

**COURT OF THE LOK PAL (OMBUDSMAN),
ELECTRICITY, PUNJAB,
PLOT NO. A-2, INDUSTRIAL AREA, PHASE-1,
S.A.S. NAGAR (MOHALI).**

**(Constituted under Sub Section (6) of Section 42 of
Electricity Act, 2003)**

APPEAL No. 07/2022

Date of Registration : 14.02.2022

Date of Hearing : 24.02.2022

Date of Order : 24.02.2022

Before:

**Er. Gurinder Jit Singh,
Lokpal (Ombudsman), Electricity, Punjab.**

In the Matter of:

M/s. Damini Resorts and Builders Pvt. Ltd.,
Basant Avenue, Urban Estate,
Dugri, Ludhiana.

Contract Account Number: 3002960990 (MS)

...Appellant

Versus

Addl. Superintending Engineer,
DS Model Town (Spl.) Divn., PSPCL,
Ludhiana.

...Respondent

Present For:

Appellant: Sh. Parvesh Chadha,
Appellant's Representative.

Respondent : Sh. Satnam Singh, AAO (Revenue),
O/o Addl. Superintending Engineer,
DS Model Town (Spl.) Divn., PSPCL,
Ludhiana.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 07.12.2021 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-299 of 2021, deciding that:

“i. The amount of Rs. 587710/-, charged to the Petitioner vide notice no. 1428 dated 28.06.2021, due to difference of tariff, is correct and recoverable.

ii. SE/ DS, West Circle Ludhiana, may enquire the matter and Responsibility be fixed for releasing such connection under MS category, against the instructions, causing revenue loss to the department as well as harassment to the Petitioner.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 14.02.2022 i.e. after stipulated period of thirty days of receipt of the decision dated 07.12.2021 of the CGRF, Ludhiana in Case No. CGL-299 of 2021 by the Appellant on 16.12.2021. An application for condoning of delay in filing the Appeal in this Court was also received with the Appeal. The Appellant deposited the requisite 40% of the disputed amount vide receipt no. 163403265 dated 09.08.2021 and receipt no. 171971191 dated 27.01.2022 of ₹ 1,17,542/- each. Therefore, the Appeal was registered on

14.02.2022 and copy of the same was sent to the Addl. Superintending Engineer/ DS Model Town (Spl.) Divn., PSPCL, Ludhiana for sending written reply/ parawise comments with a copy to the office of the CGRF, Ludhiana under intimation to the Appellant vide letter nos. 131-133/OEP/A-07/2022 dated 14.02.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 24.02.2022 at 12.30 PM and an intimation to this effect was sent to both the parties vide letter nos. 136-137/OEP/A-07/2022 dated 17.02.2022. As scheduled, the hearing was held in this Court and arguments of both the parties were heard.

4. Condonation of Delay

At the start of hearing on 24.02.2022, the issue of condoning of delay in filing the Appeal beyond the stipulated period was taken up. The Appellant's Representative submitted that decision dated 07.12.2021 of the CGRF, Ludhiana was received by the Appellant on 16.12.2021 but due to some financial problems, the balance 20% of the disputed amount, which was a requisite to file an appeal, was deposited late by the Appellant. As such, there was delay in filing the appeal and the

Appellant had requested to condone the delay. I find that the Respondent did not object to the condoning of the delay in filing the Appeal in this Court either in its written reply or during hearing in this Court.

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

“No representation to the Ombudsman shall lie unless:

(ii) The representation is made within 30 days from the date of receipt of the order of the Forum.

Provided that the Ombudsman may entertain a representation beyond 30 days on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of 30 days.”

It was observed that refusal to condone the delay in filing the Appeal would deprive the Appellant of the opportunity required to be afforded to defend the case on merits. Therefore, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court beyond the stipulated period was condoned and the Appellant's Representative was allowed to present the case.

5. Submissions made by the Appellant and the Respondent

Before undertaking analysis of the case, it is necessary to go through written submissions made by the Appellant, Rejoinder filed by the Appellant and reply of the Respondent as well as oral submissions made by the Appellant's representative and the Respondent alongwith material brought on record by both the parties.

(A) Submissions of the Appellant

(a) Submissions made in the Appeal

The Appellant made the following submissions in its Appeal for consideration of this Court:-

- (i) The Appellant was having a MS category connection, bearing Account No. 3002960990, with sanctioned load of 24.64 kW/ 27.38 kVA in its name. The connection was obtained on 03.09.2002.
- (ii) The connection was applied under Industrial Category Medium Supply for 24.64 kW which was sanctioned by PSPCL and a Demand Notice was issued. The Appellant made the compliance of this demand notice by depositing Test Report & by paying service connection charges, CEI fee etc. PSPCL released the connection on 03.09.2002. Since then, the bills

were issued in MS category and the Appellant paid the bills regularly and nothing was outstanding.

- (iii) The Appellant received a Notice No. 1428 dated 28.06.2021 from AEE/ Comm., DS Model Town (Spl.) Divn., Ludhiana to pay ₹ 5,87,710/-. It was mentioned in the Notice that as per ECR No. 3/3252 dated 23.04.2021, the connection was found being used for Water Supply so the Appellant had been charged ₹ 5,87,710/- as difference of Tariff between MS and NRS category from May, 2008 to May, 2021. The Appellant would be billed under NRS Tariff from then onwards.
- (iv) The Appellant filed the Case in the Forum on 18.08.2021 which was decided by the Forum on 07.12.2021 against the Appellant. As such, the Appellant had filed an Appeal before the Hon'ble Court of Ombudsman.
- (v) The Appellant stated that the PSCPL had not produced the original Consumer Case i.e Agreement under MS Category and simply replied before the Forum that the Case was not traceable. Copy of FIR was not submitted and no responsibility was fixed for misplacement of the Consumer Case and no such documents were provided before the Forum.
- (vi) The Applicant submitted that instructions quoted by the Respondent for charging the amount were not applicable in its

case. The Enforcement pointed out that as per memo no. 930/934 dated 22.08.2019 of CE/ Commercial, connection for common services of Private Colonies should be billed under NRS Category as per clause 3.4 of PSERC notification no. PSERC/ Secy./ Regulation 38 dated 13.05.2008. But the Appellant had not taken the Single Point Connection for the Colony as all the residents of the Colony had taken individual supply from PSPCL. The PSPCL was releasing the connections in the Colony from their own Transformers. The said connection was running under MS Category for Water Supply to Colony as per same pattern of electricity connection released to Municipal Corporation and the PSPCL had released the same after completing all formalities according to their Rules and Regulations and conditions laid down in the Demand Notice. As such, the quoted instruction was not applicable to its connection.

- (vii) The Rules quoted in the Notice were also produced before the Forum but no such discussion was made. It was pointed out that why the ASE/ DS Model Town (Spl.) Divn., Ludhiana had not issued any Notice to change A&A form etc. when a clarification was issued by the CE/ Commercial, PSPCL, Patiala vide Memo No. 930/934 dated 22.08.2019 to which the

Respondent replied that it was not possible to give notice to all the Consumers. The PSPCL did not publicize this memo, then how could it come to the Notice of the Appellant which was a deficiency on the part of the Respondent (PSPCL). The Appellant had further added that there were no such Private Colonies under this Division and the Respondent did not bother to issue such Notice.

- (viii) The Respondent must provide the list of such Colonies before the Court and also provide the detail of the charges levied to them under their control to justify the implementation of Memo No. 930/934 dated 22.08.2019.
- (ix) The PSPCL had issued instructions/ clarification to PSERC notification no. 38 dated 13.05.2008 vide memo no. 930/934 dated 22.08.2019. The Appellant applied for MS connection and it was released on 03.09.2002. If the application under MS category was wrong then why it was released? The connection was released under MS category as then officers/ officials who released connection in the year 2002 were known to the fact that the said connection was not of Single Point supply to Co-op. Group Housing Society as per the Punjab State Electricity Regulatory Commission (Single Point Supply to Co-operative Group Housing Societies/ Employers) Regulations, 2008. The

connection was released correctly under MS Category. The

Regulation 3 was reproduced as under:-

“3. Supply of electricity at Single Point by the Distribution Licensee to a Cooperative Group Housing Society/ Employer.

3.1 A Distribution Licensee shall give supply of electricity for residential purposes including common services on an application by a Housing Society which owns the premises at a Single Point for making electricity available to the members of such Society residing in the same premises.

Provided that the provisions of this Regulation shall not in any way affect the right of a person residing in the Housing Unit sold or leased by such a Housing Society to demand supply of electricity directly from the Distribution Licensee.

3.2 A Housing Society will be obliged to seek supply of electricity from the Distribution Licensee at a Single Point for common services in its premises even if no application is submitted to the Distribution Licensee under Regulation 3.1.

3.3 A Distribution Licensee shall give supply of electricity for residential purposes including common services on an application by an Employer at a Single Point for making electricity available to his employees residing in the Employers' colony.

3.4 The Terms and Conditions of Domestic supply will be applicable to supply of electricity under Regulations 3.1 and 3.3. In case of supply of electricity for common services under Regulation 3.2, the Terms and Conditions of Non-Residential supply will be applicable.

3.5 A person carrying on any business/ commercial activity in the premises of a Housing Society/ Employers' colony getting supply of electricity at a Single Point will require separate direct supply of electricity from the Distribution Licensee for such activity on the Terms and Conditions of Non-Residential Supply. The Housing Society/ Employer will provide adequate space at a convenient place for installing transformer(s), allied equipment and meter(s).

3.6 *Release of connection for supply of electricity under Regulation 3 will be subject to and on such terms & conditions as specified in the Punjab State Electricity Regulatory Commission (Electricity Supply Code & Related Matters) Regulations, 2007 & Schedule of General Charges approved by the Commission.”*

- (x) The Terms and conditions as laid down in Regulations 4.1 and 4.2 were not complied with by the Appellant as it was not a Single Point Supply case. Regulations 4.1 and 4.2 were reproduced as under:-

“4. Terms & Conditions for Supply at a Single Point under Regulation 3:

4.1 *The Distribution Licensee will give supply of electricity at a Single Point only to a Housing Society/ Employer having building plans approved by the competent authority.*

4.2 *The Housing Society/ Employer will submit the application for supply of electricity at a Single Point to the Distribution Licensee. The Distribution Licensee will supply electricity at a Single Point at 11 KV or higher voltage.”*

- (xi) The connection was released as per instructions for Water Supply in MS Category as released to Municipal Corporations for basic amenities. No Single Point Supply was applied.
- (xii) The Respondent was intentionally not producing the original Consumer Case file to escape from the negligence of issuing wrong Notice.

- (xiii) The Notice was wrong and orders passed by the Forum needed to be set aside. The PSPCL had not issued Notice according to their own instructions.
- (xiv) The amount charged vide Notice No. 1428 dated 28.06.2021, was wrong and not recoverable. The PSPCL had not issued any Notice to change the agreement from MS to NRS category. It came to the notice of the Appellant on the date of checking by Enforcement i.e. 23.04.2021, as such the Appellant was ready to pay the difference of Tariff between MS and NRS category from 23.04.2021 and was ready to change A&A form.

(b) Submissions in Rejoinder

In its Rejoinder to the written reply of the Respondent, the Appellant in addition to the following submissions reiterated the submissions already made in the Appeal for consideration of this Court.

- (i) It was not replied properly neither in the Forum nor in this Court by the Respondent that as and when consumer case was lost and no copy of FIR was produced and no responsibility was fixed from whose custody it was lost.
- (ii) The Area is covered under Municipal Corporation, Ludhiana and approved by PUDA. The water supply was being given to residents through MS connection.

- (iii) The clarification was issued on 22.08.2019 by CE/ Commercial but Respondent had not issued any notice to the Appellant till the checking of connection on 23.04.2021 and the notice after checking was issued only on 28.06.2021 i.e. after 2 months. No agreement was changed under NRS category. The Respondent had not provided the list of such type of connections running in their area. The connection of the Appellant was not covered under Single Point Supply to Co-op. Group Housing Society as per the Punjab State Electricity Regulatory Commission (Single Point Supply to Co-operative Group Housing Societies/ Employers) Regulation, 2008. The Respondent should first prove that this connection was covered under Single Point Supply, second the Basant Avenue obtained single point supply for Co-op. Group Housing Society as per Regulation 3.3.
- (iv) The Respondent had wrongly released MS connection instead of NRS category, then where was the Appellant at fault. Even no notice was given to revise the A&A form. The notice amount may be recovered from the officials/ officers who were at fault. The order of the Forum needs to be set aside in the interest of justice and the amount charged to the Appellant was wrong and not recoverable from the Appellant.

(c) Submission during hearing

During hearing on 24.02.2022, the Appellant's Representative (AR) reiterated the submissions made in the Appeal as well as in the Rejoinder and prayed for acceptance of the Appeal. He could not produce any document to establish his claim that MS industrial tariff should be applied in this case. He could not submit copy of A&A forms submitted at the time of release of connection.

(B) Submissions of the Respondent

(a) Submissions in written reply

The Respondent submitted the following written reply for consideration of this Court:-

- (i) The Appellant was using an electricity connection, bearing Account No. 3002960990 for a Private Colony water works purpose. So, it was required to be billed under NRS category as per clause 3.4 of PSERC notification no. PSERC/ Secy./ Regu. 38 dated 13.05.2008 which was further clarified by the office of Chief Engineer/ Commercial, PSPCL, Patiala vide Memo No. 930/934 dated 22.08.2019. But the said electricity connection was running under MS category since the date of connection i.e 03.09.2002.

- (ii) The premises of the Appellant was checked by Enforcement vide ECR No. 3/3252 dated 23.04.2021 and directed the Respondent to comply with the above instructions. So, the A/c of the Appellant was overhauled by charging NRS Tariff from the period 05/2008 to 05/2021 & the Appellant was apprised vide Memo No. 1428 dated 28.06.2021 to deposit the calculated amount of difference of Tariff i.e NRS & MS along with calculation sheet. It was also mentioned that the Tariff had been changed from MS to NRS.
- (iii) It was submitted before the Forum also that the consumer case of the Appellant was not traceable. The instructions in PSERC notification no. PSERC/ Secy./ Regu. 38 dated 13.05.2008 which was further clarified by the office of Chief Engineer/ Commercial, PSPCL, Patiala vide Memo No. 930/934 dated 22.08.2019 were applicable to all water works connections running in all types of Colonies & not only to those colonies which were running at Single Point connection. No Tariff Order ever allowed water works connections of colonies to be billed under industrial category.
- (iv) The Respondent stated that this connection was wrongly released under MS category instead of NRS as it was being

used for water works and the Forum had rightly passed orders in favour of the PSPCL & against the Appellant.

- (v) The Respondent prayed for the dismissal of the Appeal as in all tariff orders, there was no provision to charge MS category tariff to water works connections except Municipal Corporation Water Works Connections.

(b) Submission during hearing

During hearing on 24.02.2022, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal.

6. Analysis and Findings

The issue requiring adjudication is the legitimacy of the notice no. 1428 dated 28.06.2021 for ₹ 5,87,710/- charged to Appellant due to difference of tariff and change of tariff from MS to NRS category.

My findings on the points emerged, deliberated and analyzed are as under:

- (i) The Appellant's Representative (AR) reiterated the submissions made by the Appellant in the Appeal. He pleaded that the Appellant had applied under Medium Supply Industrial category and the connection was released on 03.09.2002 in the

same category by the Respondent. Since then, the bills were issued under MS category and the Appellant used to pay the bills regularly and nothing was outstanding. The Appellant received a Notice No. 1428 dated 28.06.2021 from the AEE/ Comm., DS Model Town (Spl.) Divn., Ludhiana to pay ₹ 5,87,710/- for the difference of Tariff between MS and NRS category for the period from May, 2008 to May, 2021 as the connection was found to be used for Water Supply by the Enforcement. The Appellant approached the Forum against this notice but did not get any relief. He had further pleaded that the Regulations/ instructions quoted in the notice were relating to Single Point connections for which the Appellant had never applied and the Respondent never issued any notice to him to change the agreement from MS to NRS. As such, the Appellant prayed that the notice no. 1428 dated 28.06.2021 be quashed and it was ready to pay the difference of Tariff from the date of checking i.e. 23.04.2021 and was ready to change A&A Form.

- (ii) On the other hand, the Respondent controverted the pleas raised by the Appellant in its Appeal and reiterated the submissions made by the Respondent in the written reply. The Respondent argued that the Appellant was using an electricity connection for a Private Colony water works purpose. So, it was required

to be billed under NRS category as per clause 3.4 of PSERC notification no. PSERC/ Secy./ Regu. 38 dated 13.05.2008 which was further clarified by the office of Chief Engineer/ Commercial, PSPCL, Patiala vide Memo No. 930/934 dated 22.08.2019. But the said electricity connection was running under MS category since the date of connection i.e 03.09.2002. So, the A/c of the Appellant was overhauled by charging NRS Tariff for the period 05/2008 to 05/2021 and the Appellant was appraised vide Memo No. 1428 dated 28.06.2021 to deposit the calculated amount of difference of Tariff i.e. NRS & MS alongwith calculation sheet. It was also argued that the Tariff had been changed from MS to NRS. The Respondent contended that no Tariff Order had ever allowed water works connections of Colonies to be billed under industrial category. He admitted that the connection was wrongly released under MS category instead of NRS as the connection was being used for Private Colony water works purpose. The Respondent prayed for the dismissal of the Appeal as in all tariff orders, there was no provision to charge MS category tariff to water works connections except Municipal Corporation Water Works Connections.

(iii) The Forum in its order dated 07.12.2021 observed as under: -

“It is observed that Petitioner applied his connection for Water Works in private colony under MS category and the same was released accordingly. However, the relevant portion of PSERC notification no. PSERC/ Secy. /Regu. 38 dated 13.5.2008, is reproduced as under:-

Supply of electricity at Single Point by the Distribution Licensee to a Cooperative Group Housing Society/ Employer.

3.1 A Distribution Licensee shall give supply of electricity for residential purposes including common services on an application by a Housing Society which owns the premises at a Single Point for making electricity available to the members of such Society residing in the same premises. Provided that the provisions of this Regulation shall not in any way affect the right of a person residing in the Housing Unit sold or leased by such a Housing Society to demand supply of electricity directly from the Distribution Licensee.

3.2 A Housing Society will be obliged to seek supply of electricity from the Distribution Licensee at a Single Point for common services in its premises even if no application is submitted to the Distribution Licensee under Regulation 3.1.

3.3 A Distribution Licensee shall give supply of electricity for residential purposes including common services on an application by an Employer at a Single Point for making electricity available to his employees residing in the Employers' colony.

3.4 The Terms and Conditions of Domestic supply will be applicable to supply of electricity under Regulations 3.1 and 3.3. In case of supply of electricity for common services under Regulation 3.2, the Terms and Conditions of Non-Residential supply will be applicable.

As per this clause, reiterated by the O/o CE/ Commercial, Patiala vide memo no. 930/934 dated 22.8.2019, addressed to all EIC/ CEs under PSPCL, all such connections are required to be released under NRS category. The Forum also sought clarification regarding this issue, from the O/o CE/ Commercial, PSPCL, Patiala vide memo no. 1534 dated 05.04.2021, in response to which his office vide memo no. 512 dated 22.04.2021 has clarified that NRS tariff should be applicable to Water Supply & Sewerage Plants of Private Colonies. Keeping in view the above, Forum is of the opinion that NRS tariff should be applicable to Water Supply & Sewerage Plants of Private colonies and the connection should have been released under NRS category as per clause 3.4 of PSERC notification no. PSERC/ Secy./ Regu. 38 dated 13.5.2008.”

- (iv) I have gone through the written submissions made by the Appellant in the Appeal, Rejoinder filed by the Appellant, written reply of the Respondent as well as oral arguments of both the parties during the hearing on 24.02.2022. The Appellant applied for the water works connection under MS industrial category and the connection for the same was released. I agree with the arguments of the Respondent that connection was wrongly released under MS industrial category as no Tariff Order had ever allowed water works connections of colonies to be billed under industrial category. The Availability clause under Schedule of Tariff for Medium Supply (MS)

industrial category, relevant at the time of release of connection in the year 2002, is as under:-

“This tariff shall apply to all industrial power supply consumers having connected load ranging from 21 KW to 100 KW.”

The water works connection of a Colony cannot be termed as industry in any terms. So, the connection was wrongly released under MS industrial category. The Availability Clause under Schedule of Tariff for Medium Supply (MS) industrial category after 2002 had never covered the water works connection of a Colony. This lapse on the part of the Respondent should be investigated and the Respondent may take disciplinary action against the erring officials/ officers responsible for releasing the said connection under MS industrial category against the instructions resulting in loss of revenue to PSPCL and undue harassment to the Appellant.

- (v) PSERC Notification No. PSERC/ Secy./ Regu. 38 dated 13.05.2008 relating to Cooperative Group Housing Societies/ Employers is not applicable in this case and was wrongly quoted in the notice dated 28.06.2021 served to the Appellant.
- (vi) The Appellant could not produce any documents to establish his claim that MS industrial tariff should be applied in this case

with effect from the date of release of this connection on 03.09.2002.

- (vii) This connection appears to have been released under MS category industrial connection in violation of instructions of PSPCL/ PSERC/ PSEB with ulterior motives so as to give undue benefit to the Appellant.
- (viii) Both the parties had admitted that an agreement (A&A form) was signed at the time of release of connection but the same was not produced in the Court. The Respondent had pleaded that the consumer case is not traceable and even the Appellant had not given any copy of the Agreement. Any agreement signed in violations to instructions/ tariff orders/ regulations is not sustainable in the eyes of law. The Appellant had to pay as per tariff rates approved by the Commission or the Competent Authority from time to time.
- (ix) In view of the above, this Court is not inclined to interfere with the decision dated 07.12.2021 of the Forum in case no. CGL-299 of 2021.

7. Decision

As a sequel of above discussions, the order dated 07.12.2021 of the CGRF, Ludhiana in Case No. CGL-299 of 2021 is hereby upheld.

8. The Appeal is disposed of accordingly.
9. As per provisions contained in Regulation 3.26 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016, the Licensee will comply with the award/ order within 21 days of the date of its receipt.
10. 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.

February 24, 2022
S.A.S. Nagar (Mohali)

(GURINDER JIT SINGH)
Lokpal (Ombudsman)
Electricity, Punjab.