**COURT OF THE LOK PAL (OMBUDSMAN),**

**ELECTRICITY, PUNJAB,**

**PLOT NO. A-2, INDUSTRIAL AREA, PHASE-1,**

**S.A.S.NAGAR (MOHALI).**

**APPEAL NO. 16/2018**

**Date of Registration : 15.02.2018**

**Date of Hearing : 09.08.2018**

**Date of Order : 14.08.2018**

**Before:**

 **Er. Virinder Singh, Lok Pal (Ombudsman) Electricity**

**In the Matter of:**

 BBF Industries Ltd.,

Village Bhamian Kalan,

Tajpur Road,

Ludhiana,

 ...Petitioner

 Versus

 Additional Superintending Engineer/DS,

Focal Point Division (Special),

 PSPCL, Ludhiana.

. ...Respondent

**Present For:**

Petitioner : Sh. Sarabjit Singh Kahlon,

 Petitioner’s Representative (PR).

Respondent : 1. Er. Sukhjeet Singh,

Addl. Superintending Engineer.

 2. Er. K.P.S. Sidhu,

 Addl. Superintending Engineer.

 3. Sh. Gursatinder Singh , AAO (Revenue).

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 16.01.2018 of the Consumers Grievances Redressal Forum (CGRF) in Case No. CG- 271 of 2017 deciding that:

 *“The difference of revised estimate Rs. 41,17,466/- and original estimate Rs.41,43,276/- (i.e. Amount recovered from the Petitioner) amounting to Rs. 25,810/- is refundable to the Petitioner.”*

 **2. Facts of the Case:**

The relevant facts of the case are that:

1. The Petitioner, having a Large Supply Category connection, with sanctioned load of 2494kW and CD as 1200kVA, submitted an Application for Independent Feeder – cum -Additional Load of 1506kW and CD of 1300kVA with aggregate load and CD extending to 4000kW and 2500kVA respectively vide Application and Agreement (A&A) No.41381 dated 29.10.2007, whereafter, the Demand Notice bearing No. 118 dated 07.01.2008 was issued for depositing a sum of Rs. 41,43,276/- as Service Connection Charges (SCC) which, in turn, were deposited by the Petitioner.
2. The Petitioner provided, at its own cost, some of the material such as M.S. Channel, Suspension clamps, ‘I’ bolts during the course of execution of the work.
3. The Independent Feeder, applied for by the Petitioner, was made operational on 25.03.2008.
4. After the completion of this work, another consumer namely Shiva Spin & Knit (P) Ltd, having Account No. E-32-FP-53-00765, applied for Independent Feeder and extension of load/CD.
5. For releasing supply through Independent Feeder to Shiva Spin & Knit (P) Ltd, 71 new Poles were erected after feeder of the Petitioner (BBF Industries Ltd.) and 63 Rail poles of the Petitioner erected at its cost were used. The shared cost of the same worked out to be Rs. 10,40,061/- which was included in the estimate of Shiva Spin & Knit (P) Ltd. The Independent Feeder of Shiva Spin & Knit (P) Ltd was made operational on 27.09.2008.
6. The Petitioner requested the Respondent, vide letters dated 09.04.2008, 23.06.2008 and 27.07.2009, to refund the amount

detailed below:

|  |  |  |
| --- | --- | --- |
| **Sr. No.** | **Particulars** | **Amount****(Rs.)** |
| 1. | Money collected from M/s Shiva Spin & Knit under clause 47.4 of Conditions of Supply for common portion of line installed at the cost of the Petitioner | 9,58,086/- |
| 2. | Difference of money deposited Rs. 41,43,276/- vide demand notice for SCC and actual amount spent Rs. 37,64,153/- | 3,79,123/- |
| 3. | Cost of material supplied by the Petitioner at its expenses | 1,43,000/- |
|  | Total claim of the Petitioner | 14,80,209/- |

1. Having failed to receive any response from the Respondent, the Petitioner represented, on 10.08.2011, to the Zonal Dispute Settlement Committee (ZDSC) which, after hearing, decided on 21.10.2011 as under:

 “*The total amount chargeable to the consumer as per decision is as under:*

* *Cost of material actual drawn as per IWR : Rs. 41,17,466/-*
* *Cost of material chargeable to the*

*Petitioner for common portion shared*

*with Ansal Feeder Poles ( 41 poles) : Rs. 6,86,748/-*

***Total***  *: Rs. 48,04,214/-*

*(Rs. Forty Eight Lakhs Four thousand Two Hundred & Fourteen only)”*

1. Not satisfied with the decision of the ZDSC, the Petitioner filed CWP No. 3525 of 2012 in the Hon’ble Punjab & Haryana High Court which passed the order on 18.09.2017, as under:

“*This petition is filed to challenge the order dated 21.10.2012 passed by Zonal dispute Settlement Committee.*

 *Learned counsel for the respondents has submitted that as per the Electricity Supply Instructions Manual, the petitioner has the remedy to appeal before the Forum for redressal of its grievances and thereafter before the Ombudsman electricity.*

 *Faced with this objection, learned counsel for the petitioner has prayed for withdrawal of the petition in order to avail its remedy in accordance with the aforesaid regulation.*

 *Consequently, the present petition is hereby allowed to be withdrawn with liberty to the petitioner to take up its remedy in accordance with law. In case the appeal is filed before the Forum by the petitioner within 15 days from the receipt of certified copy of this order, neither the Forum nor the respondent shall raised any objection to the limitation.*

 *Dismissed as withdrawn.*

 *Liberty granted.”*

1. In compliance to the decision ibid of Hon’ble Punjab and Haryana High Court, the Petitioner got its case registered on 24.10.2017 in the Forum within the limitation period. The Forum heard and decided the case vide order dated 16.01.2018 (Reference: Page 2, Para 1).
2. Aggrieved with the decision of the Forum , the Petitioner preferred an Appeal in this Court and prayed to allow the same in the interest of justice.

**3. Submissions made by the Petitioner and the Respondent:**

Before undertaking analysis of the case, it is necessary to go through the written submissions made by the Petitioner in the Appeal and reply of the Respondent as well as oral submissions made by the Representatives of the Petitioner as well as the Respondent along with the material brought on record by both the sides.

1. **Submissions of the Petitioner:**

The Petitioner made the following submissions for consideration of this Court:

1. The Petitioner had a sanctioned load of 2494kW with contract demand (CD) of 1200kVA. An Application for Independent Feeder-cum-Additional Load of 1506kW with Contract Demand (CD) of 1300kVA totaling the load to 4000kW and contract demand (CD) as 2500kVAwas submitted. After acceptance of the Application & Agreement (A&A) No. 41381 dated 29.10.07, Demand Notice bearing No. 118 dated 07.01.08 was issued for depositing a sum of Rs. 41,43,276/-, as Service Connection Charges (SCC) i.e. estimated cost of installing Independent Feeder. In compliance to the said Demand Notice, the above amount was deposited vide Receipt No. 112/ 6123 dated 21.01.2008. The Independent Feeder was made operational on 25.03.2008.
2. Subsequently, another consumer, Shiva Spin & Knit (P) Ltd. (called *‘SHIVA’)* applied for extension of load along with installation of Independent Feeder. It was issued a demand notice for depositing a sum of Rs. 55,64,718/-. The demand included shared cost of Rs.10,40,061/- for using 63 poles installed by the Petitioner. The Independent Feeder of Shiva Spin & Knit (P) Ltd. was made operational on 27.09.2008.
3. The Petitioner, vide various submissions made between 09.04.2008 and 27.07.2009, requested the Respondent for the following payments:
	* 1. Refund Rs. 9,58,086/- deposited from Shiva Spin & Knit (P) Ltd. for sharing 63 poles and accessories paid for by the Petitioner (BBF).
		2. Refund of Rs. 3,79,123/-, being the amount of difference between advance estimate and actual expenditure incurred after installation of 11 kV BBF independent feeder.
		3. Refund of Rs. 1,43,000/- being the amount spent by the Petitioner (BBF) for the material supplied, as the same was not available in the Respondent’s Stores.
4. After receiving no response from the Respondent, the matter was raised before the Zonal Dispute Settlement Committee (ZDSC), which, vide order dated 21.10.2011, directed that the Petitioner be charged a sum of Rs. 48,04,214/-. Primarily, the Petitioner (BBF) was charged an additional sum of Rs. 6,86,748/- as cost for sharing 41 poles of Ansal Housing feeder which were not accounted for earlier as admitted by the Respondent in its submission dated 16.09.2011 in the ZDSC.
5. Not satisfied with the decision of the ZDSC, CWP No. 3525 of 2012 was filed in the Hon’ble Punjab and Haryana High Court which, remitted, vide order 18.09.2017, the case to the Forum for consideration and decision on a Petition to be filed by the Petitioner within limitation period.
6. The Petitioner got its Petition registered on 08.12.2017 in the Forum which heard and decided the same on 16.01.2018. The Petitioner

was not satisfied with the said decision and preferred an Appeal in this Court for justice.

1. Regulation 3 (a) Condition of Supply (Annexure-5, CS-1), reproduced below, revealed that it pertained to the fact that even if a service line / equipment passed overhead or was placed over the property of the consumer; it shall be paid for by the consumer, and by virtue of this regulation, Distribution Licensee shall be the owner of such service line / equipment and shall maintain it at its own cost. If at a later stage, additional equipment or service line needed to be placed/drawn on the consumer’s premises, he shall facilitate the same. Ownership alluded pertained only to service line and equipment, and that too when it was placed over private / consumer’s property. The same had no relationship to the issue at hand which related to the fact that when an independent feeder, in its entirety, was erected by the 1st consumer, and later the 2nd consumer wished to share/use the same infrastructure, then, what shall be the cost sharing mechanism.

***“3(a)*** *The consumer shall be liable to pay the cost of service line /proportionate cost of back-up line (including bay)/feeding sub station (if applicable) and other equipment as per Regulation-9 of the Supply Code.*

***(b)*** *Notwithstanding that the cost of the full or a part of the service line has been paid for by the consumer, the ownership thereof shall vest in the board and will be maintained by the Board at its cost. The Board shall have a right to utilize the aforesaid service line and sub-station in the consumer’s premises, place apparatus or underground feeders in the property of the consumer’s premises with a view to connect the same with the apparatus installed in any other consumer’s premises”.*

1. The Forum relied on Regulation 9.5.5 of Supply Code-2014, came into

force from 01.01.2015 and reads as under:

*“ The proportionate cost of common portion of feeder/line recovered from 2nd and/or subsequent consumer along with interest at RBI Base Rate (compounded annually) on this proportionate cost shall be adjustable against the expenditure incurred for augmentation of feeder which might be necessitated in the event of the consumer who has borne the entire cost initially requests for enhancement in his contract demand at a later stage.”*

1. It was significant to note that Regulation 9.5.5 had been inserted from Clause 47.5 of Conditions of Supply. This happened by virtue of order dated 07.09.2011 by the Hon’ble PSERC on Petition No. 28 of 2011 filed by the Respondent-PSPCL and this was implemented from 15.09.2011. It was an addition to the previous clause No. 47 of the *‘Conditions of Supply 2010’* as no such provision was available earlier.

 *“47. PROVISION OF 11 KV INDEPENDENT FEEDER FOR CONSUMERS****:***

 *47.5 The proportionate cost of common portion of feeder / line recoverable from 2nd and / or subsequent consumer along with interest at SBI’s base rate (compounded annually) on this proportionate cost shall be adjustable against the expenditure incurred for augmentation of feeder which might be necessitated in the event of the consumer(s) who has borne the entire cost initially coming up for enhancement in his Contract Demand.*

1. The Independent Feeder applied for by the Petitioner came into operation on 25.03.2008, and that of Shiva Spin & Knit (P) Ltd. came into operation on 27.09.2008, so, neither the provisions of Regulation of Supply Code-2007 nor Clause 47.5 of Conditions of Supply were applicable.
2. Actually, the following provisions under the Electricity Act, 2003 and Supply Code -2007, effective from 01.01.2008 were applicable to the present case:

*“Section 46. (Power to recover expenditure) of Electricity Act-*

*2003:*

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

*“9. Power to recover expenditure of Supply Code 2007:*

*9.1 Subject to the provisions of the Act and these Regulations and subject further to such directions, orders or guidelines which the Commission may issue, every Licensee is entitled to recover from an applicant requiring supply of electricity or additional load/demand, any expenses that the Licensee may incur in providing the facility. The expenditure recoverable by the Licensee will be computed as detailed in Regulations 9.1.1, 9.1.2 and 9.1.3.*

 *9.1.2 For Additional Load:*

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

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

From the perusal of the above applicable rules and regulations, it was evident that the Respondent- PSPCL was entitled to recover, “….*expenses reasonably incurred in providing any electric line or electrical plant…” “….any expenses that the Licensee may incur in providing the facility….”* Or “….*actual expenditure….”*

1. The Respondent had not incurred an expense of Rs. 10,40,061/-

 which was recovered from Shiva Spin & Knit (P) Ltd. In fact, it was incurred by the Petitioner. Accordingly, the same should be rightfully credited into its account.

(xiii) For the sake of argument even if it was assumed that ownership rights were vested in the Distribution Licensee, then, such right shall not legally empower it to charge expenses, twice for the same work done, and that too without spending a single penny on either occasion from its own coffers. Public agencies were funded by the State Exchequer and established for the welfare of the public and thus, could not become instruments for illegal profiteering. Firstly, Respondent was unable on its own to finance its public projects and executed the same at the cost of the consumers, and subsequently, as in the present case, charged the second consumer for the work already executed from the pocket of the first consumer and later refused to pass on the credit to the rightful party. Such acts, no matter, under what pretext, were not worthy of a State agency.

1. The issue of refunding money got deposited, in excess of that actually spent, be resolved by getting the recalculations done in the light of the order passed by the Forum, and documents obtained under the RTI Act, 2005. To begin with, as per the Estimate No. 73445/2007 dated 07.01.2008, a demand of Rs.41,43,276/- was raised and deposited by the Petitioner. However, later Initial Works Register (IWR) No.83677 dated 30.03.09 was prepared, and it exhibited the following:
2. Cost of material actual drawn : Rs. 41,17,466/-
3. Shared cost of Ansal Poles : Rs. 6,86,748/-
4. Less shared cost of Shiva

 Spin & Knit (P) Ltd. : (-) Rs.10,40,061/-

 Actual Expenditure : Rs. 37,64,153/-.

1. With respect to actual expenditure incurred by the Respondent, the Petitioner was provided under RTI Act, information depicting the cost of the material amounting to Rs.32,56,372/- along with the cost of labor of Rs.1,30,349.42/-, for a total sum of Rs.33,86,722/-.
2. These calculations did not take into account the excess material returned to the Stores, the details of which had been procured under RTI Act, by the Petitioner.
3. Lastly, as per the decision dated 16.01.2018 of the Forum, the Petitioner was not liable to pay a sum of Rs. 6,86,748/-. Therefore, in the interest of justice, it shall be fair to reassess the actual expenditure incurred by the Respondent by taking into account the above submissions and recalculate the refund due to the Petitioner.
4. The decision of the Forum was patently illegal, arbitrary, discriminatory, unconstitutional, perverse, void, and against the principles of natural justice, contrary to law, erroneous, cryptic and non- speaking. Therefore, the order ibid should be set aside with the following prayer:
5. Petitioner’s account should be duly credited with Rs. 10,40,061/-recovered from Shiva Spin & Knit (P) Ltd. as the expenses were borne by the Petitioner. Secondly, a sum of Rs.10,40,061/-wasin excess of expenses reasonably incurred by the department under Section 46 of the Electricity Act, 2003; read with Regulation 9 of the Electricity Supply Code-2007and hence, was not legally empowered to retain it.
6. Recalculation of actual expenses be done based upon facts illustrated in the present Appeal along with order of the Forum dated 16.01.2018. Any sum charged in excess of the actual expenditure incurred should be refunded to the Petitioner along with interest under Regulation 36.3.6 of the Supply Code - 2014.
7. Any other relief that this Court may deem fit and proper in the circumstances of the case and in the interest of justice.
8. **Submissions of the Respondent:**

 The Respondent, in its defence, submitted the following for consideration of this Court:

1. The Petitioner applied for extension of load and contract demand and Independent Feeder vide A&A No. 41381 dated 29.10.2007. Accordingly, for releasing the extension in load, the Estimate No. 73445/07-08 amounting to Rs. 41,43,276/- was prepared and sanctioned and Demand Notice dated 07.01.2008 was issued. In response to which, the Petitioner deposited a sum of Rs. 41,43,276/- on dated 21.01.2008. Thereafter, 11kV line was erected for giving supply to the Petitioner through an Independent Feeder.
2. After the completion of the said work, another consumer, Shiva Spin & Knit (P) Ltd., having Account No. E32-FP53-00765, applied for extension in load and Independent Feeder. For releasing supply through Independent Feeder to Shiva Spin & Knit (P) Ltd., 71 new poles were erected after feeder of the Petitioner (BBF Industry). For erecting 11kV Independent Feeder of Shiva Spin & Knit (P) Ltd., 62 Rail poles of the Petitioner (BBF Industry) were used. Half the cost of 62 Rail poles of the Petitioner (BBF) used for erecting Independent Feeder of Shiva Spin & Knit (P) Ltd., was included in the estimate of Shiva Spin & Knit (P) Ltd. By that time, the work of Independent Feeder of the Petitioner (BBF industry) was completed. When an independent feeder was energized, it became the asset of the Distribution Licensee and the maintenance of the feeder was also the responsibility of the Distribution Licensee. In this way, the charging the Shiva Spin & Knit (P) Ltd., with half the cost of 62 poles was correct.
3. The position was also the same in the case of the Petitioner (BBF industry) . For the construction of 11kV Independent Feeder of the BBF industry, a provision of 63 new poles was made in the estimate and 63 poles including 41 Rail poles of already running Ansal Enclave feeder were used for construction of an Independent Feeder of the Petitioner (BBF industry). But, half the cost of 11kV Rail poles of already running Ansal Enclave feeder was not included in the estimate for releasing extension of BBF industry. Besides, the 11kV Ansal Enclave feeder was not an Independent Feeder and feeder was not tapped/extended for giving supply to the Petitioner (BBF industry). 41 Poles of Ansal Enclave feeder were used for erecting the Independent Feeder of BBF industry. For erecting an Independent Feeder under Regulation 51.3 of Electricity Supply Regulation (2005), which reads as under:

“Industrial and Bulk Supply consumers availing connection for load exceeding 1MW had to pay the entire cost of service line laid for them.”

The Petitioner (BBF Industry) was charged the cost of line for giving connection / Independent Feeder. Similarly, an Independent Feeder of the Petitioner (BBF industry) had never been tapped / extended for giving supply to Shiva Spin & Knit (P) Ltd. Only 62 poles of BBF Industry Independent Feeder had been used for erecting the Independent Feeder of Shiva Spin & Knit (P) Ltd. As Independent Feeder of BBF Industry and feeder of Ansal Enclave had never been tapped/extended for giving supply, the question of refund claimed did not arise.

**(iv)** After the release of connection/ Independent Feeder of the Petitioner (BBF Industry), an estimate on actual basis is prepared for Rs. 37,64,153/- on dated 30.03.2009.

1. In regard to material supplied by the Petitioner, the factual position was that the provision of 6000kg MS channel was made in the estimate but only 500kg of MS channel was drawn from store. 2500kg of channel had been supplied by the Petitioner. MS channel measured was 2880kg and 120kg MS channel had been returned to the Store. Suspension clamps and nut bolts 201kg had been supplied by the Petitioner and all 201kg of suspension clamps and nuts bolts were used and measured.

**(vi)** Only62 poles of BBF industry were used instead of 63 poles as claimed by Petitioner in the Appeal for erecting Independent

Feeder of Shiva Spin & Knit (P) Ltd.

1. The refund of cost of material supplied by the Petitioner had already been considered and rejected by the ZDSC on 21.10.2011 and upheld by the Forum vide order dated 16.01.2018.
2. Any service line/11kV Independent Feeder erected by the PSPCL for the consumer became the property/asset of the erstwhile PSEB (now PSPCL) instantaneously on its energization.
3. The consumer was liable to pay the cost of service line and other equipment as may be laid down or placed on his property for the purpose of supply to its premises as per Schedule of General & Service Charges as in force at the time of release of connection. Notwithstanding that, the cost of the full or a part of the service line had been paid by the consumer, the ownership thereof shall vest with the Distribution Licensee which will be maintained by the Distribution Licensee at its cost. The Licensee shall have the right to utilize the aforesaid service line. So, the claim of the consumer for Rs.10,40,061/- for sharing the common portion recovered from Shiva Spin & Knit (P) Ltd. was not tenable.
4. Estimate No. 83677/2008-09 dated 30.03.2009 which was prepared on actual basis and was passed for Rs. 37,64,153/-.
5. The decision dated 16.01.2018 of the Forum was based on rules & regulations and just and fair. So, there was no need to recalculate the refund due to the Petitioner. The Appeal deserved dismissal.

**5. Analysis:**

 The present dispute involves adjudication of the legitimacy of the relief claimed by the Petitioner in regard to:

1. Refund of Rs. 10,40,061/-, recovered from another consumer, Shiva Spin & Knit (P) Ltd., on account of half of the cost of the 62 Rail Poles erected at the cost of the Petitioner for its Independent Feeder.
2. Credit of the cost of material given by the Petitioner to the Respondent, owing to non-availability of the same in its Stores, for completion of the work of the Petitioner.
3. Credit of the value of the material dismantled, during execution and returned to the Store of the Respondent.
4. Reassessment/recalculation of the refund due to the petitioner as per submissions made.

*The issues in this case emerged are deliberated and analysed ad- seriatum, as under:*

1. PR contended that the Independent Feeder applied for by the Petitioner

came into operation on 25.03.2008, and that of Shiva Spin & Knit (P) Ltd. was energised on 27.09.2008, so, neither the provisions of ESR 9.5.5 nor Clause 47.5 of Conditions of Supply were applicable and contended that the provisions contained in Section 46 of the Electricity Act, 2003 and Regulation 9.1 and 9.1.2 of the Supply Code-2007 (effective from 01.01.2008), were applicable in the present case. A perusal of these provisions reveals that PSPCL was entitled to recover, “expenses reasonably incurred in providing any electric line or electrical plant…” “ any expenses that the Licensee may incur in providing the facility…” Or “… actual expenditure…”.

 PR added that the Respondent had not incurred the expenditure of Rs. 10,40,061/- which was recovered from Shiva Spin & Knit (P) Ltd. In fact, the said expenditure was incurred by the Petitioner, and should, therefore, be rightfully credited into its account. For the sake of argument, even if, it was assumed that ownership rights were vested in the Respondent, then, such right shall not legally empower it to collect such expenses, twice for the same work done, and that too without spending a single penny on either occasion from its own account. Public agencies were funded by the State Exchequer and established for the welfare of the public and thus, could not become instruments for illegal profiteering. PR also stated that Respondent was unable, on its own to finance its public projects and executed the same at the cost of consumers, and subsequently, as in the present case, charges from the second consumer had been recovered from the first consumer and later

 refused to pass on the credit to the rightful party (first consumer). Such acts, no matter, under what pretext, were not worthy of a State agency.

The Respondent, in its defence, stated that any service line/11kV Independent Feeder, erected through construction for the consumer became the property/asset of the Distribution Licensee instantaneously on its energization. As such, the consumer was liable to pay the cost of service line and other equipment as may be laid down or placed on its property for the purpose of supply to his premises as per Schedule of General and Service Charges in force at the time of release of connection. Notwithstanding that the cost of the full or a part of the service line had been paid by the consumer, the ownership thereof shall vest with the Distribution Licensee who maintained the same at its cost and had the right to utilize the aforesaid service line. So, the claim of the Petitioner for refund of Rs.10,40,061/- for sharing the common portion recovered from Shiva Spin & Knit (P) Ltd. was not tenable.

I observe that the Forum erred in deciding this issue as per amended Clause No. 47.5 of conditions of supply, in terms of order dated 07.09.2011 of the Hon’ble PSERC in Petition No. 28 of 2011 because the Independent Feeder to the Petitioner was energized on

25.03.2008 when Clause 43 of the Electricity Supply Regulation-2005, reproduced below was applicable:

**“43. *INDEPENDENT 11 KV FEEDER FOR CONTINUOUS INDUSTRY.***

***43.1***

***For a continuous process industry an 11 KV independent feeder is provided at the cost of the consumer. There may be cases where the consumer got a connection after paying the service connection charges but later on requested that he may be given the status of continuous process industry and the 11 KV Feeder installed may be treated as independent feeder. Request of the consumer may be acceded to subject to the following conditions:***

***43.1.1***

***Where an industrial consumer, getting supply from 11KV feeder exclusively meant for him, applies for independent feeder, he shall be entitled for conversion of existing 11 KV industrial feeder to an independent feeder provided he has paid the entire cost of 11KV feeder inclusive of OCB/VCB with 16% establishment charges. Where he has paid only the proportionate cost of OCB/VCB, he shall be required to pay the full cost of OCB/VCB with 16% establishment charges and the proportionate cost already paid by him on this account shall be subtracted while preferring the additional claim on this account. Such a consumer shall not be required to pay present day cost of 11 KV independent feeder with 16% establishment charges or that difference of the present day cost of independent feeder and the cost already paid by him with 16% establishment charges at the time of release of connection through industrial feeder.***

***43.1.2***

***Where supply to other industrial/general consumers is also being given from such an industrial feeder, before conversion of such feeder to any independent feeder, the supply to other consumers shall be shifted on other 11KV feeders, if so feasible, at the cost of consumer seeking an independent feeder supply character. Where the other industrial/general consumers can not be shifted to other feeders, new 11 KV feeder as deemed necessary and justified on load/technical consideration shall be erected at the cost of such consumer with 16% establishment charges before allowing him independent supply.***

 I have also perused the Section 46 of the Electricity Act 2003, also referred to by the Petitioner Representative (PR) during the course of hearing, which reads as under:

 ***46******POWER TO RECOVER EXPENDITURE***

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

 I observe that in pursuance of the Section 46 ibid, the requisite provision has been made by Hon’ble PSERC in Regulation 9.1.2 (b) of the Supply Code-2007 (effective from 01.01.2008), which reads as under:

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

In view of above Regulation, the Hon’ble PSERC approved the cost data supplied by the Respondent and approved the General Conditions and charges to be recovered from the Petitioner for giving the Supply. The Respondent during oral arguments informed that second circuit was taken from the same Rail Poles of BBF Feeder due to right of way problem and the Respondent can use these poles, as it was property of the PSPCL and maintenance was also done by the PSPCL. During course of hearing, the Respondent placed on record the single line diagram of BBF feeder, Shiva Feeder and Ansal feeder which shows that nowhere any line was tapped by the PSPCL. Hence, the Petitioner is not liable for refund of Rs.10,40,061/- recovered from Shiv Spin & Knit (P) Ltd.

 *In view of the above, the claim for refund of Rs. 10,40,061/-, on account of cost of sharing of 62 Poles of the Petitioner and recovered from Shiva Spin & Knit (P) Ltd., for giving Independent Feeder Supply, is not sustainable.*

**(ii)** PR next contended that the credit on account of cost of material given by the Petitioner to the Respondent, due to non availability of the same in its Stores, for the completion of the work, should be given to the account of the Petitioner.

 The Respondent stated that 62, instead of 63 poles as claimed by the Petitioner (BBF industry) were used for erecting Independent Feeder of Shiva Spin & Knit (P) Ltd.

*I agree with the order dated 16.01.2018 of the Forum that while revising the estimate as per actual booking made in the Initial Works Register (IWR), the material costing Rs. 1,43,000/- supplied by the Petitioner was not accounted for, therefore, the refund claimed on this account by the Petitioner was not justified.*

**(iii)(a)** PR next contended that the credit on account of cost of material

returned to the Stores had not been given. It should be given to the Petitioner.

The Respondent contested plea of the PR and stated that the material dismantled was got broken in pieces and returned to the departmental Store without any value, as such, the credit of such material was not given.

1. PR also submitted that it will be fair to reassess the actual expenditure

incurred by the Distribution Licensee, by taking into consideration the submissions made and recalculate the refund due to the Petitioner.

The Respondent contested the contention of the PR by stating that the decision dated 16.01.2018, was just and fair and based on rules and regulations in force at the relevant point of time. As such, there was no need to recalculate the refund due to the Petitioner.

*I am of the view that the Respondent should prepare the actual estimate for giving the Independent Feeder supply and Additional Load/CD to the Petitioner and recover the cost as per Regulation 9.1.2 (b) of Supply Code-2007, wh*

*ich reads as under:*

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

*However, the credit of Rs. 10,40,061/- on account of proportionate cost of 62 Rail Poles of the Petitioner and used for construction of Independent Feeder of Shiva Spin & Knit (P) Ltd., should not be given in the said estimate, as discussed above.*

 From the above analysis, it is concluded that an estimate, on actual basis, is required to be prepared, by the Respondent, for giving Independent Feeder Supply and Additional Load/CD to the Petitioner for recovery /adjustment of the cost in terms of provisions contained in Regulation 9.1.2 (b) of the Supply Code-2007. However, the estimate will not account for Rs.10,40,061/- relating to proportionate cost of material supplied for construction of Independent Feeder of Shiva Spin & Knit (P) Ltd.

**5. Decision:**

 **As a sequel of above discussions, it is held that the Petitioner should be charged the cost by preparing the estimate, on actual basis for giving Independent Feeder Supply and Additional Load/Contract Demand (CD) in terms of provisions contained in Regulation 9.1.2 (b) of the Supply Code-2007 without giving credit of Rs. 10,40,061/- as per conclusion arrived at in Para 4 above. Accordingly, the amount found short/excess be recovered/refunded, after adjustment, without interest/surcharge to the Petitioner.**

**6.** The Appeal is disposed off accordingly.

**7.** In case, the Petitioner or the Respondent (Distribution Licensee) 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.

 (VIRINDER SINGH)

 August 14, 2018 LokPal (Ombudsman)

S.A.S. Nagar (Mohali) Electricity, Punjab.