

**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. 63/2022**

**Date of Registration : 07.11.2022**

**Date of Hearing : 15.11.2022**

**Date of Order : 15.11.2022**

**Before:**

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

**In the Matter of:**

M/s. Cosmas Research Lab Ltd,  
Village Gonspura (Humbran),  
District Ludhiana.

**Contract Account Number:U12HB0100049(LS)**  
...Appellant

Versus

Addl. Superintending Engineer,  
DS Division, PSPCL,  
Adda Dakha.

...Respondent

**Present For:**

Appellant: Sh. M.R.Singla,  
Appellant's Representative.

Respondent : 1. Er. Dharam Pal,  
Addl. Superintending Engineer,  
DS Division, PSPCL,  
Adda Dakha.  
2. Sh. Deepak Gupta,  
Revenue Accountant.

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-067 of 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 19.10.2022 i.e. within the stipulated period of thirty days of receipt of the decision dated 14.09.2022 of the CCGRF, Ludhiana in Case No. CF-067 of 2022, received by the Appellant on 24.09.2022. The Appellant did not submit any evidence to show that the Appellant Company had authorized Sh. Tanuj Jain to file/ sign/ assign any Authorized Representative in this Appeal on its behalf. Also, the Appellant did not submit any receipt of deposit of requisite 40% of the disputed amount with the Appeal. The Appellant was requested to submit copy of

Resolution of Board of Directors of the Appellant Company authorizing Sh. Tanuj Jain to file/ sign/ assign Authorized Representative in this Appeal on behalf of the Appellant and receipt of deposit of requisite 40% of the disputed amount for the registration/consideration of the Appeal vide letter no. 1157/OEP/CF-067 dated 19.10.2022, letter no. 1159/OEP/CF-067 dated 21.10.2022 & letter no. 1199/OEP/CF-067 dated 01.11.2022. The Respondent was also asked to confirm whether the Appellant had deposited the requisite 40% of the disputed amount as required under Regulation 3.18 (iii) of PSERC (Forum & Ombudsman) Regulation, 2016 vide letter no. 1158/OEP/CF-067/2022 dated 21.10.2022 and letter no. 1200/OEP/CF-067/2022 dated 01.11.2022. The Respondent replied vide Memo No. 5080 dated 01.11.2022, sent through email dated 03.11.2022, that the Appellant had not deposited the requisite 40% of the disputed amount. The same was forwarded to the Appellant through email dated 03.11.2022. The Appellant submitted the copy of Resolution of Board of Directors of the Appellant Company authorizing Sh. Tanuj Jain to file/ sign the Appeal or to assign any Authorized Representative to represent the Appellant Company by e-mail, but did not submit any proof of deposit of requisite 40% of the

disputed amount. To consider the Appeal for registration, a pre-hearing was fixed in this Court for 07.11.2022 at 11.30 AM and intimation to this effect was sent to both the parties vide letter nos. 1224-25/OEP/CF-067/2022 dated 03.11.2022. On 07.11.2022, at the start of hearing, the Appellant's Representative (AR) informed this Court that 40% of the disputed amount i.e. ₹ 2,85,000/- had been deposited by the Appellant on 05.11.2022. The Respondent confirmed that the same had been received. Therefore, the Appeal was registered on 07.11.2022 and copy of the same was sent to the Addl. SE/DS Division, PSPCL, Adda Dakha for sending written reply/ parawise comments with a copy to the office of the CCGRF, Ludhiana under intimation to the Appellant vide letter nos. 1228-1230/OEP/A-63/2022 dated 07.11.2022.

### **3. Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 15.11.2022 at 11.30 AM and intimation to this effect alongwith the copy of proceedings dated 07.11.2022 was sent to both the parties vide letter nos. 1226-27/OEP/CF-67/2022 dated 07.11.2022. As scheduled, the hearing was held in this Court and arguments of both the parties were heard.

#### **4. Submissions made by the Appellant and the Respondent**

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

##### **(A) Submissions of the Appellant**

##### **(a) Submissions made in the Appeal**

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

- (i) The Appellant was having a Large Supply Category connection bearing Account No. U12-HB01-00049 with Sanctioned Load as 2500 kW/1400 kVA under DS Division, PSPCL, Adda Dakha.
- (ii) On 28.03.2011, a Large Supply connection for 2500 kW/ 2499 kVA was applied in Sub Division, Humbran for which Demand Notice was issued by the office on 02.05.2011 asking to deposit ₹ 22,50,000/- as service connection charges which were more than the actual cost of estimate. Accordingly, amount was deposited and the connection of the Appellant was released in January, 2012.

- (iii) On 21.03.2012, a notice was served to the Appellant by Sub Division office vide Memo No. 290 asking to deposit ₹ 7,10,460/- as cost of variable charges. This notice was illegal/ wrong and was in violation of the Supply Code, 2007 Regulation 9.1.1 (b) applicable for load above 500 kVA. As per this Regulation, actual cost or fixed charges per kVA basis 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 Regulation. The Respondent illegally/ wrongly suo-moto had considered/ limited the length of service line as 250 meters for charging & calculating variable charges in violation of the Supply Code Regulations.
- (iv) Against this illegal/ wrong demand, petition was filed before the Hon'ble PSERC vide Petition No. 68 of 2014. Commission had given its decision on 02.03.2022 with the remarks that Regulations were very clear and the Appellant may file his grievances before the CGRF. The PSERC order was sent to the Appellant vide PSERC/Org/428 dated 04.03.2022. Accordingly, petition was filed before the CGRF for deciding the issue. The Corporate CGRF had now passed the orders on 16.09.2022 that as similar case was pending before the High

Court, so the CCGRF shown its inability to decide the issue with the orders that the Appellant may approach the Hon'ble Ombudsman.

- (v) As per Regulations, the conditions of Demand Notice once issued cannot be altered.
- (vi) In the Case of the Appellant, Supply Code, 2007 Regulation 9.1.1 (b) was applicable being load more than 500 kVA and in the Regulation, there was no provision for charging variable charges. Only actual cost of line or fixed charges per kVA basis whichever was higher was to be charged. In Regulation, there was no limit for the service line length for cases having load above 500 kVA.
- (vii) The Respondent had wrongly/ illegally raised the demand of variable charges in violations of the Regulation by limiting the length of service line to 250 Meters whereas there was no such limit in the Regulation.
- (viii) The Ombudsman, Electricity, Punjab in similar cases in Appeal Nos. 71/2017 & 72/2017 of M/s. P.R. Alloys & M/s. Sewa Kunj Alloys had decided in favour of the consumers giving award that variable charges were not recoverable and had quashed the illegal demand of the Respondent for variable charges.

- (ix) Keeping in view the Supply Code, 2007 Regulation 9.1.1 (b), the demand of the Respondent for charging variable charges of ₹ 7,10,460/- was wrong/ illegal which was to be quashed/withdrawn.
- (x) The Appellant prayed to the Hon'ble Ombudsman to quash the wrong/ illegal demand of ₹ 7,10,460/- raised by the Respondent as variable charges and requested to order the withdrawal of the notice for ₹ 7,10,460/- as variable charges. Suitable compensation for causing harassment to the Appellant may please be also ordered/ awarded. The amount already deposited may please be ordered to be refunded with interest.

**(b) Submissions in Rejoinder**

The Appellant submitted the following Rejoinder for consideration of this Court:-

- (i) In this case, Regulation 9.1.1(b) of Supply Code-2007 was applicable being load more than 500 KVA. In the Regulation, there was no provision for charging variable charges, only actual cost of line was to be charged. No limit for service line length had been prescribed in the Regulation. Moreover, Regulation 9.1.1(b) of Supply Code 2007 was never amended and till date, it had its applicability.

- (ii) The Respondent had wrongly/illegally raised demand of variable charges in violation of the Regulations, considering service line length beyond 250 meters 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 reasonably incurred expenses for giving electric supply, so Respondent cannot charge more than the actual expenses as per this Act. The Section 46 of Electricity Act is reproduced below:-

**“Section 46 - Power to recover expenditure:**

**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.”**

- (iv) The Hon'ble Court of Ombudsman, Electricity, Punjab in similar cases having Appeal No. 71/2017 & 72/2017 of P. R. Alloys & Sewa Kunj Alloys had decided in favour of the Appellants 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 Respondent for variable charges.

- (v) It was worth mentioning that in the case pending before the Hon'ble Punjab and Haryana High Court, there was no stay against the order of the Hon'ble Court of Ombudsman, Electricity, Punjab till date.
- (vi) Keeping in view the Regulation 9.1.1(b) of Supply Code - 2007 and Section 46 of Electricity Act-2003, the demand of the Respondent for charging variable charges of ₹ 7,10,360/- was wrong/illegal which was required to be quashed/withdrawn.
- (vii) The Appellant requested the Hon'ble Court of Ombudsman to kindly order the Respondent for refunding the amount already deposited with interest as per Regulation 19.7 of Supply Code-2007 as amended from time to time in this regard for disputed cases.

**(c) Submission during hearing**

During hearing on 15.11.2022, the Appellant's Representative (AR) reiterated the submissions made in the Appeal 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 a Large Supply connection for connected load of 2500 kW/ 2499 kVA. The demand notice was issued to the Appellant for ₹ 22,50,000/- vide Memo No. 532 dated 02.05.2011 which was deposited by the Appellant and the connection was released on 23.01.2012. However, it was observed that as per Estimate No. 13137/2011-12 sanctioned vide letter no. 2042 dated 31.05.2011 for release of the subject cited connection, the total service line was for 2473 meters, so a notice was issued to the Appellant vide Memo No. 290 dated 21.03.2012 for recovery of excess service line above 250 meters amounting to ₹ 7,10,460/-. The Appellant did not agree with the same and put its case before the Hon'ble PSERC vide Petition No. 68/2014. The same was decided by the PSERC which issued order dated 02.03.2022 in which the Appellant was instructed to approach Appropriate Forum for its dispute resolution. The case was decided by the Corporate Forum, Ludhiana in its meeting dated 14.09.2022 in which it was decided 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) The Appellant was not satisfied with the decision of the Corporate Forum, Ludhiana and approached the Hon’ble Court of Ombudsman, Electricity, Punjab for redressal of its grievance. The Appellant had deposited the requisite 40% of the disputed amount i.e. ₹ 2,85,000/- vide Receipt No. 188443923 dated 05.11.2022.
- (iii) The first point of Appeal was wrong as the demand notice issued to the Appellant was never altered. It was only after release of the connection when sub division noted that as per Sanctioned Estimate, Service Line used for release of connection was of 2473 meters, so amount was charged to the Appellant vide Notice No. 290 dated 21.03.2012.
- (iv) The Appellant was quoting Regulation No. 9.1.1(b) for the present case, but it was stated that this Regulation was superseded by Commercial Circular No. 68/2008 dated 17.12.2008 in which Standard Cost Data approved by the PSERC vide letter no. 3981/PSERC/DTJ-50 dated 05.12.2008

was applied for demand notices issued w.e.f. 22.12.2008. As per point no. 5 of this Circular, for Large Supply connection with load above 500 kVA, Service Connection Charges at the rate of ₹ 900 per kVA & Variable Charges @ ₹ 320 per meter were to be recovered from the Appellant. The same was clarified by letter no. 1032 dated 13.07.2012 from O/o Chief Engineer/ Commercial, Patiala in which the Instruction No. 9.1.1(i)(b) was proposed to be amended in which for load exceeding 500 kW/ kVA, the applicant would be required to pay per kW/ kVA charges plus variable charges or actual expenditure for release of connection, whichever was higher. In this case, the amount for per kW/kVA charges & variable charges was higher than cost of estimate. So, the amount charged to the Appellant was as per CC No. 68/2008.

- (v) The Instructions regarding recovery of Service Connection Charges as per Supply Code-2007 were as follows:-

Regulation 9.1.1 (i)(a) stated that where load/demand applied was upto 500 kW/ 500 kVA & where the length of service line exceeded the prescription limit for the applied category (250 meters for Industrial & Bulk Supply), the applicant would also pay for the additional expenditure for the extra length on actual basis at the rates approved by the Commission.

- (vi) Regulation 9.1.1 (i) (b) stated that where load/demand required exceeded 500 kW/ 500 kVA, the applicant would be required to pay per kW/kVA charges as approved by the commission or the actual expenditure for release of the connection, whichever was high.
- (vii) So, in the present case Regulation 9.1.1 (i) (b) was applicable where it was stated that per kW charges or actual expenditure, whichever was higher was to be recovered from the Appellant. The amount to be recovered was revised by Commercial Circular No. 68/2008 point no. 5, where it was prescribed that for load exceeding 500 kW/ 500kVA, per kW/kVA charges alongwith variable charges @ ₹ 320 per meter (with no mention of 250 meter limit) needed to be recovered from the Appellant. This was further stated in the clarification letter no. 1032 dated 13.07.2012 from the o/o Chief Engineer/ Commercial, Patiala. So, in this case, as the amount to be recovered was higher as per Standard Cost Data or Actual Expenditure. Also, 250 meters excluded while calculation of variable charges needed to be recovered from the Appellant amounting to ₹ 80,000/- (₹ 320x250 meters). Moreover, it was submitted that the same instructions were removed from

Supply Code-2014 altogether & made applicable only at the time of withdrawal of connection by the consumer.

- (viii) The Regulation No. 9.1.1 (a) clearly stated that for industrial connections upto 500 kW/ 500 kVA, per kW/kVA charges should only be recoverable if the length of service line was upto 250 meters only. However, no limit of 250 meters was mentioned for load exceeding 500 kW/ 500 kVA. But as the instructions for service connection charges as per point no. 5 of CC No. 68/2008 was same for LS connection upto 500 kW/ 500 kVA & above 500 kW/ 500 kVA, so this limit of 250 meters was also assumed for above 500 kW/ 500 kVA connections & hence in this case excess service line of 2223 meters (2473-250) was charged to the Appellant which was correct & recoverable.
- (ix) The decision of the Appeal cases in the Court of Ombudsman, Electricity, Punjab as mentioned by the Appellant had already been appealed by the PSPCL in Punjab & Haryana High Court vide CWP No. 19701 of 2018 which was pending with the next date of hearing being 12.04.2023.
- (x) So, it was stated that Corporate Forum, Ludhiana had not issued any orders against the Appellant & had only deferred

the orders till the matter would remain pending in the Hon'ble Punjab & Haryana High Court.

**(b) Submission in Reply to Rejoinder**

During hearing on 15.11.2022, the Respondent submitted Reply to Rejoinder. He had repeated the points already raised in the Written Reply to the Appeal.

**(c) Submission during hearing**

During hearing on 15.11.2022, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal.

**5. Analysis and Findings**

The issue requiring adjudication is the legitimacy of the amount of ₹ 7,10,460/- charged as Variable Service Connection Charges vide Memo No. 290 dated 21.03.2012 after release of connection in January, 2012.

*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 Petitioner applied for a Large Supply Connection and in compliance to it, Petitioner was issued Demand Notice vide Memo No. 532 dated 02.05.2011 for Rs. 2250000/- which was deposited by the petitioner & connection of the petitioner was released on 23.01.2012. The petitioner was issued notice vide memo no. 290 dated 21.03.2012 to deposit Rs. 710460/- as variable service connection charges. Against this notice Petitioner filed petition no. 68 of 2014 before Hon’ble PSERC. Hon’ble PSERC in its meeting held on dated 09.02.2022 decided as under:

***“The fora 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 and 159 of 2021. Therefore, the petitioner may seek redressal of its grievance, if any, before the appropriate Forum”.***

Accordingly, petitioner filed his petition before the Corporate CGRF.

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.

Forum also observed that in the similar nature case pending in this Forum in the name of M/s Impel Forge & Allied Industries Ltd. (case no. CF-79/22), clarification was sought by Respondent of that case, from Legal Section which can have implication in present case. The clarification/ advice given by the legal section to Sr. Xen/

DS Samrala vide memo no. 4428 dated 03.08.2022, is 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 Court and let them decide accordingly”.*

In view of the above, Forum observed that that the issue raised by the Petitioner being 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., it would be inappropriate for this Forum to parallelly decide separate petitions for similar dispute. 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 the Appeal as well as in Rejoinder, written reply of the Respondent/ Reply to Rejoinder as well as oral

arguments of both the parties during the hearing on 15.11.2022. It is observed that the Appellant had applied for new Large Supply (LS) industrial connection for Sanctioned Load/ Contract Demand of 2500 kW/ 2499 kVA on 28.03.2011. Demand Notice vide Memo No. 532 dated 02.05.2011 for ₹ 22,50,000/- was issued to the Appellant which was deposited by the Appellant. The connection was released on 23.01.2012. Thereafter, the Respondent observed that as per Estimate No. 13137/2011-12 sanctioned vide letter no. 2042 dated 31.05.2011 for release of the subject cited connection, the total service line was for 2473 meters, so a notice was issued to the Appellant vide Memo No. 290 dated 21.03.2012 by the Respondent for recovery of excess service line above 250 meters amounting to ₹ 7,10,460/-. The Appellant did not agree with the same and put its case before the Hon'ble PSERC vide Petition No. 68/2014. The same was decided by the PSERC which issued order dated 02.03.2022 in which the Appellant was advised to approach the Appropriate Forum for the redressal of his grievance.

- (iii) Accordingly, the Appellant approached the Corporate Forum vide Case No. CF-067 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.

- (iv) 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 ₹ 7,10,460/- as variable service connection 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. He argued that this Regulation 9.1.1 (i) (b) of Supply Code, 2007 was superseded by Commercial Circular No. 68/2008 dated 17.12.2008 in which Standard Cost Data approved by the PSERC vide letter no.

3981/PSERC/DTJ-50 dated 05.12.2008 was applied for demand notices issued w.e.f. 22.12.2008. As per point no. 5 of this Circular, for Large Supply connections with load above 500 kVA, Service Connection Charges at the rate of ₹ 900 per kVA & Variable Charges @ ₹ 320 per meter were to be recovered from the Appellant. He further argued that the same was clarified by letter no. 1032 dated 13.07.2012 from o/o Chief Engineer/Commercial, Patiala in which the Regulation No. 9.1.1 (i) (b) was proposed to be amended in which for load exceeding 500 kW/kVA, the applicant would be required to pay per kW/kVA charges plus variable charges or actual expenditure for release of connection, whichever was higher.

- (v) 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.”

It is noticed that this Regulation has clearly drawn a line of distinction between the new connections with load upto 500 kW/ 500 kVA and above 500 kW/ 500 kVA.

- (vi) The consumer had applied for new LS Connection with Sanctioned Load/ Contract Demand as 2500 kW/ 2499 kVA on 28.03.2011. The applicable Regulation in this case for new connection was 9.1.1 (i) (b) of Supply Code, 2007. As per Regulation 9.1.1 (i) (b) of Supply Code, 2007; where load/ demand required exceeds 500 kW/ 500 kVA, the consumer will pay per kW / kVA charges for the required 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 9.1.1 (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.

- (vii) 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 as the Regulation 9.1.1 was superseded by the Commercial Circular No. 68/2008. 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 new connection is 9.1.1. Approval of the Standard Cost Data is subordinate to Regulation 9.1.1 of Supply Code, 2007. Charges are to be levied on approved rates according to the Regulations of the Supply Code, 2007. Regulation 9.1.1 (i) (b) is very categorical that the applicants falling in this category will be required to pay per kW / kVA charges for the required 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 15.11.2022, 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 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 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.

(viii) 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'. The regulations had been notified in the State Gazette after following the process laid down in the Act.

(ix) 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 9.1.1 (i) (b) reproduced *ibid*.

(x) The contention of the Respondent, that the Chief Engineer/ Commercial clarified vide Letter No. 1032 dated 13.07.2012 in which the Regulation No. 9.1.1 (i) (b) was proposed to be amended in which for load exceeding 500 kW/kVA, the

applicant would be required to pay per kW/kVA charges plus variable charges or actual expenditure for release of connection whichever was higher, is not tenable as the said proposal of the Licensee was never approved by the Commission.

- (xi) Both parties agreed that there is no stay of the Hon'ble Punjab & Haryana High Court relating to the case under dispute.
- (xii) Appeal Case Nos. 71/2017 & 72/2017 were decided by the Ombudsman after the cases were remanded back for decision by the Hon'ble Punjab & Haryana High Court. The cases were remanded to the Ombudsman because two previous Ombudsman gave different awards in respect of the same issue/matter (recovery of variable charges). The Ombudsman had decided in these Appeal Cases that variable service connection charges are not recoverable.
- (xiii) 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.

(xiv) The Respondent had submitted a certificate with the Reply in which he had certified that the work of the Appellant was completed as per Estimate No. 13137/2011-12 and the actual expenditure was as per Estimate. The Respondent further submitted that the actual expenditure as per the said Estimate No. 13137/2011-12 was ₹ 21,78,657/-. The Appellant had deposited the Fixed Service Connection charges of ₹ 22,50,000/-. So the Service connection charges recoverable as per Regulation 9.1.1 (i) (b) of Supply Code, 2007 in the present case is ₹ 22,50,000/- (higher of per kW / kVA charges for the required load/demand as approved by the Commission or the actual expenditure for release of load/ demand), already deposited by the Appellant. So the demand of the Respondent of variable charges of ₹ 7,10,460/- vide Notice No. 290 dated 21.03.2012 is not justified.

(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-067 of 2022. The amount of ₹ 7,10,460/- charged as Variable Service Connection Charges vide Memo No. 290

dated 21.03.2012 after the release of connection in January, 2012 is not justified as per Regulation 9.1.1 (i) (b) of Supply Code, 2007 & hence is not recoverable. The Respondent is directed to refund ₹ 2,85,000/- i.e. 40% of the disputed amount deposited by the Appellant on 05.11.2022 while filing this Appeal, along with interest as per Regulation 9.3.6 of Supply Code, 2014 to be read with amendments , if any.

(xvi) No compensation is awarded in this case.

#### **6. Decision**

As a sequel of above discussions, the order dated 14.09.2022 of the CCGRF, Ludhiana in Case No. CF-067 of 2022 is hereby quashed. The amount of ₹ 7,10,460/- charged as Variable Service Connection Charges vide Memo No. 290 dated 21.03.2012 is not justified as per Regulation 9.1.1 (i) (b) of Supply Code, 2007 & hence is not recoverable. The Respondent is directed to refund ₹ 2,85,000/- i.e. 40% of the disputed amount deposited by the Appellant on 05.11.2022 while filing this Appeal, alongwith interest as per Regulation 9.3.6 of Supply Code, 2014 to be read with amendments , if any.

**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.