**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 (RB)**

**Remand back by Hon’ble Punjab & Haryana High Court in CWP No. 10705 of 2020 vide order dated 26.08.2020**

**Date of Registration : 07.09.2020**

**Dates of Hearings : 07.09.2020, 05.10.2020, 14.10.2020,**

**04.11.2020 and 20.11.2020**

**Date of Order : 10.12.2020**

**Before:**

**Er. Gurinder Jit Singh,**

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

**In the Matter of :** M/s. Bajwa Developers Limited,

Sector-125, 5th & 6th Floor,

Sunny Business Centre,

New Sunny Enclave, Kharar.

Account No. CL-01

...Appellant

Versus

Addl. Superintending Engineer,

DS Division, PSPCL, Kharar.

...Respondent

**Present For:**

Petitioner : 1. Sh. T.S. Khaira, Advocate,

Appellant’s Counsel (AC)

2. Er. R.S. Dhiman,

Appellant’s Representative (AR).

3. Sh. Rajesh Gupta,

Appellant’s Representative (AR).

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

Addl. Superintending Engineer,

DS Division, PSPCL, Kharar.

2. Er. Swaranjeet Singh,

Assistant Engineer/DS S/D City-I,

PSPCL, Kharar.

3. Sh. Sarvpreet Singh,

Advocate (Counsel).

Before me for consideration is an Appeal preferred by the Appellant in compliance to directions given by the Hon’ble Punjab & Haryana High Court in CWP No. 10705 of 2020 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**. **Filing/Registration of the Appeal**

The present Appeal was filed in this Court in view of the order dated 26.08.2020 in CWP No. 10705 of 2020 (O & M) of the Hon’ble Punjab and Haryana High Court, Chandigarh whereby, order dated 21.11.2019 passed by this Court in an earlier Appeal, preferred against decision dated 11.06.2019 of the Forum, was set aside and the Appeal had been remitted back to this Court for decision afresh. The relevant portion of the Hon’ble High Court’s order dated 26.08.2020 is reproduced below: -

*“After hearing the arguments and considering the factual position, the grievance of the petitioner prima-facie appears to be correct. However, at this stage, the counsel for the parties agreed that there would be certain factual aspects to be gone into for deciding the said issue and the matter be remitted back to decide the appeal of developer afresh.*

*The impugned order passed in appeal is set aside and the matter is remitted back to respondent No. 1 for deciding afresh. It is clarified that nothing stated in this order shall be construed as observations on merits of case. Parties would be at liberty to raise pleas available to them before the Appellate Authority.*

*Considering the nature of the dispute, it is expected that the appeal would be decided expeditiously with the cooperation of the parties.*

*Parties shall appear before Respondent No. 1 on 7th September, 2020”*.

Accordingly, the Appeal was registered on 07.09.2020 when both the parties appeared in this Court as directed by Hon’ble High Court. Thereafter, the Appellant submitted a fresh Appeal during proceedings on 05.10.2020 and a copy of the same was given during hearing itself to Er. Swaranjeet Singh, Asstt. Engineer/DS, Kharar (deputed by Addl. Superintending Engineer/DS Division, PSPCL, Kharar) for sending written reply/parawise comments to the Appeal. Earlier, the office of CGRF, Patiala was requested vide letter No. 780/OEP/G-29 dated 27.08.2020 to send the case file of the Forum in Petition No. CGP 26 of 2019, whose decision is under challenge in this Court.

**3.** **Proceedings**

1. In compliance to direction given by the Hon’ble Punjab and Haryana High Court, vide order dated 26.08.2020 in CWP No. 10705 of 2020, both the parties were asked, vide letter nos. 809-10/OEP/A-42/2019/RB dated 31.08.2020, to appear in this Court on 07.09.2020 at 11.00 AM. Accordingly, the representatives of both the parties appeared in this Court on the said date and time. While making oral submissions, the Appellant’s Counsel stated that the Appellant would file a fresh Appeal in this Court for appropriate remedy against the order dated 11.06.2019 of the CGRF, Patiala in Case No. CGP-26 of 2019. He was asked to file the Appeal as early as possible in view of the direction given by Hon’ble Punjab and Haryana High Court in CWP No. 10705 of 2020 vide order dated 26.08.2020. In response, the Appellant’s Counsel stated that at least two weeks’ time be given to enable the Appellant to file the Appeal.

While making oral submissions, the Appellant’s Counsel stated that the Appellant was a Single Point Supply Consumer of the PSPCL (Respondent). The Representatives of both the sides were directed to submit Applications & Agreements, if any, signed between both the parties for release of connection bearing A/c No. CL-01 and subsequent extensions alongwith ‘No Objection Certificates’ issued by the Licensee for development of Electric System or any other Agreement executed between them relating to Electricity Supply.

At the end of deliberations, the Appellant was directed to ensure submissions of fresh Appeal (relating to the issues and the period for which, relief was sought from the Forum) latest by 21st September, 2020 with a copy to the Respondent who was directed to file a written reply/parawise comments to the Appeal in this Court latest by 28th September, 2020 with a copy of the same to the Appellant for filing rejoinder, if any.

It was conveyed to both the sides that hearing in this case would be held on 05.10.2020 at 11.00 AM on which date, the Representatives of both the sides would attend this Court. Copies of the minutes of the above proceedings were sent to both the sides vide letters nos. 826-27/OEP/A-42/2019 dated 07.09.2020.

1. In the hearing held on 05.10.2020, the Appellant’s Representative submitted four sets of the Appeal and related documents. The filing of the Appeal was delayed despite directions given by this Court on 07.09.2020 to submit the same by 21.09.2020 and subsequent telephonic reminders. One copy of the aforesaid Appeal was given to Er. Swaranjeet Singh, Asstt. Engineer/DS, Kharar (deputed by the Addl. SE/ DS Divn., Kharar) for furnishing written reply/parawise comments in this Court with a copy to the Appellant for filing rejoinder, if any. Both the sides were also informed about the next date of hearing as 14.10.2020 at 11.00 AM. Copies of proceedings were sent to both the parties vide letter nos. 935-36/OEP/A-42/2019/RB dated 06.10.2020.

In compliance to the above directions, the Respondent submitted written reply/parawise comments in this Court and also to the Appellant on 13.10.2020.

1. During hearing on 14.10.2020, the Respondent submitted the copies of the following documents in this Court and also gave copies to the Appellant’s Representative:-
2. Agreement dated 19.07.2004, 17.01.2007, 26.11.2007 and 28.11.2007.
3. Provisional NOCs issued by the Chief Engineer, Commercial/PSEB in 05/2004, 11/2004, 08/2005 and 07/2006.
4. Final NOC by the Chief Engineer, Commercial, PSPCL in 05/2011.
5. Letter written by the Chief Engineer, Commercial, PSEB in 10/2004 to Chief Administrator, PUDA, Mohali before release of Single Point Supply Connection to the Appellant.

The Representatives of both the Appellant and the Respondent were directed to intimate the schedule under which, the billing aspect of the Appellant’s Single Point Supply connection was covered.

The Respondent was directed to submit the following information/documents to this Court:

a) PSERC, vide its order dated 09.06.2015 in Petition No. 61/2014, decided that such Single Point Supply connections were illegal. It needed to be intimated as to why appropriate action/remedy in terms of the said decision was not taken by the PSPCL.

b) A copy of letter written to the Appellant for handing over LD System to the Licensee.

c) Functions performed under the Single Point Supply by the Appellant.

The Respondent apprised the Court that Single Point Supply energy consumption recorded was at 11 kV supply voltage.

At the end of the deliberations, the Representatives of both the sides were directed to send the respective information/documents (referred to above) by 28.10.2020 by e-mail to this Court as well as to the other side/party of the Appeal. Copies of the proceedings were sent to both the sides vide letter bearing nos. 978-979/OEP/A-42/2019/RB dated 14.10.2020.

(iv) During hearing on 04.11.2020, the Appellant’s Representative confirmed the acknowledgement of information/documents sent by the Respondent vide memo no. 9753-55 dated 29.10.2020 endorsed to the Appellant.

The Respondent inter-alia, stated as under:

a) During the period from 11/2014 to 10/2017, the Developer was maintaining the LD system of colony including attending complaint of the consumers as the system had not yet been taken over by the PSPCL.

b) PSPCL was releasing new connections in the colony, and bills to consumers are also issued by PSPCL for different colonies of consumers.

c) A reference seeking information, regarding schedule under which, the billing aspect of the Appellant’s Single Point Supply connection was covered, was made to Dy. CE/Sales-2, PSPCL, Patiala vide memo no. 2168 dated 20.10.2020 and reply was still awaited. The matter was being regularly pursued and requested for giving some more time so that the said information can be provided.

In view of the above, it was decided to fix the next date of hearing as 18.11.2020 at 11.00 AM for further deliberation. Both the parties were directed to attend the hearing on the said date and time. The Respondent was also directed to send the desired information (on receipt from PSPCL Head Office) at the earliest possible by e-mail to this Court as well as to the Appellant. Copies of minutes of the said hearing were sent to both the Appellant and the Respondent vide letter nos. 1059-60/OEP/A-42/2019 RB dated 04.11.2020.

Subsequently, on the telephonic request of the Respondent on 17.11.2020, the hearing fixed for 18.11.2020 was adjourned to 20.11.2020 and an intimation in this regard was sent to both the sides vide letter nos. 1109-10/OEP/A-42/2019 (RB) dated 17.11.2020.

(v) In the hearing held on 20.11.2020, the Respondent submitted Memo No. 10697/99 dated 20.11.2020 regarding submission of reply for the schedule under which the billing aspect of Appellant’s Single Point Supply Connection was covered. The said reply was taken on record and copy thereof was given to the Appellant’s Representative.

The Appellant’s Representative submitted written arguments in this case which were taken on record. The Respondent, on being asked, confirmed the receipt of the said written arguments in its office on 19.11.2020 evening. During the hearing, arguments took place and both the sides reiterated their respective points of view. The Respondent requested for giving time to study the written arguments of the Appellant’s Representative for filing written briefs. The Appellant’s Representative submitted that it had nothing more to submit in writing in this case. The request of the Respondent for submission of written briefs was allowed and he was directed to submit the same to this Court latest by 2nd December, 2020. Copies of minutes of hearing were also sent to both the sides vide letter nos. 1126-27/OEP/A-42/2019/RB dated 20.11.2020.

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

With a view to adjudicate the dispute afresh, 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 in this Court on 05.10.2020, for consideration:

1. The Appellant was having a Singly Point Supply Connection bearing Account No. CL-01 under DS Division, PSPCL, Kharar.
2. The Appellant was a Company engaged in the development of Residential Colonies and Commercial Complexes. The said connection of the Appellant was released in the year 2004. The LD System in the Colony was laid down by the Appellant in accordance with the ‘No Objection Certificates’ of the Respondent (PSPCL).
3. As per the rules and regulations prevalent at that time, an Agreement was executed between the Appellant and Respondent in accordance with ESR 44.8.3 and 44.9. In terms of the provisions contained in this Agreement, the Appellant was required to pay for the difference of consumption recorded by its Single Point Energy Meter and the sum total of consumption recorded by the Energy Meters of the Individual dwellers of the Colony leaving 20% on account of losses. The residents themselves paid for the electricity consumed by them to the erstwhile PSEB (Respondent) as per the meters installed by Respondent at their respective premises.
4. The 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 authorities of the Respondent to free them from the responsibility of paying for the difference of consumption, especially when Respondent was dealing with the residents through separate and independent agreement. 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 done away with. According to this 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 were to be released to the residents of the Colony like any other consumer in the State. The requirement of signing an agreement for Single Point Supply at 11 kV was also scrapped. After the issuance of CC No. 50/2007, the Colonizer was not responsible for any energy losses as the Licensee was now free to carry out checking for any kind of violation.
5. In pursuance of CC No. 50/2007, the Appellant had raised the issue of removal of its Single Point Connection with the authorities of the Respondent at different levels, but to no avail. Having failed to achieve any tangible result, the Appellant made a representation to the Chief Engineer/ DS (South) and then to CMD, PSPCL, requesting for immediate takeover of the Appellant’s LD System and removal of Single Point Meter. 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. The said Committee submitted its report recommending taking over of the LD system after fulfillment of certain conditions. No action was taken by the Respondent despite the Appellant telling them that these conditions already stood fulfilled. Instead, a notice was issued, vide letter No. 468 dated 21.03.2018, by the SDO/ DS S/D City, Kharar asking the Appellant to deposit ₹ 1,06,09,033/-. Harried and hassled by the response of the authorities of the Respondent, the Appellant had approached CGRF, Patiala for redressal of its grievances. The Forum, though showed sympathy with the Appellant but upheld the totally unjustified and untenable charges. There was no stopping of further charging beyond 10/2017 as per the notice mentioned supra. The Appellant was entirely dissatisfied with the decision of the Forum and was, therefore, constrained to file the present Appeal with the sanguine hope of justice.
6. The present fresh/ revised Appeal had been filed in line with the submissions of the Appellant’s Counsel during last hearing of this case on 07.09.2020.
7. Hon’ble Punjab and Haryana High Court, vide its order dated 26.08.2020, had rightly taken objection to the decision of this Court relating to the period 17.09.2007 to November, 2014 especially as the same was not emerged from the impugned notice. The Appellant had originally challenged before the Forum ₹ 1,06,09,033/- raised by the Respondent for the period 11/2014 to 10/2017 vide notice bearing Memo No. 468 dated 21.03.2018. While deciding the Appeal of the Appellant, this Court had taken decision about the period 17.09.2007 to 11/2014. The decision of this Court was not wholly wrong and without reason since the grounds for waiving off the charges from 11/2014 to 10/2017 were the same as for the charges from 17.09.2007 to 11/2014. It was continuation of the same story. It was a different matter that the Appellant’s Counsel in Hon’ble High Court preferred to get the case remanded back to this Court instead of justifying the waival of charges from 17.09.2007 to 11/2014. The Appellant under the present circumstances, would like to reiterate its request for setting aside the charges raised from 11/2014 to 10/2017 alongwith charges from 17.09.2007 to 11/2014 as well since the grounds for charging for both the periods were the same. The Appellant had left it to the wisdom of Hon’ble Ombudsman whether to deal with the period 11/2014 to 10/2017 or to include the period 17.09.2007 to 11/2014 also.
8. The Appellant’s main stand was that with the issuing of CC No. 50/2007 on 17.09.2007, the ESR 44.8.3 and 44.9 had ceased to exist w.e.f. 17.09.2007 as mentioned in the circular. As such, the agreement of Single Point Supply based on ESR 44.8.3 and 44.9 also became null and void w.e.f. 17.09.2007. It was enjoined upon the Respondent to remove the Single Point Supply meter and take over the LD system of the Appellant immediately after 17.09.2007 as the said Agreement was no longer enforceable after this date. Any shortcoming in the LD system should have been got removed from the Appellant or removed by the Respondent by encashing the Bank Guarantee furnished by the Appellant. Since no shortcoming was noticed/ pointed out by the Respondent after the issue of CC No. 50/2007, the LD system should be deemed as taken over by Respondent w.e.f. 17.09.2007. No charges can be raised using the Single Point Supply meter as the very basis on which this Meter was installed stood abrogated w.e.f. 17.09.2007 when the said meter lost all relevance.
9. No charges can be raised against the Appellant after 17.09.2007 on the basis of an Agreement which had become defunct on 17.09.2007. Hence, not only the charges raised from 11/2014 to 10/2017 need to be set aside, the charges illegally recovered for the period from 09/2007 to 11/2014 also need to be refunded to the Appellant. Further, the Respondent need to be restrained from charging difference of consumption beyond 10/2017 as articulated in its Notice dated 21.03.2018. Directions to the Respondent for immediate removal of defunct Single Point Supply Connection were also required to be issued.
10. Formation and proceedings of the so called High Powered Committee were also ultravires of CC No. 50/2007 and other commercial instructions. As such, no notice was required to be taken of the findings/ recommendations of this Committee as it had no mandate to bypass the provisions of CC No. 50/2007.
11. The Forum had clearly held the Respondent accountable for deficiency in the performance of its duty but had chosen to penalize the Appellant on the basis of totally wrong and illegal findings of the Committee which had no power to change the rules of the Department.
12. **Written Arguments of the Appellant**

The Appellant’s Representative submitted written arguments, during hearing in this Court on 20.11.2020, as under:

1. This Single Point Supply Connection of the Appellant, bearing Account No. CL-01 was released in the year-2004 in accordance with the provisions of ESR 44.8.3 and 44.9. An agreement was signed by the Appellant to make payment of the bills raised as per provisions of these Regulations.
2. Electricity connections to the residents of the colony were given by the Respondent and payment of electricity bills raised by them were made by the residents directly to the Licensee. The Appellant had no power to release any connection of its own.
3. The developers of the state raised their voice against this dual control system in which they had to pay even for unlawful activities of the residents. Accordingly, the erstwhile, PSEB issued CC No. 50/2007 on 17.09.2007 scrapping ESR 44.8.3 and 44.9. Consequently, the Single Point Supply Connection Account No. CL- 01 as well as the agreement signed there under became in fructuous, null and void.
4. It was on the ground of nullity of the Single Point Supply Connection and the said agreement that the Appellant plead no liability to pay any bills raised after 17.09.2007. The Single Point Supply meter was to be deemed removed from this date, even though not physically dismantled. The ibid agreement was not enforceable after 17.09.2007.
5. The Respondent’s plea that the Appellant’s connection was released under the provisions of CC No. 39/2003, and not ESR 44.8.3 and 44.9 does not hold water. The provisions of CC No. 39/2003 and ESRs 44.8.3 and 44.9 were the same word for word. The relevant contents of CC No. 39/2003 were incorporated in ESR while compiling it in 2005.
6. It is to be noted that billing for electricity consumption and taking over of LD system laid by the Appellant are two different issues. As such, removal of Single Point Supply meter cannot be linked with the taking over of LD system. Taking over of LD system may be done by the Respondent in accordance with the terms and conditions of NOC separately. But billing had to be stopped from 17.09.2007 when ESRs 44.8.3 and 44.9 were repealed and replaced.
7. Further, the subject matter of the Appellant’s grievance before CGRF, Patiala Case No. CGP-26/2019 was related to billing in the impugned notice. As such, linking of taking over of LD system with the issue challenged by the Appellant was beyond the jurisdiction of the Forum in the same manner as the period 17.09.2007 to 11/2014 decided by Ombudsman in its order dated 21.11.2019. The Appellant would, therefore, like to place its objection on record against linking of the issue which was not the subject matter of its Petition before the Forum.
8. Recommendations of the so called High Powered Committee, heavily relied upon by the Respondent were inconsequential as this Committee had no Power to override the provisions of CC No. 50/2007. The Committee could not recommend to continue billing on the basis of Single Point Supply Connection which had lost legs after the issue of CC No. 50/2007.
9. Despite of all above, the Appellant had been constantly objecting to the bills raised after 17.09.2007, and offered the LD system for taking over by the Respondent.

**(B) Submissions of the Respondent**

1. **Submission in the written reply**

The Respondent, in its written reply to the appeal of the Appellant, submitted the following for consideration of this Court**:**

1. The Respondent is a Corporation engaged in the Generation of Power for the State of Punjab and its distribution system. The Respondent was also responsible for operating and maintaining State owned Generating Projects and distribution system for domestic, commercial and industrial purposes.
2. Single point connection of the Appellant was running in Sector 125, Mohali having Account No. CL-01. The Meter for the connection was installed in the year 2004.
3. At the time of extension in load, as per NOC of the Respondent, after completing the LD system, Meters were going to be installed by the Licensee.
4. Thereafter, the Appellant requested the Respondent to remove the meter installed at its premises.
5. Before deciding to remove the said Meter, a Committee was constituted. The Committee accorded its approval for removal of the said meter on the basis of certain conditions.
6. There was no outstanding for the period upto 2014 and on the request of the Appellant, audit for the period 2012 to 2014 was carried out. As per audit report, refund of ₹ 10,85,123/- was worked out, which was adjusted during raising of bill for the period 11/2014 to 10/2017.
7. Thereafter, audit was completed in the year 2018 for the period 11/2014 to 10/2017 and an energy bill of ₹ 1,06,09,033/- was issued to the Appellant who did not pay the bill and instead filed a complaint no. CGP-26/2019 before CGRF, Patiala.
8. The Respondent pleaded in the Forum that the connection of the Appellant was released vide SJO No. 92/36553 dated 19.07.2004 as per the instructions contained in CC No. 39/2003 for release of connections under Single Point Supply. The Appellant availed various extensions on 23.09.2005, 05.10.2006, 17.01.2007, 27.11.2007 and also on 27.11.2007. A representation was made by the Appellant to the CE/DS (South), Patiala for taking over the LD system of the Appellant and correction of the billing. A Committee comprising ASE/Tech. Distribution Circle, Ropar and ASE/ DS Divn., Kharar was constituted by CE/DS (South) Zone, Patiala vide office order No. 209 dated 18.09.2014 for the redressal of the above said grievance of the Appellant. A report was submitted by the Committee on 04.11.2014 wherein it was proposed to take over the LD system of the Appellant after fulfillment of certain conditions.

On the representation of the Appellant to CMD, PSPCL, Patiala, another High Powered Committee was constituted vide office order No. 577 dated 17.11.2014 of the Dy. CE/ Sales-II, Patiala. The said Committee submitted its report on 29.04.2015 whereby it was recommended to take over the LD system of the Appellant after fulfillment of certain conditions. It was also recommended to overhaul the account of the Appellant for the last two years from the date of application of the Appellant. The account of the Appellant was overhauled and credit of ₹ 10,85,123/- was given to the Appellant. The Appellant was making regular payments against its account till 10/2014. However, from 11/2014 to 10/2017, no bill could be served to the Appellant due to implementation of SAP system in the Sub Division as it was not possible to calculate the consumption of the individual meters installed inside the Colony which were being fed from the Main Meter (CL-01) of the Appellant. A bill of ₹ 1,16,94,156/- for the period 10/2014 to 10/2017 was subsequently prepared and after adjusting a refund of ₹ 10,85,123/- for the period 2012 to 2014, the Appellant was served a Notice vide Memo No. 468 dated 21.03.2018 to deposit balance amount of ₹ 1,06,09,033/-.

Aggrieved by the said Notice dated 21.03.2018, the Appellant filed a complaint before the CGRF, Patiala who decided vide order dated 15.05.2019.

1. Thereafter, the Appellant preferred an Appeal in this Court which was decided vide order dated 21.11.2019.
2. Aggrieved with the said order of this Court, the Respondent preferred writ before the Hon’ble Punjab and Haryana High Court vide CWP No. 10705 of 2020. Hon’ble High Court, vide order dated 26.08.2020 had set aside the order dated 21.11.2019 of this Court and remitted the matter back to this Court to decide the Appeal of the Appellant afresh.
3. Now, the Appellant had filed its revised petition against the order dated 15.05.2019 of CGRF. Patiala in compliance with the decision of Hon’ble Punjab and Haryana High Court in CWP No. 10705 of2020.
4. For the period 17.09.2007 to November, 2014, the bills for the difference in energy consumption of Single Point Energy Meter and sum total of individual meters consumption were duly paid by the Appellant/ Developer, who had never contested the bills raised for this period. In fact, the Respondent had already given the Appellant a refund of ₹ 10,85,123/- for the period 2012 to 2014 as per the decision of High Powered Committee constituted on the request of the Appellant. Moreover, the order dated 21.11.2019 of the Court of Ombudsman for refunding back already recovered charges for the period 17.09.2007 to November, 2014 was challenged by the Respondent vide CWP No. 10705 of 2020 filed in the Hon’ble Punjab and Haryana High Court which had rightly found the grievance of PSPCL to be correct on this account and ordered to decide the Appeal of the Appellate afresh after only considering the Notice issued vide Memo No. 468 dated 21.03.2018 to deposit the amount of ₹ 1,06,09,033.00 for the period 11/2014 to 10/2017.
5. The connection of the Appellant was released on 19.07.2004 as per CC No. 39/2003 dated 13.06.2003 and the Appellant had relied upon CC No. 50 of 2007. It was replied that the Appellant had not even complied with Clause No. 1 of the above mentioned circular vide which, it was desired that Developer had to install the LD system as per the approved sketch, after using the material specified by Respondent. The Appellant/ Developer had never come forward for handing over the system after its completion as per the approved sketches of the Respondent alongwith necessary approvals taken by it from the Chief Electrical Inspector (CEI), State of Punjab for installed transformers/HT lines etc. The Appellant had not deposited any Bank Guarantee for the incomplete LD system. Thus, incomplete LD system could not be taken over by the Respondent to fulfill the conditions of CC No. 50/2007. In view of above, LD system in Colony of the Developer cannot be deemed to have been taken over. Further, it was clear from the report of Committee of two Addl. SE’s that the Appellant/ Developer had issued 49 No. connections in the Colony on its own and it was charging the money for the electricity provided to them. The Developer had many connections on its own for common services of the Colony for which, it was using electricity and had obtained connection for these from the Respondent in the year 2015, 2016 and 2017. The Respondent was justified for billing the Developer for the difference of consumption for the main Meter and sum total of individual meter’s consumption in the Colony for the period 10/2014 to 10/2017. This bill was duly audited for ₹ 1,06,09,033.00 by the AO/ Field, Ropar vide its Memo No. 394 dated 19.03.2018. While raising the bill, refund of ₹ 10,85,123.00 for the period 2012 to 2014 was also given to the Developer, as per the decision of the High Powered Committee constituted on the request of the Appellant for resolving the tariff issue.
6. The Appellant had not complied with Clause No. 1 of CC No. 55 of 2007 according to which, the Appellant was to complete LD system of the Colony in line with provisions of NOC/ approved sketches of the Respondent. The Appellant was very much aware of this lapse on its part and accordingly, deposited the amount for the bills raised for the period 17.09.2007 to 10/2014. Thus the actions of the Respondent for raising the bills for the period 17.09.2007 to 10/2014 and 11/2014 to 10/17 were very much justified under the provisions of Agreement with the Appellant.
7. High Power Committee was formed on the request of the Appellant and the Appellant had never taken action for complying with the recommendation of this Committee for taking over of LD system. Now, the Appellant had raised doubts on the formation of Committee itself just to hide mistakes made on its part.
8. The Appellant had wrongly challenged the findings of the Forum. The Forum had rightly agreed to the claim of the Respondent and at the same time, had given relief to the Appellant for depositing the amount of bill in installments.

**(b) Additional submissions of the Respondent**

In compliance to the directions given in the proceedings dated 14.10.2020, the Respondent sent its response, vide Memo No. 9753/55 dated 29.10.2020, to the points raised during the said proceeding as under:

1. The information regarding schedule under which, the billing aspect of the Appellant’s Single Point Supply connection was covered was sought from the office of the Dy. CE/ Sales-2, PSPCL, Patiala vide Memo No. 2168 dated 20.10.2020. The same was not yet received. The said Office was visited on 26.10.2020 by the Respondent who was apprised that process of preparing this information was in hand and the said office assured to supply the same in due course.
2. Hon’ble PSERC, vide its order dated 09.06.2015 in suo-motu Petition No. 61/2014, directed PSPCL to draft Model Distribution Franchisee Agreement within three months of the issue of its order. As per this order, individual notices were to be issued to the consumers, who had been granted Single Point Supply under Clause 8.1 to 8.4 of the repealed Conditions of Supply. In compliance to above order of Hon’ble PSERC, PSPCL, circulated draft Model Distribution Franchisee Agreement vide CC No. 58/2016 dated 14.12.2016 which was to be signed by the consumer who had been granted Single Point Supply under Clause No. 8.1 to 8.4 of the repealed Conditions of Supply.

It was worth mentioning that Single Point connection case of M/s. Bajwa Developers Pvt. Ltd. (Appellant) did not fall under Clause No. 8.1 to 8.4 of the repealed Conditions of Supply since residents of Colony were to obtain connections directly from erstwhile PSEB as per instructions of CC No. 39/2003 vide which, NOCs were issued to the Developer by erstwhile PSEB. Therefore, order dated 09.06.2015 of Hon’ble PSERC, in suo-motu Petition No. 61/2014, was not relevant for Single Point Supply connection of the Appellant.

1. LD system of the Colony was not yet handed over to PSPCL by the Appellant/Developer after completing duties/ requirements on its part and the same was still maintained by the Developer. LD system maintenance including replacement of damaged transformers alongwith attending consumer complaints in the area for Single Point Supply Connection was carried out by the Developer. All the maintenance activities carried out by the Developer were supervised and co-ordinate by the Respondent.
2. In regard to the claim of Appellant in the Appeal for refund with interest, the charges already recovered for the period 17.09.2007 to 11/2007, it was submitted that as prescribed under Regulation 2.25 of PSERC (Forums and Ombudsman) Regulations, 2016, the period of limitation was two years from the date of cause of action.
3. The claim of the Appellant to refund back the already recovered charges for the period 17.09.2007 to 11/2007 was not tenable and was not in line with provisions of Limitation Act, 1963.

**(c) Written Arguments of the Respondent**

The Respondent vide Memo No. 11153-54 dated 02.12.2020 submitted written arguments as under:

1. In the present Appeal, the Appellant had challenged the impugned amount notice/bill of ₹ 1,06,09,033/- which was charged by the Respondent (PSPCL) for the period from 11/2014 to 09/2017 for the difference in energy consumption of Single Point Energy Meter i.e. CL-01and sum total of individual consumers in its Sunny Enclave Colony. Further, it was clarified that Meter Connection No. CL-01 was not installed for any individual consumer but it was installed as per agreement made with the developer to bill for the difference of energy recorded by main meter (CL-01) and sum total of energy consumed by individual consumers in Sunny Enclave Colony. Also, it was important to mention here that Single Point Connection of M/s Bajwa Developer Pvt. Ltd. (Appellant) did not fall under Clause 8.1 to 8.4 of the repealed Conditions of Supply (COS) and it actually came under Clause 8.5 of the repealed Conditions of Supply. The said impugned amount was rightly charged to the Appellant by PSPCL as per agreement. It was relevant to mention here that for the period upto November 2014, the bills raised as per agreement/CC-39/2003 for the difference in energy consumption of Single Point Energy Meter and sum total of individual meter consumptions were duly paid by the Appellant without any objections.
2. In this Appeal, the Appellant had totally relied upon the guidelines of CC No. 50 of 2007 by stressing that after issue of CC No. 50/2007, the LD System of colony be considered deemed to be taken over by the Respondent and it should not be charged for the difference of energy recorded by Single Point Meter (CL-01) and sum total of energy consumed by individual consumers of colony. At the very outset, it was argued that the Appellant had not complied with the Clause 1 of the abovementioned circular as per which, it was desired that the developer had to install the LD system, as per the approved sketches of the Department/Respondent. Inspite of correspondence by the Respondent, the developer never came forward for handing over the LD system after its completion as per the approved sketches of the Respondent and after due approval/clearance for installed LD System of colony from the Chief Electrical Inspector (CEI) of Punjab against installed transformers/HT Lines etc. The developer could have also handed over incomplete LD system by submitting bank guarantee for the incomplete LD System but it did nothing in this regard. Thus, incomplete LD system cannot be considered as deemed to be taken over to fulfil the conditions of CC No. 50/2007 as per whims and fancies of the Appellant.
3. It was clear that the Appellant had never fulfilled conditions of CC No. 50/2007 to hand over LD System of colony to the Respondent after its completion. Further, another opportunity was provided to the Appellant by the Respondent in the year2010/11 for removal of Single Point Meter installed in the colony when another similar Single Point Connection holder M/s Aastha Enclave, Barnala and some other developers gave representation to the Department/Licensee stating that they had obtained 11KV single point electric connections for their colonies where individual meters for residents of the colonies were installed directly by the Licensee after depositing the requisite service connection charges and ACD. They had further intimated that difference of consumption recorded by Single Point metering and sum total of the individual meters got installed by the residents was being charged to them by the respondent (PSPCL) and it was requested by the developers for removal of Single Point Supply meter. In view of the above representation of the developers, the Respondent (PSPCL) department issued Memo No. 2049-2057 dated 13/10/2011 for the removal of the existing Single Point Meter installed in the colonies, subject to compliance of provisions of Clause 8.5 of Conditions of Supply and with suitable undertaking from the developer that they will not claim any refund on account of 11 KV infrastructure laid by them in fulfilment of instructions prevalent at the time of release of connection. Thus, all Single Point Supply (as per clause 8.5 of Condition of Supply) developers were given an opportunity by the Respondent for removal of Single Point Supply meter after erection/handing over of LD system of colony by the developer in compliance to Clause 8.5 of Condition of Supply. But, the Appellant did not avail opportunity provided by the Respondent vide CC No. 50/2007 and later, vide letter dated 13.10.2011, for handing over complete LD System as per approved sketches and in turn facilitating the removal of Single Point Supply meter (CL-01) of the colony. The Appellant was falsely blaming the Respondent for not taking timely action on its part.
4. It was clear from the report of the Committee of two Additional S.E’s, that Developer/Appellant had issued 49 connections in the colony on its own and the Appellant was charging the money for the electricity provided to them. Also, Developer/Appellant was using electricity directly for many common services connections of the colony for which, the Appellant had obtained connection from the Respondent only in the year 2015 & 2016 and this was an admitted fact.
5. The Respondent was entitled and justified for billing the Appellant for the difference of consumption for the main meter and sum total of individual meter consumption installed in the colony for the period from 10/2014 to 10/2017 and said bill notice was duly audited for ₹ 1,06,09,033/- by AO Field, Ropar vide Memo No. 394 dated 19.03.2018 and while raising the bill, the Appellant was also refunded a Sum of ₹ 10,85,123/- for the period of 2012 to 2014 as per the decision of the High Power Committee for resolving the tariff issue by charging for difference of units in the ratio of 90% & 10% at domestic & NRS rates respectively. The Appellant never challenged the schedule mentioned above till date and duly paid the bill till 09/2014 as the Appellant was well aware that schedule applied for billing for the difference of units in his case was correct and justified. Further, it was made clear that DS/NRS tariff schedule applied to bill difference of units for energy consumed by Single Point Supply Meter (CL-01) and sum total of energy consumed by individual consumers, in order to fulfil the conditions of Single Point Supply agreement (as per CC 39/2003), was just and correct, since electrical energy is consumed in the colony for these categories only.
6. High powered committee was formed on the request of the Appellant who never fulfilled/complied with the recommendations of this Committee for taking over the LD system.
7. The Forum had rightly agreed to the claim of the Respondents and had given relief to the Appellant to deposit the impugned amount in instalments.
8. It was therefore prayed that in the light of the facts and documents brought on record, the present Appeal be dismissed and the Appellant be directed to deposit the amount of ₹ 1,06,09,033/- along with simple interest in the interest of justice.

**5.** **Analysis and Findings**

The issues requiring adjudication in the present Appeal filed pursuant to order dated 26.08.2020 of Hon’ble Punjab and Haryana High Court in CWP No. 10705 of 2020, are the legitimacy of

1. maintainability of claim for refund of electricity bills already raised and deposited in respect of Single Point Supply Connection, bearing Account No. CL-01, for the period from 17.09.2007 to 11/2014.
2. the demand raised by the Respondent, vide notice bearing no. 468 dated 21.03.2018, asking the Appellant to deposit ₹ 1,06,09,033/-, for the period from 11/2014 to 10/2017, after giving refund for ₹ 10,85,123/-.
3. taking over of LD system by the Licensee.

*My findings on the above issues are as under:*

**Issue (i)**

a) The Appellant has, in the present Appeal challenging the decision dated 11.06.2019 of CGRF, Patiala in Case No. CGP-26 of 2019, prayed for refund of Electricity Bills already charged and deposited in respect of Single Point Supply Connection, bearing account no. CL-01, for the period from 17.09.2007 to 11/2014.

b) A perusal of the Case File No. CGP-26 of 2019 of CGRF, Patiala revealed that the Appellant did not raise this issue in its Petition registered in the Forum on 25.01.2019 (whose decision dated 11.06.2019 has been challenged by filing the present Appeal). Accordingly, the Forum did not pass any order in this regard.

c) In this connection, it is relevant to peruse Regulation 3.18 (i) of PSERC (Forum and Ombudsman) Regulations, 2016 which provides that:

“3.18 No representation to the Ombudsman shall lie unless:

1. *The consumer had, before making a representation to the Ombudsman approached the Forum constituted under sub-section (5) of Section 42 of the Act, for redressal of his grievance;”*

It is observed that the Appellant does not fulfil the requirement of the aforesaid Regulation for preferring an Appeal before the Ombudsman on this issue for which, it did not seek remedy from the Forum.

d) It is also necessary to refer to the minutes of proceedings dated 07.09.2020 in this Court directing the Appellant to ensure that fresh Appeal to be submitted (as desired by the Appellant’s Counsel during the said hearing) would be on the issues and the period for which, relief was sought for from the Forum in Case No. CGP-26 of 2019.

A copy of the minutes of the said proceedings dated 07.09.2020 containing the above directions was sent to the Appellant vide letter no. 826-27/OEP/A-42/2019/RB dated 07.09.2020 and no objection to the direction given above was raised by the Appellant.

Further, the Appellant in its Appeal had left it to the wisdom of this Court whether to include the period from 17.09.2007 to 11/2014 in the final decision or not. Hon’ble Punjab & Haryana High Court in its judgement dated 26.08.2020 in CWP-10705-2020 (O & M) had observed that the Appellant Authority exceeded its jurisdiction in deciding the controversy with regard to the period 17.09.2007 to November 2014 as the same was not emerging from the impugned notice bearing no. 468 dated 21.03.2018.

e) In view of the above, the grievance of the Appellant on this issue is not maintainable. Accordingly, it is not just and appropriate to entertain and deliberate or adjudicate this issue on merits.

**Issue (ii)**

1. This issue relates to the dispute raised by the Appellant for setting aside the demand notice, bearing no. 468 dated 21.03.2018, asking the Appellant to deposit ₹ 1,06,09,033/-, for the period from 11/2014 to 10/2017, after giving refund of ₹ 10,85,123/-. The aforesaid demand raised by the Respondent was upheld by the Forum vide order dated 11.06.2019.
2. The oral and written submissions made by the Appellant and the Respondent have been incorporated in the preceding paras and are not being repeated for the sake of brevity.
3. Section 12 (b) of the Electricity Act-2003 describes the provision relating to Authorised persons to transmit supply, etc., electricity as under:

*“No person shall*

*(b) distribute electricity; or*

*unless he is authorised to do so by a licence issued under section 14, or is exempt under section 13.”*

1. Section 86 1(a) of the Electricity Act-2003 dealing with the functions of State Commission constituted under the Act to regulate the electricity related issues of the consumers of the State prescribed the Functions of State Commission as under:

*“(1) The State Commission shall discharge the following functions, namely: -*

1. *determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:*

*Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;.”*

1. Section 181 of the Electricity Act-2003 further vests the State Commission with the following powers:

***“Powers of State Commissions to make regulations:***

*(1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.*

*(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely:*

***(x) Electricity Supply Code under Section 50***

*[The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity; measures for preventing tampering, distress or damage to electrical plant, or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters].*

1. The Appellant’s Counsel stated during hearing on 07.09.2020 and also in its written arguments during hearing on 20.11.2020 that the Appellant, M/s Bajwa Developers Ltd. was the Single Point Supply Consumer bearing Account No. CL-01 and the connection was released in the year 2004. The Appellant was a company engaged in the development of Residential Colonies and Commercial Complexes. The Respondent also confirmed in its written reply/arguments that the Appellant was a Single Point Supply Consumer.
2. During hearing on 14.10.2020, the Respondent submitted photo copies of Application and Agreement Forms dated 19.07.2004, 17.01.2007, 26.11.2007 and 28.11.2007 signed between the consumer and the erstwhile PSEB (now PSPCL). As per these agreements, the erstwhile PSEB (now PSPCL) had to raise Electricity Bills as per Tariff Rates and General Charges as circulated by the Licensee from time to time and the Appellant was bound to pay the same.
3. Regulation 1.2 of PSERC (Electricity Supply Code and Related Matters), Regulation, 2007 (applicable w.e.f 01.01.2008) provides as under:

“*These Regulations shall be applicable to all Distribution Licensees (including entities exempted under Section 13 of the Act) and all consumers in their respective licensed/supply areas, in the State of Punjab.”*

1. Regulation 3.2 of the said PSERC (Electricity Supply Code and Related Matters), Regulation, 2007 (applicable w.e.f. 01.01.2008) reads as under:

*“The Licensee will within six months of the date of notification of Supply Code or the issue of a licence submit the Conditions of Supply for the approval of the Commission.”*

As per this Regulation, PSERC approved ‘Conditions of Supply’ applicable w.e.f. 01.04.2010. These ‘Conditions of Supply’ though now repealed, were applicable to all the consumers of the State of Punjab.

1. In this connection, it is worthwhile to peruse the provision contained in Regulation 29 of Supply Code 2007 (effective from 01.01.2008 to 31.12.2014) which are reproduced below:

***“29 Recovery of electricity charges from consumers***

*29.1 A Licensee may recover from a consumer any charges due to him in respect of the supply of electricity or for the provision of any meter, electric line or electrical plant.*

*In addition, a consumer will be liable to pay any additional charges leviable relating to the supply of electricity as per conditions in force.*

*29.2 The Licensee will recover all such charges for electricity/electrical equipment supplied as per the tariff determined or charges approved by the Commission.*

*29.3 Consumers will also be liable to pay the amounts chargeable by way of taxes, duties, octroi, cess and the like as may be levied by the State Government or any other competent authority.*

*29.4 All consumers will for every billing cycle effect payments to the Licensee within the time specified in Regulation 31 at the notified offices of the Licensee or any other place specified by the Licensee for the purpose.”*

From the above, it is very clear that the licensee can recover electricity bill as per Tariff determined or charges approved by the Commission only.

The above provisions were amended vide Regulation 29 of Supply Code 2014 (effective from 01.01.2015) providing as under:

*“****29****.* ***RECOVERY OF ELECTRICITY CHARGES FROM CONSUMERS***

*29.1 A distribution licensee may recover from a consumer any charges in respect of the supply of electricity as per General Conditions of Tariff and Schedules of Tariff. In addition, a consumer shall be liable to pay rent and/or other charges in respect of any electric meter or electrical plant provided by the distribution licensee as per Schedule of General Charges.*

*29.2 Consumers shall also be liable to pay the amounts chargeable by way of taxes, duties, octroi, cess etc. as may be levied by the State Government or any other competent authority.*

*29.3 All consumers shall make payment for every billing cycle to the distribution licensee within the time specified in Regulation 31 at the notified offices of the distribution licensee or any other place or through any agency approved by the distribution licensee for the purpose.*

*29.4 The Monthly Minimum Charges (MMC) shall be payable by a consumer even if no electricity is actually consumed or the charges on actual consumption basis is less than the monthly minimum charges fixed by the Commission. Minimum charges shall also be payable on reconnection for the period the connection remained disconnected due to default on the part of consumer. However for any delay in re-connection by distribution licensee, the consumer shall not be liable to pay MMC for such period of delay.”*

These provisions also make it clear that distribution licensee can recover from a consumer any charges in respect of Supply of electricity as per General Conditions of Tariff and Schedule of Tariff. In addition, a consumer is also liable to pay rent and/or other charges in respect of any electric meter as per schedule of General Charges.

1. Single Point Supply connections are governed by Condition No. 8 of Conditions of Supply during the period 01.04.2010 to 31.12.2014. Salient features of One Point Supply to Residential Colonies/Building Complexes as per Condition 8.1 are as below:

***“8.1******One point Supply to Residential Colonies/Building complexes***

*i) The PSPCL will supply electricity at one point for residential purposes including common services on receipt of an application from a developer/ owner/association formed by the residents of a colony/building complex for providing electricity to the residents and for common services.*

*1[The electric supply to residential colonies / building complexes having demand more than 2500 KVA and upto 4000 KVA shall be given by erecting separate 11 KV feeder. As per provisions contained in Condition 8.7, the developer / owner / association formed by the residents of a colony / building complex shall be liable to pay charges towards expenses incurred by the Licensee in providing supply of electricity as per regulation 9 of Electricity Supply Code and Related Matters Regulations 2007 in addition to initial security / security consumption as per regulation 14, 15 & 16 of the same.]*

*ii) A developer/owner/association formed by the residents of the colony/ building complex will obtain a separate one point connection under NRS category for supplying electricity for commercial purposes.*

*iii) A developer / owner / association formed by the residents of the colony/ building complex will at their cost install and maintain all infrastructure, including step down sub station, required for supply of electricity within the premises.*

*iv) A developer/owner/association formed by the residents of the complex will install transformer(s), Sub Station(s) and meter(s)/ metering equipment for supply of electricity at a convenient and easily accessible place.*

*v) A developer/owner/association formed by the residents will not charge for electricity supply at a tariff higher than that approved by the Commission for the respective category of consumers. However the additional expenses in the event of supplying back up electricity may be recovered from the ultimate users of such electricity. Compatible meters may be installed by the owner/ developer / association of residents/ users for separately measuring back up electricity consumption.*

*vi) A developer/owner/association formed by the residents of the colony/ building complex will provide meters to all the residents and will also be responsible for all liabilities and obligations including individual metering, billing, collection of charges from individual users and payment of electricity bills to the Board.*

*vii) The total consumption of electricity recorded at the point of supply will be billed at the highest slab rate of Domestic Supply when it is provided for residential purposes including common services. NRS rates will be applicable when the supply is effected for commercial purposes. However a rebate of 12% in case of Domestic Supply and 10% in case of NRS will be allowed in addition to any other rebate on electricity consumption charges as admissible under the General Conditions of Tariff.*

*A developer/owner/association formed by the residents of the residential colony/building complex will also be liable to pay monthly minimum charges on the basis of sanctioned load/Contract Demand where applicable at rates specified in the Tariff Order for the relevant year.*

*viii) For setting up a Cluster Sub-Station the provisions of Condition no. 5.3 above will be applicable. The electricity lost in transformation [difference of consumption measured on high voltage side of Cluster Sub Station and total consumption recorded by meters installed for connections at (i) & (ii) above] will also be billed for each connection on a proportionate basis.”*

1. Section 62 of the Electricity Act-2003 lays down the following provisions for Determination of tariff:

*(1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –*

1. *supply of electricity by a generating company to a distribution licensee:*

*Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;*

*(b) transmission of electricity ;*

*(c) wheeling of electricity;*

*(d) retail sale of electricity:*

*Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.*

*(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.*

*(3)The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.*

*(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.*

*(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.*

*(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee”.*

m) The procedure for approval/issuance of Tariff Order is given in Section 64 of the Electricity Act-2003 which is reproduced below:

***“(Procedure for tariff order):****-(1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.*

*(2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.*

*(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,-*

*(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;*

*(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made there under or the provisions of any other law for the time being in force: Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.*

*(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.*

*(5) Notwithstanding anything contained in Part X, the tariff for any inter State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment there for.*

*(6) A tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order”.*

n) The State Commission (PSERC) is authorized to determine the tariff for Supply of Electricity to all the Consumers within the State of Punjab as per Section 86 of the Electricity Act-2003. Further, Section-181 of the Electricity Act-2003 vests the State Commission with power to make regulations relating to Electricity Supply Code under Section 50 of the Electricity Act-2003. These regulations framed by PSERC are applicable to all the consumers in the State of Punjab as clearly mentioned in Regulation 1.2 of PSERC (Electricity Supply Code & Related Matters) Regulation, 2007. ‘Conditions of Supply’ applicable w.e.f. 01.04.2010 duly approved by PSERC as per Regulation 3.2 of PSERC (Electricity Supply Code & Related Matters) Regulation, 2007 were also applicable to all the consumers of the State of Punjab. Recovery of electricity charges from the consumers is permissible only as per Regulation 29 of Supply Code-2007/2014. Raising of any demand in respect of electricity consumption beyond regulations/ tariff orders is illegal/unjustified.

1. It is observed that billing of the Appellant’s connection for the disputed period was not done as per General Conditions of Tariff and Schedule of Tariff, Conditions of Supply and Supply Code Regulations applicable from time to time and referred to in the preceding paras. Further, the billing done is not even as per circulars of the Distribution Licensee on the basis of which, the connection of the Appellant was released.
2. The demand raised by the Respondent vide memo no. 468 dated 21.03.2018 is not as per Tariff Orders issued by PSERC from time to time. In order to have an enforceable action against any consumer, authority/mandate has to be derived from the provisions of Electricity Act-2003 or the Regulations framed under Section 181 of this Act or Tariff Orders issued by the PSERC.
3. It is also observed that PSERC, vide order dated 09.06.2015 in Petition No. 61/2014, decided that Single Point Supply Connection already released are illegal and gave directions to convert these connections to ‘Franchisee Agreement’ but the Respondent had failed to act as per this Order in respect of this connection. Single Point Supply Connection of the Appellant is still running in contravention of the decision/guidelines of PSERC.
4. Rebate of 12% in case of Domestic Consumption and 10% in case of NRS consumption had been allowed in the demand notice no. 468 dated 21.03.2018 merely for maintenance of LD system, attending to consumers’ complaints, replacement of damaged transformers etc. Above mentioned rebate is to be given only if the Consumer/ Developer provide meters to all the residents in its colony and is responsible for all liabilities and obligations including individual metering, billing, collection of charges from individual users and payment of electricity bills to PSPCL. Further, the Developer had to lay the infrastructure and maintain the same for supply of electricity within the premises. This aspect has been clearly explained in Condition No. 8 of ‘Conditions of Supply’. The rebate allowed is on higher side because the Appellant was not performing all the functions for grant of rebate as mentioned in ‘Conditions of Supply’.
5. The Respondent had admitted vide memo no. 10697/99 dated 20.11.2020 that there was no separate schedule of tariff in the tariff orders issued by the PSERC for Single Point Supply Connection for billing the difference in energy consumption of single point energy meter and sum total of individual consumer meters in the colony. It has been mentioned that the billing aspect of this connection was decided by a Committee formed by PSPCL on the request of the Appellant. The Committee formed by PSPCL is not competent to decide tariff matters. The electricity bills can be recovered from a consumer only as per General Conditions of Tariff and Schedule of Tariff as per Regulation 29 of

Supply Code as applicable from time to time. It was the duty of the Licensee to get this type of connection included in the Tariff Orders issued by the PSERC because all the Tariff Orders are issued on the basis of application filed by the Licensee as per Section 64 of the Electricity Act-2003.

1. The respondent had submitted in written arguments that the connection of the Appellant comes under Condition No. 8.5 of the repealed ‘Conditions of Supply’. It is observed that this connection is not covered under Condition No. 8.5 of repealed ‘Conditions of Supply’. In case the connection is considered under Condition 8.5 of ‘Conditions of Supply’, then no demand regarding electricity consumption can be raised against the Appellant.
2. The Respondent had stressed that the Appellant had released 49 connections in the Colony on its own and the Appellant was charging the money for the electricity provided to them. Further, it was also mentioned that the Appellant was using electricity directly for many common services connections of the colony and connections for the same were obtained from the Respondent only in the year 2015 & 2016.

The said contention of the Respondent has no relevance in this case. The Respondent is at liberty to take action in respect of these violations against the Appellant as per law/regulations.

1. In view of the above, the demand raised by the Respondent, vide Memo No. 468 dated 21.03.2018, is not as per the Electricity Act-2003, Supply Code Regulations, Conditions of Supply and Tariff Orders issued by PSERC. Hence, the same is not legitimate and also not sustainable in the eyes of law.

**Issue (iii)**

a) The Appellant’s Representative, in the present Appeal and also in its written arguments submitted during hearing in this Court on 20.11.2020, pleaded that the subject matter of the Appellant’s grievance before CGRF, Patiala in Case No. CGP-26 of 2019 was related to billing in the impugned notice. As such, linking of handing over of LD system with the billing issue challenged by the Appellant was beyond the jurisdiction of the Forum. The Appellant would, therefore, like to place its objection on record against linking of the issue which was not the subject matter of its Petition before the Forum. Though the Appellant had objected to the bills raised by the Respondent, it had offered the LD system for being taken over by the Respondent.

b) The Respondent, in its defence, submitted that in this Appeal, the Appellant had totally relied upon the guidelines of CC No. 50 of 2007 by stressing that after issue of CC No. 50/2007, the LD System of colony be considered deemed to be taken over by the Respondent and it should not be charged for the difference of energy recorded by Single Point Meter (CL-01) and sum total of energy consumed by individual consumers of the colony. At the very outset, it was argued that the Appellant had not complied with the Clause 1 of the above mentioned circular as per which, it was desired that developer had to install the LD system, as per the approved sketches of the Department/Respondent. Inspite of correspondence by the Respondent, the developer (Appellant) never came forward for handing over the LD system after its completion as per the approved sketches of the Respondent and after due approval/clearance for installed LD System of colony from the Chief Electrical Inspector (CEI) of Punjab against installed transformers/HT Lines etc. The developer could have also handed over incomplete LD system by submitting bank guarantee for the incomplete LD System but it did nothing in this regard. Thus, incomplete LD system cannot be considered as deemed to be taken over to fulfil the conditions of CC No. 50/2007 as per whims and fancies of the Appellant. It was clear that the Appellant had never fulfilled conditions of CC No. 50/2007 to hand over LD System of the colony to the Respondent after its completion. Further, another opportunity was provided to the Appellant by the Respondent in the year 2010/11 for removal of Single Point Meter installed in the colony when another similar Single Point connection holder M/s Aastha Enclave, Barnala and some other developers gave representation to the Department/Licensee stating that they had obtained 11 KV Single Point Electric Connections for their colonies where individual meters for residents of the colonies were installed directly by the Licensee after depositing the requisite service connection charges and ACD. They had further intimated that difference of consumption recorded by Single Point metering and sum total of the individual meters got installed by the residents was being charged to them by respondent (PSPCL) and it was requested by the Developers for removal of Single Point Supply meter. In view of the above representation of the Developers, the Respondent (PSPCL) issued Memo No. 2049-2057 dated 13/10/2011 for the removal of the existing Single Point meters installed in the colonies, subject to compliance of provisions of Clause 8.5 of ‘Conditions of Supply’ and with suitable undertaking from developer that they will not claim any refund on account of 11 KV infrastructure laid by them in fulfilment of instructions prevalent at the time of release of connection. Thus, all Single Point Supply (as per clause 8.5 of Conditions of Supply) Developers were given an opportunity by the Respondent for removal of Single Point Supply meter after erection/handing over of LD system of colony by the Developer in compliance to Clause 8.5 of Condition of Supply. But, the Appellant did not avail the opportunity provided by the Respondent vide CC No. 50/2007 and later, vide letter dated 13.10.2011, for handing over complete LD System as per approved sketches and in turn facilitating the removal of Single Point Supply meter (CL-01) of the Developer Colony. The Appellant was falsely blaming the Respondent for not taking timely action on its part.

c) It is observed from perusal of Case No. CGP-26 of 2019 got registered by the Appellant in CGRF, Patiala that the Appellant had not raised the issue of taking over of LD system by the Respondent (PSPCL).

d) There is, thus, merit in the plea of the Appellant’s Representative that the issue of Handing Over of LD System by the Appellant to the Licensee should not be linked to the defaulting dues pending against the Appellant.

e) At the same time, LD systems, stated by the Appellant to have been laid down as per NOCs issued from time to time, are required to be handed over immediately to PSPCL. The balance work (s), if any, need to be got completed as per applicable Supply Code Regulations/Instructions issued by PSPCL from time to time. Suitable formats should be devised by the PSPCL for handing over/taking over of LD system because Assets are to be entered in the Asset Registers of PSPCL for proper accounting. Clearances received from the Chief Electrical Inspector, Punjab for energistaion of LD System should be furnished to PSPCL.

f) This issue is disposed off accordingly.

**6. Decision**

As a sequel of above discussions, the order dated 11.06.2019 of CGRF, Patiala in Case No. CGP-26 of 2019 is set aside. It is held that:

1. The dispute regarding refund of Electricity Bills charged and deposited relating to Single Point Supply Connection, bearing Account No. CL-01 for the period from 17.09.2007 to 11/2014, is not maintainable in terms of provisions of Regulation 3.18 (i) of PSERC (Forum and Ombudsman) Regulations, 2016 as the same was not raised by the Appellant in Case No. 26 of 2019 got registered on 25.01.2019, in CGRF, Patiala.
2. The demand raised by the Respondent, vide notice bearing no. 468 dated 21.03.2018 for ₹ 1,06,09,033/- for the period from 11/2014 to 10/2017, is set-aside. However, the Respondent is at liberty to raise fresh demand only as per regulations and tariff orders applicable at that time.
3. The issue of handing over of LD System by the Appellant to the Respondent is not to be linked to the defaulting dues pending against the Appellant. Since the Appellant has already laid down LD system and offered for its taking over by the Respondent, the same should be taken over by the Respondent immediately as per NOCs issued from time to time. The balance work (s), if any, need to be got completed as per applicable Supply Code Regulations/Instructions issued by PSPCL from time to time. Suitable formats should be devised for handing over/taking over of LD system because Assets are to be entered in the Asset Registers of PSPCL for proper accounting. Clearances received from the Chief Electrical Inspector, Punjab for energistaion of LD system should also be furnished to the Respondent.
4. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustments as per instructions of the PSPCL.

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

**8.** 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)

December 10, 2020 Lokpal (Ombudsman)

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