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

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

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

 **APPEAL NO. 19/2018**

**Date of Registration : 27.02.2018**

**Date of Hearing : 23.08.2018, 20.09.2018 &**

 **17.10.2018**

**Date of Order : 20.11.2018**

**Before:**

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

**In the Matter of :**

Arora Iron & Steel Rolling Mills Pvt. Ltd.,

 Dhandari Khurd, Focal Point,

 Ludhiana

 ...Petitioner

 Vs.

 Addl.Superintending Engineer

 DS Focal Point (Special) Division

 PSPCL, Ludhiana

 ...Respondent

**Present For**:

Petitioner : 1 Sh.Raminder Pal Singh,

Petitioner.

 2. Sh. Sukhminder Singh,

Petitioner’ Representative (PR).

Respondent : 1. Er.Sukhjit Singh,

 Addl.Superintending Engineer,

 DS Division, Focal Point (Spl),

 Ludhiana.

 2. Er. Udedeep Singh,

 Addl.Superintending Engineer,

 Transmission Line Division,

 PSPCL, Bathinda.

 3. Er.Ajay Kumar,

 Addl.Superintending Engineer,

 Transmission Line Division,

 PSPCL, Bathinda

 . 4. Sh.Gursatinder Singh,

 Assistant Accounts Officer (Revenue).

 DS Division, Focal Point (Spl),

 Ludhiana.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 05.01.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-256 of 2017 deciding:

*“ To uphold the decision of Zonal Dispute Settlement Committee (ZDSC), Central Zone, PSPCL, to recover Rs.35,61,471/- from the Petitioner”*.

**2**. **Facts of the Case:**

 The relevant facts of the case are that:-

1. The Petitioner, having Large Supply Category connection with

sanctioned load of 2422 kW and contract demand (CD) as 2495kVA, applied on 25.02.2012 for extension in load by 29500 kW and CD 28500 kVA, with aggregate load becoming 31922 kW and contract demand (CD) as 30995 kVA after the Feasibility was cleared by the Chief Engineer/Commercial, PSPCL, vide Memo No.20550-56 dated 27.12.2011.

1. The Demand Notice was issued, vide Memo no. 974 dated

20.03.2012, asking the Petitioner to deposit a sum of Rs.2,65,50,000/- within three months of its issue.

1. The Petitioner requested for extension in validity period of Demand

Notice on 07.08.2012, 11.10.2012 and 19.12.2012 in response to which, the validity of Demand Notice was extended upto 19.09.2012, 19.12.2012 and 19.03.2013 respectively.

1. After the compliance of Demand Notice by the Petitioner, its Load

was released on 29.05.2015 vide Service Connection Order (SCO) dated 25.05.2015.

1. After a lapse of more than one year, the Respondent issued Memo

no.2325 dated 08.07.2016 to the Petitioner asking it to deposit a sum of Rs.35,61,471/- as balance amount of Service Connection Charges(SCC) in view of the observations raised by the Revenue Audit Party (RAP) vide letter No.420-23 dated 01.07.2014 and 119 dated 09.02.2016.

1. The Petitioner did not agree with the above notice, and filed a

Petition in the Zonal Dispute Settlement Committee (ZDSC), which, in its meeting dated 24.07.2017, decided that the total amount to be deposited for release of connection was Rs.6,27,00,000/- against which Rs.30,82,000/- had already been deposited by the Petitioner. In addition, the credit of cost of 66 KV Cable amounting to Rs.5,11,00,000/- and Bay charges for Rs.49,23,000/- had already been deposited by the Petitioner, should be given as no 66 KV Bay had been constructed by the PSPCL and balance amount was recoverable.

1. Not satisfied with the decision of the Zonal Dispute Settlement

Committee (ZDSC), the Petitioner filed a Petition on 13.10.2017 in the Forum, who, after hearing, passed order dated 05.01.2018 (Reference: Page-2, Para-1), deciding to uphold the decision of the ZDSC.

1. Aggrieved with the decision of the Forum, the Petitioner preferred

an Appeal in this Court and prayed to allow the Appeal 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 written submissions made by the Petitioner and reply of the Respondent as well as oral submissions made by the Representatives of the Petitioner and the Respondent alongwith 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 applied for extension in load/CD by 29500 kW/28500

kVA (in the existing load/CD of 2422 kW/2495 kVA) on dated 25.02.2012 after depositing Earnest Money of Rs.42,75,000/- vide receipt no.144/10572 dated 19.08.2011 and seeking feasibility clearance, which was given by the Chief Engineer/Commercial, PSPCL, vide Memo no.20550/56 dated 27.12.2011. The Feasibility Clearance Committee decided to allow extension in load/CD of 29500 kW/28500 kVA to the existing load/CD of 2422 kW/2495 kVA ( at 11 KV supply voltage), thus, making total load/CD as 31922 kW/30995 kVA alongwith conversion to 66 KV Supply voltage by erecting new 66 KV Double Circuit line of 1.66 kilometer length (overhead line + underground cable). The balance ACD of Rs.3,84,75,000/- was deposited vide BA-16 Receipt no.285/10569 dated 24.02.2012. The estimate was approved by the Chief Engineer/TS, Patiala, vide Memo no. 85/88 dated 19.03.2013 for Rs.6,23,52,105/-.

1. As per arrangement for execution of work for release of connection,

the consumer gave option to erect underground cable at its own and the erection of overhead line and other work was to be executed by Transmission Line (TL)Wing of PSPCL. Besides, the cost of overhead line, the cost of underground cable was taken as Rs.5,11,33,154/- and departmental charges @ 18% as Rs.92,03,968/-, thus total estimated cost of work was Rs.6,23,52,105/-. The work for value of Rs.6,03,37,122/- (Rs.5,11,33,154/- cost of underground cable + Rs.92,03,968/- departmental charges) was to be executed by the Petitioner and the remaining work was to be executed by the TLSC wing of PSPCL.

1. The Petitioner was asked by the Respondent-PSPCL to deposit a

sum of Rs.30,82,373/- which included Rs.3,47,895/- as difference of Service Connection Charges (SCC) and estimated cost (Rs.6,27,00,000/- minus Rs.6,23,52,105/-) and overhead line charges as Rs. 27,34,478/-. The amount of Rs.30,82,373/-, as demanded by the Respondent, was paid by the Petitioner vide BA-16 Receipt no.109/90371 dated 18.03.2013. The Petitioner also deposited a sum of Rs.49,23,000/- as cost of Bay, vide Receipt no.108/90371 dated 18.03.2013. Moreover, at the time of depositing charges for erection of overhead line, the Addl.SE, Focal Point, Ludhiana, vide Memo no.4443/46 dated 05.12.2014, had specifically sought clarification from the Addl.SE/TLSC, Patiala regarding the cost of underground cable. (work to be executed by the Petitioner). The Addl.SE, TLSC Division, Patiala, vide Memo no.2227 dated 10.12.2014, had clarified that the cost of cable was Rs.6,03,37,122/- which included 18% departmental charges. It was further clarified that 18% departmental charges were added in the estimate to cover the cost of material accountability and the same was to be spent by the Petitioner. Therefore, the cost of the cable should be taken as Rs.6,03,37,122/-.

1. As per information available from records of the Respondent-

PSPCL, the details of 16% establishment charge were included in the estimate to cover the following activities:

1. Material inspection at Firm’s premises and re-inspection in case of failure of material.
2. Material accountability and clearance at site.
3. Supervision at the time of erection of new line.
4. Quality assurance of work.
5. Day to day monitoring by Field staff.

In addition to above, the Petitioner incurred huge cost in the shape of bank interest for advance payment made to the Supplier for purchase of cable.

1. As nothing was due from the Petitioner, the connection was released

by the Respondent-PSPCL on dated 29.05.2015. However, after a gap of one year, the Respondent raised the demand of Rs.35,61,471/- on the basis of observations of the Revenue Audit Party, Focal Point, PSPCL, Ludhana, charging the amount in terms of proviso to Regulation 9.1.2(i)(c) of the Supply Code-2007.

1. It was correct that as per above amendment, all the applicants were

liable to pay the charges for additional load and these charge shall not be less than those computed on per kW/kVA basis. However, the Audit Party, while pointing out the difference recoverable from the Petitioner, erred by taking the cost of underground cable as Rs.5,11,33,154/- and did not consider the departmental charges of Rs.92,03,968/- as taken by Transmission Line (TL) Wing of PSPCL, while preparing/approving the estimate. The Departmental Charges were required to be deposited by the consumer, if the work of erection of underground cable was to be done by the Department. The Departmental Charges were recovered from the consumers in lieu of expenses incurred by the Respondent-PSPCL for execution of the work and this was not the profit of the PSPCL, as such, these charges were also considered as actual expenditure.

1. During the course of proceedings of the case in the Forum, the

representative of the Respondent i.e. Addl.SE, Focal Point, Ludhiana had stated that 18% Departmental Charges comprised of 16% Establishment Charges, 1% Audit and Accounting charges and 1% Govt. Cess. Therefore, on similar lines, the Petitioner also incurred huge expenditure as the work of procuring/laying was done by the Petitioner only to expedite its completion. Besides, considerable expenditure was incurred in establishing the new Unit considering that it was very important to run the unit on schedule to avoid heavy Bank interest in the event of delay in establishing the Plant. Thus, the Petitioner, in order to expedite the work, undertook to procure/lay the cable at its end but also incurred huge additional expenditure apart from the cost of the cable.

1. Therefore, the 16% establishment charges, which were to be

recovered by the Respondent, if the work was to be executed by the Respondent, should also be allowed to the Petitioner towards the extra cost incurred by the Petitioner in procuring and undertaking other activities to erect the cable. In view of the above, the following amounts were refundable to the Petitioner:

* + - 1. Minimum SCC Rs.6,27,00,000/-

 (28500kVAx Rs.2200 per kVA)

2. Estimated Cost Rs.6,23,52,105/-

3. Applicable Amount Rs.6,27,00,000/-

4. Cost of material supplied Rs.6,03,37,122/-

 by the consumer

(Rs.5,11,33,154/-+ 18%

 i.e. Rs.92,03,967/-)

5. Net amount (3-4) Rs.23,62,878/-

 6. Less amount deposited Rs. 30,82,375/-

 by consumer

7. Less cost of Bay deposited Rs.49,23,000/-

 by consumer

 8. Amount Refundable Rs.56,42,497/-

1. It was clear that if the work/part of the work was executed by the

Petitioner at its own cost, then, Departmental Charges could not be ignored while comparing cost of execution of work with the fixed SCC payable by the Petitioner for additional load at per kW/kVA basis. However, the Audit considered only material/cost of 66 KV underground cable as Rs.5,11,33,154/-. The amount of Rs.30,82,375/- initially pointed out by the Respondent and Rs.49,23,000/- as cost of Bay had already deposited by the consumer. The Audit pointed out recoverable amount as Rs.35,61,471/-= Rs.6,27,00,000– (Rs.5,11,33,154/- + Rs.30,82,375/- + Rs. 49,23,000/-). Had the Audit considered the Departmental Charges of Rs.92,03,968/- while comparing the cost of estimate with the SCC, then, nothing was recoverable from the Petitioner. It was nowhere prescribed that Departmental Charges, taken in the estimate, were to be ignored while making such comparison, in case the work was got executed by the Petitioner on its own.

1. The Commercial Circular (CC) No.31/2012 dated 21.09.2012 was

issued as per Standard Cost Data was approved by the Hon’ble PSERC vide Memo no.5394 dated 07.09.2012, wherein it was clearly mentioned that “revised charges shall be applicable to the Demand Notices to be issued to the applicants requiring supply of electricity or additional load/demand w.e.f.01.10.2012”. In the case of the Petitioner, the Demand Notice was issued to the consumer , bearing No.974 dated 20.03.2012, as such, SCC @ Rs.900/- per kVA were applicable to the consumer. The Respondent-PSPCL, while circulating instructions as per approval of the Hon’ble PSERC), vide CC No.31/2012 dated 23.09.2012, also added that revised charges of Rs.2200/- per kW/kVA were applicable in all the cases where Demand Notice were issued/extended after 30.09.2012. PSPCL was required to take approval from the Hon’ble PSERC for any change in the instructions regarding recovery of revised SCC, as approved vide Memo no.5394 dated 07.09.2012. The consumer had paid much more than the charges @ Rs.900/- per kVA as applicable to it. There were many items such as Misc. Expenditure of Rs.2,83,000/-, which was required to be considered on actual basis, but the Respondent had not provided the details of such expenditure actually incurred. Further, Transmission Line (TL) Wing of the Respondent, while preparing the estimate of Rs.6,23,52,105/-, provided contingency @ 3% , T&P @ 1.5%, Storage 1.2% and Transportation @ 2.5% on cost of tower material, foundation cost etc. and 18% Departmental Charges were levied on these items. The 18% Departmental Charges included cost of storage, transportation etc. The excess amount taken in the estimate could be worked out, if the copy of complete Initial Works Register (IWR) was made available to the Petitioner, but complete record was not provided inspite of specific request to ZDSC/Forum. The Respondent provided copy of incomplete IWR, wherein no details of material had been mentioned by the JE and all other columns such as value, measurement, unused material etc. were available. Moreover, IWR had not been checked by the Accounts Branch of the Respondent.

1. As already submitted that as per amendment in Regulation

9.1.2 (i) (c) of the Supply Code-2007, all the applicants were liable to pay the charges for additional load and these charges should not be less than those computed on per kW/kVA basis. The pleading of the Petitioner was that the cost of work (executed by the Petitioner) as per estimate was worked out to Rs.6,03,37,122/- including Departmental Charges of Rs.92,03,968/- and the same should be considered while comparing the cost of the estimate with the SCC. The Forum considered that cost of material of Rs.5,11,33,154/- which was only supplied by the Petitioner ( as was evident from the conclusion of the Forum), whereas, the whole work of erection of underground cable was executed by the Petitioner at its cost/expenditure. The Petitioner also incurred Establishment Charges (as taken in the estimate by the Transmission Line Wing of the Respondent), as such, Departmental Charges of Rs.92,03,968/- were also required to be considered while comparing the cost of the estimate with the Service Connection Charges (SCC). The Forum did not mention any thing as to why Departmental Charges taken in the estimate by Transmission Line (TL) Wing of the Respondent could not be considered while comparing the cost of estimate with the SCC. Thus, the decision of the Forum was not only wrong and biased, but non-speaking also.

1. There may be hardly any doubt that the demand raised by the

AEE/Commercial for Rs.35,61,471/- was altogether wrong and unjustified. As such, this Court may set aside the decision of the Forum, allow the Appeal and may order the refund of 40% amount deposited by the Petitioner alongwith excess amount paid by the Petitioner against its work in the interest of justice and fairness. Further, the Respondent be directed (if considered appropriate) to submit copy of approval of the Hon’ble PSERC for making changes in instructions approved vide its Memo no.5394 dated 07.09.2012.

1. **Submissions of the Respondent**:

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

1. The Petitioner having a Large Supply Category connection, applied

on 25.02.2012 for extension of sanctioned load/contract demand (CD) from 2422 kW/2495 kVA to 31922 kW/30995 kVA. The supply voltage of the Petitioner was also required to be changed from 11 kV to 66 kV. Earlier, the Feasibility was cleared by the Chief Engineer/Commercial, Patiala vide Memo No.20550-56 dated 27.12.2011.

1. The Addl.SE, TL Division, PSTCL, Bathinda, vide letter No.208

dated 15.03.2013, informed the Add.SE/DS. Focal Point Division (Special), Ludhiana that the cable work for 66 kV supply with estimated cost amounting to Rs.6,03,37,122/- was to be done by the Firm, while the work of erection of overhead line was to be executed departmentally. The overhead and other charges amounting to Rs.30,82,373/- were recoverable from the Petitioner and the same were deposited by it. The extension of load/CD from 2422kW/2495 kVA to 31922 kV/30995 kVA and change of supply voltage from 11 kV to 66 kV was effected on 29.05.2015 vide SCO No.E32/S/15/244978/20676 dated 25.05.2015.

1. During the scrutiny of the Petitioner’s account by the Revenue Audit

Party, it was found that the difference of SCC amounting to Rs.35,61,471/- was recoverable from the Petitioner. Accordingly, the Revenue Audit Party issued letter No.420-23 dated 01.07.2014 and letter No.119 dated 09.02.2016 for charging Rs.35,61,471/- to the Petitioner as following:

* 1. Minimum SCC Rs.6,27,00,000/-

(28500 kVA x Rs.2200 per kVA)

* 1. Estimated Cost Rs.6,23,52,105/-
	2. Applicable Amount Rs.6,27,00,000/-

4. Less Cost of material supplied Rs.5,11,33,154/-

 by the consumer

5. Net amount (3-4) Rs.1,15,66,846/-

6. Less amount deposited Rs. 30,82,375/-

 by consumer

7. Less cost of Bay deposited Rs.49,23,000/-

 by consumer

8. Balance now to be recovered Rs.35,61,471/-

1. In view of the audit observations, a Notice, bearing no.2325

dated 08.07.2016 was issued to the Petitioner to deposit the amount of Rs.35,61,471/-, but the Petitioner did not agree with the same and instead of depositing the said amount, represented to the ZDSC, which, after hearing decided on 24.07.2017that:

*“The Committee, after deliberating the whole case, decided that the total amount to be deposed for release of this extension is Rs.6,27,00,000/-. Rs.30,82, 000/- has already deposited by the firm. In addition to it, the credit of cost of cable Rs.5,11,00,000/- and bay charges Rs.49,23,000/- already deposited by the firm should be given as no 66 kV bay has ben constructed by PSPCL for release of his connection and balance amount Rs.35,61,000/- is recoverable from the firm”.*

1. In compliance to the decision of the ZDSC, the Respondent issued

Notice, vide no.2015 dated 28.08.2017, to the Petitioner for depositing Rs.32,50,352/- after adjusting the amount already deposited by the Petitioner and adding the interest.

1. The Petitioner, instead of depositing the demand raised vide Notice

dated 28.08.2017, filed a Petition in the Forum, who, after hearing, decided on 05.01.2018, to uphold the decision of the ZDSC.

1. Not satisfied with the decision of the Forum, the Petitioner preferred

 an Appeal in this Court and prayed to allow the same.

1. As per Regulation 9.1.2(i)(c) of the Supply Code-2007 and

Commercial Circular (CC) No.25/2012, the amount of Rs.35,61,471/- charged was recoverable.

1. As per CC No.31/2012 issued by the Chief Engineer/Commercial,

PSPCL, pursuant to the approval of Standard Cost Data by the Hon’ble PSERC, circulated vide memo No.5394 dated 07.09.2012, “*the revised charges shall be applicable to the demand notices to be issued to the applicants requiring supply of electricity or additional load/demand w.e.f. 01.10.2012”*. The Circular clearly mentioned that “ *in view of the above all the field offices are requested to ensure that each and every demand notice issued/extended after 30.09.2012 must contain revised Service Connection Charges. However, in case due to non-receipt of this Circular or due to some other reasons, demand notice with service connection charges at unrevised/old rates is issued to any applicant after 30.09.2012, a notice/revised demand notice for depositing the SCC at revised rats must be issued immediately to the applicant consumer and it must be ensured that SCC at revised rates were recovered from the applicant/consumer before release of connection”.*

1. In the case of the Petitioner, the Demand Notice, bearing No.974

dated 20.03.2012, was issued, but the Petitioner got, extension in validity period of the Demand Notice by depositing the requisite extension fee on dated 07.08.2012, 11.10.2012 and 19.12.2012. Accordingly, the validity of the Demand Notice dated 20.03.2012 was finally extended upto 19.03.2013.

1. After making compliance of the Demand Notice by the Petitioner,

extension in load/CD was released on 29.05.2015. As the Petitioner got extended the Demand Notice dated 20.03.2012 after 01.10.2012, the Service Connection Charges, as per CC No.31/2012, were applicable to the Petitioner.

1. In view of the above submissions, the Appeal may be dismissed.

**4. Analysis:**

 The issue requiring adjudication is the legitimacy of the demand of Rs.35,61,471/- raised by the Respondent, vide Notice bearing Memo no.2325 dated 08.07.2016, based on observations of the Revenue Audit Party on account of difference of Service Connection Charges payable as per applicable rules/regulations.

 *The points emerged are deliberated and analysed as under:*

(i) The Petitioner’s Representative contended that the Petitioner was initially charged Rs.30,82,373/- which included Rs.3,47,895/- as difference of SCC and estimated cost (Rs.6,27,00,000/- minus Rs.6,23,52,105/-) and overhead line charges as Rs.27,34,478/-, which the Petitioner deposited on 18.03.2013. The Revenue Audit Party (RAP) pointed out the recovery of charges, as under:-

 1. Minimum SCC Rs.6,27,00,000/-

 (28500 kVA x Rs2200 per kVA))

 2. Estimated Cost Rs.6,23,52,105/-

 3. Applicable Amount Rs.6,27,00,000/-

 4. Cost of material supplied by consumer Rs.5,11,33,154/-

 5. Net amount (3-4) Rs.1,15,66,846/-

 6. Less amount deposited by consumer Rs.30,82,375/-

 7. Less cost of bay deposited by consumer Rs.49,23,000/-

 8. Balance now to be recovered Rs.35,61,471/-

Petitioner’s Representative added that during the course of proceedings of the case in the Forum, the Respondent i.e. Addl.SE, Focal Point Division (Special), PSPCL, Ludhiana, had stated that 18% Departmental Charges comprised of 16% Establishment Charges, 1% Audit and Accounting charges and 1% Govt. Cess. Petitioner’s Representative argued that on similar lines, the Petitioner also incurred huge expenditure as the work of procuring/laying of 66 KV underground cable was done by the Petitioner only to expedite its completion. Besides, knowing well that it was very important to run the unit on schedule to avoid heavy Bank interest in the event of delay in establishing the Plant. Thus, the Petitioner, in order to expedite the work, undertook to procure/lay the cable at its end but also incurred huge additional expenditure apart from the cost of cable. Therefore, the 16% establishment charges, which were to be recovered by the PSPCL if the work was to be executed by the PSPCL, should also be allowed to the Petitioner towards the extra cost incurred by the Petitioner in procuring and undertaking other activities to erect the cable. Petitioner’s Representative (PR) pleaded that in view of the above, the following amounts were refundable to the Petitioner:

1. Minimum SCC Rs.6,27,00,000/-

 (28500 kVA x Rs.2200 per kVA)

2. Estimated Cost Rs.6,23,52,105/-

3. Applicable Amount Rs.6,27,00,000/-

4. Cost of material supplied Rs.6,03,37,121/-

 including establishment charges

5. Net amount (3-4) Rs.23,62,878/-

 6. Less amount deposited (-) Rs. 30,82,375/-

 by consumer

7. Less cost of Bay deposited (-) Rs.49,23,000/-

 by consumer

 8. Amount Refundable Rs.56,42,497/-

Petitioner’s Representative submitted that it was clear that if the work/part of the work was executed by the Petitioner at its own cost, then Departmental Charges could not be ignored while comparing cost of execution of work with the SCC payable by the Petitioner for additional load at per kW/kVA basis. The Audit pointed out difference as Rs.35,61,471/- = Rs,6,27,00,000 – (Rs.5,11,33,154/- +Rs.30,82,375+ Rs.49,23,000/-). Had the Audit considered the Departmental Charges of Rs.92,03,968/- while comparing the cost of estimate with the per kW/kVA charges, then, nothing was recoverable from the Petitioner, while Rs.56,42,497/- were refundable. It was nowhere prescribed that Departmental Charges, taken in the estimate, were to be ignored while making such comparison, in case the work was got executed by the Petitioner on its own.

 I observe that while computing the estimated cost, the Revenue Audit Party (RAP) deducted the value of material supplied by the Petitioner i.e. 66KV underground cable but ignored the Departmental Charges, which should also have been included in the underground cable. The proviso to Regulation 9.1.2(i)(c) of the Supply Code-2007 amended as per PSERC Notification dated 13th August, 2012, circulated vide CC No.25/2012 reads as under:

*“Provided that where a HT/EHT consumer having a sanctioned load/contract demand exceeding 500 kW/500 kVA who has paid the actual cost of HT or EHT service line or feeder, requests for additional load and such load can be fed from the same line without any augmentation, then the HT consumer would be liable to pay only the proportionate cost of HT main and feeding sub station. An 33000 volts or EHT consumer would be liable to pay only the proportionate cost of back up/common line (33000 volts or above) upto the feeding sub station including bay. However, the charges payable for the additional load as above shall not be less than those computed on per kW/kVA basis for the total load ( as applicable at the time of sanction of load) less charges already paid for the existing load”.*

 I observe that the main contention of the Petitioner is that Departmental Charges have not been taken into account on the material supplied by it. In this regard, I have perused Commercial Circular (CC) No. 48/2013 dated 01.11.2013 which mainly pertains to shifting of Lines/Poles during road construction etc. but the Circular clearly mentions that in such like cases, both material and labour were to be arranged by the Applicant who “ *will be charged supervision charges @ 27% of total cost of estimate i.e. cost of material and labour etc.”*

 Though the Commercial Circular was not directly linked with the case under consideration, but the Respondent had charged 27% Supervision Charges from the NHAI.

**(ii)** Petitioner’s Representative argued that the Commercial Circular (CC) No.31/2012 was issued as per Standard Cost Data approved by the Hon’ble PSERC vide Memo no.5394 dated 07.09.2012, wherein it was clearly mentioned that “*revised charges shall be applicable to the Demand Notices to be issued to the applicants requiring supply of electricity or additional load/demand w.e.f. 01.10.2012*”.

 Petitioner’s Representative added that in the case of the Petitioner, the Demand Notice was issued bearing No.974 dated 20.03.2012, as such, SCC @ Rs.900/- per kVA were applicable to it. The PSPCL, while circulating instructions ( as per approval of the Hon’ble PSERC), vide CC No.31/2012 dated 23.09.2012, also added that revised charges of Rs.2200/- per kW/kVA were applicable in all the cases where Demand Notice were issued/extended after 30.09.2012.

 The Respondent, in its defence, stated that CC No.31/2012 issued by the Chief Engineer/Commercial, PSPCL, pursuant to the approval of Standard Cost Data by the PSERC, circulated vide memo No.5394 dated 07.09.2012 provided as under:

“ *the revised charges shall be applicable to the demand notices to be issued to the applicants requiring supply of electricity or additional load/demand w.e.f. 01.10.2012”*.

The Circular also clearly mentioned that “ *in view of the above all the field offices are requested to ensure that each and every demand notice issued/extended after 30.09.2012 must contain revised Service Connection Charges. However, in case due to non-receipt of this Circular or due to some other reasons, demand notice with service connection charges at unrevised/old rates is issued to any applicant after 30.09.2012, a notice/revised demand notice for depositing the*

*SCC at revised rates must be issued immediately to the applicant consumer and it must be ensured that SCC at revised rates were recovered from the applicant/consumer before release of connection”.*

 The Respondent added that in the case of the Petitioner, the Demand Notice, bearing No.974 dated 20.03.2012, was issued, but the Petitioner got extension in validity period of the said Demand Notice by depositing the requisite extension fee on dated 07.08.2012, 11.10.2012 and 19.12.2012, as a result of which, the validity of the Demand Notice dated 25.03.2012 was finally extended upto 19.03.2013.After making compliance of the Demand Notice by the Petitioner, extension in load/CD was released on 29.05.2015.

  *I agree with the Respondent that as the Petitioner got extended the Demand Notice dated 20.03.2012 after 01.10.2012, the Service Connection Charges, as per CC No.31/2012, were applicable to the Petitioner. I also do not find merit in the contention of the Petitioner’s Representative that provisions contained in the Supply Code-2014 instead of those in the Supply Code-2007 are applicable in the present case.*

(iii) During the course of deliberations on 23.08.2018, it was observed that copies of the detailed estimate on actual basis, duly sanctioned, by the Competent Authority and Initial Works Register(IWR), duly checked, by the Divisional Accountant (necessarily required for adjudicating the Appeal Case) were not placed on the record of this Court by the Respondent i.e. the Addl. Superintending Engineer, DS Focal Point (Special) Division, Ludhiana, who, in turn, intimated that these records were with the Addl. Superintending Engineer, Transmission Line (TL) Division, D-135, Thermal Colony, PSPCL, Bhatinda, who had got executed the work of the Petitioner. The Respondent also requested for giving one month time to enable it to arrange the submission of record from the Addl.SE/TL Division, PSPCL, Bhatinda. The request ibid was allowed and the case was fixed for hearing on 20.09.2018 for submission of the documents ibid in this Court. An Order to this effect was passed on 23.08.2018 itself and sent by Registered Post, vide letter no.1272-74/OEP/A-19/2018 dated 23.08.2018, to the Addl.S.E. Focal Point (Special) Division, PSPCL, Ludhiana and also to the Addl.S.E.TL Division, PSPCL, Bhatinda for necessary compliance.

(iv) During the hearing dated 20.09.2018, the Addl.S.E. Transmission Line (TL) Division, PSPCL, Bathinda submitted that the estimate was sanctioned on 30.05.2017 by the Chief Engineer/TS, PSPCL, Patiala. A perusal of the said estimate revealed that the same was not on actual basis and IWR submitted was also not updated. The Addl.S.E/TL, PSPCL, Bhatinda requested for grant of about one month’s time for preparation and sanction of revised estimate, as the IWR had been sent to the Circle Office for checking. The Addl. S.E/TL Division, assured that the revised estimate will be prepared after IWR was received back duly checked and thereafter got sanctioned from the Competent Authority.

 During deliberations, the Court was also apprised that inspection of 66 KV underground cable used in the execution of work by the Petitioner was done by the then Addl.S.E/TL Division, PSPCL, Bhatinda, at the premises of the Supplier- L.C.Cable, Bawal (Gurugram). Accordingly, the Addl.S.E/TL Division, PSPCL, Bhatinda was directed to ensure submission, by 18.10.2018, of revised estimate on actual basis (IWR) duly sanctioned and also the copy of the Travelling Allowance Bill of the Officer who inspected the cable. The Addl.SE/TL Division, PSPCL, Bhatinda assured to do the needful by the said date.

(v) On 17.10.2018, Er.Ajay Kumar, Addl.S.E, TL Division, Bhatinda attended this Court and submitted the letter stating as under:

*“Today i.e. on 17.10.2018, I attended this Court in connection with the subject cited case and submitted two copies of sanctioned Estimate (on actual basis) No.9028 dated 16.10.2018 for the work done departmentally including the work of providing 66 KV Underground Cable which was supplied and executed by the Petitioner itself while the inspection of the Cable was done by the Respondent. The copy of TA Bill for inspection of cable is placed before the Court in this regard. The aforesaid sanctioned estimate (on actual basis) was prepared and approved by the competent authority on the basis of IWR, the copy of the same has been submitted to the Court. The IWR is yet to be partly finalised due to other work i.e. Singla Steel, Ludhiana. The final copy of IWR will be submitted in due course of time. However, it is certified that the aforesaid sanctioned estimate (on actual basis) is based on the items drawn from the Store/other sources”.*

(vi) A perusal of the Main Abstract of the Estimate No.8100086 dated

16.07.2018 reveals that it was sanctioned on actual basis for Rs. 37,19,252/- after execution of the work of the Petitioner providing for 3% contingency, 1.25% storage, 2.5% transportation and 1.5% T&P charges on the value of material used by the Respondent for erection of overhead line. In addition, Supervision charges, amounting to Rs.7,19,400/- (2.398x4= 9.592 Km x Rs.75000/-) have been taken for the work of erection of 66 KV underground cable, which was done by the Petitioner itself. Besides, Establishment charges @ 16%, amounting to Rs.5,04,305/- have been taken on total amount of Rs.31,51,909/- except for amount of 66 KV underground cable, which was provided and erected by the Petitioner.

I would like to reproduce the Instruction No.39.3 of ESIM-2011, as under:

“**39.3** **Establishment Charges**:

*Establishment charges @ 16% of the cost of estimate i.e. cost of material and labour etc., are recoverable from the consumer when the works are carried out by PSPCL at the cost of consumer and thereafter remain the property of the PSPCL for being operated/maintained by PSPCL. The cost of estimate will also include Storage charges, Transportation charges & contingencies as per rates applicable from time to time. Establishment charges are leviable on the works such as:*

1. *Laying of independent feeders for giving supply to*

 *new/existing consumers.*

1. *Where the consumers are required to pay actual cost of*

 *works as per Regulation-9 of the Supply Code.*

1. *The works where the consumers opt for connection*

*from Urban/industrial feeder instead of nearest UPS feeder.*

1. *Where the cost of link-line is to be borne by the*

*consumer. The above works are quite different from departmental works or works required for shifting of lines etc. Estt. charges will be leviable on the total estimated amount, which will include cost of material labour charges, storage charges, transportation charges & contingencies etc”.*

**(vii)** The Addl.S.E, DS, Focal Point Division (Special), Ludhiana was directed vide letter No.1626 dated 30.10.2018, to send the consumption data of the Petitioner’s connection from the date of release of full/partial load by 09.11.2018. Accordingly, the Respondent furnished the said information, vide email dated 09.11.2018 received at 16:28 hours.

I have perused the consumption data and found that the Petitioner used load less than the sanctioned load due to constraints of the Respondent as 220 KV Gaunsgarh Sub-station was not operationalised. After commissioning of this Sub-station, full sanctioned load was allowed to the Petitioner.

**I am of the view that if the work of providing cable was executed by the Respondent then 16% establishment charges are to be borne by the Respondent and charged from the Petitioner and since this work has been done by the Petitioner itself, hence, the Petitioner is entitled to relief claimed @ 16% of establishment charges on the cost of 66 KV cable**.

 From the above analysis, it is concluded that the applicability of the provisions contained in Regulation 9.1.2(i)(c) of the Supply Code-2007 read with CC No.25/2012 in the present dispute are proved beyond doubt. At the same time, the analysis establishes the relevance of applicability of instructions circulated vide CC No.31/2012, in the case of the Petitioner, due to the reason that the Petitioner got extended the validity of the Demand Notice dated 20.03.2012 upto 19.3.2013 i.e. after 01.10.2012 which was the date of coming into effect of instructions contained in CC No.31/2012 requiring mention of applicability of revised Service Connection Charges in the Demand Notices to be issued on or after 01.10.2012. I have also gone through the Main Abstract of the estimate No.8100086 dated 16.07.2018, sanctioned on actual basis for subject cited work, amounting to Rs. 37,19,252/- and noticed that 3% contingency, 1.25 storage, 2.5% transportation and 1.5% T&P charges on the value of material used by the Respondent for erection of overhead line were charged. Further, Supervision charges, amounting to Rs.7,19,400/- have been taken for the work of erection of 66 KV underground cable, which was done by the Petitioner itself. (2.398x4= 9.592 Km x Rs.75000= Rs.7,19,400/-). In addition, Establishment charges @ 16%, amounting to Rs.5,04,305/- have been taken on total amount of Rs.31,51,909/- except for the amount of 66 KV underground cable, which was provided and erected by the Petitioner.

In view of above, the net amount recoverable/refundable from/to the Petitioner, is as under:-

* 1. Per kW/kVA charges as per = Rs.6,27,00,000/-

CC No.31/2012

* 1. Actual cost of work

i). Estimated cost = Rs.37,19,252/-

 including establishment charges

 (16%)

ii) Cost of material supplied by = Rs.5,93,14,458/-

 the Petitioner.

 (Rs.5,11,33,154/- + 16%

 establishment charges)

iii) Net amount (i+ii) = Rs.6,30,33,710/-

* 1. Net amount to be payable. = Rs.6,30,33,710/-

by the Petitioner to the

Respondent.

* 1. Already paid by the Petitioner = Rs.6,73,19,833/-

to the Respondent.

(Rs.30,82,375/-+ Rs.49,23,000/-

 + Rs.5,93,14,458/-)

**Net amount refundable = Rs.42,86,123/-**

**to the Petitioner(4-3)**

**5. Decision:**

 **As a sequel of above discussions, the Appeal is disposed off in terms of conclusion arrived at in para 4 above. Accordingly, the Respondent is directed to refund the excess amount without any interest/surcharge.**

**6**. In case, the Petitioner 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.

 (VIRINDER SINGH)

November 20, 2018 LokPal (Ombudsman)

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