

**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. 70/2022

Date of Registration : 30.12.2022
Date of Hearing : 04.01.2023, 10.01.2023
Date of Order : 10.01.2023

Before:

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

In the Matter of:

M/s. K.J. International,
Village Khingran, Choewala,
PO Bhogpur, Distt. Hoshiarpur.
Contract Account Number: 3007509090(LS)

...Appellant

Versus

Senior Executive Engineer,
DS Division, PSPCL,
Bhogpur.

...Respondent

Present For:

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

Respondent : 1. Er. Swaran Singh,
AEE/ DS Sub Divn. 1,
PSPCL, Bhogpur.
2. Sh. Chanpreet Singh, RA.

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-069/2022 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 26.12.2022 i.e. beyond the period of thirty days of receipt of the decision dated 14.09.2022 of the CCGRF, Ludhiana in Case No. CF-069/2022. The Appellant didn't produce any evidence/ documents with the Appeal to prove that it had deposited the requisite 40% of the disputed amount. Also, the authorization from all the partners of the Appellant's firm to Sh. Pawan Goyal, partner in Appellant's firm to file the Appeal, was not attached with the Appeal. So, the Appellant was requested to provide these requisite documents vide letter nos. 1395/OEP/M/s. K.J.International dated 26.12.2022 and 1397/OEP/

M/s.K.J.International dated 27.12.2022. The Respondent was also requested to confirm that the Appellant had deposited the requisite 40% of the disputed amount. The Appellant submitted the copy of Resolution signed by both the partners of the Appellant firm authorizing Sh. Pawan Goyal to file the Appeal. Also, the Respondent confirmed vide Memo No. 13934 dated 30.12.2022 that the Appellant had already deposited full disputed amount alongwith its bills on 17.06.2013 and 18.07.2013. Therefore, the Appeal was registered on 30.12.2022 and copy of the same was sent to the Senior Executive Engineer/ DS Divn., PSPCL, Bhogpur for sending written reply/ parawise comments with a copy to the office of the CCGRF, Ludhiana under intimation to the Appellant vide letter nos. 1402-1404/OEP/A-70/2022 dated 30.12.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 04.01.2023 at 12.30 PM and intimation to this effect was sent to both the parties vide letter nos. 05-06/OEP/A-70/2022 dated 02.01.2023. As scheduled, the hearing was held in this Court on 04.01.2023. During hearing, the Appellant's Representative (AR) requested for the withdrawal of the original Appeal filed on 26.12.2022. He further requested that the amended Appeal filed on 02.01.2023 may be considered. The Court allowed the same.

The Respondent requested for another date for filing suitable reply to the amended Appeal. The Court allowed the same and directed him to file the fresh Reply. He was also directed to submit the detail of actual expenditure incurred alongwith the fresh Reply with a copy to the Appellant well before the next date of hearing.

The next date of hearing in this case was fixed for 10.01.2023 at 12.00 Noon. Both the parties were directed to attend the Court on said date and time. An intimation to this effect alongwith the copy of Proceedings dated 04.01.2023 was sent to both the parties vide letter nos. 22-23/OEP/A-70/2022 dated 04.01.2023. As scheduled, the hearing was held in this Court on 10.01.2023 and arguments of both the parties were heard.

4. Condonation of Delay

At the start of hearing on 10.01.2023, the issue of condoning of delay in filing the Appeal in this Court was taken up. The Appellant had submitted that he could not file his Appeal within 30 days from the date of receipt of decision of the CCGRF due to unavoidable circumstances as his wife was not well due to Covid and he did not find time to consult his legal adviser for filing the Appeal. Therefore, the Appellant's Representative requested that the delay may kindly be condoned and the Appeal be adjudicated on merits in

the interest of justice. The Respondent had objected to it in his written Reply.

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.”

It is observed that refusal to condone the 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 Representative 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 applied for new Electric Connection in Large Supply Category for 2499 kVA load in 05/2011. Service Connection Charges amounting of ₹ 25,26,399/- as per Demand Notice were deposited which were more than the Fixed Charges per kVA. The connection was released in 12/2012.

(ii) After release of connection, Sundry Charges of ₹ 8,57,101/- were added in energy bill for the month of 5/2013 by the notified office.

When enquired about these charges from Sub Divisional Office, it was told that this was the amount of variable service connection charges pointed out by the Audit. This demand was illegal/ wrong and was in violation of the Supply Code, 2007 Regulation 9.1.1.i

(b). As per this Regulation, for getting electric connection of more than 500 kVA load, actual cost or Fixed Charges per kVA whichever was higher were required to be deposited. It was worth mentioning that for cases above 500 kVA, no limit for service line length has been prescribed in the Regulations.

- (iii) The Respondent illegally/ wrongly charged amount of ₹ 8,57,101/- as variable charges in violation of the Supply Code Regulations. Amount of ₹ 8,57,101/- was deposited under protest by the Appellant through installments to avoid disconnection. Out of 6 instalments, one was deposited alongwith energy bill on 07.06.2013 & the balance total amount of remaining 5 instalments were deposited on 08.07.2013 alongwith energy bill. The surcharge amount of ₹ 5,56,104/- charged wrongly/ illegally by the Respondent in the energy bill of 6/2013 was also deposited on 08.07.2013.
- (iv) Against this illegal/ wrong demand, petition was filed before the Hon'ble PSERC vide Petition No. 44 of 2013, the Commission gave its decision on 22.02.2022 that the Appellant may file his grievances before the CCGRF. The Appellant filed petition before the CCGRF vide Case No. CF-069/2022 for deciding the issue. The CCGRF, on pretext that similar issue was pending before the High Court, did not decide the case with the orders that the Appellant may approach Ombudsman/ Electricity, Punjab.
- (v) In the case of the Appellant, Supply Code, 2007 Regulation 9.1.1.i (b) was applicable, load being more than 500 kVA of his electric connection. In the Regulations, there was no provision for charging variable charges. Only actual cost of line or Fixed Charges per kVA

whichever was higher was to be charged. Moreover, in the Regulation, no limit of service line length had been prescribed and the Regulation 9.1.1. i (b) of Supply Code, 2007 was not ever amended and till the date it had its applicability.

(vi) The Respondent wrongly/ illegally had raised demand of variable charges in violations of the Regulations, calculating variable charges beyond 250 meters service line length whereas there was no such limit in the Regulations.

(vii) As per E.A, 2003 Section 46, Distribution Licensee can charge reasonably incurred expenses for giving electric supply. So, the Respondent cannot charge more than the actual expenses as per this Act. The relevant E.A. Section 46 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.”

(viii) Hon’ble Court of Ombudsman /Electricity, Punjab in similar cases having Appeal Nos. 71/2017 & 72/2017 of M/s. P.R. Alloys & M/s. Sewa Kunj Alloys had decided in favour of the consumers by giving award that variable charges were not recoverable/chargeable and had quashed the illegal demand of the Respondent (PSPCL) of variable charges.

- (ix) It was worth mentioning that in the case pending with the High Court, there was no stay against the orders of Hon'ble Court of Ombudsman till date.
- (x) Keeping in view the Supply Code, 2007 Regulation 9.1.1.i (b); the demand of the Respondent for charging variable charges of ₹ 8,57,101/- was wrong/ illegal which was required to be refunded. In addition, surcharge amount of ₹ 5,56,104/- charged in the energy bill for the month of 6/2013 was also refundable. The Appellant had paid all the energy bills fully in time and no amount of energy bills were pending to be deposited which warranted charging of surcharge except amount of variable charges. The amount of variable charges was not chargeable as per Regulation of Supply Code. So, charging of surcharge was also wrong/illegal and it was also refundable.
- (xi) Moreover, after completion of work, the Respondent was supposed to compute expenditure actually incurred of security works within 60 days as per Regulation 19.7 of Supply Code and the amount deposited in excess to actual expenditure was required to be refunded with interest. Till date, Respondent had not intimated actual expenditure to the Appellant. The amount in excess to actual expenditure was also refundable with interest.

- (xii) The Appellant could not file his Appeal within 30 days from the date of receipt of orders of the CCGRF due to unavoidable circumstances as his wife was not well due to Covid and he did not find time to consult his legal advisor for filing the Appeal. The request for condoning delay stands attached with this Appeal which may please be accorded and the Appeal may please be registered.
- (xiii) The Appellant requested the Ombudsman to quash the wrongly/ illegally charged amount of ₹ 8,57,101/- as variable charges & surcharge amount of ₹ 5,56,104/- with interest as per Regulation 19.7 of the Supply Code, 2007. In addition, amount of security works in excess to actual expenditure may please be refunded with interest.

(b) Submission during hearing

During hearings on 04.01.2023 & 10.01.2023, 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) The Appellant applied for new Electric Connection in Large Supply Category for 2499 kVA load in 05/2011. Service Connection

Charges amounting to ₹ 25,26,399/- as per Demand Notice were paid by the Consumer on 25.04.2012.

- (ii) After the accounts of the Sub Division were checked by the Audit Party, it had been noticed that the amount of ₹ 8,57,101/- was less charged from the Appellant and as such, this amount was required to be recovered from the Appellant.
- (iii) The amount had been raised on account of variable charges at the rate of ₹ 320/- per meter. The total length of service line was 3795 meter and out of this, 250 meter had been deducted as permissible limit and for the remaining service line, demand had been raised at the rate of ₹ 320/- per meter as variable charges.
- (iv) The demand was legal and as per Regulations of Electricity Supply Code and related matters- Regulations, 2007, Regulation No. 9.1.1 (i)(b). Where load/demand 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 connection, whichever was higher. Per kW/ kVA charges which were approved by the Commission included both fixed as well as variable charges which had been approved by the Commission vide its letter no. 3981/PSERC/DT/J-50 dated 05.12.2008 and the same had been adopted by the then PSEB vide its CC No. 68/2008 dated 17.12.2008. **If these charges (VARIABLE PLUS FIXED) were**

not chargeable, then the PSERC would not had approved these charges.

- (v) Hence, the amount of ₹ 8,57,101/- was recoverable according to the Electricity Supply Code and related matters. And even the Appellant had submitted the Undertaking that they would abide by the decision of the Hon'ble CCGRF, Ludhiana. So, this Appeal was void and the same was liable to be dismissed without any consideration.
- (vi) As per Clause 9.1.1(i)(b) where load/demand 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 connection, whichever was higher. Per kW/kVA charges, which were approved by the Commission, included both fixed as well as variable charges which had been approved by the Commission vide its letter no. 3981/PSERC/DT/J-50 dated 05.12.2008 and the same had been adopted by the then PSEB vide its CC No. 68/2008 dated 17.12.2008. The Appellant had emphasized on the **“only cost of line or fixed charges per kVA whichever is higher is to be charged”** and these lines were nowhere written in Regulation 9.1.1 (i)(b). Hence, the Appellant was only misinterpreting the Regulation before the Hon'ble Ombudsman to ensure the judgment in its favour. It was also

mentioned here that as per Memo No. 1032 dated 13.07.2012 of the Chief Engineer/ Commercial, PSPCL, Patiala, it was clarified to the Addl. SE/ DS Division, Samrala that wherever the length of the service line exceeded the permissible limit, then the fixed charges of ₹ 900/- per kVA and variable charges of ₹ 320/- per meter, both were recoverable. The amount of ₹ 8,57,101/- was legal.

(vii) As per Electricity Act, 2003, Section 46 ***“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.”***

(viii) The State Commission regulated and issued letter no. 3981/PSERC/DT/J-50 dated 05.12.2008 and the same had been adopted by the then PSEB vide its CC No. 68/2008 dated 17.12.2008. According to which fixed charges as ₹ 900/- per kVA/kW and ₹320/- per meter as variable charges, both were approved by the Commission in case where load was more than 500 kW/kVA. So, the variable charges of ₹ 320/- per meter were also recoverable.

(ix) It was pertinent to mention here that the order dated 14.12.2017 in Appeal No. 72/2017 had now been challenged under High Court

Case No. CWP No. 19701 of 2018. In the same type of case of Service Connection Charges i.e. Case No. 20/2014 of M/s. Menka Industries, Village Paddi, Distt. Ludhiana v/s PSPCL & the Case No. 24/2014 of M/s. Jagraon Multimetals, Ludhiana v/s PSPCL, the Hon'ble Ombudsman decided that the amount on account of service connection charges was justified and hence was recoverable.

- (x) It was admitted that the similar case i.e. CWP No. 19701 of 2018 titled PSPCL v Sewa Kunj Alloys was pending before the Hon'ble Punjab and Haryana High Court. It was pertinent to mention here that the Hon'ble CCGRF had stated the following in its decision dated 14.09.2022:-

“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.”

- (xi) It was worth mentioning that the Hon'ble PSERC & the CCGRF both courts had not yet decided the case in favour of the Appellant.
- (xii) The demand of ₹ 8,57,101/- was charged according to the Supply Code, 2007 Regulation 9.1.1 (i)(b) and CC No. 68/2008. Hence, it was legal and recoverable from the Appellant.

- (xiii) The Appellant had filed Case No. CF-069/2022 dated 07.07.2022 before the Hon'ble CCGRF which was decided on 14.09.2022 with the decision that the similar nature case was pending before Hon'ble Punjab & Haryana High Court in CWP No. 19701 of 2018 and whenever that case was decided by the Hon'ble Punjab & Haryana High Court, the Appellant can approach the Forum.
- (xiv) The Appellant can file the Appeal only within 30 days from the final verdict of the Hon'ble CCGRF but the Appellant cannot file their Appeal after a period of 30 days. It was against the rules and regulations, hence the Appeal should be dismissed. The Appeal of the Appellant was false and frivolous, not maintainable, without any cause of action, and had been filed with malafide intention, and the same was liable to be dismissed.
- (xv) It was certified that the total amount of electricity bill for the month of 05/2013 was ₹ 61,71,410/- (SOP ₹ 55,60,118/-, Rental ₹ 919/- & ED ₹ 6,10,368/-). Surcharge was levied as 10% of SOP, i.e. ₹ 55,60,118X10/100= ₹ 5,56,011/-. If any decision regarding surcharge was taken by the Hon'ble Court of Ombudsman, it would be implemented accordingly.
- (xvi) It was also certified that at the time of release of connection, the actual cost of the Estimate was recovered from the Appellant. After that, the Audit Party noticed that the amount charged through

demand notice was less charged as per Commercial Circular No. 68/2008, which was recoverable.

(b) Submission during hearing

During hearings on 04.01.2023 & 10.01.2023, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal. He had admitted that there is no stay of any Court in respect of deciding this case.

6. Analysis and Findings

The issue requiring adjudication is the legitimacy of the refund claim of the Appellant of ₹ 8,57,101/- charged to him on account of Variable Service Connection Charges alongwith the late payment surcharge amounting to ₹ 5,56,104/- along with interest.

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 the Petitioner is having LS connection with sanctioned load of 7250KW/ 5200KVA. Earlier, Petitioner had applied for industrial connection with load of 2499kW/ 2499KVA on dated 04.05.2011. Connection was released on dated 13.12.2012. Petitioner was issued bill in the month 06/2013 which includes sundry charges amounting to Rs. 857101/-, on account of variable service

connection charges, which was earlier not charged at the time of release of connection. Petitioner got installments of sundry charges and deposited First installment under protest. Thereafter Petitioner filed a Petition in Hon'ble PSERC regarding this issue. Hon'ble PSERC vide its order dated 21.02.2022 decided the issue as under:

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

Accordingly, petitioner filed this petition before the CGRF, now Corporate CGRF, Ludhiana.

Forum observed that petitioner in his rejoinder has mentioned that Hon'ble, Ombudsman Electricity, Punjab, in similar case in appeal no. 72/2017 have decided in favour of the consumer and against the respondent PSPCL. 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.

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

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

- (ii) I have gone through the written submissions made by the Appellant in the Appeal, written reply of the Respondent as well as oral arguments of both the parties during the hearings on 04.01.2023 and 10.01.2023. It is observed that the Appellant had applied for new Large Supply (LS) industrial connection for Contract Demand of 2499 kVA on 04.05.2011. Demand Notice No. 1451-A dated 31.05.2011 of ₹ 38,83,124/- was issued to the Appellant which included difference of ACD of ₹ 14,19,170/- and the Estimate cost of ₹ 24,63,954/-. The same were deposited by the Appellant in

compliance to the demand notice vide BA16 No. 520/8538 dated 08.06.2011. The Estimate Amount was revised to ₹ 25,26,399/- and an additional demand of ₹ 62,445/- was raised by the Respondent vide Memo No. 815 dated 20.04.2012. The Appellant deposited the same amount vide BA16 No. 471/10404 dated 25.04.2012. The connection was released on 31.12.2012.

- (iii) Thereafter, the Appellant was getting regular consumption bills till 04/2013. But the Respondent posted a Sundry Charges of ₹ 8,57,101/- in the bill of 05/2013 on the basis of Memo No. 265 dated 27.05.2013 of the Audit Party for difference of Service Connection Charges. The Appellant filed a Petition No. 44 of 2013 before the PSERC, which was disposed of by the Commission on 21.02.2022 deciding that the issue raised in the present petition pertained to billing dispute of the consumer of PSPCL which fell in the jurisdiction of the Forum for redressal of grievances of consumers established under Section 42(5) of Electricity Act, 2003. The Forum for redressal of grievances of consumers had been established and the regulations in this regard have been framed by the Commission vide PSERC (Forum and Ombudsman) Regulations, 2016 as amended with Regulations No. 154 of 2020 and 159 of 2021. Therefore, the Petitioner may seek the redressal of his grievances, if any.

- (iv) Accordingly, the Appellant approached the Corporate Forum vide Case No. CF-069 of 2022. The Corporate Forum disposed of the case on 14.09.2022 deciding that the matter of similar nature was pending before Hon'ble Punjab & Haryana High Court, in CWP No. 19701 of 2018 titled PSPCL V/s Sewa Kunj Alloys Pvt. Ltd., therefore, it would be inappropriate for it at this point of time to adjudicate upon this petition, which was on the similar issue. Petitioner, if need be, may approach this Forum once the case was decided by the Hon'ble Punjab & Haryana High Court.
- (v) The Appellant filed the present Appeal against the order dated 14.09.2022 of the Corporate Forum pleading that there was no stay by the Hon'ble Punjab & Haryana High Court, in CWP No. 19701 of 2018, so the case should have been decided on merits by the Corporate Forum. The Appellant's Representative (AR) pleaded that the demand of ₹ 8,57,101/- 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.
- (vi) To arrive at a decision, a perusal of Regulation 9.1.1 (i) is needed, which is reproduced as under:

“9.1.1 For new connections

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

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

Where the length of the service line exceeds the above prescription for the applied category, the applicant will also pay for the additional expenditure for the extra length on actual basis at the rates approved by the Commission.

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

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

On perusal of above Regulation, it is noticed that this Regulation has clearly drawn a line of distinction between the new connections upto 500 kW/ 500 kVA and above 500 kW/ 500 kVA.

- (vii) The consumer had applied for new LS Connection with CD (Contract Demand) as 2499 kVA on 04.05.2011. The applicable regulation in this case for release of new connections is 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 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. 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.

- (viii) Standard Cost Data was approved by the Commission, as required under Regulation 10 of the Supply Code, 2007. The Commission approved the Standard Cost Data which was made applicable with the issue of Commercial Circular No. 68/2008. The only contention put forth by the Respondent was that in column-5 of the Standard Cost Data, both per kVA charges and variable charges have been mentioned and hence are recoverable. In my view, the provisions of the Supply Code, 2007 and the approved Standard Cost Data are not being correctly interpreted by the Respondent. The charging Regulation of Supply Code, 2007 for recovery of charges for new connections 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 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 as approved by the Commission or the actual expenditure for release of connection, whichever is higher. No other expenditure is mentioned in this provision. Therefore, in my view, even if variable charges are mentioned in the Standard Cost Data that does not make its charging mandatory when the same is not provided in the charging Regulation. Mention of any rates in the approved cost data only gives rates to be adopted where ever applicable according to Charging Regulation. During the course of proceedings on 10.01.2023, it was enquired from the Respondent whether the actual 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 of service lines were taken into account and were also included in the case of the Appellant. Thus, there does not appear to be any justification in recovering variable charges again when these had already been included while preparing the estimate of expenditure. It needs to mention here that this anomaly of mentioning variable charges in the column for loads above 500 kVA CD (Contract Demand) has itself been removed by the PSERC while approving Standard Cost Data applicable from 01.10.2012 as is apparent from CC No. 31/2012. This supports the

view that variable charges were not mandatory for loads above 500 kVA even for connections released before the said date for the reasons discussed above.

- (ix) The Commission never approved the amendment in the Regulation 9.1.1 (i) (b) of the Supply Code, 2007 as proposed by the Licensee. So, the advice from the O/o the Chief Engineer/ Commercial to the Addl. SE/ DS Division, Samrala vide its Memo No. 1032 dated 13.07.2012, that wherever the length of the service line exceeded the permissible limit, then Per kW fixed charges were recoverable alongwith the variable charges per meter in excess of the permissible limit, was not tenable. It was ultra vires of the Regulation 9.1.1 (i) (b) of the Supply Code, 2007.
- (x) Commercial Circulars and instructions issued by the Licensee (PSPCL) cannot override/ modify the Supply Code, 2007 Regulations which had been framed by the Commission as empowered under Section 181 of 'The Electricity Act, 2003'. These regulations had been notified in the State Gazette after following the process laid down in the Act.
- (xi) 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 the 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*.

- (xii) Both parties agreed during hearing on 10.01.2023 that there is no stay of the Hon'ble Punjab & Haryana High Court relating to the case under dispute and the case can be decided by this court.
- (xiii) 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 decided in these Appeal Cases that Variable Service Connection Charges are not recoverable.
- (xiv) The Corporate Forum should have passed a well reasoned speaking/ detailed order on the issues 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 by the Corporate Forum in respect of issues raised by the Appellant in the dispute case filed before the Corporate Forum. The

Corporate Forum did not decide the case on merits rather disposed it of stating the pendency of CWP No. 19701 of 2018 before the Hon'ble Punjab and Haryana High Court as the reason. This was not correct on the part of the Corporate Forum because this case is lingering on for the last many years.

(xv) The Respondent had informed that the estimated expenditure in this case was ₹24,63,954/- as per Estimate No. 23052/ 2012-13 which was revised to ₹ 25,26,399/- vide Revised Estimate No. 13106. The actual expenditure incurred by the PSPCL was ₹ 25,26,399/- as confirmed by the Respondent during the hearing. Per kVA service connection charges for CD of 2499 kVA applied by the Appellant in this case comes to ₹ 22,49,100/-. So higher of these, i.e., amount of ₹ 25,26,399/- was recoverable from the Appellant as per Regulation 9.1.1 (i) (b) of Supply Code, 2007. The same amount was deposited by the Appellant. The Respondent wrongly recovered ₹ 8,57,101/- later on as variable service connection charges through Sundry Charges from the Appellant.

(xvi) 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-069 of 2022. Amount of ₹ 8,57,101/- charged to the Appellant through Sundry Charges as Variable Service Connection Charges for the release of load of new connection on 31.12.2012 is not

justified as per Regulation 9.1.1 (i) (b) of Supply Code, 2007 and hence is not recoverable. The Respondent is directed to refund the amount of ₹ 8,57,101/- recovered as variable service connection charges alongwith interest from the date of deposit to the date of refund as per Regulation 19.7 of Supply Code, 2007 as amended from time to time. The Respondent is also directed to work out the revised Late Payment Surcharge by treating the variable service connection charges as NIL and refund/recover the amount as per instructions of the Licensee in this regard alongwith interest.

7. Decision

As a sequel of above discussions, the order dated 14.09.2022 of the CCGRF, Ludhiana in Case No. CF-069 of 2022 is hereby quashed. Amount of ₹ 8,57,101/- charged to the Appellant through Sundry Charges as Variable Service Connection Charges for the release of load of new connection on 31.12.2012 is not justified as per Regulation 9.1.1 (i) (b) of Supply Code, 2007. The Respondent is directed to refund this amount of ₹ 8,57,101/- alongwith interest from the date of deposit to the date of refund as per Regulation 19.7 of Supply Code, 2007 as amended from time to time. The Respondent is also directed to work out the revised Late Payment Surcharge in this case by treating the payable variable service

connection charges as NIL & refund/ recover the amount with interest as per instructions of the Licensee.

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.

January 10, 2022
S.A.S. Nagar (Mohali)

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