

**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. 53/2022

**Date of Registration : 06.10.2022
Date of Hearing : 19.10.2022/28.10.2022
Date of Order : 28.10.2022**

Before:

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

In the Matter of:

**M/s. Garrison Engineer (West),
Military Engineer Services,
Pathankot-145001.**

Contract Account Number: 3007509010(BS)

...Appellant

Versus

**Addl. Superintending Engineer,
DS City Division, PSPCL,
Pathankot.**

...Respondent

Present For:

Appellant:

1. Sh. Sudhir Nar,
Appellant's Counsel.
2. Sh. Rajesh Kumar,
Sub JE E/M.
Appellant's Representative.

Respondent :

1. Er. Ashwani Kumar,
AEE, DS Sub-Division, PSPCL,
Sujanpur, Pathankot.
2. Sh. Tarsem Lal, UDC

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 17.08.2022 of the Corporate Consumer Grievances Redressal Forum, Ludhiana (Corporate Forum) in Case No. CF-072/2022, deciding that:

“The amount of Rs. 9816887/- charged on a/c of ED & IDF, vide notice no. 340 dated 01.03.2021 and Rs. 9260160/- vide notice no. 398 dated 02.03.2022, subsequently added in the bills as sundry charges, are correct and recoverable.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 29.09.2022 i.e. within the period of thirty days of receipt of the decision dated 17.08.2022 of the CCGRF, Ludhiana in Case No. CF-072/2022. The Appellant had mentioned in the Appeal that the copy of the decision of Corporate Forum was received on 01.09.2022, but did not attach any proof in this regard. The Appellant also did not submit any evidence in support of deposit of the requisite 40% of the disputed amount for filing the Appeal in this Court as required under Regulation 3.18 (iii) of PSERC (Forum & Ombudsman) Regulation, 2016. So, the Appellant was requested vide letter no. 1031/OEP/Garrison Engineer (W) dated 29.09.2022 to submit the proof of deposit of requisite 40% of

the disputed amount and proof of receipt of copy of decision of the Corporate Forum. The Appellant submitted the proof of receipt of decision of the Corporate Forum on 29.09.2022 through email. The Respondent was also asked to confirm whether the Appellant had deposited the requisite 40% of the disputed amount vide Memo No. 1045/OEP/M/s. Garrison Engineer (W) dated 29.09.2022 and the same was confirmed by the Respondent vide Memo No. 1968 dated 06.10.2022. Therefore, the Appeal was registered on 06.10.2022 and copy of the same was sent to the Addl. SE/ DS City Divn., Pathankot for sending written reply/ parawise comments with a copy to the office of the Corporate CGRF, Ludhiana under intimation to the Appellant vide letter nos. 1086-88/OEP/A-53/2022 dated 06.10.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 19.10.2022 at 12.30 PM and intimation to this effect was sent to both the parties vide letter nos.1105-06/OEP/A-53/2022 dated 11.10.2022. As scheduled, the hearing was held in this Court and a copy of the proceedings dated 19.10.2022 was sent to both parties vide letter nos. 1147-1148 / OEP/A-53/2022 dated 19.10.2022. The next date of hearing

was fixed for 28.10.2022 at 01.00 PM because the Appellant requested for filing a rejoinder. The Appellant Counsel (AC) omitted Respondent No. 1 (Principal Secretary, Power, Punjab Govt.) because the same was not made a party in petition filed before Corporate Forum. Arguments were heard on 28.10.2022. The Appellant did not file Rejoinder in this case.

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 Counsel 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 BS Category Connection bearing Account No. G57-BS01-00014 (3007509010) of 66kV, Sub Station, Sujampur with electricity billing amounting approximately 1200 lac annually.

- (ii) The brief facts regarding the present controversy was that the Respondent had raised electricity bill no. 20210316020047 dated 16.03.2021 & Memo No. 340 dated 01.03.2021 with ED charges (As Sundry Charges) amounting to ₹ 98,16,887/- (09/2018 to 10/2020), which were paid on 30.03.2021. The Sundry Charges which were levied by the PSPCL were totally irregular, not justified and was not agreed/accepted by the Appellant i.e. M/s. Garrison Engineer (West), Pathankot.
- (iii) SDO, Sujanpur, PSPCL had issued bill no. 51210221279 dated 22.03.2022 & HM No. 52 dated 31.01.2022 with ED Charge (As Sundry Charges) ₹ 92,60,160/- (Jan, 2016 to Aug, 2018) as per CC No. 38/2020 dated 02.09.2020 and CC No. 39/2020 dated 30.09.2020 as calculated by the Internal Audit of the PSPCL. As per HM No. 52 and the Section 17 (1) (c) of the Limitation Act 1963 “In case of mistake the limitation period begins to run from the date when the mistake is discovered for the first time.” After receiving an exaggerated/ inflated electricity bill dated 12.01.2022, the office of the Appellant approached SDO, Sujanpur, PSPCL vide their office letter no. 4005/Mon/E4 dated 28.03.2022 and had requested to generate the bill after excluding the Sundry Charges by giving specific reasons that the office of M/s. Garrison Engineer (W)

Pathankot would not be able to pay the Sundry Charges amounting to ₹ 92,60,160/- for the reason that the mistake was first discovered vide HM No. 63 dated 24.02.2021, hence the amount should be recovered from 01.03.2021 onwards. Hence, the amount already deposited under the bill No. 20210316020047 dated 16.03.2021 as Sundry Charges i.e. ₹ 98,16,887/- (September, 2018 to October, 2020) shall also be refunded/ adjusted in future bills.

- (iv) Thereafter, once again PSPCL issued bill no. 1004322147 dated 26.04.2022 with previous month arrear of ₹ 1,01,66,024/- (levying penalty on the amount of arrear for ED charges i.e. ₹ 92,60,160/-).
- (v) Aggrieved by the Bill No. 1004322147 dated 26.04.2022 issued by the SDO, Sujjanpur, PSPCL and seeing that no heed was being given by the Respondent in order to lay the grievance of the Appellant to rest at their own level, the Appellant's office was forced to approach the Forum vide its letter no. 4005/Mon/E4 dated 02.05.2022.
- (vi) Thereafter, the Forum intimated to the Appellant vide Memo No. 887/T-076/2022 dated 30.05.2022 for attending pre-hearing on 27.06.2022 at the CCGRF, Ludhiana for deciding the amount to be got deposited for case registration.

- (vii) The Corporate Forum proceedings dated 23.06.2022 (Pre-poned from 27.06.2022 by the CCGRF) was adjourned for 11.07.2022 as the Respondent did not submit the reply and requested another date.
- (viii) The Forum on 12.07.2022 (Postponed from 11.07.2022 by the CCGRF) registered the case considering the amount of ₹ 98,16,887/- (already paid in the bill of 03/2021) as the registration amount. The next date of hearing was given telephonically.
- (ix) The Corporate Forum on 29.07.2022 listened to the Appellant and considered the documents already submitted and the case was closed for speaking orders.
- (x) The Corporate Forum had not considered the contentions of the Appellant under the provisions of the Electricity Supply Instructions Manual, 2018 wherein, it was provided under Para 93.2 that as per Section 56 (2) of the EA, 1956, no sum due from any consumer shall be recoverable after the period of two years from the date when sum became first due, unless such sum had been shown continuously as recoverable as arrears of charges for electricity supplied. Therefore, in view of the above stated provision of law, the imposition of ED and IDF were only demanded with the electricity bill dated 16.03.2021 and

dated 26.04.2022 in view of CC No. 38 dated 02.09.2020 and CC No. 39 dated 30.09.2020 which was not shown regularly and continuously recoverable as arrears of charges in any of the previous electricity bills. However, despite of that, justified request for waiving off the ED and IDF charges amounting to ₹ 1,90,77,047/- (₹ 98,16,887/- + ₹ 92,60,160/-) was not considered by the Forum and was decided arbitrarily and illegally in favour of the Respondent.

Relevant extract of the provision para no. 93.2 of the ESIM-2018, dealing with the limitation for payment of arrears which were not originally billed is reproduced for your kind perusal:-

“93 PAYMENT OF ARREARS NOT ORIGINALLY BILLED:

93.2 Limitation:

Under Section 56(2) of the Act, no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied.”

- (xi) The Forum passed the final speaking order dated 17.08.2022 against the Appellant arbitrarily, illegally and without considering the actual purport of the provisions and also without considering the facts and circumstances of the matter. The Forum while deciding the application filed by the Appellant returned the decision against the Appellant holding

that the amount of ₹ 98,16,887/- added in the electricity bill no. 20210316020047 dated 16.03.2021 and ₹ 92,60,160/- added in bill no. 51210221279 dated 22.03.2022 as Sundry Charges were correct and recoverable. The Forum while passing impugned speaking order dated 17.08.2022 had relied heavily on the Hon'ble Supreme Court decision dated 05.10.2021 delivered in CA 7235 of 2009 titled M/s. Prem Cottex Vs UHBVNL which was not applicable to the facts and circumstances of the present case. In the above-mentioned judgment relied upon by the Forum, while deciding had made an error and overlooked the fact that in that case the controversy arose due to the deficiency on the part of the Electricity Department.

- (xii) It was also pertinent to mention that the Respondent had raised an illegal and arbitrary demand of ₹ 1,90,77,047/- for ED and IDF charges for the period 01/2016 to 10/2020. It was a matter of record that the Appellant had already paid the ED and IDF charges and the same were also not reflected in the bills continuously and regularly as an arrear of bills by the Respondent, till the issuance of the CC No. 38 dated 02.09.2020 and CC No. 39 dated 30.09.2020. The action of the Respondent in charging ED and IDF as Sundry Charges in

electricity bill dated 12.01.2022 was also bad in law as the monetary liability had been fastened upon the Appellant without any locus and that too retrospectively w.e.f. 01/2016. The Appellant was the Central Government Organization under the Ministry of Defence and being a public authority was being compelled to pay the huge and arbitrary amount out of the public money which was to be spent on various centrally sponsored multifarious activities which was not sustainable in the eyes of law. More so, there was no fault on the part of the Appellant. The Appellant was paying the electricity bills as demanded by the Respondent.

- (xiii) The impugned order dated 17.08.2022 was also liable to be set aside on the sole ground that the same was passed by overlooking Article 287 of the Constitution of India which clearly provided that no law of the State should impose, or authorize the imposition of a tax on the consumption of sale of electricity (whether produced by the Government or other persons) which was consumed by the Govt. of India or sold to the Govt. of India for consumption by that Govt. and further, it was provided that any such law imposing or authorizing the imposition of a tax on the sale of electricity shall secure that the price of electricity sold to the Govt. of India, shall be less by

the amount of the tax than the price charged to the other consumers. A relevant Article 287 of the Constitution of India is reproduced herewith for the proper adjudication of the present Appeal which was overlooked by the Forum while passing the impugned order dated 17.08.2022:-

“287. Exemption from taxes on electricity.

Save in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is-

(a) consumed by the Government of India, or sold to the Government of India for consumption by that Government; or

(b) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway,

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of any railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.”

- (xiv) The Electricity Department/ Erstwhile PSEB was levying octroi on Union of India and UOI aggrieved by the action of the erstwhile PSEB demanding octroi on electricity consumed by

the Union of India, the same was challenged by way of filing CWP No. 2225 of 2001 in case titled *Union of India vs PSEB and Others reported as 2017 PLR 237. The Hon'ble Punjab and Haryana High Court, Chandigarh held that levy of octroi on Union of India is barred and the demand of the octroi is held to be illegal in view of the Article 287 of the Constitution of India reproduced supra.*

- (xv) CC No. 38 dated 02.09.2020 and CC No. 39 dated 30.09.2020 on the basis of which the PSPCL was charging the ED and IDF were also liable to be set aside being ultravires to the Article 287 wherein, it did not classify between offices and the residential buildings, emphasis was further laid that residential building in the cantonment area were meant for the employees of the Central Govt. doing public functions came under the ambit of the definition Govt. of India for the purpose of getting exemption from ED and IDF. The Circulars of the PSPCL/ Respondent on the basis of which the tax in the shape of ED and IDF were being charged was totally contrary to the nexus achieved by Article 287 of the Constitution of India and impugned order dated 17.08.2022 which was passed without considering the same was required to be set aside.

- (xvi) In spite of the facts mentioned above, the Appellant office was continuously paying Electricity Duty and Infrastructure Dev. Fund charges provisionally from 12/2020 and arrears for the month of 09/2020 and 11/2020 had also been paid provisionally in view of the above stated circulars.
- (xvii) An opportunity of hearing may kindly be granted to the Appellant before passing the order in the present Appeal.
- (xviii) Therefore, on the basis of the above- mentioned facts and circumstances, it was most respectfully prayed that the impugned order dated 17.08.2022 may kindly be set aside.
- (xix) Further the Respondent may kindly be directed to waive off the Electricity Duty and Infrastructure Dev. Fund amounting to ₹ 92,60,160/- and the amount of ₹ 98,16,887/- already deposited by the Appellant office may kindly be directed to be refunded or adjusted in the future bills.
- (xx) Furthermore, the PSPCL may kindly be directed not to charge Electricity Duty (ED) and Infrastructure Dev. Fund (IDF) in the future bills till the final decision from this Court was taken on the present Appeal.

(b) Submission during hearing

During hearing on 19.10.2022/ 28.10.2022, the Appellant reiterated the submissions made in the Appeal and prayed to

allow the same. AC confirmed that the electricity consumption bills of the residential colonies in the Cantonment Areas are being regularly recovered from its occupants by the Appellant

(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 BS Category Connection, bearing Account No. 3007509010 (connection no. G57BS0100014) of 66 kV Sub Station, Sujampur running under DS City Division, PSPCL, Pathankot in the name of M/s Garrison Engineer (West), Pathankot.
- (ii) It was correct that the Respondent had raised electricity Bill No. 20210316020047 dated 16.03.2021 & Memo No. 340 dated 01.03.2021 with ED charges (as sundry charges) amounting to ₹ 98,16,887/- (Sep. 2018 to Oct. 2020), which were paid on 30.03.2021, but it was absolutely incorrect to allege that sundry charges which were levied by the PSPCL were totally irregular, not justified, rather same were very much legal one and the Appellant was liable to make payment of the same.

(iii) It was submitted that there was no denial of the fact that SDO, Sujanpur, PSPCL had issued bill no. 51210221279 dated 22.03.2022 & HM No. 52 dated 31.01.2022 with ED charge (as sundry charges) for an amount of ₹ 92,60,160/- (January, 2016 to August, 2018) as per CC No. 38/2020 dated 02.09.2020 and CC No. 39/2020 dated 30.09.2020 as calculated by the internal audit of PSPCL. In reply to remaining allegations that as per HM No. 52 and the Section 17(1)(c) of the Limitation Act, 1963 “In case of mistake the limitation period begins to run from the date when the mistake is discovered for the first time”, it was submitted here that same was not applicable in the instant matter. After receiving allegedly exaggerated/inflated electricity bill dated 12.01.2022, the Appellant approached SDO, PSPCL, Sujanpur, vide its office letter no. 4005/Mon/E4 dated 28.03.2022 and had requested to generate the bill after excluding the sundry charges by giving specific reasons that the Appellant would not be able to pay the sundry charges amounting to ₹ 92,60,160/- for the reason that the mistake was first discovered vide HM No. 63 dated 24.02.2021, hence the amount should be recovered from 01.03.2021 onwards. It was submitted here that it was explained to officials of the Appellant that contention raised by them was not applicable in

instant matter and as such, they were liable to make payment of sundry charges amounting to ₹ 92,60,160/-. It was incorrect to allege that amount already deposited under the bill no. 20210316020047 dated 16.03.2021 as sundry charges i.e. ₹ 98,16,887/- (September, 2018 to October, 2020) was liable to be refunded/ adjusted in future bills.

- (iv) It was submitted that there was no denial of the fact that another bill was issued by the PSPCL i.e. bill no. 1004322147 dated 26.04.2022 with previous month arrear of ₹ 1,01,66,024/- (levying penalty on the amount of arrear for ED charges i.e. ₹ 92,60,160/-).
- (v) It was submitted that it was correct that the Appellant approached the Corporate Forum, Ludhiana vide its office letter no. 4005/Mon/E4 dated 02.05.2022 against the claim from the Respondent but it was submitted here that demand of the Respondent was very much legal one and as such, it was incorrect to allege that the Appellant was forced to approach the Corporate Forum, Ludhiana.
- (vi) Thereafter the Corporate Forum, Ludhiana intimated to the Appellant vide Memo No. 887/T-076/2022 dated 30.05.2022 for attending pre-hearing on 27.06.2022 at Corporate Forum,

Ludhiana for deciding the amount to be got deposited for the case registration, was matter of record.

- (vii) In reply to para no. 7 of the Appeal, it was matter of proceedings of Corporate Forum, Ludhiana and needed no reply.
- (viii) In reply to para no. 8 of the Appeal, it was matter of proceedings of Corporate Forum, Ludhiana and needed no reply.
- (ix) In reply to para no. 9 of the Appeal, it was matter of proceedings of Corporate Forum, Ludhiana and needed no reply.
- (x) It was submitted that it was incorrect to allege that Corporate Forum, Ludhiana had not considered the contentions of the Appellant under the provisions of the Electricity Supply Instructions Manual-2018 wherein, it was provided under para 93.2 that as per Section 56 (2) of the Electricity Act-1956, no sum due from any consumer shall be recoverable after the period of two years from the date when sum became first due, unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. It was incorrect to allege that justified request for waiving off the ED and IDF charges amounting to ₹ 1,90,77,047/- (₹ 98,16,887/- +

₹ 92,60,160/-) was not considered by the Corporate Forum, Ludhiana and was decided arbitrarily and illegally in favour of the Respondent. Rather demand of the Appellant was not tenable in the eyes of law.

The facts of the matter was that arrears in question were pointed out by audit party for the first time vide Half Margin No. 52 dated 31.01.2022. It was further submitted that amount of ₹ 92,60,160/- (for the period 01/2016 to 08/2018) was the amount which the PSPCL had earlier not demanded from the Appellant due to error and same was demanded vide Memo No. 398 dated 02.03.2022. Similarly, vide Half Margin No. 63 dated 24.02.2021, an amount of ₹ 98,16,887/- was charged for the period from 09/2018 to 10/2020 and was demanded by the PSPCL vide Memo No. 340 dated 01.03.2021, for the first time, as same was the amount which PSPCL had earlier not demanded from the Appellant due to error.

The Appellant had raised objection regarding period of limitation in instant matter and clarification of said point was that Section 56(2) of the Electricity Act, 1956 did not preclude the Licensee Company from an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake of bona fide error. It did not

however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply for recovery of the additional demand. As per Section 17(1)(c) of Limitation Act, 1963, in case of mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.” Even in Hon’ble Supreme Court’s decision dated 05.10.2021 delivered in Civil Appeal No. 7235/209 titled as M/s Prem Cottex Vs Uttar Haryana Bijli Vitran Nigam Ltd., Hon’ble Supreme Court in para 24 & 25 of this judgment observed as follows :-

“24. Subsection (2) uses the words “no sum due from any consumer under this Section”. Therefore, the bar under Sub section (2) is relatable to the sum due under Section 56. This naturally takes us to Subsection (1) which deals specifically with the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by Section 56, under Subsection (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.

25. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake detected is not covered by Subsection (1) of Section 56, Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the

mischief, namely, “no sum due from any consumer under this Section”, appearing in Subsection (2).”

So, keeping in view above said observations of Hon’ble Supreme Court, amount charged to the Appellant on account of ED & IDF on the power consumed by residents residing in the residential colonies, was not time barred and was justified and recoverable.

- (xi) It was submitted that there was no denial of the fact that the Corporate Forum, Ludhiana passed the final speaking order dated 17.08.2022 against the Appellant but it was incorrect to allege that same was passed arbitrarily, illegally and without considering the actual purport of the provisions and also without considering the facts and circumstances of the matter. It was correct that Corporate Forum, Ludhiana while deciding the application filed by the Appellant returned the decision against the Appellant holding that the amount of ₹ 98,16,887/- added in the electricity bill no. 20210316020047 dated 16.03.2021 and ₹ 92,60,160/- added in the bill no. 51210221279 dated 22.03.2022 as sundry charges were correct and recoverable. It was further correct that the Corporate Forum, Ludhiana while passing speaking order dated 17.08.2022 had relied heavily on the Hon’ble Supreme Court decision dated 05.10.2021 delivered in CA 7235 of 2009 titled

as M/s. Prem Cottex Vs UHBVNL, but it was incorrect to allege that same decision was not applicable to be the facts and circumstances of the present case. It was incorrect to allege that the abovementioned judgment relied upon by the Corporate, Forum, Ludhiana, while deciding had made an error or overlooked the fact in that case the controversy arose due to the allegedly deficiency on the part of the electricity dept.

- (xii) It was submitted that it was incorrect to allege that the Respondent had raised an illegal or arbitrary demand of ₹ 1,90,77,047/- for ED and IDF charges for the period January, 2016 to October, 2020, or the action of the Respondent in charging ED and IDF as sundry charges in electricity bill dated 12.01.2022 was also bad in law as the monetary liability had been fastened upon the Appellant without any locus and that too retrospectively w.e.f. January, 2016 or the Appellant who were the Central Government Organization under the Ministry of Defence being a public authority was being compelled to pay the huge and arbitrary amount out of the public money which was to be spent on various centrally sponsored, multifarious activities which was not sustainable in the eyes of law. More so, when there was no fault on the part of the Appellant, the Appellant was paying the electricity bills as

demanded by the Respondent. It was also submitted that Respondent were also performing duties of State & could not run its affairs without money.

- (xiii) The allegations of para no. 13 of the Appeal were absolutely incorrect and hence denied. It was incorrect to allege that order dated 17.08.2022 was liable to be set aside on the sole grounds that the same was passed by overlooking Article 287 of the Constitution of India which clearly provided that no law of the State should impose, or authorize the imposition of a tax on the consumption of sale of electricity (whether produced by the government or other persons) which was consumed by the Government of India or sold to the Government of India for consumption by that Government and further, it was provided that any such law imposing or authorizing the imposition of a tax on the sale of electricity should secure that the price of electricity sold to the Govt. of India, should be less by the amount of the tax than the price charged to the other consumers. It was submitted that when Article 287 of the Constitution of India & CC No. 38/2020 dated 02.09.2020 as well as CC No. 39/2020 dated 30.09.2020 were read together then picture became more clear. It was pertinent to mention that vide above said circulars, instructions were issued to the effect

that electricity duty should be levied on the residential colonies of Central Government Organizations and that electricity duty could not be exempted on the power consumed by the residents residing in the residential colonies owned by the Government of India (Army, Railway, BSF etc.). Further, Memo No. 220-225/RG-366/ED/SV/V-14 dated 30.09.2020 was issued for clarification regarding bulk supply connection of Railway, BSF, Army, Central Government Institution etc. The said instructions reads as below:-

“It is observed that many connections of the Central Govt. institutions are released under Bulk supply category, which comprises of mixed load of Domestic as well as motive/ industrial load subject to minimum of 25% domestic load. Therefore, Electricity Duty be charged on pro-rata basis of total consumption of Bulk Supply connection on the basis of percentage of sanctioned residential/colony load (as per registered A & A Form) subject to a minimum of 25% to total sanctioned load.”

So, it was submitted that electricity duty was not exempted to the consumers who were residing in colonies where electricity was being consumed by them from bulk supply connection of Railway, BSF, Army, Central Government Institution etc. Even Government of Punjab, Electricity Department, Energy Section, had issued letter bearing Memo No. 11/62/2019 in this regard to Chief Electrical Inspector, Punjab.

- (xiv) In reply to allegations of para no. 14 of the Appeal, it was submitted that facts referred in present para of the Appeal were not applicable to the present controversy.
- (xv) It was incorrect to allege that the CC No. 38/2020 dated 02.09.2020 and CC No. 39/2020 dated 30.09.2020 on the basis of which the PSPCL was charging the ED and IDF were also liable to be set aside allegedly being ultravires to the Article 287 wherein, it did not classify between offices and the residential buildings, emphasis was further laid that residential buildings in the cantonment area were meant for the employees of the Central Government doing public functions came under the ambit of the definition Government of India for the purpose of getting exemption from ED and IDF. It was incorrect to allege that the circulars of the PSPCL/ Respondent on the basis of which the tax in the shape of ED and IDF were being charged, were totally contrary to the nexus achieved by Article 287 of the Constitution of India or order dated 17.08.2022 which was allegedly passed without considering the same required to be set aside.
- (xvi) It was submitted that Appellant was duty bound to pay Electricity Duty and Infrastructure Development Funds to the Respondent as per law.

(xvii) Keeping in view, above noted facts and circumstances, present Appeal of the Appellant was liable to be dismissed and may kindly be dismissed with costs.

(b) Submission during hearing

During hearing on 19.10.2022/ 28.10.2022, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal. The Respondent confirmed that 40% of the disputed amount has been deposited. The Respondent also confirmed that the Electricity Duty (ED) & the Infrastructure Development Fund (IDF) were used to be charged regularly to the Appellant before 01/2016 on the basis of information provided by the Appellant regarding number of electricity units consumed by the residential colony in the Cantonment Area and after 11/2020, ED & IDF have been regularly charged to the Appellant as per Commercial Circulars (38/2020 & 39/2020). The Respondent could not give satisfactory reply when he was asked to explain the reasons for not charging ED/IDF to the Appellant during the disputed period (01/2016 to 10/2020)

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of the amount of ₹ 98,16,887/- vide Notice No. 340 dated 01.03.2021 and ₹ 92,60,160/- vide Notice No. 398 dated 02.03.2022 charged to the Appellant and subsequently added in the bills as Sundry Charges on account of Electricity Duty & IDF in accordance with Commercial Circular Nos. 38/2020 & 39/2020.

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

- (i) The Appellant's Counsel (AC) reiterated the submissions made in the Appeal. He pleaded that the disputed amount of Electricity Duty & IDF charged to the Appellant were totally irregular, not justified and were not agreed/accepted by the Appellant office. The Corporate Forum had not considered the contentions of the Appellant. It specifically pointed out the provisions of the ESIM-2018, wherein it was provided under Instruction No. 93.2 that as per Section 56 (2) of the Electricity Act, 2003, no sum due from any consumer shall be recoverable after the period of two years from the date when sum became first due, unless such sum had been shown continuously as recoverable as arrears of charges for electricity supplied.

Therefore, in view of the above stated provision of law, the imposition of ED and IDF were only demanded with the electricity bill dated 16.03.2021 and 26.04.2022 in view of CC No. 38/2020 dated 02.09.2020 and CC No. 39/2020 dated 30.09.2020 which were not shown regularly and continuously recoverable as arrears of charges in any of the previous electricity bills. However, despite of that, justified request for waiving off the ED and IDF charges amounting to ₹ 1,90,77,047/- (₹ 98,16,887/- + ₹ 92,60,160/-) was not considered by the Forum and the case was decided arbitrarily and illegally in favour of the Respondent. The Forum while passing impugned speaking order dated 17.08.2022 had relied heavily on the Hon'ble Supreme Court decision dated 05.10.2021 delivered in CA 7235 of 2009 titled M/s. Prem Cottex Vs UHBVNL. However, the facts of that case were not applicable to the facts and circumstances of the present case. In the above- mentioned judgment, the dispute arose due to the deficiency on the part of the electricity department. The Respondent had raised an illegal and arbitrary demand of ₹ 1,90,77,047/- for ED and IDF charges for the period 01/2016 to 10/2020. It was a matter of record that the Respondent had not demanded any ED and IDF charges and the same was also not

reflected in the bills continuously and regularly as an arrear of bills by the Respondent, till the issuance of the CC No. 38/2020 dated 02.09.2020 and CC No. 39/2020 dated 30.09.2020. The action of the Respondent in charging ED and IDF as Sundry Charges in electricity bill dated 12.01.2022 was also bad in law as the monetary liability had been fastened upon the Appellant without any locus and that too retrospectively w.e.f. 01/2016. The Appellant was the Central Government Organization under the Ministry of Defence. He pleaded that the impugned order dated 17.08.2022 was also liable to be set aside on the sole ground that the same was passed by overlooking Article 287 of the Constitution of India which clearly provided that no law of the state shall impose, or authorize the imposition of a tax on the consumption of sale of electricity (whether produced by the government or other persons) which was consumed by the Govt. of India or sold to the Govt. of India for consumption by that Govt. Further, it was provided that any such law imposing or authorizing the imposition of a tax on the sale of electricity shall secure that the price of electricity sold to the Govt. of India, shall be less by the amount of the tax than the price charged to the other consumers. The Electricity Department/ Erstwhile PSEB was levying octroi on Union of India and UOI

aggrieved by the action of the erstwhile PSEB, challenged the same by way of filing CWP No. 2225 of 2001 in case titled *Union of India vs PSEB and Others reported as 2017 PLR 237*, in which the Hon'ble Punjab and Haryana High Court, Chandigarh held that *levy of octroi on Union of India is barred and the demand of the octroi is held to be illegal in view of the Article 287 of the Constitution of India reproduced supra*. CC No. 38/2020 dated 02.09.2020 and CC No. 39/2020 dated 30.09.2020 on the basis of which the PSPCL was charging the ED and IDF were also liable to be set aside being ultravires to the Article 287 wherein, it did not classify between offices and the residential buildings, emphasis was further laid that residential buildings in the cantonment area were meant for the employees of the Central Govt. doing public functions came under the ambit of the definition of Govt. of India for the purpose of getting exemption from ED and IDF. He prayed that the impugned order dated 17.08.2022 may kindly be set aside. Further the Respondent may kindly be directed to waive off the Electricity Duty and Infrastructure Dev. Fund (ED & IDF) amounting to ₹ 92,60,160/- and the amount of ₹ 98,16,887/- already deposited by the Appellant office may kindly be directed to be refunded or adjusted in the future bills. Also,

PSPCL may kindly be directed not to charge Electricity Duty (ED) and Infrastructure Dev. Fund (IDF) in the future bills till the final decision from this Court was taken on the present Appeal.

- (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 it was absolutely incorrect to allege that sundry charges which were levied by the PSPCL were totally irregular, not justified, rather same were very much legal one and the Appellant was liable to make payment of the same. He argued that it was incorrect to allege that justified request for waiving off the ED and IDF charges amounting to ₹ 1,90,77,047/- (₹ 98,16,887/- + ₹ 92,60,160/-) was not considered by the Corporate Forum, Ludhiana and was decided arbitrarily and illegally in favour of the Respondent. Rather demand of the Appellant was not tenable in the eyes of law. The facts of the matter was that arrears in question were pointed out by audit party for the first time vide Half Margin No. 52 dated 31.01.2022. It was further submitted that amount of ₹ 92,60,160/- (for the period 01/2016 to 08/2018) was the amount which the PSPCL had earlier not demanded from the Appellant

due to error and the same was demanded vide Memo No. 398 dated 02.03.2022. Similarly, vide Half Margin No. 63 dated 24.02.2021; an amount of ₹ 98,16,887/- was charged for the period from 09/2018 to 10/2020 and was demanded by the PSPCL vide Memo No. 340 dated 01.03.2021, for the first time, as same was the amount which PSPCL had earlier not demanded from the Appellant due to error. The Appellant had raised objection regarding period of limitation in instant matter and clarification of said point was that Section 56(2) of the Electricity Act, 2003 did not preclude the licensee company from an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake of bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply for recovery of the additional demand. As per Section 17(1)(c) of Limitation Act, 1963, in case of mistake, the limitation period begins to run from the date when the mistake is discovered for the first time. Even as per the observations of the Hon'ble Supreme Court in its decision dated 05.10.2021 delivered in Civil Appeal No. 7235/209 titled as M/s Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd., amount charged to the Appellant on

account of ED & IDF on the power consumed by residents residing in the residential colonies, was not time barred and was justified and recoverable. It was also submitted that Respondent were also performing duties of State & could not run its affairs without money. It was submitted that when Article 287 of the Constitution of India & CC No. 38/2020 dated 02.09.2020 as well as CC No. 39/2020 dated 30.09.2020 were read together, then picture becomes more clear. It was pertinent to mention that vide above said circulars, instructions were issued to the effect that electricity duty should be levied on the residential colonies of Central Government Organizations and that electricity duty could not be exempted on the power consumed by the residents residing in the residential colonies owned by the Government of India (Army, Railway, BSF etc.). Further, Memo No. 220-225/RG-366/ED/SV/V-14 dated 30.09.2020 was issued for clarification regarding bulk supply connection of Railway, BSF, Army, Central Government Institution etc. It was submitted that Appellant was duty bound to pay Electricity Duty and Infrastructure Development Funds to the Respondent as per law. He prayed that keeping in view, above noted facts and

circumstances, present Appeal of the Appellant was liable to be dismissed and may kindly be dismissed with costs.

- (iii) The Corporate Forum in its order dated 17.08.2022 observed as under:-

“Forum observed that, PSPCL vide CC nos. 38 & 39/2020, issued instructions/clarification that levy of ED cannot be exempted on the power consumed by residents residing in residential colonies owned by the Govt. of India (Army, Railways, BSF etc.) and BS connections of Central Govt. institutions comprising of mixed load subject to minimum of 25% domestic load. As ED was not being charged to this account, so as per these instructions, the account of the petitioner was overhauled by Internal Audit vide Half Margin no. 63 dated 24.02.2021 and amount of Rs. 9816887/- for the period from 09/2018 to 10/2020 was charged. Petitioner was issued notice vide Memo no. 340 dated 01.03.2021. Petitioner deposited this amount online along with the bill of 03/2021 on dated 24.03.2021. Audit Party further overhauled the account of the petitioner vide Half Margin no. 52 dated 31.01.2022 for the period from 01/2016 to 08/2018 and amount of Rs. 9260160/- was charged. Notice vide Memo No. 398 dated 02.03.2022 was issued and the amount was also charged in his bill of the month of 03/2022. Petitioner did not agree to it and filed his case in the Forum.

Petitioner in his petition contended that *"It is clearly mentioned in the letter of SDO S/D PSPCL office, in case of mistake the limitation period begins to run from the date when the mistake is discovered for the first time"*. In this case, the mistake was initially detected vide HM No. 63 dated 24.02.2021. Hence the amount to received should start from 01.03.2021. He requested about the same but all their requests go in vain and no any favorable action on the matter has been received from Respondent till to date.

Petitioner also submitted that as per article 287 of Constitution of India "***No law of state shall impose or authorized the imposition of tax on consumption or sale of electricity (Whether produced by Govt or other Persons) which is consumed by Govt of India or sold to Govt of India for consumption by the Government***" and resident of cantonment area are also occupied Govt accommodation in the interest of state and no any ED & IF charges are applicable to the occupants.

During proceedings petitioner was asked that the above article 287 of Constitution of India does not exempt the resident residing in the residential colonies to which petitioner admitted that they are now paying the ED & IDF regularly as charged in the bills but pleaded that the sundry charges of previous period may be waived off being time-barred.

Respondent stated that in the half margin it is mentioned that the Legal section of the PSPCL vide its U.O. no. 1248 dated 27.10.2021 addressed to Chief Engineer Commercial, Patiala has clarified about the period of limitation, as under:

"To conclude, Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply. For recovery of the additional demand. As per Section 17(1)(c) of the Limitation Act, 1963. In case of mistake, the limitation period begins to run from the date when the mistake is discovered for the first time."

Respondent was asked to submit the copy of the above clarification during discussion and he submitted the copy of the same.

Forum observed that vide CC no. 38 & 39/2020 only clarification has been issued regarding ley of ED & IDF, which was discontinued to such consumers due to one reason or other. This mistake was noticed and instructions were issued vide above circulars on dated 02.09.2020 & 30.09.2020.

Further the Legal Adviser PSPCL, Patiala vide memo no. 12/76 dated 24.01.2022 has mentioned the Hon'ble Supreme Court's decision dated 5.10.2021 delivered in Civil Appeal No. 7235/209 titled as M/s Prem Cottex v/s Uttar Haryana Bijli Vitran Nigam Ltd., as under:

Hon'ble Supreme Court in para 24 & 25 of this judgement observed as follows:

*"24.' Subsection (2) uses the words "no sum due from any consumer under this Section". Therefore, the bar under Subsection (2) is relatable to the sum due under Section 56. This naturally takes us to Subsection (1) which deals specifically with **the negligence on the part of a person to pay any charge for electricity** or any sum other than a charge for electricity. **What is covered by section 56, under subsection (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.***

*25. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistakes detected is not covered by Subsection (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer **under this Section**", appearing in Subsection (2)."*

From the above, Forum observed that as per CC no. 38/2020, the levy of ED cannot be exempted on the power consumed by the residents residing in the residential colonies owned by Govt of India (Army, Railway, BSF etc.), therefore the amount has been rightly charged. Further the same cannot be considered as time barred in the light of the decision of Hon'ble Supreme Court delivered in Civil Appeal No. 7235/209 titled as M/s Prem Cottex v/s Uttar Haryana Bijli Vitran Nigam Ltd. Therefore, Forum is of the opinion that amount charged to the petitioner on a/c of ED & IDF on

the power consumed by residents residing in the residential colonies, is not time barred and is justified and recoverable. Keeping in view the above, Forum came to unanimous conclusion that the amount of Rs. 9816887/- charged vide notice no. 340 dated 01.03.2021 and Rs. 9260160/- vide notice no. 398 dated 02.03.2022, subsequently added in the bills as sundry charges, are correct and recoverable.”

- (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 19.10.2022/28.10.2022. It is observed by this Court that the Department of Power (Energy Branch), Govt. of Punjab vide its letter to the Chief Electrical Inspector, Patiala which was endorsed to the Licensee vide Endst. No. 11/62/2019-EB4/1688 dated 10.08.2020 for information and necessary action, clarified as under:

“that levy of electricity duty cannot be exempted on the power consumed by the residents residing in the residential colonies owned by the Government of India (Army, Railway, BSF, etc.)”

Taking action on the above clarification by the Govt. of Punjab (authority to levy or exempt ED & IDF), the Licensee issued Commercial Circular No. 38/2020 dated 02.09.2020 for the meticulous compliance of the above instructions by the field officers of the PSPCL. Further, it was clarified by the PSPCL vide Commercial Circular No. 39/2020 dated 30.09.2020 that

in case of Bulk Supply connections of Government of India, ED be charged on pro-rata basis on the basis of percentage of sanctioned residential/colony load (as per registered A&A Form) subject to a minimum of 25% to total sanctioned load.

- (v) On the basis of these Commercial Circulars, the Respondent charged ₹ 98,16,887/- vide Notice No. 340 dated 01.03.2021 and ₹ 92,60,160/- vide Notice No. 398 dated 02.03.2022 to the Appellant and subsequently added in the bills as Sundry Charges. The Appellant contended that the amount charged was time barred as per Section 56 (2) of Electricity Act, 2003. I don't agree with this contention of the Appellant as the Supreme Court of India had decided this issue in the Civil Appeal No. 7235 of 2009 titled as M/s Prem Cottex Vs Uttar Haryana Bijli Vitran Nigam Ltd. &Ors. Hon'ble Supreme Court in para 24 & 25 of this judgment observed as follows:

*"24.' Subsection (2) uses the words "no sum due from any consumer under this Section". Therefore, the bar under Subsection (2) is relatable to the sum due under Section 56. This naturally takes us to Subsection (1) which deals specifically with **the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 56, under subsection (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.***

*25. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistakes detected is not covered by Subsection (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer **under this Section**", appearing in Subsection (2)."*

On perusal of above paras & complete judgment of Hon'ble Supreme Court of India, it is very clear that the Respondent can recover the amount short billed due to negligence on the part of Licensee even after two years.

- (vi) The Appellant pleaded that this Hon'ble Supreme Court ruling was not relevant in the present case as the facts of the case were different. In my opinion, this Hon'ble Supreme Court ruling on Section 56 (2) of Electricity Act, 2003 is very clear and relevant to the present case also.
- (vii) The Appellant also contended that the Commercial Circular Nos. 38/2020 & 39/2020 were ultravires to the Article 287 of the Constitution of India as residential buildings in the cantonment area meant for the employees of the Government of India came under the ambit of the definition of Government of India for the purpose of getting exemption from ED & IDF. In this regard, I am of the opinion that Government of Punjab had clarified regarding this to the Licensee vide Endst. No.

11/62/2019-EB4/1688 dated 10.08.2020 and the Licensee had acted accordingly.

- (viii) The Electricity Duty is being levied by the Punjab Govt. as per The Punjab Electricity (Duty) Act, 2005. As per this Act, the State Government may, in public interest by notification in the Official Gazette, exempt any licensee, consumer or person from the payment of the whole or part of the electricity duty for such period and subject to such conditions as may be specified in such notification. The Electricity Duty is being levied by PSPCL (Licensee) as per above mentioned Act. This cannot be exempted by the Licensee. The Appellant may approach Punjab Govt. for exemption of ED/IDF in the future for residential electricity consumption in Cantonment Areas.
- (ix) Appellant Counsel (AC) had confirmed during hearing on 19.10.2022/ 28.10.2022 that the electricity consumption bills of the residential colonies in the Cantonment Areas are being regularly recovered from its occupants by the Appellant. It is felt that ED & IDF shall be payable by the occupants of the residential colonies in the Cantonment Areas and burden on this account shall not pass on to Govt. of India (Central Government).

- (x) The Respondent confirmed that the Electricity Duty (ED) and Infrastructure Development Fund (IDF) were charged regularly to the Appellant prior to 01/2016 and after 11/2020. The Respondent failed to give any satisfactory reply for not raising demand for ED/ IDF during the disputed period (01/2016 to 11/2020). This is a serious lapse on the part of the officials/officers of the Licensee resulting into this dispute.
- (xi) In view of the above, this Court is not inclined to differ with the decision dated 17.08.2022 of the Corporate Forum in Case No. CF-072 of 2022. The amount of ₹ 98,16,887/- vide Notice No. 340 dated 01.03.2021 and ₹ 92,60,160/- vide Notice No. 398 dated 02.03.2022 charged to the Appellant and subsequently added in the bills as Sundry Charges on account of Electricity Duty & IDF are correct and hence fully recoverable.

6. Decision

As a sequel of above discussions, the order dated 17.08.2022 of the CCGRF, Ludhiana in Case No. CF-072 of 2022 is hereby upheld.

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.

October 28, 2022
S.A.S. Nagar (Mohali)

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