

**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. 60/2022

Date of Registration : 28.10.2022

Date of Hearing : 10.11.2022

Date of Order : 15.11.2022

Before:

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

In the Matter of:

M/s. Impel Forge & Allied Industries Ltd.,
V&PO Kohara, Sahnewal Road,
District Ludhiana.

Contract Account Number:R74KR0100015(LS)
...Appellant

Versus

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

...Respondent

Present For:

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

Respondent : 1. Er. Kanwal Preet Singh Sidhu,
Addl. Superintending Engineer,
DS Division, PSPCL, Samrala.
2. Er. Gundeep Singh Marya,
AE/ DS S/D, Kohara.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 14.09.2022 of the Corporate Consumer Grievances Redressal Forum, Ludhiana (Corporate Forum) in Case No. CF-079/2022, deciding that:

“As the matter of similar nature is pending before Hon’ble Punjab & Haryana High Court, in CWP no. 19701 of 2018 titled PSPCL V/s Sewa Kunj Alloys Pvt. Ltd., therefore, it would be inappropriate for this Forum at this point of time to adjudicate upon this petition, which is on the similar issue. The present petition is disposed of with this observation. Petitioner, if need be, may approach this Forum once the case is decided by the Hon’ble Punjab & Haryana High Court.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 12.10.2022 i.e. within the period of thirty days of receipt of the decision dated 14.09.2022 of the CCGRF, Ludhiana in Case No. CF-079/2022 and the same was received by the Appellant on 21.09.2022. The Appeal was incomplete and the Appellant was requested to complete the Appeal in all respects vide this office Memo No. 1123/OEP/CF-079/2022 dated 12.10.2022 and Memo No. 1140/OEP/CF-079/2022 dated 18.10.2022. This was refund case so there was no need to deposit the requisite 40% of the

disputed amount. The Appellant sent the requisite documents through speed post and the same was received in this office on 28.10.2022. Therefore, the Appeal was registered on 28.10.2022 and copy of the same was sent to the Addl. SE/ DS Division, PSPCL, Samrala 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. 1170-72/OEP/A-60/2022 dated 28.10.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 10.11.2022 at 12.30 PM and intimation to this effect was sent to both the parties vide letter nos. 1209-10/OEP/A-60/2022 dated 02.11.2022. As scheduled, the hearing was held in this Court and arguments of both the parties were heard. The case was closed and order was reserved. Proceedings dated 10.11.2022 were sent to both parties vide letter nos. 1252-53/OEP /A-60/2022 dated 10.11.2022.

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 LS Category Connection bearing a/c no. R74KR0100015 with sanctioned load 1992 kW/1992 kVA running under DS Division, PSPCL, Samrala in its name.
- (ii) The Appellant was asked by Sub division office, Kohara to deposit ₹ 7,36,000/- as cost of variable charges when the Appellant got new electricity Large Supply category connection. This notice was illegal/wrong and was in violation of Regulation 9.1.1(b) of Supply Code 2007 applicable for load being more than 500 KVA. As per this Regulation, for getting electric connection of more than 500 KVA load, actual cost or fixed charges per KVA, whichever was higher were required to be deposited. It was worth mentioning that for cases above 500 KVA, no limit for service line length had been prescribed in the Regulations. The Respondent illegally/wrongly had given notice considering the length of service line beyond 250 meters

for charging variable charges in violation of the Supply Code Regulations.

- (iii) Against this illegal/ wrong demand, petition was filed before the Hon'ble PSERC vide Petition No. 43 of 2013. The Commission had given its decision on 22.02.2022 that the Appellant may file its grievances before the CGRF. Accordingly, the Appellant filed the petition before the CCGRF vide Case No. CF-079/2022 for deciding the issue. The CCGRF, on pretext that similar issue was pending before the Hon'ble High Court, did not decide the case with the orders that the Appellant may approach Ombudsman, Electricity, Punjab against its orders.
- (iv) In the case of Appellant, Regulation 9.1.1(b) of Supply Code, 2007 was applicable because the load applied was more than 500 KVA and there was no provision for charging variable charges. Only actual cost of line or fixed charges per KVA, whichever was higher, was to be charged. Moreover, in the Regulation, no limit of service line length had been prescribed.
- (v) The Respondent wrongly/illegally had raised the demand of variable charges in violation of the Regulations beyond 250 meters service line length whereas there was no such limit in the Regulations for cases having load more than 500 kVA.

- (vi) This Hon'ble Court in similar cases in Appeal Nos. 71/2017 & 72/2017 of P. R. Alloys & Sewa Kunj Alloys had decided in favour of the consumers by giving award that variable charges were not recoverable/ chargeable and had quashed the illegal demand of the Respondent as variable charges.
- (vii) It was worth mentioning that in the case pending with High Court, there was no stay against the order of the Hon'ble Court of Ombudsman, Electricity, Punjab till date.
- (viii) Keeping in view the Supply Code, 2007 Regulation 9.1.1(b), the demand of the Respondent for charging variable charges of ₹ 7,36,000/- was wrong/illegal which was required to be quashed/withdrawn.
- (ix) The Appellant requested this Court to quash the wrong/illegal demand of ₹ 7,36,000/- as variable charges and also requested to refund the amount with interest which stood already deposited.

(b) Submissions made in the Rejoinder:

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

- (i) Regulation 9.1.2 (b) of Supply Code, 2007 was applicable being load more than 500 kVA. In the Regulations, there was

no provision for charging variable charges, only actual cost of line was to be charged. Moreover, in the Regulation there was no prescribed limit for service line length.

(ii) The Respondent had wrongly and illegally raised demand of variable charges in violation of the Regulations, considering service line length beyond 250 metres to charge variable charges, whereas there was no such limit in the Regulations for cases having load more than 500 kVA.

(iii) As per Section 46 of Electricity Act, 2003; Distribution Licensee can charge reasonable incurred expenses for giving electric supply, so the Respondent cannot charge more than the actual expenses as per this Act. Section 46 of the Act is as under: -

“Section 46 (Power to recover expenditure)

The State Commission may, by regulations, authorize a Distribution Licensee to charge from a person requiring a supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.”

(iv) This Court in similar Case Nos. A-71/2017 and A-72/2017 of P. R. Alloys & Sewa Kunj Alloys have decided in favour of the consumers by giving award that variable charges were not recoverable/ chargeable for cases having load of more than 500

kVA and quashed the illegal demand of the Respondent for variable charges.

- (v) In the case pending with the High Court, there was no stay against the order of this Court.
- (vi) Keeping in view Regulation 9.1.2(b) of Supply Code, 2007 and Section 46 of Electricity Act, 2003; the demand of the Respondent for charging variable charges of ₹ 7,36,000/- was wrong/ illegal which was required to be quashed/ withdrawn.
- (vii) It was prayed that the Respondent may be directed to refund already deposited amount with interest as per Regulation 19.7 of Supply Code, 2007 as amended from time to time.

(c) Submission during hearing

During hearing on 10.11.2022, the Appellant reiterated the submissions made in the Appeal as well as in the Rejoinder and prayed to allow the same.

(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 had applied for extension in load of 692 kW/1292 kVA in its existing load of 1300 kW/700 kVA thus

making 1992 kW/1992 kVA load vide A&A No. 32883 dated 19.10.2011. In compliance to it, AE/DS, PSPCL, Kohara issued Demand Notice No. 2987 dated 03.01.2012 of ₹ 22,26,800/- to the Appellant which included difference of ACD of ₹ 3,28,000/-, Service Connection Charges of ₹ 11,62,800/- and Variable Charges per meter of ₹ 7,36,000/- as per instructions of Commercial Circular No. 68/2008. The same were deposited by the Appellant in compliance to the demand notice vide receipt BA16 No. 177/4797 dated 24.01.2012 without any objection at that time.

- (ii) The amount was got deposited as per prevalent instructions. In reference to the disputed amount, it was submitted that an estimate no. 13870/11-12 was framed by the DS Sub division, PSPCL, Kohara. As per estimate, the line length of 2550 metres was needed to be augmented for which variable charges were [2550-250=2300 x 320(per metre)=₹ 7,36,000/-]. The detail was also given to the Appellant at that time.
- (iii) The demand was raised and variable charges were got deposited as per instructions of PSERC vide Commercial Circular No. 68/2008 which were enforceable at that time. Thereafter, the Appellant had filed Petition No. 43 of 2013 before the Hon'ble PSERC which was disposed off by the

Hon'ble PSERC on 21.02.2022. As per decision, the PSERC had not given any relief to the Appellant as the petition was specifically raised on the issue of deposit of variable charges amounting to ₹ 7,36,000/-. The PSERC had given decision on 21.02.2022, reproduced below:-

“The Forum for the redressal of the grievances of the consumers have been established and the Regulations in this regard have also been framed by the Commission vide PSERC Forum and Ombudsman Regulations, 2016 as amended vide Regulation No. 154 of 2020 and 159 of 2021. Therefore, the petitioner may seek redressal of its grievance, if any, before the appropriate Forum.”

- (iv) After this, the Appellant filed the dispute Case No. T-95/22 before the CCGRF, Ludhiana. Also, the legal advice was sought and the opinion obtained from the office of Legal Advisor, PSPCL, Patiala is reproduced asunder:-

“In context of the referred matter it is advised to appear before the forum on the date of hearing and inform regarding the pendency of similar issue before Hon'ble High Court and let the forum decide accordingly.”

- (v) The decision of the Corporate Forum Ludhiana is reproduced below:-

“As the matter of similar nature is pending before Hon'ble Punjab & Haryana High Court, in CWP no. 19701 of 2018 titled PSPCL V/S Sewa Kunj Alloys Pvt. Ltd., therefore, it would be inappropriate for this Forum

at this point of time to adjudicate upon this petition, which is on the similar issue. The present petition is disposed of with this observation. Petitioner, if need be, may approach this Forum once the case is decided by the Hon'ble Punjab & Haryana High Court.”

- (vi) In response to the above decision, the Appellant filed the present Appeal in the Court of Ombudsman, Electricity, Punjab.
- (vii) The Appellant had filed the present Appeal after its Petition No. 43/2013 was disposed off by the PSERC as per decision dated 21.02.2022 and the dispute Case No. T-95/22 of M/s. Impel Forge & Allied Industries Ltd., Sahnewal Road, Village Kohara, Ludhiana Vs PSPCL before the Corporate Forum, Ludhiana. As per decision, the PSERC had not given any relief to the Appellant as the petition was specifically raised on the issue of deposit of variable charges amounting to ₹ 7,36,000/-.
- (viii) It was also submitted that as the Appellant had not followed the Consumer Complaint Handling Procedure and Cause of action was much older than two years, it became time barred as per Regulation 2.25 of PSERC (Forum and Ombudsman) Regulations, 2016 and Clause 56.2 of Electricity Supply Act-2003.
- (ix) It was also clarified that the amount was charged on account of variable charges per meter recoverable as per Commercial

Circular No. 68/2008 and other relevant regulations. Also, as per CE/Commercial, PSPCL, Patiala Memo No.1032 dated 13.07.2012, it was very much clear and confirmed that rules for recovery of variable charges alongwith fixed charges already covered in Supply Code Regulations means there was no need of changing the regulations.

- (x) In view of the contents recorded in CE/Commercial Memo No. 1032 dated 13.07.2012 wherein it had been clarified that “Secretary, PSERC informed that there is no need of changing the Regulation as the issue has already been covered in the Supply Code Regulations. Hence it was agreed upon that no amendment in the Regulation is required. “ਉਪਰੋਕਤ ਤੋਂ ਇਹ ਸਪਸ਼ਟ ਹੁੰਦਾ ਹੈ ਕਿ ਜਿਥੇ ਸਰਵਿਸ ਦੀ ਲੰਬਾਈ permissible limit ਤੇ ਵੱਧ ਹੈ, ਉਥੇ ਪ੍ਰਤੀ ਕਿਲੋਵਾਟ ਚਾਰਜਿਜ਼ ਦੇ ਨਾਲ-ਨਾਲ permissible limit ਤੋਂ ਵੱਧ ਸਰਵਿਸ ਤੇ ਪ੍ਰਤੀ ਮੀਟਰ ਦੇ ਹਿਸਾਬ ਨਾਲ ਚਾਰਜਿਜ਼ ਵੀ ਲੈਣੇ ਬਣਦੇ ਹਨ। ਪੀ.ਐਸ.ਈ.ਆਰ.ਸੀ. ਵੱਲੋਂ ਮੰਨਜ਼ੂਰ ਕੀਤੇ ਸਰਵਿਸ ਕੁਨੈਕਸ਼ਨ ਚਾਰਜਿਜ਼ ਵਿਚ ਵੀ 500 ਕਿਲੋਵਾਟ ਤੋਂ ਵੱਧ ਲੋਡ ਵਾਲੇ ਖਪਤਕਾਰਾਂ ਲਈ 320/- ਰੁ: ਪ੍ਰਤੀ ਮੀਟਰ ਚਾਰਜਿਜ਼ ਵਿਖਾਏ ਗਏ ਹਨ।”

This clarification also confirmed that the rules of recovery of variable charges were very much clear and there was no misinterpretation of any clause stood involved in the present case.

- (xi) The demand of variable charges was accurate and was as per Rules and Regulations of PSPCL as described above.
- (xii) The Appellant had given reference of Appeal Nos. 71/2017 and 72/2017 for getting relief on similar ground which was also denied. It was submitted that PSPCL had filed an Appeal against the decision of Appeal No. 72/2017 titled as M/s Sewa Kunj Alloys Pvt. Ltd. vs PSPCL before the Hon'ble High Court, Chandigarh vide CWP No. 19701 of 2018. The next date of hearing was 12.04.2023. Therefore, these Appeals were not applicable in this case.
- (xiii) The Ombudsman, Electricity, Punjab had already decided below mentioned cases of similar nature in favour of PSPCL in the Appeal No. 20/2014 titled as M/s Menka Industries, Dehlon Road, Ludhiana Vs PSPCL and the Appeal No. 24/2014 titled as Ms/ Jagraon Multi Metals vs PSPCL.
- (xiv) Keeping in view the above- mentioned facts and as matter of similar nature was pending before the Hon'ble Punjab & Haryana High Court in CWP No. 19701 of 2018 titled PSPCL vs Sewa Kunj Alloys Pvt. Ltd., it was prayed that the present Appeal may be dismissed.

(b) Submissions made in the Reply to Rejoinder:

The Respondent made the following submissions in the Reply to the Rejoinder for consideration of this Court: -

(i) Section 9.1.2 (b) of Supply Coe, 2007 provided that:

“Where total load including existing load exceeds 500kW/ 500 kVA, the consumer will pay per kW/ kVA charges for the additional load/ demand as approved by the Commission or the actual expenditure for release of load/ demand, whichever is higher.”

(ii) It was clearly stated that the charges for the additional load/ demand as approved by the Commission were to be taken and in this case, the approved charges as per PSERC letter no. 3981/OSERC/DTJ-50 dated 05.12.2008 from Director/ Regulations, PSERC, Chandigarh addressed to the Chief Engineer/ Commercial, Patiala against which Commercial Circular No. 68/2008 dated 17.12.2008 circulated for implementation had been done. Therefore, the charges claimed from the Appellant were as per direction of the Hon’ble Commission and there was no violation of the concerned Regulation.

(xv) It was reiterated that the charges raised to the consumer in the concerned case were as per the directions of the Hon’ble Commission and the same had been clarified in Supply Code Review panel meeting dated 08.06.2012 vide CE/ Commercial letter No. 1032 dated 13.07.2012 wherein it had been clarified

that “Secretary, PSERC informed that there is no need of changing the Regulation as the issue has already been covered in the Supply Code Regulations. Hence it was agreed upon that no amendment in the Regulation is required. “ਉਪਰੋਕਤ ਤੋਂ ਇਹ ਸਪਸ਼ਟ ਹੁੰਦਾ ਹੈ ਕਿ ਜਿਥੇ ਸਰਵਿਸ ਦੀ ਲੰਬਾਈ permissible limit ਤੋਂ ਵੱਧ ਹੈ, ਉਥੇ ਪ੍ਰਤੀ ਕਿਲੋਵਾਟ ਚਾਰਜਿਜ਼ ਦੇ ਨਾਲ-ਨਾਲ permissible limit ਤੋਂ ਵੱਧ ਸਰਵਿਸ ਤੇ ਪ੍ਰਤੀ ਮੀਟਰ ਦੇ ਹਿਸਾਬ ਨਾਲ ਚਾਰਜਿਜ਼ ਵੀ ਲੈਣੇ ਬਣਦੇ ਹਨ। ਪੀ.ਐਸ.ਈ.ਆਰ.ਸੀ. ਵੱਲੋਂ ਮੰਨਜ਼ੂਰ ਕੀਤੇ ਸਰਵਿਸ ਕੁਨੈਕਸ਼ਨ ਚਾਰਜਿਜ਼ ਵਿਚ ਵੀ 500 ਕਿਲੋਵਾਟ ਤੋਂ ਵੱਧ ਲੋਡ ਵਾਲੇ ਖਪਤਕਾਰਾਂ ਲਈ 320/- ਰੁ: ਪ੍ਰਤੀ ਮੀਟਰ ਚਾਰਜਿਜ਼ ਵਿਖਾਏ ਗਏ ਹਨ।”

The above confirmed that the recovery of variable charges was very much clear and there was no misinterpretation of any clause in the present case.

- (iii) The Appellant had referred Appeals Nos. 71/2017 and 72/2017 for getting relief on similar ground, which was also denied. It was submitted that PSPCL had filed an Appeal against the decision in Appeal No. 72/2017 titled as M/s. Sewa Kunj Alloys (P) Ltd. Vs PSPCL before the Hon’ble High Court, Chandigarh vide CWP No. 19701 of 2018. The next date of hearing was 12.04.2023 and thus the decisions of these case were not applicable.

- (iv) This court had already decided similar case in favour of PSPCL in Appeal No. 20/2014 titled as M/s. Menka Industries, Dehlon Road, Ludhiana V/s PSPCL and Appeal No. 24/2014 titled as M/s. Jagraon Multimetals V/s PSPCL.
- (v) It was prayed that since similar nature matter is subjudiced before Hon'ble High Court in CWP No. 19701 of 2018 titled as PSPCL V/s Sewa Kunj Alloys Pvt. Ltd so the present Appeal may be dismissed.

(c) **Submission during hearing**

During hearing on 10.11.2022, the Respondent reiterated the submissions made in the written reply to the Appeal as well as in the Reply to the Rejoinder and prayed for the dismissal of the Appeal.

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of the amount of ₹ 7,36,000/- charged as Variable Service Connection Charges at the time of extension of load by the Appellant in the year 2011.

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

- (i) The Corporate Forum in its order dated 14.09.2022 observed as under:-

“Forum observed that as per Respondent, the petitioner had applied for extension in load of 692KW/1292KVA in his existing load of 1300KW/700KVA thus making total load of 1992KW/1992KVA vide A&A No. 32883 dated 19.10.2011. In compliance to it, AE/DS PSPCL, Kohara issued Demand Notice No. 2987 Dated 03.01.2012 of Rs. 22,26,800/- which includes difference of ACD Rs. 3,28,000/-, Service connection charges of Rs. 11,62,800/- and variable charges per meter of Rs. 7,36,000/- as per instructions of Commercial Circular No. 68/2008. Petitioner deposited the same vide BA16 No. 177/4797 dated 24.01.2012, without any objection at that time. After that Petitioner filed the Petition with Hon’ble PSERC for seeking the refund of Rs. 736000/- already deposited on account of variable service connection charges. Hon’ble PSERC vide its order dated 21.02.2022, decided the issue as under:

“The forum for redressal of the grievances of the consumers have been established and the Regulations in this regard have also been framed by the Commission vide PSERC Forum and Ombudsman Regulations, 2016 as amended vide Regulation No. 154 of 2020 159 of 2021. Therefore, the petitioner may seek redressal of its grievance, if any, before the appropriate Forum”.

Accordingly, petitioner filed this petition before CGRF Patiala, now Corporate CGRF Ludhiana, for the seeking the refund of Rs. 736000/- by disputing the amount already deposited on account of variable service connection charges.

Forum observed that petitioner in his petition has mentioned that Hon’ble, Ombudsman Electricity, Punjab, in similar cases in appeal no. 71/2017 & 72/2017 of P. R.

Alloys & Sewa Kunj Alloys have decided in favour of the consumers giving award that variable charges are not recoverable and quashed the illegal demand of variable charges. On the other hand, Respondent submitted that PSPCL has filed an appeal against the decision in appeal no. 72/2017 titled as M/s Sewa Kunj Alloys (P) Ltd. Vs Ombudsman before the Hon'ble High Court, Chandigarh vide CWP 19701 of 2018. The next date of hearing is 20.10.2022.

Further during proceedings, respondent stated that he is seeking clarification from the legal section which may have implication in the present case. Then he submitted the opinion/advice of Legal Section given vide his memo no. 1296 dated 18.08.2022, as under:

"In context of the referred matter it is advised to appear before the Forum on the date of hearing and inform the Forum regarding the pendency of similar issue before Hon'ble High Court and let the Forum decide accordingly."

In view of the above, Forum observed that the issue raised by the Petitioner is similar to the issue pending before the Hon'ble Punjab & Haryana High Court in the case no. CWP No. 19701 of 2018, against the decision of Ombudsman dated 14.12.2017 titled PSPCL (through Sr. Xen Samrala Divn.) V/s Sewa Kunj Alloys Pvt. Ltd. Therefore, Forum is of the opinion that as the matter of similar nature is pending before Hon'ble Punjab & Haryana High Court, in CWP no. 19701 of 2018 titled PSPCL V/s Sewa Kunj Alloys Pvt. Ltd., therefore, it would be inappropriate for this Forum at this

point of time to adjudicate upon this petition, which is on the similar issue.

Keeping in view the above, Forum came to unanimous conclusion that as the matter of similar nature is pending before Hon'ble Punjab & Haryana High Court, in CWP no. 19701 of 2018 titled PSPCL V/s Sewa Kunj Alloys Pvt. Ltd., therefore, it would be inappropriate for this Forum at this point of time to adjudicate upon this petition, which is on the similar issue. The present petition is disposed of with this observation. Petitioner, if need be, may approach this Forum once the case is decided by the Hon'ble Punjab & Haryana High Court."

- (ii) I have gone through the written submissions made by the Appellant in its Appeal/ Rejoinder, written reply of the Respondent/ Reply to the Rejoinder as well as oral arguments of both the parties during the hearing on 10.11.2022. It is observed that the Appellant had applied for extension in load of 692 kW/ 1292 kVA in his existing load of 1300 kW/ 700 kVA thus making 1992 kW/ 1992 kVA load vide A&A No. 32883 dated 19.10.2011. AE/DS, PSPCL, Kohara issued Demand Notice No. 2987 dated 03.01.2012 of ₹ 22,26,800/- to the Appellant which included difference of ACD of ₹ 3,28,000/-, Fixed Service Connection Charges of ₹ 11,62,800/- and Variable Service Connection Charges of ₹ 7,36,000/- for 2300

metres additional line as per instructions of Commercial Circular No. 68/2008. The same were deposited by the Appellant in compliance to the demand notice vide BA16 No. 177/4797 dated 24.01.2012.

- (iii) Thereafter, the Appellant filed a Petition No. 43 of 2013 before the PSERC, which was disposed of by the Commission on 21.02.2022 deciding that the forum for redressal of the grievances of the consumers had been established and the Regulations in this regard have also been framed by the Commission vide PSERC Forum and Ombudsman Regulations, 2016 as amended vide Regulation Nos. 154 of 2020 and 159 of 2021. Therefore, the petitioner may seek redressal of its grievance, if any, before the appropriate Forum.
- (iv) Accordingly, the Appellant approached the Corporate Forum vide Case No. CF-079 of 2022. The Corporate Forum disposed of the case on 14.09.2022 deciding that the matter of similar nature was pending before Hon'ble Punjab & Haryana High Court in CWP No. 19701 of 2018 titled PSPCL V/s Sewa Kunj Alloys Pvt. Ltd., therefore, it would be inappropriate for it at this point of time to adjudicate upon this petition, which was on the similar issue. Petitioner, if need be, may approach this

Forum once the case was decided by the Hon'ble Punjab & Haryana High Court.

- (v) The Appellant filed the present Appeal against the order dated 14.09.2022 of the Corporate Forum pleading that there was no stay by the Hon'ble Punjab & Haryana High Court, in CWP No. 19701 of 2018, so the case should have been decided on merits by the Corporate Forum. The Appellant's Representative (AR) pleaded that the demand of ₹ 7,36,000/- as variable charges was wrong/illegal and was in violation of Regulation 9.1.1 (i) (b) of Supply Code, 2007. However, the Respondent controverted the pleas raised by the Appellant in its Appeal and argued that the said charges were correct as per the instructions of Commercial Circular No. 68/2008 prevalent at that time.
- (vi) To arrive at a decision, a perusal of Regulation 9.1.1 (i) is needed, which is reproduced as under:

"9.1.1 For new connections

(i) Domestic, Non-Residential, Industrial and Bulk Supply categories:

- (a) The applicant requesting the Licensee for a new connection under Domestic, Non-Residential, Industrial and Bulk Supply categories will be required to pay per KW/KVA charges as approved by the Commission. Such charges will be payable by an applicant where the load/demand required is upto and including 500 KW/500 KVA and the length of the service line is upto one hundred metres for Domestic & Non-Residential Supply category and two hundred fifty metres for Industrial and Bulk Supply categories. Where the length of the service line exceeds the above prescription for the applied category, the applicant will also pay for the additional expenditure for the extra length on actual basis at the rates approved by the Commission.

(b) Where load/ demand required exceeds 500 KW/500 KVA, the applicant will be required to pay per KW/KVA charges as approved by the Commission or the actual expenditure for release of connection, whichever is higher.

(c) The applicant seeking supply at voltage of 33000 volts and above, will be liable to pay the expenditure incurred for providing the service line and proportionate cost of back-up/common line (33000 volts or above) upto the feeding substation including bay, if any.”

On perusal of above Regulation, it is noticed that this Regulation 9.1.1 is applicable for new connections but in the present Appeal Case , the Appellant had applied for additional load (692 kW /1292 kVA) which is required to be dealt as per Regulation No. 9.1.2 of Supply Code, 2007 which is reproduced below :-

“9.1.2 For additional load

(i) Domestic, Non-Residential, Industrial and Bulk Supply categories:

(a) The consumer applicant requesting the Licensee for additional load/ demand will pay per KW/KVA charges as approved by the Commission. Such charges will be payable by a consumer where the total load including existing load is upto 500 KW/500 KVA and/or the length of the service line is upto one hundred metres for Domestic and Non-Residential Supply category and two hundred fifty metres in the case of Industrial and Bulk Supply categories.

Where the length of the existing service line is more than the limit prescribed above and additional load/demand necessitates augmentation of the existing service line, the applicant will, in addition to per KW/KVA charges, be required to pay the actual cost of augmentation for the length of service line beyond the prescription as indicated above, at the rates approved by the Commission.

(b) Where total load including existing load exceeds 500 KW/500 KVA, the consumer will pay per KW/KVA charges for the additional load/demand as approved by the Commission or the actual expenditure for release of load/demand, whichever is higher.

(c) In case of a consumer with supply voltage of 33000 volts and above, the consumer will only be liable to pay the cost of the service line and proportionate cost of back-up/ common line (33000 volts or above) including bay, if any.

Provided that where a HT/EHT consumer having a sanctioned load/ contract demand exceeding 500 KW/500 KVA who has paid the actual cost of HT or EHT service line or feeder, requests for additional load and

such load can be fed from the same line without any augmentation, then the HT consumer would be liable to pay only the proportionate cost of HT main and feeding sub station. An 33000 volts or EHT consumer would be liable to pay only the proportionate cost of back up/common line (33000 volts or above) upto the feeding sub station including bay.”

- (vii) The consumer had applied for extension in load of 692 kW/ 1292 kVA in his existing load of 1300 kW/ 700 kVA thus making total load of 1992 kW/ 1992 kVA vide A & A No. 32883 dated 19.10.2011. The applicable regulation in this case for release of additional load is 9.1.2 (i) (b) of Supply Code, 2007. As per Regulation 9.1.2 (i) (b) of Supply Code, 2007; where total load including existing load exceeds 500 kW/ 500 kVA, the consumer will pay per kW / kVA charges for the additional load/ demand as approved by the Commission or the actual expenditure for release of load/demand, whichever is higher. It is apparent that connections for load exceeding 500 kW / 500 kVA, have been treated differently and there was no limit of length of the service line and also there was no provision for payment of additional variable charges for the service line. For the connections falling under Regulation 9.1.2 (i) (b), there is provision for recovering actual expenditure for release of connection, in case it is higher than the approved per kW / kVA charges. Thus, any additional expenditure on the extra length of the service line is automatically covered in the

actual expenditure, which will be higher, if length of the service line is quite high.

- (viii) Standard Cost Data was approved by the Commission, as required under Regulation-10 of the Supply Code, 2007. The Commission approved the Standard Cost Data which was made applicable with the issue of Commercial Circular No. 68/2008. The only contention put forth by the Respondent was that in column-5 of the Standard Cost Data, both per kVA charges and variable charges have been mentioned and hence are recoverable. In my view, the provisions of the Supply Code, 2007 and the approved Standard Cost Data are not being correctly interpreted by the Respondent. The charging Regulation of Supply Code, 2007 for recovery of charges for additional loads is 9.1.2. Approval of the Standard Cost Data is subordinate to Regulation 9.1.2 of Supply Code, 2007. Charges are to be levied on approved rates according to the Regulations of Supply Code, 2007. Regulation 9.1.2 (i) (b) is very categorical that the applicants falling in this category will be required to pay per kW / kVA charges for the additional load/demand as approved by the Commission or the actual expenditure for release of load/ demand, whichever is higher. No other expenditure is mentioned in this provision. Therefore,

in my view, even if variable charges are mentioned in the Standard Cost Data that does not make its charging mandatory when the same is not provided in the charging Regulation. Mention of any rates in the approved cost data only gives rates to be adopted where ever applicable according to Charging Regulation. During the course of proceedings on 10.11.2022, it was enquired from the Respondent whether the expenditure as per estimate, in the case of the Appellant included charges for the length of the required service line etc. He conceded that while preparing the estimate, all expenses including the cost of service line were taken into account and included in the case of the Appellant. Thus, there does not appear to be any justification in recovering variable charges again when these had already been included while preparing the estimate of expenditure. It needs to mention here that this anomaly of mentioning variable charges in the column for loads above 500 kVA CD (Contract Demand) has itself been removed by the PSERC while approving Standard Cost Data applicable from 01.10.2012 as is apparent from CC No. 31/2012. This supports the view that variable charges were not mandatory for loads above 500 kVA even for connections released before the said date for the reasons discussed above.

(ix) Commercial Circulars and instructions issued by the Licensee (PSPCL) cannot override/ modify the Supply Code, 2007 Regulations which had been framed by the Commission as empowered under Section 181 of 'The Electricity Act, 2003'. These regulations had been notified in the State Gazette after following the process laid down in the Act.

(x) I have gone through Section 46 of Electricity Act-2003 which states as under:

"The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses **reasonably incurred** in providing any electric line or electrical plant used for the purpose of giving that supply."

Thus, as per this Section 46 of Electricity Act-2003, the reasonability of expenses incurred was to be determined by the Hon'ble PSERC which had notified the Supply Code-2007 vide Notification dated 29.06.2007 and laid down the expenses to be recovered in Regulation 9.1.2 (i) (b) of Supply Code, 2007 reproduced *ibid*.

(xi) The contention of the Respondent that the Appellant had not followed the Consumer Complaint Handling Procedure and cause of action was much older than two years, so it became time barred as per Regulation 2.25 of PSERC (Forum and Ombudsman) Regulations, 2016 and Clause 56.2 of Electricity

Supply Act-2003, is not maintainable as the Appellant approached the Commission for the redressal of its grievance where it remained pending for adjudication till 22.02.2022.

- (xii) Both parties agreed during hearing on 10.11.2022 that there is no stay of the Hon'ble Punjab & Haryana High Court relating to this case under dispute.
- (xiii) Appeal Case Nos. 71/2017 & 72/2017 were decided by the Ombudsman because the cases were remanded back for review of earlier decisions by the Hon'ble Punjab & Haryana High Court. The cases were remanded back to the Ombudsman because two previous Ombudsman gave different awards in respect of the same issue/matter (recovery of variable charges). It was decided in these Appeal Cases that variable charges are not recoverable.
- (xiv) The Corporate Forum should have passed a speaking/ detailed order on the issue 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 issue raised by the Appellant in the dispute case filed before the Corporate Forum. The Corporate Forum did not decide the case on merits rather disposed it of stating the pendency of CWP No. 19701 of 2018

before the Hon'ble Punjab and Haryana High Court as the reason. This was not correct on the part of the Corporate Forum because the case is pending since 2013.

- (xv) In view of above, this Court is not inclined to agree with the decision dated 14.09.2022 of the Corporate Forum in Case No. CF-079 of 2022. Amount of ₹ 7,36,000/- charged as Variable Service Connection Charges at the time of extension of load of the Appellant in the year 2011 is not justified as per Regulation 9.1.2 (i) (b) of Supply Code, 2007.
- (xvi) The Respondent had intimated that the estimated expenditure as per estimate no. 23321/ 2012-13 is Rs. 15,40,659/- and date of release of additional demand of 1292 kVA is 26.09.2012 as per SJO No. 95/44600 dated 26.09.2012. The Respondent is directed to work out the actual expenditure incurred for release of additional load / demand and then apply Regulation 9.1.2 (i) (b) of Supply Code, 2007. Refund/ recover the amount, if any, as per Regulation No. 19.7/19.8 of Supply Code, 2007 and Regulation No. 9.3.6/ 9.3.7 of Supply Code, 2014 as amended from time to time.

6. Decision

As a sequel of above discussions, the order dated 14.09.2022 of the CCGRF, Ludhiana in Case No. CF-079 of 2022 is hereby

quashed. Amount of ₹ 7,36,000/- charged as Variable Service Connection Charges at the time of release of extension of load of the Appellant in the year 2011 is not recoverable as per Regulation 9.1.2 (i) (b) of Supply Code, 2007. The Respondent is directed to refund / recover the amount, if any, as per Regulation No. 19.7/19.8 of Supply Code, 2007 and Regulation No. 9.3.6/ 9.3.7 of Supply Code, 2014 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.

November 15, 2022
S.A.S. Nagar (Mohali)

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