

**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. 69/2022

Date of Registration : 26.12.2022

Date of Hearing : 04.01.2023

Date of Order : 04.01.2023

Before:

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

In the Matter of:

M/s. Ishwar Industries,
C-200, Phase-VII, Focal Point,
Ludhiana-141010.

Contract Account Number: 3005063796 (LS)

...Appellant

Versus

Sr. Executive Engineer,
DS Focal Point (Spl.) Divn.,
PSPCL, Ludhiana.

...Respondent

Present For:

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

Respondent : Er. Jagdeep Singh,
Sr. Executive Engineer,
DS Focal Point (Spl.) Divn.,
PSPCL, Ludhiana.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 27.10.2022 of the Corporate Consumer Grievances Redressal Forum, Ludhiana (Corporate Forum) in Case No. CF-132/2022 deciding that:

“Action be taken as per the conclusion arrived at point (viii) above.”

Point (viii) of the decision is reproduced as under:

“Keeping in view of the above, Forum came to the unanimous conclusion that as agreed by the Respondent, the expenditure incurred on the existing structure be taken as half the expenditure taken in the estimate and amount to be deposited from the petitioner be recalculated accordingly. The excess amount deposited by the petitioner, if any, alongwith interest, be refunded, as per Reg. 9.3.6 of Supply Code, 2014, amended from time to time.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 26.12.2022 i.e. beyond the period of thirty days of the decision dated 27.10.2022 of the CCGRF, Ludhiana in Case No. CF-132/2022. The Appellant was not required to deposit requisite 40% of the disputed amount because it was a refund case. Therefore, the Appeal was registered on 26.12.2022 and copy of the same was sent to the Sr. Xen/ DS Focal Point (Spl.) Divn., PSPCL, Ludhiana for sending written reply/ parawise comments with a copy to the office of the CCGRF, Ludhiana under intimation to

the Appellant vide letter nos. 1392-94/ OEP/A-69/2022 dated 26.12.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 04.01.2023 at 12.00 Noon and intimation to this effect was sent to both the parties vide letter nos. 03-04/OEP/A-69/2022 dated 02.01.2023. As scheduled, the hearing was held in this Court and arguments of both the parties were heard.

4. Condonation of Delay

At the start of hearing on 04.01.2023, the issue of condoning of delay in filing the Appeal in this Court was taken up. The Appellant's Representative stated that the decision dated 27.10.2022 was implemented by AEE Commercial, Ludhiana vide Memo No. 14570 dated 02.12.2022. After implementation of the decision, the Appellant was not satisfied and came to know the final calculations on 05.12.2022. The Appellant filed the Appeal Case and sent the same through courier. But the courier was received back on 22.12.2022 by the Appellant and the Appellant filed the Appeal again personally on 26.12.2022. The Appellant's Representative further prayed that the delay in filing the present Appeal be kindly condoned and the Appeal be

adjudicated on merits in the interest of justice. The Respondent did not object to the condoning of delay in filing the Appeal.

In this connection, I have gone through Regulation 3.18 of PSERC (Forum and Ombudsman) Regulations, 2016 which reads as under:

“No representation to the Ombudsman *shall lie unless:*

- (ii) *The representation is made within 30 days from the date of receipt of the order of the Forum.*

Provided that the Ombudsman may entertain a representation beyond 30 days on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of 30 days.”

The Court observed that non-condoning of delay in filing the Appeal would deprive the Appellant of the opportunity required to be afforded to defend the case on merits. Therefore, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court beyond the stipulated period was condoned and the Appellant’s Counsel was allowed to present the case.

5. 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 LS Category Connection, bearing Account No. 3005063796 with sanctioned load of 396.702 kW/450 kVA under DS Focal Point (Spl.) Divn., Ludhiana.
- (ii) To have an independent feeder, the Appellant deposited ₹ 16,19,510/- as cost of estimate on 13.03.2019 vide BA-16 No. 200/51104.
- (iii) The work of erection of Independent Feeder was completed in the end of 2019. After completion of work, the Respondent was bound to calculate expenditure actually incurred (Recoverable amount) against the works as per Regulation 9.3.6 of Supply Code, 2014 and was supposed to refund the excess amount

deposited after completion of work within 60 days but it was not done in the case of the Appellant.

- (iv) The Appellant requested the AEE Commercial, Focal Point Division, Ludhiana on 04.06.2021 for refund of excess amount than the actual expenditure incurred against deposit estimate amounting to ₹ 16,19,510/- as per Regulation 9.3.6 of Supply Code, 2014, but they failed to comply with the instructions.
- (v) The Appellant was compelled to file a case before the CGRF for refund of ₹ 6 lac approximately. After deliberations for almost one year, the CCGRF failed to decide the issue. On 12.07.2022, the CCGRF gave a vague order that since the refundable amount was less than ₹ 5 lac, so the Appellant may approach the Appropriate Forum. Against this order, an Appeal was filed before the Hon'ble Court of Ombudsman. The Case was remanded back to the CCGRF by the Hon'ble Court of Ombudsman to decide the issue. Now, Corporate CCGRF had given its decision on 27.10.2022 received on 14.11.2022 by hand. Order of the CCGRF was wrong & it was in contradiction to the provisions of the Supply Code, 2014.
- (vi) The Calculation given by the AEE/ Commercial, Focal Point (Spl.) Divn., Ludhiana vide Memo No. 3769 dated 23.11.2022 for implementing decision of the CCGRF was as under:-

a) Expenditure for erecting 11 kV independent line	₹ 8,82,904/-
b) Old structure charges ₹ 2,81,000/- x ½	₹ 1,40,500/-
c) Old structure labour ₹ 44,752/- x ½	₹ 22,376/-
Total	₹ 10,45,780/-
d) 16% charges	₹ 1,67,324.80
Total	₹ 12,13,104.80
 GST@ 18%	 ₹ 2,18,358.86
 Grand Total	 ₹ 14,31,462.86

(vii) The CCGRF had wrongly decided that cost of existing structure be taken as ½ whereas in view of the Supply Code, 2014, Regulation 9.5.4, only proportionate cost was to be charged for using the existing infrastructure. Accordingly to this provision for item (b) & (c), chargeable cost came to be ₹ 2,81,000/- x $\frac{450}{5620}$ = ₹ 22,500/- & ₹ 44,752/- x $\frac{450}{5620}$ = ₹ 3,583/-.

Regulation 9.5.4 is reproduced below: -

“9.5.4 In the event of tapping / extending an independent feeder, the consumer getting the benefit of independent feeder by tapping/ extending shall be liable to pay proportionate cost for common portion of line/feeder including Circuit Breaker at the feeding sub-station as per the cost data approved by the Commission in addition to actual cost of independent portion/section of service line.”

Keeping in view the above provision, cost of existing structure used had been allowed by the CCGRF & calculated by the Respondent was wrong & illegal.

(viii) 16% charges were required to be applicable on new 11 kV line expenditure of ₹ 8,82,904/- which came out to be ₹ 1,41,265/-,

whereas the Respondent had shown it as ₹ 1,67,324.80 calculated by including the cost of existing structure which was also wrong as the cost of existing structure included 16 % charges at the initial stage.

- (ix) The Respondent had shown amount of GST as ₹ 2,18,358.86 in the expenditure which had been calculated wrongly. Applicable GST amount came to ₹ 1,58,923/- only, which was required to be applicable on new expenditure of ₹ 8,82,904/- only and not on amount of 16% and on proportionate cost of old structure.
- (x) Till date, the Respondent had neither deposited GST amount in Govt. account nor had issued/ supplied any copy of invoice showing amount of GST deposited. Hence, the GST expenditure could not be claimed by the Respondent as expenditure actually incurred. Whenever the Respondent deposited the GST amount, only then it could be deducted from the refundable amount on actual basis.
- (xi) The actual expenditure as per the Appellant's assessment came out to be ₹ 10,67,910/- only (₹ 8,82,904/- + ₹ 22,500/- + ₹ 3,583/- + ₹ 1,41,265/- = ₹ 10,50,252/-) against deposit of ₹ 16,19,510/-, so the Appellant was entitled for refund of ₹ 16,19,510/- ₹ 10,50,252/- = ₹ 5,69,258/- plus interest on this amount after the period of 60 days from the date of completion

work as per Supply Code, 2014, Regulation 9.3.6. The Appellant was entitled for interest w.e.f. 01.01.2020 and the interest amount came out to be:-

01.01.2020 to 31.03.2020/ ₹ 5,69,258/- x 10.45% x 3/12 =	₹ 14,872/-
01.04.2020 to 31.03.2021/ ₹ 5,69,258/- x 10.15% =	₹ 57,779/-
01.04.2021 to 31.03.2022/ ₹ 5,69,258/- x 9.40% =	₹ 53,510/-
01.04.2022 to 31.12.2022/ ₹ 5,69,258/- x 9.55% x 9/12 =	₹ 40,773/-
Total =	₹ 1,66,934/-

Hence, total refundable amount including interest came out to be ₹ 5,69,252/- + ₹ 1,66,934/- = ₹ 7,36,186/-.

- (xii) Considering GST amount of ₹ 1,58,923/- to be deposited by the Respondent, even in that case the Appellant was entitled for refund of ₹ 7,36,186/- - ₹ 1,58,923/- = ₹ 5,77,263/-. The Respondent had now credited amount of ₹ 2,56,696/- in consumer account of the Appellant which was for very less amount than the entitled refundable amount.
- (xiii) Hon'ble Court of the Ombudsman Electricity Punjab was requested to be kind enough to order the genuine refund of ₹ 5,77,263/- (including interest), in excess to actual expenditure be allowed to the Appellant as per Supply Code, 2014 Regulation 9.3.6.

(b) Submission during hearing

During hearing on 04.01.2023, 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) It was submitted that the Regulation 9.5.4 of Supply Code, 2014 which the Appellant was quoting in its Appeal was irrelevant to the subject cited case. Regulation 9.5.4 reproduced below:-

“In the event of tapping / extending an independent feeder, the consumer getting the benefit of independent feeder by tapping/ extending shall be liable to pay proportionate cost for common portion of line/feeder including Circuit Breaker at the feeding sub-station as per the cost data approved by the Commission in addition to actual cost of independent portion/section of service line.”

So, as per the above Regulation, it was valid for independent feeder where a tapping or an extension was done, whereas in the subject cited case, the Appellant was given supply through an independent feeder on a multi-circuit support alongwith a new VCB emanating from 66 kV Sub Station, Phase-7, Dhandari Kalan as was clear from the Estimate drafted by AEE

Tech. It was also informed that the 11 kV Ishwar Industry feeder was erected on the existing 11 kV independent feeder Laj Export as per the estimate drafted by AEE Tech-II. Therefore, as per the Regulation 9.5.7 and as per the clarification received from the office of the CE/ Commercial vide Memo No.467 dated 30.07.2020 which stated that, *“Where multi-circuit supports are provided for erecting a single circuit independent feeder, the concerned consumer shall be charged the cost of single circuit supports only”*. As such, the Appellant should be charged one-half cost of the existing structure in the estimate.

- (ii) It was submitted that as per Regulation 9.5.1 of Supply Code-2014, the Appellant was charged 16% Establishment Charges of the cost of material and labour, which was reproduced as below:-

“Consumers catered supply at 11kV and running essential services or continuous process industries irrespective of their load/contract demand or AP High Technology consumers with load more than 100 kW or other Industrial consumers with a contract demand exceeding 4000 kVA (in case of release of connection/additional load at lower than the prescribed voltage due to constraint as per regulation 4.2.1) may apply for an independent 11 kV feeder to avail the benefit of uninterrupted supply of electricity provided they agree to pay the cost of the independent feeder including breaker at the feeding sub-station and establishment charges at the rate of 16% of the cost of material and labour.”

- (iii) It was submitted that as per the clarification received from AO/GST vide Memo No. 6206/6380 dated 22.07.2019, the 18% GST was to be taken on material cost + labour charges as well. Therefore, 18% GST was charged on the total amount including labour and material. It was also submitted that the Respondent had already deposited GST amount of ₹ 2,18,358/-. 4 no. GST Invoices were issued to the Appellant.
- (iv) The calculation done was as per the decision of the Corporate Forum, Ludhiana and in accordance with the prevalent rules & regulations of the PSPCL.

(b) Submission during hearing

During hearing on 04.01.2023, 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 the claim of the Appellant regarding refund of the amount deposited by him in excess of the actual expenditure incurred for erecting independent feeder alongwith interest as per Regulation 9.3.6 of Supply code, 2014.

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

- (i) The Corporate Forum in its order dated 27.10.2022 observed as under:-

“Forum observed that Petitioner deposited Rs. 1619510/- on dated 14.03.2019 as demanded by PSPCL for erecting independent feeder. Petitioner contended that actual expenditure incurred for erection of this line is much less as compared to the amount deposited by him. Petitioner requested to the office of Respondent for the refund of excess amount deposited by him. But no action was taken on his request. So, Petitioner filed his case in CGRF (now Corporate CGRF) for refund of excess of the actual expenditure incurred by the Respondent for erecting independent feeder alongwith interest. The case was heard in Corporate Forum on dated 23.06.2022, 08.07.2022, 12.07.2022. Forum in its hearing dated 12.07.2022 decided the case as under:

“Forum observed that the dispute is regarding the expenditure incurred on erection of line for independent feeder and as per Petitioner, he is entitled for refund of Rs. 484205/- plus interest on this amount as explained in the above para. On the other hand, as per Respondent the actual expenditure amount is Rs. 1664888/- (including GST of Rs. 253966/-) and as such Petitioner is required to pay balance amount of Rs. 45378/-.

Keeping in view of the above, Forum is of the opinion that the amount of claim of the petitioner is Rs. 484205/-, which is less than Rs. 5Lacs. As per PSERC (Forum & Ombudsman) (2nd Amendment) Regulations, 2021 this Forum can deal with monetary disputes above Rs. 5 lacs. Therefore; as the disputed amount claimed by Petitioner is less than Rs. 5 lacs, Petitioner may approach the appropriate Forum. The present petition is dismissed accordingly.”

Petitioner instead of approaching to appropriate Forum, filed appeal against the decision of Forum with Hon’ble Ombudsman and Hon’ble Ombudsman vide its order in

appeal no. 42 dated 29.08.2022, remanded back the case to CCGRF, Ludhiana with direction to hear and decide the case on merits expeditiously. The case is admitted accordingly.

Forum observed that the estimate for the separate independent feeder was prepared & got sanctioned and accordingly as demanded, the Petitioner deposited the amount of Rs. 1619510/-. Petitioner contended that as per his estimate, amount of Rs. 1294228/- was actually incurred for this work, therefore, as per Regulation 9.3.6 of the Supply Code-2014, the excess amount retained by the Respondent should be refunded alongwith interest. Respondent in its reply submitted vide memo no. 2596 dated 12.10.2022 that expenditure for erecting 11 KV independent feeder is Rs. 1664888/-. Respondent also submitted that the estimate passed by the competent authority vide memo no. 2190 dt. 26.02.2019 was of amount Rs.16,19,510/-. In the estimate, the GST @ 18% was taken only on the Labour Charges, whereas as per the clarification received from AO/GST vide memo no. 6206/6380 dated 22.07.2019, the GST is to be taken on both the material cost and Labour charges, which is now included and therefore the GST @ 18% is now equal to Rs. 253966/-. As per this increased GST, the total expenditure amounts to Rs.16,64,888/-, so the consumer is now required to deposit the additional amount of Rs. 45379/-. However, Respondent in its reply to the proceeding dated 12.10.2022 vide his Memo no. 2663 dated 18.10.2022 submitted that as per the Supply Code Regulation-9.5.7 and as per the clarification received from the office of CE Commercial vide memo no. 464 dated 30.07.2020, where multi-circuit supports are used for erecting a single circuit independent feeder, the concerned consumer shall be charged the cost of single circuit supports only, therefore, the consumer should be charged one-half cost of the existing structure in the estimate. Forum observed that as

per the above instruction/clarification, necessary correction (i.e. half the cost of material & labour, incurred on existing structure) is required to be made in the expenditure incurred on account of cost of existing structure and GST accordingly, to determine the excess amount.

The Relevant regulation of Supply Code-2014 dealing with Security (works) being in excess of the recoverable amount, as under:

Regulation 9.3.6 of Supply Code 2014 dealing with Security (works) being in excess of the recoverable amount, as under: -

“After execution of work of the electric line or electrical plant as the case may be, the distribution licensee shall be entitled to demand from the applicant the total amount of expenditure actually incurred (recoverable amount) and adjust Security (works) against such recoverable amount. In the event of Security (works) being in excess of the recoverable amount, the excess amount shall be determined by the distribution licensee within sixty (60) days from the date of release of connection and refunded by adjustment against electricity bills of the immediately succeeding months. In case the distribution licensee fails to refund the excess amount and adjust it against electricity bills of the immediately succeeding months, the distribution licensee shall be liable to pay interest on the excess amount at twice the SBI’s Base Rate prevalent on first of April of the relevant year plus 2% for the period of delay beyond sixty (60) days of the date of release of connection till the excess amount is adjusted. The amount of such interest shall be adjusted against the electricity bills thereafter.”

Forum observed that regulation 9.3.6 provided that after execution of the work of electric line or electrical plant, in event of Security (works)/service charges being in excess of the actual expenditure incurred, the excess amount shall be determined by the Respondent department within 60 days from the date of release connection. In case the Respondent failed to do so, he shall be liable to pay interest on the excess amount at SBI’s Base Rate prevalent on 1st of April of the relevant

year plus 2%, for the period delayed beyond 60 days from the date of release connection until its realization. Forum have gone through the Appeal as well as Rejoinder of the Petitioner and written submissions of the Respondent as well as oral arguments of both the parties, Forum observed that although the Petitioner did not raise the issue of refund of excess amount deposited by it till 15.06.2021, but at the same time, Respondent also failed in performing his duties in this regard as laid down in Reg. 9.3.5 of Supply Code-2014. The Respondent was required to determine the excess amount within 60 days of release of the connection and adjust the same in the electricity bills alongwith interest as per Supply Code-2014, amended from time to time. In view of the above discussion, Forum is of the view that as agreed by the Respondent, the expenditure incurred on the existing structure is required to be taken as half the expenditure and amount to be got deposited from the petitioner, is required to be recalculate accordingly. As per the revised calculations, the excess amount deposited by the petitioner, if any, alongwith interest, be refunded, as per Reg. 9.3.6 of Supply Code, 2014, amended from time to time. Keeping in view of the above, Forum came to the unanimous conclusion that as agreed by the Respondent, the expenditure incurred on the existing structure be taken as half the expenditure taken in the estimate and amount to be deposited from the petitioner be recalculated accordingly. The excess amount deposited by the petitioner, if any, alongwith interest, be refunded, as per Reg. 9.3.6 of Supply Code, 2014, amended from time to time.”

- (ii) I have gone through the written submissions made by the Appellant in the Appeal, written reply of the Respondent as

well as oral arguments of both the parties during the hearing on 04.01.2023. It is observed that the Appellant had applied for a connection through 11 kV independent feeder and deposited ₹ 16,19,510/- as the cost of the Estimate vide BA16 No. 200/51104 dated 13.03.2019. The connection through the 11 kV independent feeder was released to the Appellant at the end of 2019.

- (iii) The Appellant contended that the Forum had wrongly decided that the cost of existing structure be taken as half as Regulation 9.5.4 of Supply Code, 2014 provided only for the proportionate cost to be charged for using the existing infrastructure. The Respondent controverted the pleas raised by the Appellant and submitted that the Regulation 9.5.4 was not applicable in this case. The relevant regulation in this case is Regulation 9.5.7 and as per the clarification issued by the office of the Chief Engineer/ Commercial vide Memo No. 467 dated 30.07.2020, since only two feeders were sharing the poles, so the decision of the Corporate Forum, Ludhiana was correct in this regard. I agree with the contentions of the Respondent. The Corporate Forum had correctly decided that the expenditure incurred on the existing structure be taken as half the expenditure taken in the estimate as the Appellant shared the existing structure with

11 kV Laj Export Independent feeder as per the Estimate of the Appellant.

- (iv) The Appellant further contended that the 16% departmental charges should be levied only on the new structure and not on the existing structure as the cost of existing structure included 16% departmental charges at the initial stage. The Respondent had charged the material and labour cost of the 39 poles only, NOT loaded with 16% departmental charges and then divided it by two. Then on overall cost, 16% charges were levied which was the correct implementation of the decision of the Corporate Forum. However, I observed that the Respondent had refunded the interest from the date of deposit of the amount. The interest should be given for the period of delay beyond sixty days of the date of release of connection till this amount is refunded to the account of the Appellant as per Regulation 9.3.6 of Supply Code, 2014 as amended from time to time.
- (v) As regards the contention of the Appellant regarding the GST, the Respondent had provided the GST Invoices to the Appellant. The Appellant was satisfied with the invoices given to him.

- (vi) In view of the above, this Court is not inclined to interfere with the decision dated 27.10.2022 of the Corporate Forum in Case No. CF-132 of 2022.

6. Decision

As a sequel of above discussions, the order dated 27.10.2022 of the Corporate Forum in Case No. CF-132 of 2022 is hereby upheld.

7. The Appeal is disposed of accordingly.
8. As per provisions contained in Regulation 3.26 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016, the Licensee will comply with the award/order within 21 days of the date of its receipt.
9. In case, the Appellant or the Respondent is not satisfied with the above decision, it is at liberty to seek appropriate remedy against this order from the Appropriate Bodies in accordance with Regulation 3.28 of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2016.

January 04, 2023
S.A.S. Nagar (Mohali)

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