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

 **ELECTRICITY, PUNJAB,**

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

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

 **APPEAL NO. 19/2020**

**Date of Registration : 19.03.2020**

**Date of Hearing : 19.06.2020**

**Date of Order : 24.06.2020**

**Before:**

**Er. Gurinder Jit Singh,**

 **Lokpal (Ombudsman), Electricity, Punjab**.

**In the Matter of :**

Darshana Devi,

HB-161, Karabara,

Near Dana Mandi,

Mastan Da Dehra,

Ludhiana.

**Contract Account Number: 3005217934**

 ...Appellant

 versus

Additional Superintending Engineer,

DS, City West Division (Special),

PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Respondent : Er. Ramesh Kaushal

 Additional Superintending Engineer,

 DS, City West Division (Special),

PSPCL, Ludhiana.

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 27.01.2020 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-323 of 2019, deciding that:

 *“As the matter is being referred to High Court and is being considered as sub-judice, therefore no compensation can be considered/allowed to the Petitioner in this case.”*

**2*.* Registration of the Appeal**

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this office on 19.03.2020 i.e. after more than one month of receipt of decision dated 27.01.2020 of the Forum sent to the Appellant, vide Memo No. 350/CGL-323 dated 30.01.2020, by the office of the CGRF, Ludhiana. However, the Appellant submitted an application alongwith the Appeal requesting for condonation of the delay in filing the Appeal by giving reasons for the delay. Since the present Appeal was preferred for claiming compensation, the Appellant was not required to deposit any amount for filing the Appeal. Accordingly, the Appeal was registered and forwarded to the Addl. S.E., City West Division (Special), PSPCL, Ludhiana with the request to send written reply/parawise comments with a copy to the office of the CGRF, Ludhiana to send the case file under intimation to the Appellant vide letter No. 286-288/OEP/A-19/2020 dated 19.03.2020.

**3.** **Proceedings**

With a view to adjudicate the dispute, a hearing was fixed for 17.06.2020 at 12.00 Noon and intimation to this effect was sent to the Appellant and the Respondent vide Memo No. 413-14/OEP/A-19/2020 dated 09.06.2020. In response, he intimated vide e-mail dated 15.06.2020 that he had not received the written reply from the Respondent due to which, it was not possible to submit a rejoinder and attend the hearing on 17.06.2020. He also requested for sending a copy of the written reply of the Respondent and refixing the date of hearing. Accordingly, a copy of the written reply of the Respondent was sent to him vide e-mail dated 15.06.2020 for filing the desired rejoinder and attending this Court on 19.06.2020 at 11.00 AM (for which, consent was given by him on Phone) vide Memo No. 455-56 dated 15.06.2020. Subsequently, Sh. Parvesh Chadha, Authorised Representative sent an e-mail on 19.06.2020 (date of hearing) at 8.40 AM stating that due to some problem, it was not possible for him to attend the hearing and requested to consider its Appeal and rejoinder already submitted for decision. Proceedings were held on 19.06.2020 and attended by the Addl. S.E., DS West Division (Special), Ludhiana. Copies of the same were sent to both the sides vide Memo No. 468-69/OEP/A-19/2020 dated 19.06.2020.

**4. Condonation of Delay**

During the hearing on 19.06.2020, the issue of condonation of delay in filing the Appeal was first taken up. In the present Appeal, the Appellant’s Representative stated that the order dated 27.01.2020 was issued by the office of the CGRF, Ludhiana vide Memo No. 350/CGL-323 dated 30.01.2020 and was received by the Appellant from the office of the Forum on 13.02.2020. Thereafter, the Appellant remained busy in its domestic affairs due to which, the filing of the Appeal within the stipulated time limit got a bit delayed. The Appellant’s Representative requested to condone the delay of one week beyond stipulated time in filing the Appeal in this Court.

The Respondent, in its written reply, objected to the condonation of delay in filing the Appeal in this Court on the plea that cogent and sufficient reasons for condonation of delay were not given for the delay and the Appeal merit dismissal on this ground alone.

 In this connection, I have gone through Regulation 3.18 (ii) of PSERC (Forum and Ombudsman) Regulations, 2016 which reads as under:

 *“No representation to the Ombudsman shall lie unless: The representation is made within one month from the date of receipt of the 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 find that the Appellant has given insufficient reasons for the delay of about one week in filing the Appeal. However, non condonation of delay would deprive the Appellant of the opportunity required to be afforded to present and defend the case. Thus, with a view to meet the ends of ultimate justice, the delay in filing the Appeal beyond the stipulated period was condoned and the case was heard on merits.

**5.** **Submissions made by the Appellant and the Respondent**

With a view to adjudicate the dispute, it is necessary to go through written submissions made in the Appeal by the Appellant and reply of the Respondent as well as oral submissions made by their respective representatives along with material brought on record by both the sides.

1. **Submissions of the Appellant**
2. **Submissions made in the Appeal**

The Appellant made the following submissions in the Appeal, received on 19.03.2020, for consideration of this Court:

1. The Appellant had applied for the change of name and change of

Supply from HT to LT being the legal heir of her husband, Sh. Baje Singh in whose name, the connection, bearing Account No. 3002961551 (Old W41CN060382H),was running. Therefore, the Appellant deposited ₹ 100/- vide receipt no. 49/48262 dated 02.02.2015. The said application was entered in Service Register vide A & A No. 58229 dated 06.02.2015 by the office of the AEE/Commercial, DS City West Division (Special), Ludhiana.

1. The connection was taken for the purpose of Cold Store in

MS category with sanctioned load as 59.750 kW and CD as 66.390 kVA. The supply was provided on HT by PSPCL at their level. The Cold Store was used for storage of vegetables and fruits. After the death of Sh. Baje Singh (Appellant’s husband), the business was closed and the cold store was converted into Hosiery Unit. The PSPCL issued Orders for change of name vide Sundry Job Order no. 147/41114 dated 22.07.2016 and also converted supply from HT to LT vide SCO No. 100002886272 dated 01.09.2016.

1. The Transformer was removed and LT Energy Meter was

installed. Despite this, the billing continued to be done on HT category of Seasonal Industry and bills continued to be issued in the name of Late Sh. Baje Singh (previous consumer and the husband of the Appellant).

1. The PSPCL did not comply with its own instructions forcing

the Appellant to move a Case (CGL-086/2019) in the Office of the CGRF, Ludhiana and the same was decided on 01.05.2019. In compliance to this order dated 01.05.2019 of the Forum, new Account No. 3005217934 had been allotted to the Appellant and nature of Industry/supply was changed in June, 2019 in the record of the Respondent.

1. As per Standard of Performance and as per provisions under

Regulation 26.5 of Supply Code-2014, the period prescribed for change of name and change of supply from HT to LT was 7 working days and 14 days respectively.

1. The change in name of the consumer was due from

09.02.2015 and change of supply voltage was due on 16.02.2015 but the Respondent had not performed the duties prescribed for the purpose, as such, compensation became due as under:

 Change of Name 10.02.2015 to 30.06.2019=1601x1000 = ₹ 16,01,000/-

Change of Category 17.02.2015 to 30.06.2019 =1594x1000 =₹ 15,94,000/-

Total amount of compensation payable = ₹ 31,95,000/-

1. The compensation, as per applicable regulations approved by

the Hon’ble PSERC, may be awarded to the Appellant who, was not at fault and there was a deficiency in service on the part of PSPCL as it had not complied with the Regulations of Supply Code-2014 under Electricity Act-2003.

1. It was worth mentioning that non processing of the change of

Name (CON) and Change of Supply (COS) were also pointed out in the dispute cases before the CGRF Patiala vide Case No. CG-2015/2017 and before CGRF Ludhiana, vide Case No. CGL-086/2019. A complaint was also made before the CGRF, Ludhiana on 26.09.2019. The bill, after effecting connection and Change of supply from HT to LT, was issued in 06/2019, as per directions of the CGRF, Ludhiana in Case No. CGL-86/2019.

1. The Respondent had not produced the copy of stay order, if

any, in CWP filed by it, challenging the order of CGRF, Ludhiana in Case No.CGL 086/2019, before the Hon’ble Punjab and Haryana High Court, Chandigarh.

1. In compliance to the said decision of the Forum, the

 Respondent had refunded/adjusted excess amount charged in the account of the Appellant.

1. The Respondent had not filed the Appeal before Hon’ble

High Court against the order passed by the Forum in Case No. CGL-086/2019.

1. The Forum decided the case without going through the record

and only on the basis of reply that PSPCL was filing the case in the Hon’ble High Court. This was not fair and without any verification of evidence like CWP No. or stay order brought on record by the Respondent before the Forum.

1. This was a genuine case of non payment as per Standard of

Performance in terms of Regulation 26 of Supply Code-2014 and no such case was lying pending in any Court of Law.

1. The order of the CGRF, Ludhiana be set – aside and

compensation of ₹ 31,95,000/- be awarded as applied for by the Appellant.

1. **Submissions in Rejoinder**

The Appellant’s Representative, in its rejoinder (to the written reply of the Respondent) sent vide e-mail dated 17.06.2020 made the following submissions for consideration of this Court:

1. The Court could check from the copy of A&A Form submitted

with the Appeal, the details of Load given relating to Hosiery Unit in Industrial/Motive Load as 90 no. Sewing Machine each 250 W and 40 of 300 W, motor etc. and balance is light load.

1. The objection raised on the A&A Form that it was neither

mentioned to change of type of Industry/type of Supply nor consumer applied was incorrect.

1. In addition to this, an affidavit of NON Polluting Industry

and the type of Industry mentioned as Sr. 23 (ESIM-2011) was attached. The duty of the CC/RA/AEE, Commercial was to get completed the required formalities at the time of accepting the application. The consumer had no knowledge of these types of objections as the Estimate was framed by the PSPCL as per instructions and rules framed by the PSPCL and not by the Appellant.

1. The job order no. 147/41114 dated 22.07.2016 was

issued after 538 days (2.02.2015 to 22.07.2016) from the date of application whereas time limit of 7 days had been fixed under Electricity Act-2003. Even after abnormal delay in issuance of SJO, the title of the consumer (i.e. Changing the name) was not changed till 30.06.2019, and was changed on directions of the CGRF.

1. The change of supply from HT to LT was done by the

PSPCL because previously, the nature of industry was “Cold Store” which was on LT but later on erstwhile PSEB (now PSPCL) converted it into HT at their own cost in the State of Punjab to stop theft of Electricity. The Appellant had not applied for getting supply on HT instead of LT. The Appellant had requested at the time of applying for change of name and change of load from cold store to hosiery (due to the death of Sh. Baje Singh who was doing Fruit Business), and also to convert the supply from HT to LT. Accordingly, the Job order no.100002886272 dated 01.09.2016 was issued after 70 days of issuing Job order for change of name. It is totally wrong to say that Change of supply from HT to LT was unauthorizedly done.

1. Besides, in this Change Of Supply process the SDO/Tech,

ASE.,EA and MMTS, and ME Lab, Ludhiana were involved. Without these authorities, supply could not be converted. The LT, CT meter was issued and HT meter/TF was removed, before the change took place. ASE, EA & MMTS, Ludhiana had visited site as per ECR No.1/2934 dated 24.11.2019 in response to letter issued by the office vide no 3580 dated 02.11.2016. It was cleared in that ECR as checking as per memo no. 3580 dated 02.11.2016 giving directions that DDL of the meter taken, Meter be changed with DLMS meter. The whole process was done by PSPCL, it was on their part and not on the part of the Appellant. The Respondent (PSPCL) neither refused nor intimated in writing to furnish fresh A&A Form for change of supply from HT to LT. The Respondent had not rejected the application for change of name and category but acted late and not according to the norms /time limit fixed by the PSERC.

1. The change in name and change of Supply process was done

after the decision of CGRF in case no. CGL-089 of 2019. Due to delay in affecting the change in name and category, the Case No. CGL-323/2019 was filed for the compensation in terms of Regulation U/S 26 of Supply Code-2014 for violation of Minimum Standard of Performance.

1. The PSPCL had not intimated the CWP No. of the case filed

in Hon’ able Punjab and Haryana High Court, Chandigarh. This point was raised during the proceedings of the case in the Forum. Now, the Respondent had intimated about the Case No. CWP-7160/2020 only without mentioning any order passed by the Hon’ble High Court. Moreover, the CWP was against the decision in Case No. CGL-089/19 and not against CGL-323/2019. The Respondent was misleading this Court.

1. No stay had been granted against the wrong decision passed by

the CGRF, Ludhiana in Case No. CGL-323/2019. The order passed by the CGRF, Ludhiana was also due to misleading submissions by the Respondent. No document was produced before the CGRF, regarding court case running in the Hon’able Punjab and Haryana High Court, Chandigarh. The CGRF had passed wrong order dated 27.01.2020 in Case no. CGL-323/2019, without any documentary evidences.

1. There were no False/Forged documents. There was no

connivance from the Appellant side. The officers/officials of PSPCL, while dealing with application of consumer caused long harassment till 30.06.2019. Before this, the MDI charges were levied and a relief was obtained by filing a case in office of the CGRF, Patiala vide Case No. CG-205/2017. Similarly, a case of wrong billing (HT side) was filed in office of CGRF, Ludhiana vide No. CGL-086/2019.

1. The Appeal filed by the Appellant was as per regulations and the

Appellant was entitled to compensation as per Supply Code -2014.

Accordingly, compensation amounting to ₹ 31,95,000/- for the delay in performance as per Minimum Standard of Performance under Regulation 26.5 of Supply Code-2014 may be awarded.

1. **Submissions of the Respondent**
2. **Submissions made in the Written Reply**

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

1. An Electricity connection, having account no. 3002961551,

was got sanctioned by Sh. Baje Singh (husband of the Appellant) under MS category with sanctioned load/contract demand as 59.750kW/66.39kVA. Supply was used for Cold Store and the connection was on HT Supply.

1. After the death of Sh. Baje Singh, his wife Smt. Darshana Devi

(Appellant) applied for change of name from Sh. Baje Singh to Smt. Darshana Devi on 02.02.2015 and submitted A&A Form along with required documents and deposited processing fee of ₹ 100/- only. On the A &A Form, no mention was made about change of the type of industry/type of supply and the consumer did not apply for it. As the consumer had applied only for change of name, therefore, estimate no. 6300173/2016-17 was prepared for nil amount for change of name only. Nothing was mentioned regarding change of industry/change of supply in it.

1. Accordingly, job order was issued for change of name only. No job order was issued for change of supply/nature of industry by commercial office.
2. The change of Supply from HT to LT was unauthorizedly done by Technical Office staff. The technical staff installed LT, CT set in place of 11kV CT/ PT unit by violating the instructions of PSPCL.
3. The consumer, in connivance with staff of Sub-Divisional Office, Technical Unit No. II, got the supply changed from HT to LT. As the action taken by sub divisional office, T-2, City

 North, Ludhiana was unauthorized and as per directions of

 the Forum in the decision of Case No. CG 205/2017, the matter was enquired from Technical Audit, with the approval of CMD, PSPCL. The case of change of name was kept pending due to inquiry. The Change in name of the consumer and

industry was effected as per decisions of CGRF, Ludhiana vide order dated 01.05.2019 in Case No. CGL-086/2019.

1. The Technical Audit enquiry had clearly established malafide

intention in this case and charge sheets were issued to three officials/officers including SDO/Technical. Besides, show cause notice was issued to JE (in-charge of ME 1 and 2 Lab) for illegally drawing LT, CT and Energy Meter from ME Lab without any provision of the same in the estimate for nil amount approved for this case.

1. The consumer filed the Case No. CGL 89/2019 for refund of the

billed amount in CGRF, Ludhiana, who considering the consumer’s application for change of user to be genuine, proceeded to pass order giving undue refund of about ₹ 3 lakhs causing considerable financial loss to PSPCL and regularized the wrong doing in this case. Technical Audit enquiry had clearly established malafide intention in this case. As per the decision of the Forum in Case No. CGL 89/2019 filed by the Consumer, the amount was refunded and after change of name, new account no. 3005217934 was allotted to the Appellant.

1. A CWP-7160/2020 was filed against decision of the Forum

before Hon’ble Punjab and Haryana High Court after obtaining the approval of the competent authority.

1. The Appellant filed a case, bearing no. CGL-323/2019, before

the Consumer Grievance Redressal Forum, Ludhiana regarding compensation for non-compliance of Minimum Standard of Performance. The Forum decided the matter on 27.01.2020 and passed a well –reasoned speaking order running into 16 pages and held that “As the matter is referred to High Court and is being considered as sub-judice, therefore, no compensation can be considered/allowed to the Petitioner in this case.” The Forum also granted liberty to the Appellant to file the representation before this Court within 30 days from the date of receipt of the order from the Forum but the present Appeal was not filed within the prescribed period and even the delay in filing the Appeal had not been explained with cogent and sufficient reason. The Appeal was, thus, barred by limitation and deserved dismissal.

1. The whole case was based on false submissions and forged

documents. A fraud had been perpetuated by the consumer in connivance with some officials of PSPCL, whereby change of user’s name had been granted without any authorization because no application, as alleged for change of user’s name was ever made.

1. There was no infirmity or illegality in the order dated

27.01.2020 passed by the Consumer Grievances Redressal Forum, Ludhiana. The said order was a well-reasoned and speaking order. All the grounds submitted by both the parties were considered by the Forum and a legal and valid order was passed.

1. It was, therefore, prayed that the Appeal filed by the Appellant

 may be dismissed with costs.

1. **Submissions during Hearing**

During hearing on 19.06.2020, the Respondent submitted a letter, bearing no. 2299 dated 16.06.2020, stating as under:

“With due respect, it is stated that the decision of CGRF, Ludhiana vide Case No. CGL-89/19 has already been implemented and the amount has been refunded to the consumer. Against this decision, CWP No. 7160/2020 has been filed before Hon’ble Punjab and Haryana High Court after obtaining the approval of Higher Authorities. The next date of hearing is 20.07.2020. It is further intimated that the present appeal filed in the Hon’ble Court of the Ombudsman for compensation is not maintainable as per regulation 26.5 of Supply Code-2014 because the appellant did not approach First Appellate Authority i.e. Concerned Dispute Settlement committee and filed the case of compensation in CGRF directly who is Second Appellate Authority. Hence the Appeal is not maintainable in the Court of Hon’ble Ombudsman and it should be dismissed.”

**6.** **Analysis and Findings**

 The issue requiring adjudication is the legitimacy of grant of compensation for deficiency in service due to non compliance of Minimum Standard of Performance, on the part of the licensee, as per applicable regulations.

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

1. The Appellant has, in the present Appeal, prayed for grant of

compensation amounting to ₹ 31,95,000/- as per details given below, for delay/deficiency in service/non compliance of Minimum Standards of Performance by the distribution licensee in regard to delay in change of name and change of category of the connection as per Regulation 26.5 of Supply Code -2014:

 Change of Name 10.02.2015 to 30.06.2019=1601x1000 = ₹ 16,01,000/-

Change of Category 17.02.2015 to 30.06.2019 =1594x1000 =₹ 15,94,000/-

Total amount of compensation payable = ₹ 31,95,000/-

1. The present Appeal preferred by the Appellant poses a challenge

to the order dated 27.01.2020 of CGRF, Ludhiana in Case No. 323 of 2019 deciding that

“As the matter is being referred to High Court and is being considered as sub-judice, therefore no compensation can be considered/allowed to the Petitioner in this case.”

I have perused the CWP 7160 of 2020 filed by the Respondent- PSPCL (referred to by the Forum in its said decision dated 27.01.2020) and observed that the aforesaid CWP filed by the PSPCL has no relevance to the present Appeal.

I also observe that the Addl. S.E., DS West Division (Special), PSPCL, Ludhiana agreed during hearing on 19.06.2019 that the present Appeal had no relevance to the CWP No. 7160 of 2020 pending before Hon’ble High Court.

1. The Addl. S.E., DS West Division (Special), PSPCL, Ludhiana,

vide letter no. 2299 dated 16.06.2020 given during hearing, stated as under:

“With due respect, it is stated that the decision of CGRF, Ludhiana vide Case No. CGL-89/19 has already been implemented and the amount has been refunded to the consumer. Against this decision, CWP No. 7160/2020 has been filed before Hon’ble Punjab and Haryana High Court after obtaining the approval of Higher Authorities. The next date of hearing is 20.07.2020. It is further intimated that the present appeal filed in the Hon’ble Court of the Ombudsman for compensation is not maintainable as per regulation 26.5 of Supply Code-2014 because the appellant did not approach First Appellate Authority i.e. Concerned Dispute Settlement committee and filed the case of compensation in CGRF directly who is Second Appellate Authority. Hence the Appeal is not maintainable in the Court of Hon’ble Ombudsman and it should be dismissed.”

1. Keeping in view the submissions of the Appellant and the

Respondent, it is worthwhile to peruse the provisions contained in Regulation 26 of Supply Code -2014:

**“26. PAYMENT OF COMPENSATION**

26.1 In the event of failure to meet the Standards of Performance specified in Annexure-1, the distribution licensee shall be liable to pay compensation to the affected consumers as specified in Annexure-5.

Provided that the maximum limit of compensation payable

in case of violation of any Standard of Performance shall be

 Rs. 5,000/-. In case affected consumers are more than one, the amount of compensation within this limit shall be shared by all the claimant consumers for each notified office and this amount shall be distributed equally amongst all the claimant consumers who have been awarded the compensation by the competent authority.

26.2 The aggrieved consumer may submit the claim in format specified in Consumer Complaint Handling Procedure (CCHP) for compensation to the Nodal officer of the Dispute Settlement Committee (DSC) as per procedure contained in CCHP.

 26.3 The compensation shall be paid by the functionary/officer incharge of the concerned notified office to the concerned/affected consumer (s) by way of adjustment in the electricity bills of the immediately succeeding months upon the award of compensation.

 26.4 The consumer may further pursue their claims with the ‘Forum for Redressal of Grievances of the Consumers’ (Forum) and the Ombudsman Electricity as per PSERC (Forum and Ombudsman) Regulations, 2005.

 26.5 The authority and the time limit for filing request/appeal for compensation shall be as under:-

|  |  |  |
| --- | --- | --- |
| **Authority** | **Name of Authority** | **Time Limit** |
| First Appellate Authority | Concerned DisputeSettlement Committee | 1 Month |
| Second Appellate Authority | Consumer Grievances Redressal Forum | 3 Month |
| Final Appellate Authority | Ombudsman Electricity | 1 Month |

The above period may be relaxed by the chairperson of the appellate authority in case of genuine difficulty.

26.6 The compensation payable by the distribution licensee under Regulation 26.1 and attributable to its negligence/inefficiency shall not be allowed as a pass through expense in the Aggregate Revenue Requirements of the Licensee.”

From the above analysis, it is observed that the Appellant had not followed the procedure laid down in Regulation 26.5 of Supply Code-2014 for payment of compensation. As such, the Appeal preferred by the Appellant is not maintainable/sustainable.

**7. Decision**

 As a sequel of above discussion, the order dated 27.01.2020 of CGRF, Ludhiana in Case No. CGL-323 of 2019 is set aside. The present Appeal of the Appellant for grant of compensation is not maintainable/sustainable. However, the Appellant is at liberty to approach the concerned Dispute Settlement Committee (First Appellate Authority) for grant of compensation for non compliance of Minimum Standard of Performance by the PSPCL in terms of provisions contained in Regulation 26 of Supply Code-2014.

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

**9.** In case, the Appellant 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.

 (GURINDER JIT SINGH)

June 24, 2020 Lokpal (Ombudsman)

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