

**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. 66/2022

Date of Registration : 25.11.2022

Date of Hearing : 05.12.2022

Date of Order : 09.12.2022

Before:

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

In the Matter of:

M/s. Varun Garg c/o Hotel Queen's Land,
BK-44 0823, Goniana,
Distt.-Bhatinda-151201.

Contract Account Number: 3005822878 (NRS)

...Appellant

Versus

Senior Executive Engineer,
DS City Division,
PSPCL, Bhatinda.

...Respondent

Present For:

Appellant: Sh. Parvesh Chadha,
Appellant's Representative.

Respondent : 1. Er. Jagjit Singh,
AE DS Sub- Division,
PSPCL, Goniana.

2. Sh. Harshul Garg, RA.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 02.11.2022 of the Corporate Consumer Grievances Redressal Forum, Ludhiana (Corporate Forum) in Case No. CF-131 of 2022, deciding that:

“The connection (extension of load) has been applied and released in the name of M/s Varun Garg, Hotel Queen’s Land for Hotel and Restaurant purpose under NRS category. The A&A Form constituting the agreement between both the Respondent and the Petitioner has been signed for Hotel & Restaurant under NRS category. As such the plea of the Petitioner to treat the connection for Marriage Palace only is not justified and as such the petition is dismissed.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 25.11.2022 i.e. within the stipulated period of thirty days of receipt of the decision dated 02.11.2022 of the CCGRF, Ludhiana in Case No. CF-131/2022. The Appellant was not required to deposit requisite 40% of the disputed amount as it was a refund case. Therefore, the Appeal was registered on 25.11.2022 and copy of the same was sent to the Addl. SE/DS City Division, PSPCL, Bhatinda for sending written reply/ parawise comments with a copy to the office of the CCGRF, Ludhiana under intimation to the Appellant vide letter nos. 1297-99/OEP/A-66/2022 dated 25.11.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 05.12.2022 at 12.30 PM and intimation to this effect was sent to both the parties vide letter nos. 1311-12/OEP/A-66/2022 dated 30.11.2022. As scheduled, the hearing was held in this Court and arguments of both the parties were heard. The case was closed and the order was reserved. Proceedings dated 05.12.2022 were sent to both the parties vide letter nos. 1319-20/OEP/A-66/2022 dated 05.12.2022.

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 along with material brought on record by both the parties.

(A) Submissions of the Appellant

(a) Submissions made in the Appeal

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

- (i) The Appellant was having a NRS Category Connection, bearing Account No. 3005822878 with sanctioned load/ CD as

397.511 kW/ 357.760 kVA under DS City Division, PSPCL, Bhatinda. The connection was obtained for Marriage Palace and the HT supply was used for “Marriage Palace”.

- (ii) The Appellant filed a case in Corporate Forum, Ludhiana on 22.07.2022 bearing Case No.T-176/2022 and was registered on 15.09.2022 as CF-131/2022. The case was heard in its proceedings dated 23.08.2022, 06.09.2022, 15.09.2022, 29.09.2022, 12.10.2022 and finally on 18.10.2022. The case was decided on 02.11.2022. The decision was issued vide Memo No. 2142/ TP-176/2022 dated 10.11.2022 and was received on 15.11.2022.
- (iii) The billing before introduction of CC No.47/2017 & CC No.24 of 2018 was done on 80% Fixed charges. But the billing of Marriage Palace was to be charged @10% & @25% fixed charges respectively instead of 80% as applicable to other consumers, but the PSPCL office as well as CBC had not issued bill accordingly. The billing of the Appellant was done on 80% fixed charges of sanctioned CD. The request was made by the Appellant against this irregularity to the Respondent’s office on 29.05.2018 and reminder was sent vide letter dated 02.07.2018. A demand to refund the excess billed fixed charges was made but no such bills were revised/corrected since

04/2018 to 08/2022. Therefore, the Appellant filed a case in Corporate Forum, Ludhiana for the refund of excess paid amount with interest.

- (iv) The Corporate Forum, Ludhiana decided the case on 02.11.2022. The decision was not acceptable as the Corporate Forum had not decided the case on the basis of actual facts.
- (v) CC No. 47/2017 & CC No.24 of 2018 were introduced and No such Notice was issued by PSPCL as desired by the Corporate Forum during discussion and mentioned in the judgment at page no. 8:-

“The Respondent submitted that Petitioner had never applied for modification of A&A form, in his office. As Petitioner had entered into an agreement for NRS connection”

It was added that no such instruction was given in the ibid Circular regarding execution of fresh agreement i.e. A& A form/change of nature of category i.e. NRS to Marriage Palace. No such notice had ever been issued. The tariff was applied and fixed charges were not reduced from 80% to 25%. As per Circular Tariff 3.7.6, it was as below:-

“iv) Consumers running Marriage Palaces shall pay Fixed Charges on 25% of Sanctioned Load/Contract Demand. In case, the consumer exceeds its Load/Contract Demand during a billing cycle/month, he shall also be liable to pay applicable load/demand surcharge.”

- (vi) A clarification was issued by CE/Commercial, PSPCL, Patiala in this regard vide Memo No. 06/SV/GEN/BTD/V-3 dated 10.01.2022 addressed to ASE, DS Division, Shri Mukatsar Sahib which cleared that no definition of marriage palace or the condition required to be fulfilled had been mentioned in the tariff. The detail of this clarification was as under for the consideration:-

“In reference to above the matter was discussed and deliberated with the concerned office dealing with the tariff issues. As per clarification given it has been intimated that “in Clause SV.3 Note (iv) of Schedule of Tariff for NRS of Tariff Order 2021-22 it has been mentioned that marriage palaces shall pay fixed charges on the 25% of the sanctioned load/contract demand instead of fixed charges on 80% of the sanctioned load/contract demand but no definition of marriage palace or the conditions required to be fulfilled have been mentioned in the tariff order 2021-22. Therefore, the field office for allowing 25% fixed charges instead of 80% for marriage palaces, the concerned field office may ascertain genuineness of such marriage palaces from Local Administration/ Local Body Deptt.”

It was added that the PSPCL local staff was visiting every month to record the readings/ checking and it was in their knowledge that connection was being used for Marriage Place and there was no Hotel at site.

- (vii) The Forum’s observation given in Para at page 8 were reproduced as under:-

“The Petitioner never mentioned the Category i.e., Marriage Palace for obtaining electricity connection/extension of load. Hotel Queen’s Land appeared on some of the photographs and all other documents. Even the name ‘Hotel Queen’s Land’ is itself evidence to prove that the unit was established as hotel.”

The above observation of the Corporate Forum was not admitted. The two parts tariff was not applicable at the time of release of connection and it was introduced vide CC No. 24/2018. As such, only NRS category was mentioned in A&A forms. The Name was registered as **‘Hotel Queen’s Land’** but connection was used for marriage palace from the start. The hotel was never constructed but name was written for this marriage palace.

- (viii) The Corporate Forum’s had below mentioned observation that the documents produced in support to business/ uses of electricity for marriage palace were not sufficient:-

“The Petitioner’s Representative submitted with the petition letters/references of various Departments such as from Sr. Town Planner, Patiala, issued for change of use of land (CLU), license for allowing consumption of liquor on special occasion in marriage palace or a banquet hall issued by Collector Cum-Deputy Excise and Taxation Commissioner, Faridkot Division. Forum observed that documents submitted by the Petitioner from the various departments is not the basis/criteria for determining the tariff as it is for purpose of determining the categorization under respective Acts/Laws of the department concerned.”

The documents issued by Punjab Government Departments had a valid proof to determine the nature and purpose of use of premises. The CGRF, Patiala had considered these types of documents and issued order in this regard vide Case No. CGP-381/2021 issued vide Memo No. 3287 dated 16.05.2022 at Page-4 in Para-4. Therefore, the rejection/ non acceptance of these types of documents were a great injustice with the Appellant. The Appellant's documents were according to the clarification given by the CE/Commercial, PSPCL, Patiala vide Memo No. 06/SV/GEN/BTD/V-3 dated 10.01.2022. The Appellant had/is paying necessary fees to the concerned departments every year to maintain use of Marriage Palace business.

- (ix) In reference of Case No. CGP-187 of 2019, the same rebate had been given by ordering 25% fixed charges and order was passed in favour of the Applicant. Moreover, it was allowed w.e.f. 01.01.2018 as per CC No. 46/2017 but the Appellant was claiming from 01.04.2018, as per CC No. 24/2018 which may be given from the claimed date.
- (x) The Respondent had denied the representations given by the Appellant on 29.05.2018 & reminder dated 02.07.2018 to charge the 25% fixed charges and also to refund the excess

billed fixed charges. It was further added that Respondent amended the category on the bill from NRS to Miscellaneous (others) and Marriage Palace and these were submitted with reply as a proof. The bills for the months of 09/2020, 10/2020, 07/2021, 09/2021, 04/2022 & 05/2022 supported the reply as it was clearly mentioned (on the top of bills) that nature of supply was being used for "MARRIAGE PALACE". But the relevant tariff had not been changed/ applied means 25% fixed charges were not levied and billing was continued with 80% fixed charges. The copies were produced by PSPCL but the Corporate Forum had ignored this point.

(xi) The bill issued on 22.09.2022 for the period 17.08.2022 to 21.09.2022 was issued on 25% fixed charges and onwards. Thus, the PSPCL had admitted the error and corrected it after filing of the petition before the Corporate Forum on 15.09.2022. Therefore, the claim of Appellant was correct and liable to be refunded with interest.

(xii) In another case, Case No. CGP-187 of 2019 of M/s Punjab Palace, the CGRF, Patiala had passed order and given refund of excess billed fixed charges as per decision dated 20.08.2019, reproduced below :-

“1.Petitioner be charged Fixed Charges on 10% of Load/Contract Demand or Actual Load/Demand recorded

during the billing cycle/month, whichever is higher for the period 01.01.18 to 31.03.18 as per tariff order for MYT Control Period from FY 2017-18 to FY 2019-20 for PSPCL for the year 2017/18 and adopted by Respondent Corporation vide CC 46/2017.

2. Further petitioner be charged Fixed Charges on 25% of Sanctioned Load / Contract Demand for the period 01.04.18 to 30.06.19 as per the tariff order for the year 2018/19 and adopted by Respondent Corporation vide CC 23/2018 and 25/2019.”

(xiii) The Independent Member and Permanent Invitee from the O/o CE/Commercial, Patiala did not agree to the above conclusion and expressed their opinion as under:

“(i) Respondent supplied bills dated 20.09.2020, 22.10.2020, 22.07.2021, 22.09.2021, 25.04.2022 and 23.05.2022 to the Forum which had been issued to the petitioner from time to time. Rate category on all these bills has been clearly mentioned as ‘MARRIAGE PALACES’, however, fixed charges have been charged on 80% of sanctioned CD instead of on 25% applicable to Marriage Palaces as per CC 24/2018. Respondent was not able to explain this anomaly. Had the Respondent set correct flags in SAP system as per correct category of Marriage Palace as otherwise mentioned in bills, this issue/case would not have arisen.

(ii) Petitioner had submitted copy of CLU approval letter issued by Senior Town Planner vide his office Memo No. 1005-STP(P)/MPP-446B dated 31.03.2014 wherein it is stipulated as under: -

*“The permission for Change of Land Use is granted as per policy of Regularization of Existing **Marriage Palaces** issued vide letter no: 12/8/2012-5HgII/5094 dated 16.11.2012 and 12/8/2012-5HgII/105 dated 07.01.2013 respectively.”* And

*“The change of land use shall be in the hands of Hotel Queen’s Land (**Marriage Palace**), Village Bhokhra*

Tehsil Goniana Mandi & District Bathinda and shall deposit CLU/EDC /License/ Permission Fee and all other charges levied or to be levied by Housing and Urban Development Department, Punjab from time to time.”

- (iii) Further, Collector-cum-Deputy Excise and Taxation Commissioner, Faridkot had issued a license to the petitioner Sh. Varun Garg in his capacity as Managing Partner of M/s Queen’s Land vide Registered No. 9/BTI/2004-05, relevant portion of the license is reproduced below: -

*“This license authorizing the owner of a **Marriage Palace** or a **Banquet Hall** for the consumption of liquor only in the **Marriage Palace** or the **Banquet Hall** specified below and for the period from 01.04.2004 to 31.03.2005 is granted to Sh. Varun Garg S/o Managing Partner owner of **Queen’s Land** District of Bathinda.”*

License in Form L-5D was issued for serving liquor in commercial places like Marriage Palaces, Banquet Halls, or Community Centers or Dharamshala and it is not applicable for Hotels and Restaurants. Further, petitioner had been depositing Annual License Fee to ETO, Bathinda under L-5D w.e.f. FY-2004-05.

- (iv) This relief of fixed charges on 25% of Sanctioned CD instead of on 80% of CD; in respect of marriage palaces was given for the first in the tariff order for the FY 2018-19 vide CC No. 24/2018 dated 24.04.2018 and it was stipulated in this circular as under: -

“All concerned officers/officials are requested to go through these instructions so as to acquaint themselves with various conditions for its correct applications.”

Hence, as per above stipulation, it was the duty of the Respondent to identify all marriage palaces falling in his jurisdiction and to bill these with fixed charges on correct percentage of the sanctioned CD as per CC 24/2018 i.e., 25%.

Therefore, Independent Member and Permanent Invitee from the O/o CE/Commercial, Patiala are of the opinion that the petitioner had been running a marriage palace and not a hotel; in the name of 'Hotel Queen's Land' FY 2004-05 onwards, and connection of the petitioner was required to be billed under category of Marriage Palace w.e.f. 01.04.2018 as per CC No. 24/2018 dated 24.04.2018. Hence, bills issued to the petitioner from 01.04.2018 onwards are required to be quashed and his account is to be overhauled with fixed charges on 25% of his sanctioned CD w.e.f. 01.04.2018."

- (xiv) The bills were presented by PSPCL and as per version there must be a mistake to send DATA in SAP which was corrected in September, 2022 when bill was issued on Fixed charges @25% of sanctioned CD. There was a fault to set FLAG in the system of SAP for billing purpose.
- (xv) The documents for CLU were issued before the introduction of CC No. 24/2018 relating to MARRIGE PALACE. The document of Liquor License was also valid w.e.f. FY 2004-2005 and prior to the issuance of CC No. 24/2018.
- (xvi) The field officers/officials had not made compliance of the instruction to verify the sites. Even no such notice was issued to the Appellant to change agreement. The opinion was not admitted and the decision was made by the Corporate Forum with majority decision by virtue of casting vote of the

Chairperson as there was difference of opinion in judgment of members.

(xvii) The previous billing before introducing CC No. 47/2017 & CC No. 24/2018 was issued as per Tariff code 1 which was for all NRS connections and Tariff code 2 was for Hotels i.e. normal NRS consumers using electricity for 12 Hrs daily but Hotels were using for 20 Hrs. This formula was adopted while calculating the average as per Supply Code instructions using LDHF formula. The PSPCL issued bills under code 1 as such the Fixed Charges were levied on 80% of CD. The Respondent office had not acted to verify the facts and amend the billing for Marriage Palace and due to their lapse, we had suffered by paying excess 55% fixed charges.

(xviii) There was no code to Marriage Palace tariff. It was introduced vide CC No. 47/2017 & CC No. 24/2018 for the first time and in SAP, a Flag was required to be set for billing which was not done even after the Appellant requested vide his letters dated 29.05.2018 & 02.07.2018. The PSPCL got it done after filing of present dispute in the Corporate Forum, Ludhiana by the Appellant. Now the proper billing was being issued.

(xix) The supply was never used for Hotel as it was never constructed and it was a Marriage Palace. The consumption

data was attached for the authentication as there were ups and downs in consumption because consumption increased during marriage season/function and low during the off seasons, but in Hotel industry there must be regular consumption. The PSPCL had never pin pointed the variation in consumption neither by the local authority nor by the CBC, who prepared the bills above 100 kVA.

- (xx) The decision of the Corporate Forum may kindly be set aside and refund be allowed from 01.04.2018 to 17.08.2022 as a difference of excess billing due to excess Fixed Charges were issued and deposited by the Appellant.
- (xxi) The Appellant requested that order be issued to the Respondent that the billing of the Appellant be revised by applying 25% fixed charges against already charged 80%. The issued bills were paid regularly, nothing was pending. A refund be allowed with interest for the period 01.04.2018 to 17.08.2022.

(b) Submissions made in the Rejoinder

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

- (i) In Para (a), the Respondent had admitted that there was NO INSTRUCTION in both CC as such **no notice** was issued to Appellant for the applicability of Tariff of marriage palace.

Then there was no need to tender fresh A&A form/modify as there was no change in the category. The CCGRF, Ludhiana had not decided the case on facts as such this Appeal had been filed. The billing was not amended to properly implement the tariff / applied and Fixed charges were not reduced from 80% to 25% as per provision 3.7.6 of Circular Tariff.

- (ii) The reply to Para (b) was not admitted. The Respondent was challenging the clarification given by the CE/Commercial, PSPCL, Patiala. It was correct that it was not addressed to Respondent's office but it was for all marriage places, as such reply was not correct. The Chief Engineer/Commercial, PSPCL, Patiala was issuing all letters/ circulars on behalf of PSPCL and was valid in all over Punjab as well as in the COURT. The department was acting on their instructions. As such, the Appellant was not correctly charged Fixed Charges on 80% of CD which were to be billed on 25%.
- (iii) The reply to Para (c) was also not admitted, it was submitted that when this connection was obtained in year 2003 for load 149.772 kW (HT), the PSEB now PSPCL had no separate instruction/ category for MARRIAGE PALACE and connections were covered under NRS Tariff and billed accordingly. It was started vide CC No. 47/2017 w.e.f.

01.01.2018. The change in % age rate of Fixed charges came in to notice of the Appellant during May, 2018 and the Appellant approached the concerned office on 29.05.2018. It was correct that Display and Title was “Hotel Queen’s Land”. The same was since D.O.C. PSEB/PSPCL did not raise any objection at the time of release of connection or on extension of load from 149.772 kW to 297.150 kW on 24.04.2007 and then 397.511 kW on 21.01.2004. All the times load was released after verification of LOAD at site. If it was HOTEL, then how they release to Marriage Palace. Secondly, the AEE was recording Monthly readings above 100 kW as per ESIM Instruction No. 81.1.2. Why he had not pinpointed that there was NO HOTEL? The name “Hotel Queen’s Land” did not mean the nature of use for hotel. The PSPCL authorities had released the load every time after due verification of site.

- (iv) The reply in Para (d) was also not admitted as the documents submitted from various departments were issued by Govt. Departments and were not challengeable because the concerned departments had issued the same after completing all formalities. The site was actual used for MARRIAGE PALACE and the documents proved it. It was added that the Respondent had not acted according to their own instruction as

clarified by the CE/Commercial, PSPCL, Patiala against all Tariff circulars CC of 2017 to 2021 in which it was very much clear that fixed charges were to be levied @25% to marriage palaces. It was further clear that **“there is no definition about marriage palace in tariff order or condition required, therefore, the field office for allowing 25% fixed charges instead of 80% for marriage places, the concerned field office may ascertain genuity of such marriage palaces from Local Administrations/Local Body Deptt.”** The Local office had not acted accordingly on our representations dated 29.05.2018 & dated 02.07.2018 and billing was done with 80% of CD.

- (v) In Case No. CGP-187 of 2019, the same rebate had been given by ordering 25% Fixed charges and order was passed in favour of Appellant without any fresh A&A form. The Respondent gave no comments.
- (vi) In reply in Para (f), the Respondent had denied about both representations but added that they were well known about the uses of load/supply for Marriage Palace.
- (vii) In reply in Para (g), the Respondent admitted that tariff had been changed on representation. Here it was again submitted that the Appellant had not filled the fresh A&A forms for

change of category on which basis the CCGRF had decided the case against the Appellant. The Respondent also raised the objection in its reply dated 01.02.2022. Therefore, the claim of the Appellant was correct and liable to be refunded with interest.

- (viii) In the reply in Para (h), the Respondent had not submitted any comments as this order was passed against PSPCL as this was against the Respondent.
- (ix) In the reply in Para (i), the Respondent had not submitted any comments as this observation of the **Independent Member and Permanent Invitee from the O/o CE/Commercial, Patiala** were passed against PSPCL and there was a deficiency in service for non implementation of their own instructions. **“Forum, with majority decision by virtue of casting vote of the Chairperson.”**
- (x) In the reply of Para (j), the contents of appeal were admitted. Thus, the office had not acted to verify the facts and amend the billing for Marriage Palace. Due to their lapse, we had suffered by paying excess 55% fixed charges. The same may be refunded with interest.
- (xi) The reply in Para (k) was correct. The plea of the Appellant was correct as such the excess deposit needed to be refunded.

- (xii) In reply in Para (1), the Respondent admitted by way of “matter of record” that meant they were admitting that supply was never used for HOTEL and was /is used in MARRIAGE PALACE. Thus, the billing was wrong by charging 80% of CD instead of 25%. Therefore, the Appellant had claimed rightly for refund.
- (xiii) The Corporate Forum, Ludhiana had not decided the case rightly and **prayed** that the decision may kindly be set aside and refund be allowed from 01.04.2018 to 17.08.2022 as a difference of excess billing issued and deposit of Fixed Charges.
- (xiv) It was added that as per SAP system, only a FLAG was set with particular consumer for change in tariff which was not done in 2018 against tariff to issue bills with 25% Fixed charges. Similar Flags were being done in DS consumers for the implementation of rebate of 300 units and IT section issued instructions in this regard.

(c) Submission during hearing

During hearing on 05.12.2022, 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 Corporate Forum had decided the case on actual facts. CC Nos. 47/2017 and 24/2018 had no instructions to issue notice to the consumer or applicability of marriage palace tariff, so no such notice was required to be issued. The Appellant had applied for a NRS connection and after that never applied for a modification of A & A Form in the Sub-Division.
- (ii) The clarification issued by the CE/Commercial, PSPCL, Patiala in this regard vide Memo No. 06/SV/GEN/BTD/V-3 dated 10.01.2022 addressed to ASE/ DS Division, PSPCL, Shri Mukatsar Sahib had nothing to say about the agreement form. The Appellant had applied and made an agreement for hotel connection. So, the Appellant had been rightly charged on 80% of Contract Demand.
- (iii) The Appellant never mentioned the category i.e. Marriage Palace for obtaining electricity connection/extension of load. Hotel Queen's Land appeared on some of the photographs and all other documents. Even the name 'Hotel Queen's Land' was itself evidence to prove that the unit was established as hotel.

- (iv) The documents submitted by the Appellant from the various departments were not the basic criteria for determining the tariff as it was for the purpose of determining the categorization under respective Act/ Laws of the department concerned.
- (v) No representation from the Appellant to charge 25% fixed charges had been received in the Sub-division office.
- (vi) The bill issued on 22.09.2022 for the period 17.08.2022 to 21.09.2022 was issued on 25% fixed charges on the application submitted by the Appellant in the Sub-division office.
- (vii) The CCGRF, Ludhiana had rightly decided the case on facts and record, so the Appeal was required to be dismissed.

(c) Submission during hearing

During hearing on 05.12.2022, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal.

6. Analysis and Findings

The issue requiring adjudication is the legitimacy of claim of the Appellant for refund of alleged excess billing from 01.04.2018 to 16.08.2022 on account of Fixed Charges levied to him on 80% of the sanctioned CD instead of 25% of the sanctioned CD, amounting to ₹ 15,02,530/- with interest.

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

- (i) The Corporate Forum in its order dated 02.11.2022 observed as under:-

“Forum observed that Petitioner in his petition pleaded that he is running a marriage palace and as per CC No. 24/2018 dated 24.04.2018 only 25% of fixed charges are to be charged whereas he is paying the fixed charges @80% of his sanctioned CD. He requested the concerned O/o respondent for refund of excess billed fixed charges but till date refund of excess fixed charges has not been given to him. Not satisfied with the bills issued to him, petitioner filed his case in Corporate CGRF, Ludhiana.

Forum observed that the Petitioner applied for a new connection under NRS category. Application and Agreement No. 27468 dated 09.10.2003 was signed for release of an electric connection for NRS purpose in the Petitioner’s premises situated at 7th mile Stone, Goniana-Bathinda Road, Vill-Bhokhra, Goniana. The tariff as approved by the Commission from time to time was and is being charged strictly as per Application and Agreement signed between the Petitioner and the Respondent on 09.10.2003. This agreement is still continuing. The Petitioner’s Representative submitted that Two Part Tariff was introduced by the Hon’ble PSERC and circulated by the PSPCL, vide Commercial Circular No. 24/2018 dated 24.04.2018 for charging of Fixed Charges @ 25% (of CD) from 01.04.2018 for Marriage Palaces. The Petitioner’s Representative submitted with the petition letters/references of various Departments such as from Sr. Town Planner, Patiala, issued for change of use of land (CLU), license for allowing consumption of liquor on special occasion in marriage palace or a banquet hall issued by Collector Cum-Deputy Excise and Taxation Commissioner, Faridkot Division.

Forum observed that documents submitted by the Petitioner from the various departments is not the basis/criteria for determining the tariff as it is for purpose of determining the categorization under respective Acts/Laws of the department concerned. Tariff applicability is determined by the Respondent based on the Sales Regulations/ ESIM and Tariff Orders approved by PSERC depending upon purpose of use of electricity. It is unfair to treat Hotel Queens Land, Bathinda as Marriage Palace only for the purpose of charging Fixed Charges for Marriage Palaces. The Petitioner never mentioned the Category i.e., Marriage Palace for obtaining electricity connection/extension of load. Hotel Queen's Land appeared on some of the photographs and all other documents. Even the name '**Hotel Queen's Land**' is itself evidence to prove that the unit was established as hotel. Therefore, the plea of the Petitioner's Representative that it was not a hotel, is not sustainable. Further, the Petitioner had never challenged the electricity bills issued during the period of dispute. Further this agreement can be modified mutually by both the parties. But the Respondent submitted that Petitioner had never applied for modification of A&A form, in his office. As Petitioner had entered into an agreement for NRS connection and supply shall be used for construction and running of Hotel & Restaurant as mentioned in Partnership Deed and Affidavit attached with A&A form with the Respondent. So, the NRS tariff meant for Hotel and Restaurant is applicable to him. Therefore, the Petitioner is not entitled to Refund on account of Fixed Charges for the period w.e.f. 01.04.2018 onwards.

However, Independent Member and Permanent Invitee from the O/o CE/Commercial, Patiala did not agree to the above conclusion and expressed their opinion as under:

- i. Respondent supplied bills dated 20.09.2020, 22.10.2020, 22.07.2021, 22.09.2021, 25.04.2022 and 23.05.2022 to the Forum which had been issued to the petitioner from time to time. Rate category on all these bills has been

clearly mentioned as 'MARRIAGE PALACES', however, fixed charges have been charged on 80% of sanctioned CD instead of on 25% applicable to Marriage Palaces as per CC 24/2018. Respondent was not able to explain this anomaly. Had the Respondent set correct flags in SAP system as per correct category of Marriage Palace as otherwise mentioned in bills, this issue/case would not have arisen.

- ii. Petitioner had submitted copy of CLU approval letter issued by Senior Town Planner vide his office Memo No. 1005-STP(P)/MPP-446B dated 31.03.2014 wherein it is stipulated as under: -

*"The permission for Change of Land Use is granted as per policy of Regularization of Existing **Marriage Palaces** issued vide letter no: 12/8/2012-5HgII/5094 dated 16.11.2012 and 12/8/2012-5HgII/105 dated 07.01.2013 respectively."* And

*"The change of land use shall be in the hands of Hotel Queen's Land (**Marriage Palace**), Village Bhokhra Tehsil Goniana Mandi & District Bathinda and shall deposit CLU/EDC/License/Permission Fee and all other charges levied or to be levied by Housing and Urban Development Department, Punjab from time to time."*

- iii. Further, Collector-cum-Deputy Excise and Taxation Commissioner, Faridkot had issued a license to the petitioner Sh. Varun Garg in his capacity as Managing Partner of M/s Queen's Land vide Registered No. 9/BTI/2004-05, relevant portion of the license is reproduced below: -

*"This license authorizing the owner of a **Marriage Palace** or a Banquet Hall for the consumption of liquor only in the **Marriage Palace** or the Banquet Hall specified below and for the period from 01.04.2004 to 31.03.2005 is granted to Sh. Varun Garg S/o Managing Partner owner of Queen's Land District of Bathinda."*

License in Form L-5D is issued for serving liquor in commercial places like Marriage Palaces, Banquet Halls,

or Community Centers or Dharamshala and it is not applicable for Hotels and Restaurants. Further, petitioner had been depositing Annual License Fee to ETO, Bathinda under L-5D w.e.f. FY-2004-05.

- iv. This relief of fixed charges on 25% of Sanctioned CD instead of on 80% of CD; in respect of marriage palaces was given for the first in the tariff order for the FY 2018-19 vide CC No. 24/2018 dated 24.04.2018 and it was stipulated in this circular as under: -

“All concerned officers/officials are requested to go through these instructions so as to acquaint themselves with various conditions for its correct applications.”

Hence, as per above stipulation, it was the duty of the Respondent to identify all marriage palaces falling in his jurisdiction and to bill these with fixed charges on correct percentage of the sanctioned CD as per CC 24/2018 i.e., 25%.

Therefore, Independent Member and Permanent Invitee from the O/o CE/Commercial, Patiala are of the opinion that the petitioner had been running a marriage palace and not a hotel; in the name of ‘Hotel Queen’s Land’ FY 2004-05 onwards, and connection of the petitioner was required to be billed under category of Marriage Palace w.e.f. 01.04.2018 as per CC No. 24/2018 dated 24.04.2018. Hence, bills issued to the petitioner 01.04.2018 onwards are required to be quashed and his account is to be overhauled with fixed charges on 25% of his sanctioned CD w.e.f. 01.04.2018.

As discussed above, there is a position of tie as votes of the Chairperson and Member/Finance are on one side and those of Independent Member and Permanent Invitee O/o CE/Commercial, Patiala are on the other side. Hence, the case is to be decided with the casting vote of the Chairperson/Corporate CGRF, Ludhiana as per Regulation No. 2.15 of Notification dated 25.08.2021 of Hon’ble PSERC. Accordingly, the case is decided with the casting vote of Chairperson along-with supporting vote of Member/Finance.

The comments/opinion of the chairperson/CCGRF, Ludhiana, in this case, are as under:

In this case although some of the electricity bills during 2020 to 2022 have been issued where 'MARRIAGE PALACES' has been mentioned in the right top corner, but neither petitioner nor respondent could submit any document on the basis of which the same has been mentioned. It is further observed that the similar case no. CGL-244/2020, in the name of M/s. Manoj Kumar Choda c/o My Fair Resorts, Phagwara, was decided by the CGRF, Ludhiana as under:

"The connection (New/extension of load) has been applied and released in the name of Sh. Manoj Kumar Choda, (Partner), Mayfair Village Resort and not for Marriage Palace. The A&A form constituting the agreement between both the Licensee and the Petitioner has been signed for Mayfair Village Resort. As such the plea of the Petitioner to treat the connection for Marriage Palace only is not justified and as such the petition is dismissed."

Similarly, another case no. CGP-341/2019 in the name of Sh. Sadhu Ram c/o Gardenia Resort, Rupana, Sri Mukatsar Sahib was decided by CGRF, Patiala and appeal no. A-17 of 2020 against the decision of this case, has been decided by the Court of Hon'ble Lokpal (Ombudsman), Electricity, Punjab, vide his order dated 30.06.2020, as under:

"As a sequel of the above discussion, the Appeal of the Appellant against the order dated 26.02.2020 of the CGRF, Patiala in Case No. CGP-341 of 2019 is dismissed. The Appellant shall submit, if it, so desires, a fresh Application and Agreement after effecting the change in the name/title of its Unit for becoming eligible for charging of Fixed Charges, applicable for Marriage Palaces at reduced rates as per instructions of the PSPCL. In case, the Appellant does so and the Application and Agreement is signed between the Consumer and PSPCL, the Respondent shall consider and decide the claim of the Appellant for future billing as per law/regulations/ tariff order."

Therefore, Chairperson/ CCGRF, Ludhiana, is of the view that the claim of the petitioner is not maintainable.

In view the above discussion and facts, Forum, with majority decision by virtue of casting vote of the Chairperson,

is of the opinion that connection has been applied and released for use of supply for construction and running of Hotel & Restaurant and not for marriage palace. The A&A form constituting the agreement between both the Respondent and the petitioner has been signed for Hotel & Restaurant as such the plea of the petitioner to treat the connection for marriage palace is not justified.

Keeping in view the above, Forum, with majority decision, came to the conclusion that the A&A form constituting the agreement between both the Respondent and the petitioner has been signed for Hotel & Restaurant under NRS category as such the plea of the petitioner to treat the connection for marriage palace is not justified as such petition is dismissed.”

- (ii) I have gone through the written submissions made by the Appellant in the Appeal and in the Rejoinder, written reply of the Respondent as well as oral arguments of both the parties during the hearing on 05.12.2022. It is observed that the Appellant had applied for new Non Residential Supply (NRS) connection for Sanctioned Load of 149.772 kW. Application and Agreement (A&A) No. 27468 dated 09.10.2003 was signed in ink between Sh. Varun Garg (Appellant) and the Respondent-PSPCL for release of an electric connection for NRS purpose in the Appellant's premise situated at Hotel Queen's Land, Village Bhokra, Near KV School, Goniana, Bathinda.

- (iii) The Appellant's Representative submitted that Two Part Tariff was introduced by the Hon'ble PSERC and circulated by the PSPCL, vide Commercial Circular No. 46/2017 dated 10.11.2017 for charging of Fixed Charges from 01.01.2018 to 31.03.2018. Besides, Commercial Circular No. 23/2018 dated 24.04.2018 was issued by the PSPCL for charging of Fixed Charges @ 25 % of sanctioned CD from 01.04.2018 for Marriage Palaces. I find that the Respondent, in its written reply, stated that in the A & A Form submitted in physical form, the consumer never mentioned the Category i.e. Marriage Palace. So, the Appellant was not entitled to Refund claimed with interest and was not entitled for Fixed Charges to the tune of 25% on sanctioned contract demand (CD) for the period 01.04.2018 till the request letter received from the Appellant on 16.09.2022. In fact, the Appellant mentioned his address in the A&A as Hotel Queen's Land which implied that the connection was applied for running a Hotel.
- (iv) During the hearing on 05.12.2022, the Respondent stated that the Appellant was a NRS category consumer who did not point out or gave any request orally or in writing about charging Fixed Charges at concessional rates w.e.f. 01.01.2018 till his request letter dated 16.09.2022. Before that, the Appellant had

not challenged the electricity bills issued during the period of dispute. So, now the concessional Fixed Charges on 25% of the sanctioned CD was applied to the Appellant's account w.e.f. 17.08.2022 (billed on 22.09.2022) on the basis of the Appellant's request dated 16.09.2022.

- (v) I find that the Appellant ought to have visited regularly the website of the PSERC/ PSPCL for keeping himself posted with the latest developments particularly with the hosting of Tariff Orders issued every year. The Appellant cannot feign ignorance about not having seen the Tariff Orders for FY 2018-19, 2019-20 and 2020-21 which were duly uploaded on the website of the PSPCL. In addition, advertisements relating to issuance of the said Tariff Orders (regarding charging of Fixed Charges at concessional rates as claimed in the present Appeal) were given in the leading newspapers in English, Punjabi and Hindi by PSPCL as is evident from the following details:

Sr. No.	Tariff Order for Financial Year	Date of publication in newspapers
1	2018-19 (Revised)	26.05.2018
2	2019-20	20.06.2019
3	2020-21	09.06.2020

But the Appellant had not made any representation to the Respondent in this regard at an appropriate time. The Appellant could not produce any concrete documentary evidence which shows that it had represented its grievance to the Respondent at an appropriate time. The copy of request letter, claimed to be submitted to the Respondent on 29.05.2018 by the Appellant with reminder on 02.07.2018, attached with the Appeal did not contain anything which shows that it was received in the office of the Respondent. The Appellant failed to prove that these letters were ever delivered to the Respondent. Even in his request letter dated 16.09.2022, the Appellant did not mention anything about these letters dated 29.05.2018 and 02.07.2018, which proved that these letters were never sent to the Respondent office by the Appellant. The Appellant being a large consumer with sanctioned CD of 357.769 kVA should be vigilant about its rights and ignorance of the same on the part of the Appellant is no excuse. The Appellant himself failed to approach the Respondent at an appropriate time for redressal of its grievances and as such, the Appellant cannot take benefit of its own wrongs/ delays. The Fixed Charges were invariably shown on the monthly electricity bills served to the Appellant during the disputed period, but he had never represented in the

office of the Respondent for correction of these Fixed Charges on 80% of the sanctioned CD instead of 25%. The bills were not challenged for rectification of errors by the Appellant at an appropriate time. Delay is on the part of the Appellant to file the representation for correction/ challenge of bills. Therefore, this Court is of the view that the Appellant did not take appropriate remedy at an appropriate time. As such, the claim of the Appellant for refund of alleged excess billing from 01.04.2018 to 16.08.2022 on account of Fixed Charges levied to him on 80% of the sanctioned CD instead of 25% of the sanctioned CD, amounting to ₹ 15,02,530/- with interest is decided against the Appellant after due consideration.

- (vi) The Appellant submitted with the Appeal permission/ license of various Departments such as from
- a) Sr. Town Planner, Patiala for Change of land use from Agriculture to Marriage Palace (Extention): M/s Hotel Queen's Land (Marriage Palace) at Village Bhokra (H.B. No: 160) Tehsil Goniana Mandi & Distt. Bathinda.
 - b) License in Form L-5 D for allowing serving/ consumption of liquor only in the Marriage Palace or the Banquet Hall issued to Appellant by the Collector-Cum-Deputy Excise and Taxation Commissioner, Faridkot Division, Faridkot.

I find that the Appellant had relied upon the documents/clearances provided by other departments which are irrelevant as the Appellant had entered into agreement for NRS connection with the Respondent. This agreement can be changed mutually by both parties. But the Appellant had never applied for its modification in the office of AE, DS S/D, Goniana before his application dated 16.09.2022 so as to avail benefit of reduced Fixed Charges. Moreover, the above mentioned permissions/ license alongwith photographs submitted by the Appellant were required to be timely submitted with the office of AE, DS S/D Goniana for modification in A&A. Now, it is of no use to present these before this Court as the Respondent had already modified the electricity connection of the Appellant w.e.f. 17.08.2022 (billed on 22.09.2022) on his request dated 16.09.2022.

- (vii) The Appellant contended that his documents were according to the clarification given by the CE/Commercial, PSPCL, Patiala vide Memo No. 06/SV/GEN/BTD/V-3 dated 10.01.2022. Therefore, the rejection/ non acceptance of these types of documents were a great injustice with the Appellant. The field officers/officials had not made compliance of the instruction to verify the sites. Even no such notice was issued to the

Appellant to change agreement. The Respondent argued that the clarification issued by the CE/Commercial, PSPCL, Patiala in this regard vide Memo No. 06/SV/GEN/BTD/V-3 dated 10.01.2022 addressed to ASE/DS Division, PSPCL, Shri Mukatsar Sahib had nothing to say about the agreement form and the Appellant never submitted his request for amendment in the A&A till 16.09.2022. I find that the Respondent is correct as it was the responsibility of the Appellant to timely submit his request which he never did before his request letter dated 16.09.2022. The question was never on the validity of the documents but its timely representation by the Appellant to the Respondent as the Respondent changed the category of the Appellant's connection immediately after receiving request in this regard on 16.09.2022.

- (viii) The Appellant's Representative also stated that the officers of PSPCL were taking readings of Energy Meter periodically. I observe that the duty of the officer taking readings of Energy Meter or officer at CBC was, at the most, to point out violation, if any, in running the electric connection or any defect/inaccuracy in the working of the Energy Meter and proper billing of the units consumed by the consumer as per Tariff of category opted by him in A&A. The

inspecting/checking officers are not supposed to verify about the businesses being carried out by the consumer. The onus was on the Appellant to get the A&A timely modified to avail the benefit of reduced Fixed Charges by submitting application alongwith supporting documents as he had signed the A&A with the Respondent.

- (ix) From the above analysis, it is concluded that the Appellant failed to prove the legitimacy of its entitlement/claim for refund of excess Fixed Charges amounting to ₹ 15,02,530/- for the period from 01.04.2018 to 16.08.2022. The tariff being charged from the Appellant is strictly as per agreement signed between both parties. Accordingly, the claim of the Appellant for refund of the amount charged/ billed in excess (due to charging Fixed Charges at full rates by the Respondent) w.e.f. 01.01.2018 to 16.08.2022 is not sustainable. As such, the Appellant is also not entitled to interest on the amount claimed refundable (not to be refunded as per this decision) as prayed for.
- (x) The Appellant's Representative referred to some of the decisions of the CGRF and stated that interest on the refund of excess billing cases was allowed and the present dispute may be adjudicated on the same analogy. I observe that the facts and circumstances of the cases referred to by the Appellant are not

identical with those of the present dispute. As such, the plea of the Appellant's Representative for treating the present case at par with the cases referred to by him is without merit.

- (xi) The Respondent informed that from 17.08.2022 (billed on 22.09.2022), benefit of Fixed Charges on 25% of the Sanctioned CD has been released to the Appellant on his application dated 16.09.2022.
- (xii) In view of the above, I am not inclined to interfere in the decision dated 02.11.2022 of the Corporate Forum in case of CF-131/2022.

7. Decision

As a sequel of above discussions, the order dated 02.11.2022 of the CCGRF, Ludhiana in Case No. CF-131/2022 is hereby upheld.

- 8.** The Appeal is disposed of accordingly.
- 9.** 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.
- 10.** 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.

December 09, 2022
S.A.S. Nagar (Mohali).

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

