave (Bajwa Developer, Khara)r and individual consumer meters being fed from this main meter energy. This is in spite of the fact that handling of the consumers in the sense that issuing of bills and collection of revenue was not being done by the developer / Petitioner as per the provisions of CC No. 39/2003. The amount of Rs.1,06,09,033/- for the period 11/2014 to 10/2017 were charged to the Petitioner after giving a rebate of 18% / 20% to account for distribution losses, handling charges etc although handling of the consumers in the sense that issuance of bills and collection of revenue was not being done by the developer / Petitioner. The Petitioner had not cleared the disputed amount of Rs.1,06,09,033/- as charged to it vide memo No. 468 dated 21.3.2018 due to which, LD system of the Petitioner could not be taken over.

I observe that there was also deficiency on the part of the Respondents also as bills were not issued in time to the Petitioner. Had the bills been issued to the Petitioner in time, it would have cleared all its dues as per the conditions laid down in the report dated 29.04.2015 of the High Powered Committee.

I also observe that the Petitioner has pleaded that the LD system should be deemed to be taken over by PSPCL w.e.f. 17.09.2007 as per provisions contained in CC No.50/2007. In this regard, I have noted the contention of the Respondent that the Petitioner had not even complied with clause (i) of CC No.50/2007 as per which, work was to be completed/carried out strictly as per approved sketch from the Respondent-PSPCL, so, there was no lapse on the part of Respondent-PSPCL. No Bank Guarantee was deposited by the Petitioner till date. So, incomplete HT/LD System could not be taken over by the Respondent-PSPCL. The Petitioner had never come forward to hand over Colony after completing the System as per NOC issued by the Respondent-PSPCL, so it could not be deemed to have taken over the HT/LD System of the Petitioner. Besides, the Petitioner was charging money from the residents residing in its Colony after installing its own private Energy Meters.

**5. Conclusion**:

The above analysis, reveals that the connection of the Petitioner was released on 19.07.2004 as per provisions contained in CC No.39/2003 dated 13.06.2003 and Clause No.44.8.3 and 44.9 of Electricity Supply Regulations in force then. The LD System in the Colony was laid down by the Petitioner in accordance with the No Objection Certificate of the distribution licensee. As per the rules and regulations prevalent at that time, an Agreement

was executed between the Petitioner and the Respondent in accordance with ESR 44.8.3 and 44.9. In terms of the provisions contained in this Agreement, the Petitioner was required to pay for the difference of consumption recorded by its Single Point Energy Meter and the sum total of consumption recorded by Energy Meters of the Individual dwellers of the Colony leaving 20% an account of losses. The Petitioner paid for the electricity consumed by it to Respondent as per the Energy Meters installed by the Respondent at their premises. Keeping in view the genuine problems of the Developers, the Respondent issued revised instructions vide CC No. 50/2007 whereby, ESR 44.8.3 and 44.9 were struck off. However, it remained to be ensured that all the prescribed formalities had been completed and in case of non-fulfillment of the requisite requirement, Bank Guarantee for suitable amount was required to be taken from the Petitioner. In the present case, the Petitioner has prayed for deemed taking over of LD System w.e.f. 17.09.2007 despite the fact that complete LD System was not laid and commissioned. The Senior Executive Engineer, DS Division, Kharar intimated during hearing on 7.11.2019 that LD System was now ready for being taken over. Thus, from the above analysis, it is concluded that :

1. the amount charged to the Petitioner on account of difference in energy consumption of the Single Point

Supply Energy Meter and Consumer Meter alongwith interest and surcharge for the period from 17.09.2007 to 11/2014 is not just and fair, hence, not recoverable.

1. the amount charged for the period from 11/2014 to

10.02.2017, after giving the prescribed rebate to account for distribution losses, handling charges etc. is not recoverable.

1. LD System, complete and satisfactory in all respect,

be taken over after ensuring the observance of rules and instructions of the distribution licensee applicable at the time of release of connection and clearance of the outstanding dues, if any, against the Colony feeding through the Single Point Metering. In case of any deviation/deficiency, Bank Guarantee for the suitable amount, if any, is required to be taken from the Petitioner.

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

**As a sequel of above discussions, the order dated 11.06.2019 of the CGRF, Patiala in Case No. CGP-26 of 2019 is modified in terms of conclusion arrived at in Para-5 above. 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)

November, 21, 2019 Lokpal (Ombudsman)

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