

**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. 42/2022

Date of Registration : 22.08.2022

Date of Hearing : 29.08.2022

Date of Order : 29.08.2022

Before:

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

In the Matter of:

M/s. Ishwar Industries,
C-200, Phase-VII, Focal Point,
Ludhiana-141010.

Contract Account Number: 3005063196 (LS)

...Appellant

Versus

Senior Executive Engineer,
DS Focal Point (Spl.) Division,
PSPCL, Ludhiana.

...Respondent

Present For:

Appellant: Sh. K.D. Parti,
Appellant's Representative.

Respondent : Er. Jagdeep Singh,
Sr. Xen/ DS Focal Point (Spl.) Division,
PSPCL, Ludhiana.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 12.07.2022 of the Corporate Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. T-412 of 2021, deciding that:

“Keeping in view of the above, Forum is of the opinion that the amount of claim of the petitioner is Rs. 4,84,205/-, which is less than Rs. 5 lacs. As per PSERC (Forum & Ombudsman) (2nd Amendment) Regulations, 2021 this Forum can deal with monetary disputes above Rs. 5 lacs. Therefore, as the disputed amount claimed by the petitioner is less than Rs. 5 lacs, Petitioner may approach the appropriate Forum.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 22.08.2022 i.e. within the period of thirty days of receipt of the decision dated 12.07.2022 of the CCGRF, Ludhiana in Case No. T-412 of 2021 by the Appellant on 21.07.2022. There were public holidays on 19.08.2022 to 21.08.2022. The requisite 40% of the disputed amount was not required to be deposited in this case as it was a refund case. Therefore, the Appeal was registered on 22.08.2022 and copy of the same was sent to the Addl. SE/ Sr. Xen, DS Focal Point (Spl.) Division, Ludhiana for sending written reply/ parawise comments with a

copy to the office of the CCGRF, Ludhiana under intimation to the Appellant vide letter nos. 897-899/OEP/A-42/2022 dated 22.08.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 29.08.2022 at 12.30 PM and intimation to this effect was sent to both the parties vide letter nos. 912-13/OEP/A-42/2022 dated 23.08.2022. As scheduled, the hearing was held in this Court and arguments of both the parties were heard.

4. 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 and reply of the Respondent as well as oral deliberations 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 LS Category Connection, bearing Account No. 3005063196 with sanctioned load of 396.702 kW/ 450 kVA in the

name of M/s. Ishwar Industries under DS Focal Point Division (Spl.), PSPCL, Ludhiana.

- (ii) The Appellant deposited ₹16,19,510/- as estimated cost on 13.03.2019 vide BA-16 No. 200/51104 for erection of independent feeder for the Appellant.
- (iii) The work of independent feeder erection was completed in the end of 2019. After completion of work, the Respondent was bound to calculate expenditure actually incurred (recoverable amount) against the works as per Regulation 9.3.6 of Supply Code, 2014 and was supposed to refund the excess amount deposited within 60 days, but it was not done in the case of the Appellant. If the recoverable cost would have been more than the deposited amount, then notice of 30 days was required to be served to the Appellant as per Regulation 9.3.7 of Supply Code, 2014.
- (iv) The Appellant requested to AEE/Commercial, DS Focal Point (Spl.) Division, PSPCL, Ludhiana on 04.06.2021 for refund of excess amount deposited than the actual expenditure incurred against deposit estimate amounting to ₹16,19,510/- as per Regulation 9.3.6 of Supply Code-2014, but they failed to comply with the instructions.
- (v) The Respondent did not take any action on the request of the Appellant for refund of excess amount deposited than the actual expenditure. The Appellant was compelled to file a case before the Forum. After deliberations for almost one year, the Forum failed to decide the issue. On

12.07.2022, the Forum gave vague order that refundable amount was less than ₹ 5 lac, so the Appellant may approach the Appropriate Forum. The Forum failed to understand the case rather refused to understand. Copy of the order issued by the Forum vide Memo No. 1283/T-412/2022 dated 12.07.2022 was received personally from the Forum office on 21.07.2022 by the Appellant.

(vi) As per the Appellant's estimate, the actual expenditure incurred for erecting 11 kV independent feeder was as under which was on the basis of figures submitted by the Respondent before the Forum:-

i)	Expenditure for erecting 11 kV independent line	= ₹ 8,82,904/-
ii)	16% charges amount	= ₹ 1,41,265/-
iii)	Cost of old existing structure used ₹ 2,81,000x1/3	= ₹ 93,667/-
iv)	Old structure labour cost ₹ 52,408x 1/3	= ₹ 17,469/-
	Total	= ₹ 11,35,305/-
v)	Applicable GST @ 18% on Item No. i (₹ 8,82,904 x 18%)	= ₹ 1,58,923/-
	Grand Total	= ₹ 12,94,228/-

As per clarification regarding Supply Code Regulation 9.5.7 for independent feeder to consumer issued by CE/Commercial vide Memo No. 464/DD/SR-91 dated 30.07.2020, in case if any independent feeder was erected by sharing the 11 kV existing poles, the applicant of independent feeder was required to be charged 1/3rd cost of existing poles/material.

(vii) The Respondent had shown amount of GST as ₹ 2,53,966/- in the expenditure which had been calculated wrongly in excess and moreover

this amount had not been deposited by the Respondent in the government accounts till date. In case the Respondent had deposited this amount then the same should have been intimated to the Appellant so that he might have got the input credit for the GST. Applicable GST amount came to ₹ 1,58,923/-only, which was applicable on item no. (i) above against new expenditure of ₹ 8,82,904/- only. GST amount of ₹ 2,53,966/- had been calculated wrongly by the Respondent.

(viii) The Appellant submitted some important provisions of Goods and Services Act- Section 122. Penalty for certain offences.-(1) Where a taxable person who-

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due; shall be liable to a penalty which may extend to twenty-five thousand rupees.

(ix) Till date, the Respondent had neither deposited GST amount in Govt. account nor had issued/supplied any copy of invoice showing amount of GST deposited. Hence, GST expenditure could not be claimed by the Respondent as expenditure actually incurred.

(x) Excluding GST amount, actual expenditure as per the Appellant's assessment came out to be ₹ 11,35,305/- only as per detail given above, against which the Appellant had deposited ₹ 16,19,510/-, so the Appellant was entitled for refund of ₹ 16,19,510/- - ₹ 11,35,305/- = ₹ 4,84,205/- plus interest on this amount after the period of 60 days from the date of

completion of work as per Supply Code-2014 Regulation 9.3.6. Even if it was considered that GST amount of ₹ 1,58,923/- was to be deposited by the Respondent, then also the Appellant was entitled for refund with interest.

- (xi) The Appellant prayed the Hon'ble Court of Ombudsman, Electricity, Punjab to be kind enough to order the genuine refund to the Appellant of the excess amount deposited than the actual expenditure with interest as per Supply Code Regulations.

(b) Submissions made in the Rejoinder

In its Rejoinder to the written reply of the Respondent, the Appellant submitted the following for consideration of this Court:

- (i) When the Appellant had filed its claim before the CCGRF, its claim was for more than ₹ 6 lacs as the total expenditure against deposit of ₹ 16,19,510/- was ₹ 8,82,904/- + ₹ 1,41,265/- = ₹ 10,24,169/- as per information given by the Respondent upon the enquiry of the Appellant. The Appellant had enclosed two letters to prove that dispute case filed was for ₹ 6 lacs. Further when the dispute was filed before CGRF directly, at that time Corporate CGRF was not functional and the dispute cases for any amount were being filed by the Consumers directly and were accepted by the CGRF as there was no bar for the amount that it should be beyond ₹ 5 lacs.
- (ii) The dispute cases filed by other consumers for amounts less than ₹ 5 lacs after the date of filing the case by the Appellant, had been decided by the same CGRF.

- (iii) Corporate CGRF had not decided the case deliberately for the reasons best known after hearing the case for almost one year. Corporate CGRF had tried to help the Respondent for their lapses and wrong actions by not following Supply Code Regulations to settle the account within 60 days from the date of completion of work. Moreover, CCGRF had given vague order that the Appellant should approach the concerned Zonal CGRF as the refundable amount was less than ₹ 5 lacs. On finality of the issue if the refundable amount after adding interest amount becomes more than ₹ 5 lacs in that case authority will again ask that the appellant should approach Competent Authority and the matter will not end depriving the Appellant of natural justice.
- (iv) As per the estimate of the Appellant, refundable amount will be more than ₹ 5 lacs when interest amount for the period 2019 to 2022 after completion of work was added in the basic refundable amount as per Supply Code Regulations.
- (v) It was requested to refund the amount deposited in excess to the actual expenditure with interest as per Supply Code Regulation.

(c) Submissions during hearing

During hearing on 29.08.2022, the Appellant's Representative (AR) reiterated the submissions made in the Appeal as well as in the Rejoinder and prayed to allow the Appeal.

(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 having a LS Category Connection, bearing Account No. 3005063196 with sanctioned load of 396.702 kW/ 450 kVA in the name of M/s. Ishwar Industries under DS Focal Point Division (Spl.), PSPCL, Ludhiana.
- (ii) The Respondent submitted that the estimate passed by the competent authority vide Memo No. 2190 dated 26.02.2019 was of an amount of ₹ 16,19,510/-. In the estimate, GST @ 18% was levied only on the Labour Charges, whereas as per the clarification received from AO/GST vide Memo No. 6206/6380 dated 22.07.2019, 18% GST was to be levied on material cost + Labour Charges as well, which was then included and therefore the GST 18% was now equal to ₹ 2,53,966/-. As per IWR, the total expenditure amounted to ₹ 16,64,888/-, so the consumer may now deposit the balance amount i.e. ₹ 45,379/-.
- (iii)
- | | |
|--|---------------|
| Expenditure for erecting 11 kV, Independent Line : | ₹ 8,82,904/- |
| Cost of Old Structure : | ₹ 2,81,000/- |
| Labour Charges : | ₹ 52,408/- |
| Total : | ₹12,16,312/- |
| 16% Charges : | ₹ 1,94,610/- |
| Total : | ₹14,10,922/- |
| GST @ 18% : | ₹ 2,53,966/- |
| G. Total : | ₹ 16,64,888/- |

It was submitted that the estimate had been passed by the Competent Authority i.e. Chief Engineer /Central Zone bearing rates as above. It was also intimated that as per estimate, the independent 11 kV Ishwar Industry Feeder was released on existing structure used for independent 11 kV Laj Export Feeder.

- (iv) GST Calculation had been done at the rate of 18% & it was calculated as above. It was also intimated that his office will deposit the amount of ₹ 21,306/- as GST for the estimate amount ₹ 16,19,510/- and the same will be intimated to the Ombudsman also. The Appellant had submitted his GST No. on 12.07.2022 via whatsapp to AEE/Commercial. Had, the department deposited GST amount in the unregistered accounts, the Appellant could not have availed the GST because GST No. was not provided by the Appellant at that time.

(b) Submission during hearing

During hearing on 29.08.2022, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal.

5. Analysis and Findings

The issue requiring adjudication is whether the decision of the Corporate Forum, to direct the Appellant to approach the Appropriate Forum as the

Corporate Forum can deal with monetary disputes above ₹ 5 Lac only, is tenable or not.

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

- (i) The Appellant's Representative (AR) reiterated the submissions made in the Appeal. He pleaded that the Appellant filed the case before the Forum in 2021 but after deliberations for almost one year, the Forum failed to decide the case and gave vague order that since the refundable amount was less than ₹ 5 Lac, so the Appellant might approach the Appropriate Forum. The Appellant prayed the Court of Ombudsman, Electricity, Punjab to be kind enough to order the genuine refund to the Appellant of the excess amount deposited than the actual expenditure with interest as per Supply Code, 2014, Regulation 9.3.6.
- (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 estimate passed by the competent authority vide Memo No. 2190 dated 26.02.2019 was of amount of ₹ 16,19,510/-. In the estimate, GST @ 18% was levied only on the Labour Charges, whereas as per the clarification received from AO/GST vide Memo No. 6206/6380 dated 22.07.2019, 18% GST was to be levied on both material cost and Labour Charges as well, which was then included and therefore, the GST @18% was now equal to

₹ 2,53,966/-. As per IWR, the total expenditure amounted to ₹ 16,64,888/-, so the consumer may now deposit the balance amount i.e. ₹ 45,379/-. He had submitted that as per the estimate, the independent 11 kV Ishwar Industry Feeder was released on existing structure used for independent 11 kV Laj Export Feeder. He assured that his office will deposit the amount of ₹ 21,306/- as GST for the estimate amount of ₹ 16,19,510/- and the same will be intimated to the Ombudsman also. The Appellant had submitted his GST No. on 12.07.2022 via Whatsapp to the AEE/Commercial. Had, the department deposited GST amount in the unregistered accounts, the Appellant could not have availed the GST because GST No. was not provided by the Appellant at that time. The Respondent prayed for the dismissal of the Appeal.

(iii) The Forum in its order dated 12.07.2022 observed as under:

“Forum observed that the dispute is regarding the expenditure incurred on erection of line for independent feeder and as per Petitioner, he is entitled for refund of Rs. 484205/- plus interest on this amount as explained in the above para. On the other hand, as per Respondent the actual expenditure amount is Rs. 1664888/- (including GST of Rs. 253966/-) and as such petitioner is required to pay balance amount of Rs. 45378/-.

Keeping in view of the above, Forum is of the opinion that the amount of claim of the petitioner is Rs. 4,84,205/-, which is less than Rs. 5 lacs. As per PSERC (Forum & Ombudsman) (2nd Amendment) Regulations, 2021 this Forum can deal with monetary disputes above Rs. 5 lacs. Therefore, as the disputed amount claimed by the petitioner is less than Rs. 5 lacs, Petitioner may approach the appropriate Forum.”

(iv) I have gone through the written submissions made by the Appellant in the Appeal, written reply of the Respondent as well as oral arguments of both

the parties during the hearing on 29.08.2022. The Corporate Forum dismissed the petition of the Appellant without going into the merits of the case. The Forum directed the Appellant to approach the Appropriate Forum as the amount claimed by the Appellant was less than ₹ 5 Lac. Regulation 2.9 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) (2nd Amendment) Regulations-2021 prescribes the limits of Monetary Complaints to be dealt by the different Forums. The Corporate Forum can directly deal with monetary disputes above ₹ 5 Lacs as per Regulation 2.9.1 (i), reproduced as under:

“The Corporate Forum shall have the jurisdiction to dispose of all the monetary disputes of an amount exceeding Rs. Five lakh (Rs. 5,00,000/-) in each case. Provided that the complaint/representation is made within two years from the date of cause of action”.

- (v) This Court observed that the Appellant had filed the petition before the Forum mentioning the disputed amount as ₹ 6 Lac. The Forum itself had mentioned in its decision that as per the Appellant, he was entitled for refund of ₹ 4,84,205/- plus interest, which also becomes more than ₹ 5 Lacs if interest portion is added to this amount. So, the observation of the Forum that the disputed amount was less than ₹ 5 Lac is not correct.
- (vi) The Appellant approached the Forum in August, 2021 for the redressal of its grievance and the Forum took nearly 1 year to dismiss the case and that too without going into the merits of the case, which is not desirable on the part of the Forum.

- (vii) The Forum should have passed a speaking/ detailed order on the issues involved after giving an opportunity of hearing to both parties. Detailed deliberations were not held and due process of law was not followed in the Forum in respect of issues raised by the Appellant in the case filed before the Forum. With a view to meet the ends of ultimate justice, this Court is inclined to remand back this Appeal case to the Corporate CGRF, Ludhiana for hearing, adjudicating and passing of speaking orders in respect of issues raised before this Court as per PSERC (Forum & Ombudsman) Regulations, 2016 as amended from time to time. This dispute case is already delayed by more than a year. As such, the Corporate Forum may decide the case on priority basis.
- (viii) In view of above, this court is not inclined to agree with the decision dated 12.07.2022 of the Forum in Case No. T-412 of 2021.

6. Decision

As a sequel of above discussions, the order dated 12.07.2022 of the Corporate CGRF, Ludhiana in Case No. T-412 of 2021 is hereby set-aside. The Appeal case is remanded back to Corporate CGRF, Ludhiana with a direction to hear and decide this case on merits expeditiously as per PSERC (Forum & Ombudsman) Regulations, 2016 as amended from time to time.

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

8. 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.
9. In case, the Appellant or the Respondent is not satisfied with the above decision, it is at liberty to seek appropriate remedy against this order from the Appropriate Bodies in accordance with Regulation 3.28 of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016.

August 29, 2022
S.A.S. Nagar (Mohali)

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