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

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

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

 **APPEAL NO. 26/2018**

**Date of Registration : 08.05.2018**

**Date of Hearing : 13.09.2018**

**Date of Order : 18.09.2018**

**Before:**

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

**In the Matter of :**

 Gitansh International Pvt. Ltd.,

 Rahon Road,

Village- Seerah,

Industrial Zone, Ludhiana.

 ...Petitioner

 Versus

Additional Superintending Engineer,

DS Sunder Nagar Division,(Special)

PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Petitioner : 1. Sh. Jaswant Singh,

 Petitioner’s Representative (PR).

 2. Sh. Balbir Singh,

 Petitioner’s Representative (PR).

Respondent : 1. Er. Ram Pal

 Sr.Executive Engineer.

 2. Sh.R.P.Sandeep,

 Revenue Accountant.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 23.03.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-06 of 2018 deciding that:

“*Petitioner be charged for releasing new connection of 998 kW/CD 998kVA, per kW/kVA charges @Rs.750 per kVA applicable at that time or actual expenditure worked out with 50mm2 ACSR conductor (Rabbit), 150mm2 11kV XLPE cable inclusive with the cost of 11kV breaker alongwith 16% establishment charges, whichever is higher as per Regulation 9.1.1(i)(b) of PSERC (Electricity Supply Code & Related Matters) Regulation-2007.”*

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

 The relevant facts of the case are that:-

1. The Petitioner applied for grant of a new Large Supply Category

connection with sanctioned load of 998 kW and contract demand (CD) of 998 kVA, vide Application and Agreement No.48449 dated 13.10.2008, after permission for registration of Application and Feasibility Clearance was granted by the Dy. Chief Engineer, DS, City East Circle, PSPCL, Ludhiana vide memo no.9087 dated 10.10.2008.

1. An Estimate amounting to Rs.20,87,156/- for the said connection

was sanctioned on 30.10.2008 and Demand Notice, bearing No.2650 dated 04.11.2008, for deposit of Rs.13,24,750/-, was issued to the Petitioner.

1. In compliance to the said Demand Notice, the Petitioner deposited

the Test Report on 12.11.2008 and made the payment mentioned in the Demand Notice, whereafter, the connection was released to the Petitioner on 16.03.2009.

1. Subsequently, the Petitioner was served a supplementary notice,

vide memo no.714 dated 26.04.2010, for deposit of Rs.10,61,258/- (i.e. Rs.10,27,508/- for difference of Service Connection Charges payable as per Regulation 9.1.1(i)(b) of the Supply Code-2007 and metering equipment charges of Rs.33,750/- not paid earlier) in view of Audit Party Half Margin No.07 dated 06.04.2010. The Petitioner deposited the said amount on 19.05.2010 .

1. The Petitioner challenged the demand raised by filing a

Petition in the Hon’ble Court of Sh. Jasvir Singh, PCS, Civil Judge (Junior Division), Ludhiana, vide CS No.383 dated 16.11.2010, which was dismissed on 27.08.2013**.**

1. The Petitioner, then, filed an Appeal against above decision in

the Hon’ble Court of Sh.Virinder Aggarwal, Additional District Judge, Ludhiana, vide Civil Appeal No.268 dated 11.12.2013, which was also dismissed as not maintainable with the stipulation

that the “ *Petitioner was free to approach the Dispute Settlement Committee of the Respondent Corporation within a period of one month from the date of receipt of copy of judgement/ decree and if the claim was filed before the Dispute Settlement Committee within the stipulated period, it shall adjudicate the dispute within six months after hearing the Petitioner*”.

1. However, the Petitioner filed a Petition on 03.01.2018 in

the Forum which, after hearing, passed the order 23.03.2018. (Reference Page-2, Para-1).

1. Though the Petitioner got relief of Rs.2,66,590/- as per above

decision, it was not satisfied and filed an Appeal in this Court praying for 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 refuted the claim made by the Respondent, in its reply, that the Petitioner was running a Large Supply category connection with sanctioned load of 3598 kW with Contract Demanbd (CD) of 3996 kVA. In fact, the Petitioner applied for load of 998 kW and CD 998 kVA on 13.10.2008. The Respondent had misguided this Court and had tried to show as if the Petitioner was already having 3598 kW and CD 3996 kVA and applied for additional load of 998 kW and CD 998kVA on 13.10.2008. This was a wrong information given by the Respondent. The real fact was that there was no connection of Gitansh International prior to 13.10.2008 and the Petitioner had applied for a new Large Supply Category connection of 998 kW and CD 998 kVA on 13.10.2008 and the dispute was of amount of Service Connection Charges charged from the Petitioner vide Demand Notice bearing No.2650 dated 04.11.2008 for release of load with CD of 998 kVA. After compliance of this Demand Notice by the Petitioner, the connection was released in 03/2009. The Audit, vide Audit Para no.07 dated 06.04.2010, directed the Respondent to raise revised demand for the Service Connection Charges from Rs.13,24,750/- to Rs.23,52,258/- after more than one year from the release of connection. The dispute was of the amount revised by Audit for release of load of 998 kW and CD of 998 kVA. The Petitioner got the load extended to 3598 kW and CD 3996 kVA from 06/2017.
2. The Respondent, in its reply, stated that bifurcation was required to cater to the load of the Petitioner’s new connection ( having load as 998kW and CD 998 kVA) otherwise the existing connections already running from the existing system without any trouble. The Respondent had concealed the material fact that as per office note approved at the time of giving Feasibility Clearance, the connected load on Sportking feeder was 9669 kVA and after bifurcation and shifting of the load, the load of Sportking feeder shall be reduced to 4518 kVA and load on new proposed 11kV Seerah feeder shall be 6018 kVA (4518 existing load +1500 kVA new load proposed). The feasibility was cleared by the Dy. Chief Engineer, East Circle, Ludhiana accordingly vide memo no.9087-88 dated 10.10.2008. Moreover, as per sanctioned estimate, out of total length of 3.74 KM newly proposed 11 kV line, the 3 KM portion of the line from the Sub-Station was the common portion of the line for the Petitioner on which 4518 kVA load of Sportking was shifted and remaining 0.74 KM was for the Petitioner only. The Respondent provided 65mm2, ACSR Conductor which could take load of 311 Amps and 11 kV, XLPE cable of 300 mm2 which could take 395 Amps. Thus, it clearly proved that the bifurcation was done by constructing feeder capable of taking 7.5 MVA and shifting of existing 5151 kVA load of Sportking feeder to newly proposed 11 kV feeder, thus, reply of the Respondent was wrong.
3. Full cost of line alongwith VCB and Establishment charges were recoverable only in case of Independent Feeder. But in the case of the Petitioner, neither the Petitioner applied for Independent Feeder nor the Respondent sanctioned the same, thus full cost was not recoverable from the Petitioner.
4. Full cost of work was only chargeable if the work was done at the request of the Petitioner as deposit work.
5. Full cost of work was only chargeable in case the feeder to be constructed was a dedicated feeder for one consumer only, but the Petitioner’s case did not fall in any of the above categories.
6. The Respondent, in its reply, stated that actual expenditure i.e. cost of estimate of bifurcation plus cost of VCB plus 16% Establishment charges were recoverable as per Regulation 9.1.1(i)(b) of Supply Code-2007. This was, in fact, wrong interpretation of instructions. Regulation 9.1.1(i)(b) of Supply code-2007 which were framed, under Section 46 of the Electricity Act-2003 and provided that the Distribution Licensee was 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. This implied that the Respondent could recover the expenditure incurred for giving the supply for the load of 998 kVA only. Thus, the actual expenditure represented all expenses incurred by the Respondent for the improvement of supply system including augmentation of conductor and replacement of cable etc. or to provide any other infrastructure to strengthen the supply system for release of required quantum of load/demand which was 998 kVA on the existing feeder/supply line. The existing feeder was bifurcated and new 11 kV feeder was created to cater the load of 7500 kVA and also the new feeder was not dedicated feeder. The Respondent shifted load of 4518 kVA of existing large number of consumers of 11kV Sportking feeder or newly proposed constructed 11 kV Seerah feeder. Thus, the Respondent could not recover the full cost of bifurcation from the Petitioner. In case of the Petitioner, 3 KM line was submain and 0.74 KM was service line, hence, the Respondent could recover the cost on proportionate basis for 3 KM line and full cost of 0.74KM service line only. There was no instruction of the Hon’ble PSERC at that time under which, full cost of bifurcation 11kV feeder was recoverable from the Petitioner.
7. The amount of sanctioned estimate was Rs.20,27,809/-, whereas the actual expenditure as per audit figures of the Initial Works Register (IWR) of the work for release of connection supplied by the Respondent was Rs.14,55,386/- as per the information obtained under the RTI Act.
8. As per instructions existing at that time, full cost of VCB was recoverable in case of Independent Feeder only as per Regulation 43 of ESR-2005, whereas the Petitioner never applied for Independent Feeder. Hence, full cost of breaker was not recoverable.
9. The Establishment charges @16% were applicable only in those cases where the work was executed as deposit work on the request of the consumer for independent feeder.
10. The Respondent cleared the feasibility of Modern Casting for shifting the already running load from Bajra Category-1 feeder to Sportking feeder after bifurcation of Sportking feeder into two feeders as deposit work.
11. The Petitioner was not satisfied with the decision of the Forum. As such, the present Appeal had been filed for justice and may be allowed.
12. **Submissions of the Respondent**:

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

1. The Petitioner is currently running a Large Supply Category connection with sanctioned load of 3598 kW with a Contract Demand (CD) of 3996 kVA. The Petitioner applied for grant of Large Supply connection for 998 kW with CD of 998 kVA on 13.10.2008 after the permission for registration of Application & Agreement (A&A) and Feasibility Clearance was granted by the Deputy Chief Engineer, Operation City Circle, PSPCL, Ludhiana vide its memo No.9087 dated 10.10.2008.
2. An Estimate amounting to Rs.20,87,156/- for the said connection was sanctioned on 30.10.2008 and Demand Notice, bearing No.2650 dated 04.11.2008, for deposit of Rs.13,24,750/-, was issued to the Petitioner.
3. In compliance to the said Demand Notice, the Petitioner deposited the Test Report on 12.11.2008 and made the payment mentioned in the Demand Notice. The connection was released to the Petitioner on 16.03.2009.
4. As per Audit Party Half Margin No.07 dated 06.04.2010, the Petitioner was charged additional sum of Rs.10,61,258/- in terms of provisions contained in Regulation 9.1.1(i)(b) of the Supply Code-2007 as per which, the consumer was required to pay per kWh/kVAh charges approved by the Hon’ble PSERC or the actual expenditure for release of connection, whichever is higher.
5. The Petitioner deposited the same vide receipt dated 19.05.2010.
6. Aggrieved against the said demand, the Petitioner filed a Civil Suit on 15.11.2010 in the Hon’ble Court of Civil Judge (Junior Division) Ludhiana, who, after hearing, decided the Civil Suit in favour of the Respondent.
7. Not satisfied with the above decision, the Petitioner preferred an Appeal in the Hon’ble Court of District Judge, Ludhiana, which, after hearing decided that the suit of the Petitioner was not maintainable and held that it was free to approach Dispute Settlement Committee of the Distribution Licensee.
8. The Petitioner, then, filed a Petition with the Forum on

03.01.2018, which, after hearing passed the order dated 23.03.2018. (Reference: Page-2).

 **(x)** Not satisfied with the decision of the Forum, the Petitioner filed an Appeal in this Court.

**(xi)** ThePetitioner had deposited the disputed amount with the Respondent without any protest after admitting its liability which clearly proved that the present Appeal is nothing but filed only with the motive to embarrass the Respondent.

**(xii)** In view of the above submissions, the Appeal may be dismissed.

**4. Analysis:**

 The issue requiring adjudication is the legitimacy of supplementary demand of Rs.10,61,258/- raised by the Respondent, vide Memo No.714 dated 26.04.2010, (based on Audit Party’s Inspection Note No.07 dated 06.04.2010), on account of short assessment /difference of Service Connection Charges payable as per applicable rules/regulations.

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

1. The Petitioner’s Representative (PR) contended thatthe Petitioner

had applied for a new Large Supply Category connection of 998 kW and CD 998 kVA on 13.10.2008 and the same was released on 16.03.2009 after deposit by the Petitioner, the Service Connection Charges (SCC) of Rs.13,24,750/- in compliance to Demand Notice, bearing No. 2650 dated 04.11.2008. Subsequently, the Respondent, vide Memo no. 714 dated 26.04.2010 (based on Audit Observation dated 06.04.2010), revised the Service Connection Charges from Rs.13,24,750/- to Rs.23,52,258/- after more than one year from the release of the connection. Petitioner’s Representative referred to the reply of the Respondent stating that bifurcation was required to cater to the load of the Petitioner’s new connection (which was 998kW and CD 998 kVA) otherwise the existing consumers were already running from the existing system without any trouble. The Respondent had concealed the material fact that as per office note approved at the time of giving Feasibility Clearance, the connected load on Sportking feeder was 9669 kVA and after bifurcation and shifting of the load, the load of 11 kV Sportking feeder would be reduced to 4518 kVA and load on new proposed 11 kV Seerah feeder would be 6018 kVA (4518 kVA existing +1500 kVA new load proposed). The feasibility was cleared by the Dy. Chief Engineer, East Circle, Ludhiana accordingly vide memo no.9087-88 dated 10.10.2008. Moreover, as per sanctioned estimate, out of total length of 3.74 KM of new proposed 11 kV line, the 3 KM portion of the line from the Sub-Station was the common portion of the line for the Petitioner on which, 4518 kVA load of Sportking was shifted and remaining 0.74 KM was for the Petitioner only. The Respondent provided 65mm2, ACSR Conductor which could take 311 Amps and 300 mm2, 11 kV, XLPE cable which could take 395 Amps. Thus, it clearly proved that the bifurcation was done by constructing feeder capable of taking 7.5 MVA and shifting of existing 6018 MVA load of Sportking feeder to newly proposed 11 kV feeder and reply of the Respondent was wrong. Full cost of line alongwith VCB and Establishment charges were recoverable only in case of Independent Feeder. But in the case of the Petitioner, neither the Petitioner applied for Independent Feeder nor the Respondent sanctioned the same, thus, full cost was not recoverable from the Petitioner and the same was recoverable/chargeable only if the work was done on the request of the Petitioner as deposit work or the feeder to be constructed was a dedicated feeder for one consumer only, but the Petitioner’s case did not fall in any of the above categories. The amount of Rs.13,24,750/- deposited by the Petitioner (in response to supplementary demand raised) included (Rs. 1,10,000/- as Earnest Money plus Service Connection Charges of Rs.6,38,500/-{998x750=Rs.7,48,500/- Minus Rs.1,10,000/-) plus variable charges Rs.4,56,250/- (i.e. 3.95 KM minus 0.300) x Rs.125/- per meter} plus proportionate cost of VCB of Rs.1,20,000}.

 The Respondent, in its defence, stated that the expenditure on new connections for Domestic, Non- residential, Industrial and Bulk Supply Categories, as provided under the

Regulation 9 of the Supply Code-2007 (which came into effect from 01.01.2008) reproduced as under:

 “(i) *Domestic, non-Residential, Industrial and Bulk Supply*

 *Categories*:

1. *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 approved by the Commission. Such charges will be payable an applicant where the load/demand required is upto including 500 kW/500 kVA and the length of the service line upto one hundred meters for Domestic & Non-Residential Supply category and two hundred fifty meters 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.*

1. ***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”.***

 I observe that PSPCL issued CC No. 68/2008 dated 17.12.2008 in compliance to Hon’ble PSERC letter No. 981/ PSERC/ DTJ-50 dated 05.12.2008 stating that the charges were recoverable from the applicants as per Regulation 9 of the Supply Code-2007 and  **revised charges as approved were applicable to the demand notice to be issued w.e.f. 22nd Dec., 2008**.

 I find that the Audit Party, vide Half Margin No.07 dated 06.04.2010, calculated the recoverable amount as under:-

 **.** Estimated cost Rs.20,27,809/-

 **.** Establishment Charges(16%) Rs. 3,24,449/-

 **.** Total Recoverable Rs.23,52,258/-

 **.** Already deposited Rs.13,24,750/-

 **.** Add cost of Metering Rs. 33,750/-

 Equipment

 **Balance Amount Recoverable Rs.10,61,258/-**

*I also observe that the Petitioner’s case is covered under Regulation 9.1.1(i)(b) which clearly stipulates that Petitioner is liable to pay expenditure per kW/kVA charges as approved by the Commission or the actual expenditure for release of connection whichever is higher.*

I am of the view that since the CC No.68/2008 was applicable to the Demand Notice issued w.e.f. 22.12.2008, these orders shall not have any bearing in the present case as the Demand Notice was issued to the Petitioner before 22.12.2008. As per feasibility clearance, the load to the Petitioner was to be released after bifurcation of existing 11 kV Sportking Feeder. However, the Respondent should have created minimum standard feeder capacity for the Petitioner and not spare capacity for future growth or for shifting of some loads of existing feeder to the newly created one.

**(ii)** From the study of the estimate, it is seen that Respondent has executed bifurcation of 11 kV feeder by providing 65 mm2 ACSR Conductor and 11 kV, XPLE cable of capacity 300mm2 whereas, the Forum has rightly observed that Conductor of 50mm2 and Cable of 150mm2 was sufficient for catering to the load of the Petitioner and given the relief to the Petitioner. Since, the existing Feeder was already overloaded, hence, there was no choice except to create a new feeder to cater to the demand of the Petitioner for new connection. Hence, the cost of 11KV VCB and 16% establishment charges are recoverable from the Petitioner.

**(iii)** There is merit in the decision taken by the Forum directing the Respondent to revise the estimate by providing 50mm2, ACSR Conductor and 150mm2, XPLE Cable. The variable charges @ Rs.125/- per meter while calculating per kW/kVA charges were not applicable at that time as also decided by the Forum.

 From the above analysis, it is concluded that the Respondent is required to prepare and got sanctioned an estimate on actual basis as per Initial Works Register (IWR), duly pre audited, and by taking the size of Aluminium Conductor Steel Reinforced (ACSR) of size 50mm2 instead of 65 mm2 and 11kV, XPLE cable of size 150mm2  instead of 300mm2 (as decided by the Forum in Case No. CG-06 of 2018) plus 16% Establishment charges and cost of VCB and comparing kW/kVA rates prevailing at relevant point of time and charge, whichever is higher, as per provisions contained in Regulation 9.1.1(i)(b) of the Supply Code-2007.

**5. Decision:**

 **As a sequel of above discussions, the decision dated 28.03.2018 of CGRF in Case No.CG-06 0f 2018 is upheld.**

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

**7**. 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)

September 18, 2018 LokPal (Ombudsman)

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