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

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

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

 **APPEAL NO. 22/2019**

**Date of Registration : 04.04.2019**

**Date of Hearing : 30.05.2019**

**Date of Order : 04.06.2019**

**Before:**

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

**In the Matter of :**

Senior Executive Engineer,

Grid Construction Division,

PSTCL, Jalandhar.

 ...Petitioner

 Versus

M/S SEL Manufacturing Co. Ltd.,

Village Shekhan Mazara ,

 Rahon Machhiwara Road,

 S.B.S.Nagar (Nawanshahar).

 ...Respondent

**Present For:**

Petitioner : 1. Er.Kulwant Singh,

 Senior Executive Engineer,

 PSTCL, Jalandhar.

 2. Er.Vinaydeep Singh,

 Senior Executive Engineer,

 DS Division, PSPCL, S.B.S.Nagar

Respondent : 1. Sh.M.R.Singla,

 Petitioner’s Representative (PR).

 2. Sh.R.S.Dhiman,

Petitioner’s Representative (PR).

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 24.01.2019 of the Consumer Grievances Redressal Forum (Forum) in Case No.CGL-034 of 2018 deciding as under :

*“(i) That charging by Respondent No.2 (PSTCL) of*

*Rs.20,12,120/- on account of normative proportionate cost of Sub Station to the Petitioner, is not in order and is liable to be refunded. Accordingly, following shall be recovered from amount of Rs.48,25,000/- deposited by the Petitioner:*

1. *Rs.28,48,808/- as expenditure incurred on*

 *the cost of 132 kV bay.*

1. *Labour cost for construction of 132 kV bay*

*amounting to Rs.2,61,673/-*

1. *Rs.1,30,836/- as expenditure of*

 *dismantlement of 132 kV bay.*

*Further, as the load was not released on 132 kV and 132 kV bay has been dismantled/Sub Station upgraded to 220 kV, therefore, the material for which the Petitioner has deposited the amount with the Respondent, is required to be refunded to the Petitioner.*

*As per above, the balance amount of Rs.15,83,683/- be refunded to the Petitioner by Respondent No.2 i.e. PSTCL with interest after 120 days from the last date of deposit of the amount to actual date of payment in accordance with Supply Code (2007) Regulation, 19.7.*

*(ii) Respondent No.1 (PSPCL) shall refund Rs.3,01,738/- (i.e. Expenditure of Rs.1,98,262/- for Civil works out of Rs.5,00,000/-) to the Petitioner with interest after 120 days from the last date of deposit of the amount to actual date of payment in accordance with Supply Code (2007) Regulation, 19.7”.*

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

 The relevant facts of the case are that:-

1. M/S SEL Manufacturing Co.Ltd. (Consumer/Firm) was an Industrial

Unit and presently having sanctioned load of 3999 kVA (CD) at Supply voltage of 11 kV.

1. The said firm applied new connection with load of 14364.280 KW/

10370 kVA CD, at 132 kV on 19.08.2008 with erstwhile PSEB which issued a Demand Notice on 14.01.2009. In response, compliance was made by the firm by depositing full cost of 132 kV line and Rs.53,25,000/- towards cost of 132 kV Bay.

1. Due to delay on the part of the licensee in erecting 132 kV line, the

firm requested to release partial load of 3999 kVA at 11 kV Supply Voltage as a stop-gap arrangement and the same was released by the erstwhile PSEB on 20.02.2009.

1. After bifurcation of the erstwhile PSEB into PSPCL and PSTCL, the

work of erection 132 kV line was to be carried out by the PSTCL, but it could not be completed due to problem of Right of Way which was to be obtained by the Respondent. As a result, the remaining load could not be released.

1. After waiting for release of the remaining load and conversion to

132 kV Supply Voltage for long time, the firm filed Petition No.07 of 2013 for refund of Security (Works) and Security (Consumption) to the Hon’ble PSERC who decided the matter vide order dated 09.05.2013. This was followed by Review Petition No.40 of 2013 filed by PSPCL, decided by the Hon’ble PSERC on 30.08.2013. Subsequently, a Review Petition was filed by the PSTCL before the Hon’ble PSERC seeking review of its order dated 30.08.2013. In its order dated 22.11.2013, Hon’ble PSERC held that  *PSTCL shall be liable to pay the interest to the firm (SEL) for total amount deposited by the firm (SEL) as cost of line/security (works) after 120 days from the last date of deposit of the amount to actual date of payment.*

1. In view of the above decision, PSTCL refunded the cost of erection

of 132 kV line deposited by the firm along with interest. But the cost of the 132 kV bay was not refunded on the plea that they had already erected the bay and expenditure had been incurred. Due to non implementation of the order ibid in full of Hon’ble PSERC on the part of PSTCL, Petition No.64 of 2017 was preferred by the Firm before the Hon’ble PSERC who, vide its order dated 07.05.2018, held , as under:

*“PSTCL is directed to add the normative proportionate cost of the common assets viz. land, building etc. on lump sum basis as approved in the cost data by the Commission in actual expenditure incurred amounting to Rs.28,48,808/- and accordingly work out the total expenditure on the erection of 132 kV bay at Jadla Substation. The excess amount on account of cost of132 kV bay deposited by the Petitioner, if any, shall be refunded along with interest as per Supply Code, by PSTCL within 30 days. In case, the Petitioner is not satisfied with the amount calculated by PSTCL for 132 kV bay as directed above, the Petitioner shall be free to approach the grievances settlement mechanism of the licensee as per law”.*

1. Subsequently, Senior Executive Engineer, Grid Construction

Division, PSTCL, Jalandhar vide Memo No.2154 dated 13.06.2018, informed that no amount was refundable, as the actual expenditure incurred on electrical works of 132 kV bay at 132 kV Sub Station, Jadla was Rs.28,48,808/- adding Rs.20,12,120/- on account of proportionate normative cost of Sub Station assets, the total cost of this Bay was pegged at Rs.48,60,928/-. As such, nothing was refundable since a sum of Rs.48,25,000/- only was deposited in his Division.

1. Aggrieved by implementation of order of the Hon’ble

PSERC by PSTCL due to interpretation of facts and Supply Code Regulations, Review Petition No.04 of 2018 was filed by the Firm. Treating it as a case of billing dispute, Hon’ble PSERC vide order dated 26.09.2018 directed the Petitioner to place its grievance before CGRF for adjudication of the matter. Hon’ble PSERC also authorised the Forum to summon PSTCL, if so required and directed PSTCL to appear before the Forum as and when summoned for this purpose.

1. As a result , the firm filed a Petition No.CGL-034/2018

dated 14.11.2018 with the CGRF, Ludhiana, who, after hearing, passed the order dated 24.01.2019. (Reference Page-2, Para-1).

1. Not satisfied with the decision of the Forum, the **PSTCL**

**(Licensee)** preferred an Appeal in this Court as per advice given by the Legal Section of PSTCL vide Memo no.678 dated 19.03.2019 and prayed as under:

*“It is requested that the matter may be thrashed in depth and orders passed to allow cost of common assets as expenditure of 132 kV bay*”.

**3. Analysis:**

The issue requiring adjudication is the maintainability of the present Appeal preferred by the PSTCL (Licensee Organisation).

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

1. The present Appeal preferred by the PSTCL poses a challenge to the

order dated 24.01.2019 passed by the CGRF, Ludhiana in Case No.CGL-034 of 2018. A perusal of the order ibid reveals that its implementation of the order ibid is to be done partly by PSTCL and partly by the PSPCL ( licensees in the present case).

1. During the course of hearing, the Petitioner submitted to the

 Court that the decision of the Forum is contradictory to the order

of Hon’ble PSERC in Petition No.64 of 2017 who gave following directions in this case:

“Whereas cost of 132 kV bay is concerned, PSTCL submitted that actual expenditure incurred on electrical works only for erection of 132 kV bay at Jadla Sub-station is Rs.28,48,408/- and it does not include proportionate cost of land, yard earthing, bus bar, main trenches, battery and battery charger etc. In view of this, the charges on normative basis as approved by the Commission are being recovered from the consumers. PSTCL is directed to add the normative proportionate cost of the common assets viz. land, building etc. on lump sum basis as approved in the cost data by the Commission while calculating cost of line bay and accordingly work out the total expenditure on the erection of 132 kV bay at Jadla Substation. The excess amount on account of cost of 132 kV bay deposited by the Petitioner, if any, shall be refunded along with interest on the excess amount as per Supply Code by PSTCL within 30 days. In case, the Petitioner is not satisfied with the amount calculated by PSTCL for 132 kV bay as directed above, the Petitioner shall be free to approach the grievances settlement mechanism of the licensee as per law ”.

 However, CGRF, Ludhiana decided in Petition No.CGL-034 as under:

“the charging on account of normative proportionate cost of the Substation to the Petitioner, is not in order and is liable to be refunded”.

 *I find there is a merit in the contention of the Petitioner that the CGRF order is contradictory to the directions of the Hon’ble PSERC. According to PSERC decision, the refund of normative proportionate cost of Substation is not required to be made. At the root of this case is the fact that the Right of Way for 132 kV line was to be obtained by the Respondent (SEL) who squarely failed to do it resulting into non-execution of the 132 kV transmission line. It can not have double benefit of its failure. Hence, I feel that the CGRF* *has overstepped its jurisdiction prescribed by the Hon’ble PSERC.*

1. During the course of hearing, the Petitioner’s Representative (PR)

(Sr.Xen, PSTCL,Jalandhar) was asked to refer to any rule/regulation under which, the present Appeal had been preferred by the PSTCL (being a licensee and not a consumer) in this Court. But it did not have any such evidence. It simply stated that the Appeal had been preferred in this Court on the advice of the Legal Wing of the PSTCL.

1. With a view to adjudicate the case, it is worthwhile to peruse the

provision contained in Section 42(6) of the Electricity Act, 2003 which reads as under:

“**Section 42(6)**:

 ***Any consumer****, who is aggrieved by non-redressal of his grievance under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission”.*

 I am of the view that the present Appeal preferred by the PSTCL (being a licensee and not a consumer) is not maintainable in this Court and may be filed before Hon’ble PSERC or appropriate body.

**4. Decision**:

**As a sequel of above discussions, although the CGRF decision is not in line with the directions of the Hon’ble Commission { para 3 (ii), Page- 7 to 9}, it is held that the Appeal preferred against the order dated 24.01.2019 of the CGRF, Ludhiana in Case No. CGL- 034 of 2018 is not maintainable in this Court and the Petitioner may approach the Hon’ble PSERC or appropriate body.**

**5.** The Appeal is disposed of accordingly.

(VIRINDER SINGH)

June 04, 2019 Lok Pal (Ombudsman)

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