

**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. 47/2022

Date of Registration : 19.09.2022

Date of Hearing : 29.09.2022

Date of Order : 29.09.2022

Before:

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

In the Matter of:

M/s. Kirpa Foods,
Village Jorki Kankar Wali,
Fazilka.

Contract Account Number: Y52FS0100039 (LS)

...Appellant

Versus

Addl. Superintending Engineer,
DS Division, PSPCL,
Fazilka.

...Respondent

Present For:

Appellant: Sh. Ashok Kumar Dhawan,
Appellant's Representative.

Respondent : (1) Er. Ramesh Kumar,
Assistant Engineer,
DS Suburban Sub Divn.,
PSPCL, Fazilka.
(2) Sh. Sandeep Kumar, RA.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 09.08.2022 of the Corporate Consumer Grievances Redressal Forum, Ludhiana in Case No. CF-94 of 2022, deciding that:

“Forum observed that the amount for the dispute of threshold rebate of 2017-18 is less than Rs. 5 Lac, therefore the same cannot be heard in Corporate Forum as per PSERC (Forum & Ombudsman) (2nd Amendment) Regulation 2021. However, petitioner can approach appropriate Forum for redressal of his grievances.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 19.09.2022 i.e. within the period of thirty days of receipt of the decision dated 09.08.2022 of the CCGRF, Ludhiana in Case No. CF-94 of 2022, received by the Appellant on 26.08.2022. The requisite 40% of the disputed amount was not required to be deposited in this case being a refund case. Therefore, the Appeal was registered on 19.09.2022 and copy of the same was sent to the Addl. SE/ DS Division, PSPCL, Fazilka for sending written reply/ parawise comments with a copy to the office of the CCGRF, Ludhiana under intimation to the Appellant vide letter nos. 1010-12/OEP/A-47/2022 dated 19.09.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 29.09.2022 at 12.30 PM and intimation to this effect was sent to both the parties vide letter nos. 1024-25/OEP/A-47/2022 dated 21.09.2022. 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 along with 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. Y52-FS01-00039 with sanctioned load of 800 kW and CD as 800 kVA running in the name of M/s Kirpa Foods under DS Division, PSPCL, Fazilka.

- (ii) The Appellant had filed a petition before the CGRF, Patiala in the month of 02/2022, which was taken on record as Case No. T-52 of 2022, but first hearing was held on 17.06.2022 and thereafter the CGRF, Patiala was disbanded and the case was transferred to the Corporate Consumer Grievance Redressal Forum, Ludhiana. The case was decided against the instructions of PSPCL as laid down vide Commercial Circular No. 39/2021, issued by the office of the Chief Engineer/ Commercial, Patiala.
- (iii) The case was not decided on the merits of the case and only monetary limit i.e. less than Rs. 5.00 lac was considered for disposal of the case and even the monetary limit taken was not correct as presumed by the Corporate Forum, Ludhiana.
- (iv) As per the original petition, the following issues were raised before the Forum:-
- (a) To refund/ adjust ₹ 6,27,105/- on account of non-adjustment of threshold rebate for the year 2017-18.
 - (b) To refund/ adjust interest for ₹ 2,58,994/- as admissible under Regulation No. 35.1.3 of the Supply Code, 2014.
 - (c) To allow the interest for ₹ 77,920/- against ₹ 9,74,010/- deposited as ACD/Meter Security, for the period 08/2014 to 03/2015 under Regulation 17 of the Supply Code-2014.

- (d) To allow interest on interest for ₹ 1,11,210/- admissible under Regulation 17.3 of the Supply Code-2014.
- (v) But the Forum decided only the issue for threshold rebate for the year 2017-18 and all the other issues (b) to (d) mentioned above were dropped and no hearing was allowed on the pretext that each issue was less than ₹ 5.00 lac. The action of the Forum was not as per true sense of CC No. 39/2021 whereas limit of ₹ 5.00 lacs was fixed for the whole case and not for each separate issue. Even the issue of threshold rebate for 2017-18 was not decided on merits of the issue.
- (vi) The issues from (c) to (d), as mentioned above, were dropped without giving an opportunity of being heard and only monetary limit was considered, which was against the instructions as laid down by the Hon'ble PSERC in this regard as per Regulation 2.31 of PSERC (Forum and Ombudsman) (2nd Amendment) Regulations, 2021 and also against the instructions contained in CC No. 39/2021.
- (vii) Although the Forum had exclusive right to reject any claim or accept it but the Forum had pre-decided the case without giving any opportunity of being heard which was against the true sense of justice.

- (viii) The case was decided after 184 days from the submission of grievance before the CGRF, Patiala during February, 2022 which was against the prescribed time limit of 45 days as laid down vide Regulation 2.31 of PSERC (Forum and Ombudsman) Regulations 2021 reproduced as under:-

“2.31 On receipt of the comments from the concerned officer of the licensee or otherwise and after conducting or having such inquiry or local inspection conducted as the Forum may consider necessary, and after affording reasonable opportunity of hearing to the parties, the Forum shall pass appropriate orders for disposal of the grievance, within a period not exceeding forty five (45) days from the date of receipt of the complaint/grievance. The complaint/grievance by senior citizens physically challenged or person suffering from serious ailments shall be disposed of on priority. However the order in case of grievance relating to non-supply, connection or disconnection of supply shall be issued by the Forum within 15 days of the filing of the grievance.”

- (ix) It was further added that several cases registered after February, 2022 were decided by the Forum. Meanwhile the CGRF, Patiala was disbanded which led to further delay for which Appellant was not responsible.
- (x) The total amount of this case was not less than ₹ 5.00 lacs as discussed above. Moreover when the case was initially submitted before the CGRF, Patiala, the monetary limit was not mandatory. So, the case was fully fit to be heard as appeal and it was humbly prayed that if this Appeal was not allowed, the Appellant was likely to suffer irreparable losses.

- (xi) It was specifically mentioned that as per Commercial Circular No. 39/2021, the criteria of amount was per case and not per issue. The instructions as mentioned above are reproduced as under:-

“2.9.1 Corporate Forum

(i) 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.

(ii) Any complainant aggrieved by non-redressal of his grievance within the time period specified by the Commission or is not satisfied with the redressal of the complaint by the Zonal or Circle or Divisional Forum may himself or through his authorized representative, approach the Corporate Forum in writing for the redressal of his grievance.

Provided that the Corporate Forum shall entertain only those complaints against the orders of Zonal or Circle or Divisional Forum, as the case may be, where the representation is made within 2 months from the date of receipt of the orders of respective Zonal/Circle/Divisional Forum, as the case may be.

Provided further that the Corporate Forum may, for reasons to be recorded in writing, entertain a complaint which does not meet the aforesaid requirements.”

- (xii) The case was decided on 09.08.2022. However, the copy of judgment was sent by speed post on 22.08.2022, which was received on 26.08.2022. Therefore, the Appeal was submitted within one month of the receipt of copy of judgment.
- (xiii) The issue regarding monetary limit had already been decided in the Appeal No. A-46 of 2022 by this Hon’ble Court. The

Appellant prayed to kindly accept the Appeal in the interest of justice.

(b) Submissions made in the Rejoinder

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

- (i) The Appellant submitted that as regards the reply of the Respondent that the claim of refund/ adjustment of threshold rebate for the year 2017-18 for ₹ 4,40,689/- was time barred, it was not correct. To elaborate, the definition of Regulation 2.25 of PSERC (Forum and Ombudsman) Regulations, 2016 is reproduced as under:-

“The Forum shall entertain only those complaints where the representation is made within 2 years from the date of cause of action in case the complainant approaches the Forum directly or within 2 months from the date of receipt of the orders of respective Dispute Settlement Committee constituted under CCHP.

Provided that the Forum may, for reasons to be recorded in writing, entertain a complaint which does not meet the aforesaid requirements.”

- (ii) It was further requested that due to expansion of the pandemic disease Covid-19, the Hon’ble Supreme Court of India passed an order dated March 23, 2020 extending the limitation period w.e.f. 15.03.2020 to 14.03.2021 which was further extended from 15.03.2021 to onwards by the order dated 14.03.2021. It

was added that as per latest Order No. 871 of 2022, the Hon'ble Supreme Court of India had extended the date upto 31.05.2022. So, to include period from 14.03.2020 to 31.05.2022, was a violation of the ruling of the highest Court of land, because this ruling was binding to central/ all states legislation and tribunals of the country.

- (iii) It was further requested that the period of threshold rebate related to the bill for the month of 03/2018 and the bill for 03/2018 was issued on 05.04.2018 which was payable on 16.04.2018. Thus, the period after 16.04.2018 to 31.05.2022 could not to be included in the limitation period.
- (iv) It was wrong that interest was not admissible under Regulation 35.1.3 of the Supply Code, 2014. In view of the position explained above, both the claim and interest were as per law and as per rules of PSPCL, as the Appellant had to pay more during the month of 4/2018 than the actual bill due to fault of the Respondent.
- (v) The reply of the Respondent in regard to claim of interest on interest as per Regulation 17.3 of Supply Code-2014 was wrong and not based upon the facts.
- (vi) The Appellant again requested this Court to issue instructions to the Corporate CGRF, Ludhiana to decide the case on merits.

The position regarding CC No. 39/2021 as explained in reply was not correct, rather the case should be considered as per guidelines issued by the Hon'ble Court of Ombudsman in the Appeal No. 46 of 2022.

(c) Submission during hearing

During hearing on 29.09.2022, the Appellant's Representative (AR) reiterated the submissions made in the Appeal/ rejoinder and prayed to allow the same. He pleaded that the case may be remanded back to Corporate Forum for hearing/ decision on merits.

(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. Y52FS0100039 with sanctioned load of 800 kW/ 800 kVA running under DS Division, PSPCL, Fazilka.
- (ii) The Respondent submitted that the Appeal submitted by the Appellant was not fully correct. The issue-wise reply was given by the Respondent.
- (iii) **Refund/Adjustment of threshold rebate for the year 2017-**

18:- As per PSPCL norms, the Respondent scrutinized his

records and found that there were 3,27,670 units excess in the year 2017-18 on which threshold rebate was required to be given. The correct calculation of this was ₹ 4,40,689/-. However, this would not be given to the Appellant due to lapse of time (2 years) as per Commercial Circular No. 39/2021 and Regulation 2.9.1 of PSERC (Forum and Ombudsman) Regulations, 2016.

- (iv) **Refund/adjustment of interest for as admissible under Regulation No. 35.1.3 of Supply Code-2014:-** There was no question for interest on above amount of threshold rebate because the Appellant had not approached the PSPCL office for this within time period mentioned in Regulation 35.1.2 of Supply Code-2014, so there was no applicability of Regulation 35.1.3 of Supply Code-2014.
- (v) **Refund of interest on Security for the period 01.08.2014 to 31.03.2015:-** The interest on Security for above mentioned period was ₹ 76,570/- which was refunded in Appellant's bill issued on 23.09.2022. The total Security of Appellant was ₹ 9,44,000/- as advanced consumption deposit and ₹ 27,060/- as Meter Security as per BA 16 No. 102/85328 dated 28.07.2014, which was wrongly updated as ₹ 30,010/- so there was shortage of ₹ 2,950/- in Meter Security for which the Court was

requested to direct the Appellant to deposit this shortage amount in PSPCL DS Sub Division, Sub-urban Fazilka.

(vi) **To allow interest on interest as per Section 17.3 of Supply**

Code-2014:- As per CE/ Commercial, Patiala Memo No 1038-43/DD/SR-103 dated 15.05.2019, Memo No. 49-54/DD/SR-103 dated 08.01.2022, Memo No. 575-81/DD/SR-103 dated 21.09.2020, Memo No. 297-302/DD/SR-103 dated 26.03.2021 and Memo No. 121-26/DD/SR-103 dated 26.06.2022, there was no provision to allow interest on interest because Security/Additional Security & Meter Security was already updated by this office on time and interest for pending period was refunded in Appellant's bill for the month of 09/2022. So as per above-mentioned office orders, there was no provision applicable of Section 17.3 of Supply Code-2014.

(c) **Submissions with reference to Rejoinder:**

- (i) The Appellant stated in the Rejoinder that the claim was not time barred. This was wrong because the Appellant had enough time to approach the Respondent for this issue i.e from the issue date of bill for the month of 03/2018 i.e from 16/04/2018 upto 21/03/2020 before the lockdown of (Covid-19) and from the date 08.05.2020 to onwards because the work of

Respondent resumed w.e.f 08.05.2020 as per CC no. 21/2020 dated 07.05.2020.

(ii) There was no interest admissible for this cause of action under regulation 35.1.3 of Supply Code, 2014 because the Appellant had not given any complaint/ request letter for this under regulation 35.1.2 of Supply Code, 2014 within time period.

(iii) Because the pending interest on securities was paid to Appellant in the bill for the month of 09/2022 so there was no provision to allow interest on interest because the Appellant was receiving interest on securities every year in its bill.

It was prayed for dismissal of the Appeal and the Appellant can approach appropriate Forum for redressal of its grievances i.e Zonal Forum as per CC No. 39/2021 dated 28.10.2021 because the amount of dispute is less than ₹ 5.00 lacs.

(d) Submission during hearing

During hearing on 29.09.2022, the Respondent reiterated the submissions made in the written reply to the Appeal. However, he has no objection if the case is remanded back to Corporate Forum for adjudication.

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 various issues raised by the Appellant amounting to ₹ 10,75,229/- collectively in one case, but individually each dispute was of amount less than ₹ 5 Lac 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 decision of the Forum was wrong as the total disputed amount involved was ₹ 10,75,229/- which was more than ₹ 5.00 lac. He pleaded that the case was filed with the CGRF, Patiala in the month of February, 2022 as Case No. T-52 of 2022 and as per Regulation 2.31 of PSERC (Forum and Ombudsman) Regulations, 2021, the case was to be decided within 45 days of the registration. But after holding first hearing on 17.06.2022 by the CGRF, Patiala; it was disbanded and the case was transferred to the Corporate CGRF, Ludhiana as per regulations as the amount of

case was more than ₹ 5.00 lac. But out of four issues raised by the Appellant in its Petition, the Corporate Forum decided to hear only first issue of Threshold Rebate and dropped the other issues without giving an opportunity of being heard, on the ground that all these issues were individually less than ₹ 5.00 lac each. Later on, the Corporate Forum decided the case on 09.08.2022 on first issue of Threshold Rebate also on the same plea that as the amount of Threshold Rebate agreed by both the Appellant and the Respondent during hearing was less than ₹ 5.00 lac, so this issue also cannot be heard in the Corporate Forum. The Corporate Forum did not decide the case of the Appellant on the merits, against the Regulations of the Hon'ble PSERC and CC No. 39/2021. He pleaded that the total amount of this case was not less than ₹ 5.00 lac. Moreover when the case was initially submitted before the CGRF, Patiala, the monetary limit was not mandatory. He pleaded that monetary criteria mentioned in the Regulation 2.9.1 of PSERC (Forum and Ombudsman) Regulations, 2021 was per case basis and not per issue basis. He prayed that the Appeal be accepted in the interest of justice otherwise the Appellant would suffer irreparable loss.

- (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 claim of the Appellant regarding Threshold Rebate of the FY 2017-18 and interest thereon was time barred as per Commercial Circular No. 39/2021 and Regulation 2.9.1 of PSERC (Forum and Ombudsman) Regulations, 2016 as it was more than 2 years old and the Appellant never approached them for this earlier. He argued that the interest on security for the period from 01.08.2014 to 31.03.2015 had already been given to the Appellant in its bill dated 23.09.2022. Further, he argued that since the interest on security had already been given to the Appellant in its bill dated 23.09.2022, so the claim of the Appellant for the interest on this interest was not admissible.
- (iii) The Corporate Forum in its order dated 09.08.2022 observed as under:

“During pre hearing on dated 26.07.2022, Forum decided to register the case as per claim of petitioner for Rs. 627105/- being more than 5 lacs for the dispute of threshold rebate of 2017-18.

In Today’s hearing, Respondent submitted calculations of Rs. 440689/- regarding threshold rebate of 2017-18 to which Petitioner agreed.

Forum observed that the amount for the dispute of threshold rebate of 2017-18 is less than Rs. 5 Lac, therefore the same cannot be heard in Corporate Forum as per PSERC (Forum & Ombudsman) (2nd Amendment) Regulation 2021. However, petitioner can approach appropriate Forum for redressal of his grievances.”

(iv) I have gone through the written submissions made by the Appellant in the Appeal/ rejoinder, written reply of the Respondent as well as oral arguments of both the parties during the hearing on 29.09.2022. 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 all the disputes/ issues raised by the Appellant in its Petition were less than ₹ 5 Lac each. 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 Lac 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.”

This Court had observed that the Monetary Limit mentioned in the Regulation 2.9.1 (i) above is on “each case” basis and not on “each issue” basis.

(v) This Court observed that the Appellant had filed the petition before the CGRF, Patiala mentioning the disputed amount as

₹ 10,75,229/-. After the CGRF, Patiala was disbanded; this case was transferred to the Corporate Forum as per the Monetary Limits mentioned in Regulation 2.9.1 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) (2nd Amendment) Regulations-2021. So, the decision of the Forum that the disputed amount was less than ₹ 5 Lac is not correct and tenable.

- (vi) The Appellant approached the CGRF, Patiala in February, 2022 for the redressal of its grievance and the Corporate Forum, after nearly 6 months, disposed of the case and that too without going into the merits of the case, which is not desirable on the part of the Forum as the case was to be decided within a period not exceeding 45 days from the date of receipt of complaint/grievance as per Regulation 2.31 of PSERC (Forum and Ombudsman) (2nd Amendment) Regulations, 2021 which is reproduced below :

“2.31 On receipt of the comments from the concerned officer of the licensee or otherwise and after conducting or having such inquiry or local inspection conducted as the Forum may consider necessary, and after affording reasonable opportunity of hearing to the parties, the Forum shall pass appropriate orders for disposal of the grievance, within a period not exceeding forty five (45) days from the date of receipt of the complaint/grievance. The complaint/grievance by senior citizens physically challenged or person suffering from serious ailments shall be disposed of on priority. However the order in case of grievance relating to non-supply, connection or disconnection of supply shall be issued by the Forum within 15 days of the filing of the grievance.”

- (vii) The Forum should have passed a speaking/ detailed order on the issues involved in this case after giving an opportunity of hearing to both parties. Detailed deliberations were not held and due process of law was not followed in the Corporate Forum in respect of issues raised by the Appellant in the dispute 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 7 months. 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 09.08.2022 of the Corporate Forum in Case No. CF-94 of 2022.

6. Decision

As a sequel of above discussions, the order dated 09.08.2022 of the CCGRF, Ludhiana in Case No. CF-94 of 2022 is hereby quashed. The Appeal case is remanded back to Corporate Forum, 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.

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

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