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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 47/2018**

**Date of Registration : 30.07.2018**

**Date of Hearing : 15.11.2018**

**Date of Order : 28.11.2018**

**Before:**

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

**In the Matter of:**

 Ladhar Paper Mills,

 Village Ladhran,

 Tehsil Nakodar, District Jalandhar.

...Petitioner

 Versus

 Addl. Superintending Engineer,

DS Division,

PSPCL, Nakodar.

 ...Respondent

**Present For:**

Petitioner : Shri R.S. Dhiman,

 Petitioner’s Representative (PR).

Respondent : Er. Sukhwinder Singh,

 Addl. Superintending Engineer,

 DS Division,

 PSPCL, Nakodar.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 11.07.2018 in Case No. CG-141 of 2018 of the Consumers Grievances Redressal Forum (Forum) deciding that :

*“Amount of Rs. 27,85,669/- charged to the Petitioner by issuing supplementary notice letter no. 78 dated 27.02.2018 on account of proportionate cost for availing 66 kV supply as per Regulation 9.1.1 (b) & (c) of the Supply Code-2007 is justified and recoverable from the Petitioner.”*

**2. Facts of the Case:**

The relevant facts of the case are that:

1. The Petitioner was having a Large Supply Category connection with a sanctioned load of 5200 kW and contract demand (CD) of 4100 kVA. Initially, the Contract Load was 5777 kVA which was released in 09/2010 against the Application and Agreement (A&A) No. 13810/LS dated 02.09.2008 and Supply Voltage was 66 kV.
2. The Demand Notice (DN) was issued vide No. 21 dated 13.01.2009. The Feasibility was cleared by the Chief Engineer/Commercial, vide memo no. 62240 dated 04.08.2008.
3. As per Demand Notice, the Petitioner deposited Rs. 54,65,348/- as Line Charges vide BA 16 No. 193/5084 dated 25.02.2009.
4. The Petitioner was served a supplementary notice vide memo no. 78 dated 27.02.2018 to deposit Rs. 27,85,669/- on account of proportionate cost of Back up/Common Line (33000 Volts or above) upto the feeding station including Bay, if any, as per provisions contained in Regulation 9.1.1 (i) (b) and (c) of the Supply Code-2007, which was not demanded earlier.
5. Aggrieved with the supplementary notice, dated 27.02.2018, the Petitioner filed Petition in the Forum, who, passed the order dated 11.07.2018 (Reference: Page-2, Para-1).
6. Not satisfied with the decision of the Forum, the Petitioner preferred Appeal in this Court and prayed to set aside the decision of the Forum and 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 along with 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 connection to the Petitioner was released in 09/2010, after compliance of Demand Notice bearing no. 21 dated 13.01.2009 issued by DS Sub-urban Sub Division, Nakodar. There was no mention of the disputed amount of Rs. 27,85,669/- in the said Demand Notice. As such, the demand raised now vide memo no. 78 dated 27.02.2018 by the AEE, Sub-urban Sub Division, PSPCL, Nakodar, after eight years was not maintainable in terms of Regulation 6.1 of the Supply Code-2007 which clearly laid down that the terms and condition specified in the demand notice once issued will not be altered except when necessitated by change in applicable laws.
2. The Petitioner got its sanctioned load reduced from 5777 kVA to 4100 kVA in December, 2017 since its demand never exceeded 3000/3100 kVA from the date of release of connection till December, 2017. Thus, raising of the demand of proportionate cost based on original sanctioned load of 5777 kVA after a period of eight years was not sustainable. No expenditure was incurred by the Respondent – PSPCL on the Back Up 66 KV line from 09/2010 to 12/2017 on account of load of 5777 kVA running on this line. So the demand based on 5777 kVA was totally wrong and unjustified.
3. The disputed demand of Rs. 27,85,669/- had been raised on account of proportionate cost of 14.9 km 66 KV line, which was recoverable in 2010 at the time of release of connection.
4. The length of 66 KV line considered for calculation of proportionate cost was 14.9 km while the same was 12.5 km when the connection was sanctioned.
5. Had it been brought to the knowledge of the Petitioner that the proportionate cost will be charged for the applied load, the Petitioner would have availed lesser load initially. In feasibility clearance or at the time of issuance of Demand Notice for release of connection, no indication for charging any proportionate cost was given by the Respondent.
6. Aggrieved with the decision of the Forum, the Petitioner preferred Appeal in this Court and prayed to set-aside the decision of the Forum in the interest of justice.
7. **Submissions of the Respondent:**

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

1. The dispute related to the demand of proportionate cost of Back up line and Bay for Rs. 27,85,669/- which was required to be deposited while making the compliance of the Demand Notice was issued by the SDO/DS Sub-Urban Sub Division, PSPCL, Nakodar vide its office memo no. 21 dated 13.01.2009. As per the erstwhile PSEB Commercial Circular No. 68/2008 dated 17.12.2008, issued with the approval of the Hon’ble PSERC, this amount was not demanded by the concerned Sub Divisional office but it was mentioned in the Demand Notice (Page no. 2 at Sr. No. 15) that if some amount was not raised at the time of issuance of the Demand Notice, then, applicant/consumer will be liable to pay the same at a later stage. The Petitioner had also submitted an affidavit stating that if any charges were pending due to revision of rates by the licensee, it will deposit the same. It was only in the month of February 2018 that the office of the AEE/DS Sub –urban Sub Division, PSPCL, Nakodar came to know about the omission/oversight of the aforesaid cost. Accordingly, the Petitioner was given notice to deposit the above said cost by the AEE/DS Sub-urban Sub Division, PSPCL, Nakodar vide its office memo no. 78 dated 27.02.2018.
2. The demand of the proportionate cost, based on 5777 kVA, was logical because at the time of release of connection, the electrical system was erected according to the desired/applied demand of 5777 kVA of the Petitioner. As the proportionate cost of 66 KV line charged to the Petitioner was recoverable, the Appeal may be dismissed.

 **4. Analysis:**

 The issue requiring adjudication is the legitimacy of the amount of Rs. 27,85,669/- charged to the Petitioner, vide Supplementary Notice issued vide memo no. 78 dated 27.02.2018, on account of the proportionate cost for availing contract demand (CD) of 5777 kVA at 66 KV Supply as per applicable regulations.

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

1. The present dispute involves raising of the demand of the proportionate cost of 66 kV Back up line and Bay for Rs. 27,85,669/- which was required to be deposited while making the compliance of the Demand Notice issued by the SDO/DS Sub-urban Sub Division, PSPCL, Nakodar vide its office memo no. 21 dated 13.01.2009. As per Commercial Circular No. 68/2008 dated 17.12.2008 issued by the erstwhile PSEB with the approval of the Hon’ble PSERC, this amount was not mentioned in the Demand Notice ibid. However, this Demand Notice (Page no. 2 at Sr. No. 15) clearly stipulated that if some amount was not demanded at the time of issuance of Demand Notice, then, applicant/consumer will be liable to pay the same at a later stage. The Petitioner had also submitted an affidavit stating that if any charges were pending due to revision of rates by the licensee, it will deposit the same. It was only in the month of February 2018 that the office of the AEE/DS Sub –Urban Sub Division, PSPCL, Nakodar came to know about the omission/oversight of the aforesaid cost.
Accordingly, the Petitioner was given notice to deposit the above said cost by the AEE/DS Sub-Urban Sub Division, PSPCL, Nakodar vide its office memo no. 78 dated 27.02.2018.

*I find that as per provisions contained in Regulation 6.1 of the Supply Code-2007, the terms and conditions specified in the Demand Notice once issued will not be altered except when necessitated by change in applicable laws. A perusal of material available on record reveals that there was no change in law at the time of issue of Demand Notice. However, proportionate cost of Back up line and Bay at 220 KV Sub-station Kotla Junga is recoverable since the Demand Notice clearly stipulated that if some amount was not demanded at the time of issuance of Demand Notice, the Applicant/Consumer shall be liable to pay the same at a later stage and the Petitioner had given an Affidavit stating that it shall deposit revised rates.*

I observe that the Respondent, in its written reply, admitted that it was only in the month of February, 2018 that office of the SDO, DS Sub-urban Sub Division, PSPCL Nakodar came to know about the above said cost on being intimated in this regard by the SE/DS, Kapurthala vide their office memo no. 1244 dated 25.01.2018.

*I am, therefore, of the view that though the Petitioner is liable to pay on account of proportionate cost of Back up line and Bay for availing demand of 5777 kVA at 66 KV supply in terms of provisions contained in Regulation 9.1.1 (b) and (c) of the Supply Code-2007, it is not fair to levy interest/surcharge on the amount due as the onus for not raising the demand correctly at the time of issuance of Demand Notice dated 13.01.2009 rests with the Respondent itself.*

1. During the course of hearing, the material available on record came up for discussions and it was observed that the sketch of the back-up 66 KV Line and proposed 66 KV Line for releasing the connection to the Petitioner does not match with the calculation sheet and the contents of letter No. 238 dated 28.02.2018 of AE/TL Sub Division, PSPCL, Jalandhar. Accordingly, the Respondent was directed, vide letter No. 1677 /OEP/A-47/2018 dated 16.11.2018, to send the revised sketch duly authenticated from 220 KV Kotla Janga Sub-station to 66 KV Alewali Sub-station and from 66KV Alewali Sub-station to the Petitioner’s Sub-station with complete tower details and number of circuits, conductor size of each Line and length of the Line, by 22.11.2018 positively. In response, the Addl. S.E., DS Sub-urban Sub Division, PSPCL, Nakodar sent, vide memo no. 4076 dated 22.11.2018, a copy of the sketch, Maximum Demand reading from the date of connection i.e. 10/2010 to 11/2018 and the calculation sheet.

 I find from the perusal of the above documents/sketch provided by the Respondent that length of the feeding line from 220 KV sub-station Kotla Junga of PSTCL to 66 KV Allewali Sub-station of PSPCL, (from where the supply to the Petitioner was given) is as under:

*“5.722 Kilometre of conductor size 0.2 Sq. inch on Multi Circuit Towers and 6.42 Kilometre of 0.15 Sq. inch on single circuit towers.”*

 Hence, the total length of the line from Kotla Junga Sub-station to Allewali sub-station is 12.142 Kilometre.

However, the Petitioner vide e-mail dated 22.11.2018 received at 12:26 hours, intimated the length of line as 11.912 Kilometre. As a matter of fact, the Petitioner’s Representative did not raise this point during oral arguments. Even if, the submissions of the PR, though belated, is considered/entertained, it is evident that the Petitioner has not taken the sag of the conductor due to which, the length of line as calculated by the Petitioner it comes to 11.912 Kilometre.

 *I also find that the Petitioner was charged proportionate cost of Back Up 66 KV Line as 14.9 Kilometre whereas it should have been 12.142 Kilometre (5.722 Kilometre of conductor size 0.2 square inch and 6.42 Kilometre of size 0.15 square inch). Accordingly, the proportionate cost of back up line is to be calculated as per actual length of the 66 KV line provided by the Respondent from Kotla Junga to Allewali Sub-station.*

 From the above analysis, it is concluded that the Petitioner is required to be charged the proportionate cost of back up/common line (33000 volts or above) upto Feeding Sub-station including Bay as per provisions contained in Regulation 9.1.1 (i) (b) and (c) of the Supply Code-2007.

**5. Decision:**

 **As a sequel of above discussions, the order dated 11.07.2018 of the Forum in Case No. CG-141 of 2018 is partly modified. It is held that the Petitioner shall be charged proportionate cost of Back up line and Bay as per conclusion arrived at in para 4 above. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment. It is also held that no interest/surcharge shall be charged to the Petitioner as the onus for not raising the demand and recovering the proportionate cost correctly at the time of issuance of the Demand Notice, rests with the Respondent itself.**

**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)

November 28th , 2018 LokPal (Ombudsman)

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