**COURT OF THE LOKPAL (OMBUDSMAN),**

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 36/2019**

**Date of Registration : 25.06.2019**

**Date of Hearing : 29.08.2019**

**Date of Order : 06.09.2019**

**Before:**

 **Er. Virinder Singh, Lokpal (Ombudsman), Electricity.**

**In the Matter of:**

 SEL. Mfg. Co. Ltd (Unit-II),

 Ludhiana -Samrala Road,

Village Lalkalan,

District Ludhiana. ...Petitioner

 Versus

 Addl. Superintending Engineer,

DS, Division,

PSPCL, Samrala ...Respondent

**Present For:**

Petitioner : 1. Sh. R.S. Dhiman ,

 Petitioner’s Representative (PR).

 2. Sh. M.R. Singla,

 Petitioner’s Representative (PR).

 3. Sh. P.K. Aggarwal, (PR),

Petitioner’s Representative.

Respondent : 1. Er. Kanwalpreet Singh Sidhu,

 Addl. S.E. , DS Division,

PSPCL, Samrala.

 2. Sh. Balwinder Singh,

 Upper Division Clerk (UDC).

Before me for consideration is an Appeal preferred by the Petitioner against the decision dated 12.04.2019 amended vide Order dated 24.05.2019 in Case No. CG-12 of 2019 of the Consumers Grievances Redressal Forum (Forum), Patiala stating as under:

*“Excess amount deposited by the petitioner at the time of release of connection on the basis of estimated cost over and above the actual expenditure incurred of Rs 28,95,782/- be refunded* ”.

**2. Facts of the Case:**

 The relevant facts of the case are that:

**(i)** The Petitioner was having a Large Supply (LS) Category Connection with sanctioned load of 4905.730 kW and contract demand (CD) of 4000 kVA.

(**ii)** The Respondent issued Demand Notice, bearing No. 461 dated 15.05.2007, on account of the estimated cost of 11 kV feeder amounting to Rs 31,12,068/- which was deposited by the Petitioner on dated 23.05.2007. The extension, as applied above, was released on 17.11.2007.

**(iii)** The Petitioner, vide its letter No. NIL dated 23.07.2015, addressed to AEE/DS Sub division PSPCL, Katani Kalan requested for finalization of account of erection of 11 kV feeder and also sent a reminder dated 09.02.2016 in this regard**.**

**(iv)** The Petitioner also sought the information under RTI Act-2005 vide application dated 24.01.2018. Accordingly, the Respondent vide Memo No. 751 dated 30.01.2018, sent the copy of Form-27 and copy of Initial Works Register (IWR) of 11 kV Saluja Cotex (P) Ltd. feeder from which, the extension was released**.**

**(v)** For refund of amount deposited in excess of the expenditure incurred by the licensee, the Petitioner filed a Petition in Zonal Dispute Settlement Committee (ZDSC), who decided in its meeting dated 31.10.2018 as under:

*“Today on dated 31.10.2018, Representative of Petitioner informed the Committee that they had deposited full estimated cost for construction of 11 kV independent feeder for getting load extension whereas less expenditure had been incurred for construction of the feeder. Accordingly, Representative of the Petitioner submitted an application to the Committee for getting refunded approximately amounting to Rs 9,32,568/- being the difference of amount deposited and actual expenditure incurred.*

 *Presenting Officer while submitting relevant documents related to the case informed that amount deposited by the Petitioner is correct as per instructions of the Corporation and no refund is required to be given to the Petitioner.*

*The Committee after hearing the consumer’s view and perusal of documents submitted by the Presenting Officer and facts related to the case found that the present case is related to the disputed amount instead of refund case and required to be dealt with Consumer Grievances Redressal Forum (CGRF) as per Commercial Circular No.61/2008. Therefore, this case required to be dealt with by Consumer Grievances Redressal Forum (CGRF). Consumer be informed accordingly.”*

**(vi)** Accordingly, the Petitioner filed a Petition dated 14.01.2019 in the CGRF, Patiala, who, after hearing, passed the order dated 12.04.2019, amended vide order dated 24.05.2019. (Reference Page-2, Para-1).

 **(vii)** The Petitioner was not satisfied with the decision of the CGRF and preferred an Appeal in this Court. It prayed that the Appeal may be allowed and necessary orders passed for correct evaluation of the refundable amount and payment thereof with applicable interest as per provisions of Supply Code Regulations.

**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 was running an industrial unit at Village Lall-

Kalan Distt. Ludhiana having an electricity connection of the unit, bearing Account No. R 72-KK01-00025 under Katani Kalan Sub division of DS Division Samrala. All electricity bills were paid regularly by the Petitioner.

1. The Petitioner, initially having sanctioned load of 2,000 kW

and contract demand of 1500 kVA, fed at 11 kV supply voltage. It applied for extension of load of 4905.730 kW and contract demand (CD) of 4000 kVA. The total load was to be fed at 11 kV as per feasibility clearance and a new 11 kV independent feeder was to be erected.

1. The Demand Notice for the above mentioned extension was

issued, vide AEE Katani Kalan’s Memo No 461 dated 15.05.2007, asking the Petitioner to deposit Rs 31,12,068/- as cost of estimate for erection of 11 kV feeder. The Petitioner deposited this amount on 23.05.2007. The extension in load was released on 18.11.2007 after erecting 11 kV feeder.

1. As per Instructions, then in force viz Sales Regulations (2005)

51.2.2.1 (2) Service Connection Charges (SCC) were chargeable @ Rs 750/- per kW for extended load or actual cost whichever is higher (load being above 1MW).

**(v)** The actual cost of erection of feeder as per Initial Work Register (IWR) was Rs 21,49,311/-, SCC on load basis came to Rs 21,79,500/- (2,906 kW X Rs 750 =21,79,500) , so, the chargeable cost worked out to Rs 21,79,500/- and refundable amount was Rs 31,12,068-21,79,500= Rs 9,32,568/-.

**(vi)** The refund of excess amount of Security (works) was to be taken by the Respondent suo-motu. But, nothing moved despite repeated requests and several rounds to the Respondent’s offices by the Petitioner.

**(vii)** The Petitioner placed its grievance before Zonal Level Refund Committee of South Zone at Patiala. But, the Committee finally disposed it of stating that the dispute fell within the purview of the CGRF.

**(viii)** Accordingly, a Petition was filed before the Forum and the same was registered as Case No CG-12 of 2019. A decision in this case was conveyed to the Petitioner on 12.04.2019. In this order, there was an arithmetical mistake in addition to some other shortcomings which were pointed out to the Forum and an amendment was issued by the Forum on 28.05.2019.

**(ix)** The Forum in its orders had ignored the vital issues and the

order was not in a accordance with Instructions/Regulations on the subject matter.

**(x)** The Respondents had calculated the expenditure for erection of feeder arbitrarily in violation of the instructions, and it was not based on the statutory record IWR/form-27. This point was specifically brought to the notice of the Forum but cognizance of the same was not taken. Actual expenditure as per IWR was Rs 21,49,711/- whereas the Forum had allowed to fix it at Rs 28,95,782/- in violation of the Rules/ Instructions, thus depriving the Petitioner of additional refund amounting to Rs 7,46,071/-.

**(xi)** The amount of security in excess of actual expenditure was refundable after completion of work. Interest was payable on the refundable amount in case of delay in effecting adjustment after completion of work. This statutory provision had not been kept in view by the Forum in its order. In fact, no speaking order had been passed with regard to payment of interest. It is in gross violation of the regulations of Supply Code -2007/Supply Code-2014.

**(xii)** The refundable amount be correctly evaluated and paid with applicable interest.

 (**b) Submissions of the Respondent:**

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

1. The Petitioner had applied for a new Large Supply (LS)

Category connection for load of 2,000 kW and contract demand of 1,500 kVA vide application dated 16.10.2006 which was released on dated 09.11.2016.

1. Thereafter, the Petitioner applied for extension in load to

2905.730 kW and contract demand of 2,500 kVA on 20.04.2007 which was released by the concerned Sub division by erecting new 11 kV feeder named Saluja Cotex from erstwhile 132 kV Sub Station, Ghulal on 17.11.2007 with total load released to the said firm to 4905.730 kW and contract demand (CD) of 4,000 kVA.

1. The cost incurred for providing the 11kV Feeder for release of

extension in load was Rs 31,12,068/-as per estimate, whereas the value as per Store Requisition on IWR was Rs 31,42,702 duly pre audited by the Accounts Officer/PSPCL, Patiala.

1. As per the version of the Petitioner, the difference was due to

accounting of the dismantlement of the material and there was no provision of giving credit to the consumer for the same as per instructions of the PSPCL.

1. The dismantlement in this estimate was only due to release

of extension in load of this particular Consumer and the department had to incur expenditure for this by reorienting 3 no. feeders named 11 Katani, 11 kV Bhaini Sahib and 11 kV Mangla feeder and for which there was no Instruction of giving due credit of dismantled material to the Consumer availing extension in load.

1. The Consumer never approached the Sub-divisional Office

regarding the estimated cost incurred for release of extension in load.

1. The Forum, vide order dated 12.04.2019 amended vide order

dated 24.05.2019, decided to refund the amount deposited in excess by the Petitioner by applying Establishment Charges @16% instead of @27.5%.

1. The cost recovered as per estimate in the year 2007 was as per instructions prevailing at relevant point of time. There was no provision of claiming the refund on frivolous ground after a lapse of 11 years from the cause of action.
2. The matter be disposed of with the directions that the

amount already deposited by the Consumer in 2007 was in accordance with the instructions in force of the licensee at relevant point of time.

**4. Analysis**

 The issue regarding adjudication is the legitimacy of the plea of the Petitioner for correct evaluation of the amount refundable (due to deposit of estimated cost over and above the actual expenditure for release of extension in load/erection of Feeder) and payment thereof with applicable interest.

 *The points emerging in the present dispute are deliberated and analysed as under:*

(i) Petitioner’s Representative (PR) argued that the extension was released on 17.11.2007 and before coming into effect of Supply Code -2007 w.e.f. 01.01.2008, provisions of Electricity Supply Regulation-2005(ESR) were in force. In this connection, Petitioner’s Representative (PR) also cited the applicability of provisions of Commercial Circular (CC) No. 46/88 dated 26.07.1988, 33/90 dated 15.06.1990 and 27/91 dated 16.04.1991 issued by the erstwhile PSEB specifying recovery of Departmental/ Supervision/ Establishment charges in such cases.

 As per material on record, the actual expenditure of the material as per Store Requisition Values against Estimate No.73123/2007-08 duly pre-audited by the Accounts Officer, was Rs 22,28,263/-. Which was the basic cost of the material including storage charges upto the receipt of material in the stores of the Respondent, excluding the cost of transportation of the material from stores to the site of the work, storage cost of the material at different sites of work and also contingencies. These costs could not be worked on actual basis due to many reasons as the transportation may have involved transportation of the material to different sites work simultaneously. Similarly, the material may have been stored at different number of locations at site and as such, may have required different arrangements for upkeep and protection of the material. As such, provision of 5% was made on account of Contingency @ 1%, Storage @ 1.5% and Transportation @ 2.5%.

Beside, erection and dismantlement charges were also included in the estimated cost of the work of the Petitioner.

In addition to above, establishment charges @ 16% of cost of estimate i.e. cost of material, labour etc. are recoverable as per commercial circular No 27/1991 dated 16.04.1991 which read as under:

**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 PSEB at the cost of consumer and thereafter remain the property of the Board for being operated/maintained by PSEB. 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 consumers.*
2. *In case where the consumers are required to pay cost of works as per Scheduled of General and Service Connection charges.*
3. *The works where the consumers opt for connection from Urban Feeders instead of nearest Rural Feeder.*
4. *Where the cost of link-line is to be borne by the consumer.*

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

 I have perused the submission made by the Petitioner’s Representatives with reference to applicable regulations and I am of the view that the CGRF, Patiala rightly decided that total amount to be recovered was Rs 24,96,364/-(cost of material and 5% for contingency, storage, transportation, erection and dismantlement charges) plus Rs 3,99,418/-(16% Departmental Charges on estimated cost) = Rs 28,95,782/-.

 I am also of the view that the plea of the Petitioner’s Representative (PR) for additional refund of Rs 7,46,071/- (the amount got deposited in excess from the Petitioner) is not sustainable due to the reason that the amount of expenditure for execution of the work of release of extension, taken into consideration by the Petitioner, was the amount before pre-audit by the Accounts Officer concerned. On the other hand, the amount of Rs 28,95,782/- worked out by the Forum, in its order dated 24.05.2019, is the amount which is the actual expenditure as per regulations and duly pre-audited by the Accounts Officer.

(ii) It is observed that at the time of release of extension in load in the year 2007, the Feasibility Clearance was given by the Chief Engineer/Commercial, PSPCL, vide Memo No.135 dated 11.04.2007, for grant of extension in load and CD at 11 kV Supply Voltage mentioning therein that the load will be released by providing 2.7 kilometer, 11 kV line from 132 kV sub-station, Ghulal upto the premises of the consumer. Subsequently, this feeder was decleared independent/continous process industry status (category (iv) ) by the Chief Engineer S.O & C, PSEB, Patiala vide Memo No. 3093 dated 21.04.2008, regularizing the status with immediate effect i.e. from the date of connection.

(iii)Petitioner’s Representative (PR) contended that the amount of

Security (Works) in excess of actual expenditure was refundable after completion of the work. Accordingly, interest was payable on the refundable amount in case of delay in effecting adjustment after completion of the work. This statutory provision had not been kept in view by the Forum in its order. In fact, no speaking order had been passed with regard to payment of interest which was gross violation of the regulations.

The Respondent contested the claim of the Petitioner’s Representative (PR) by stating, during hearing in this Court, that the Petitioner had not submitted any request for refund and payment of interest after completion of the work about 11 years ago. As the Petitioner’s Representative showed a copy of letter written to the Respondent’s Sub Divisional Office in the year 2015 followed by reminder in the year 2016, the Addl. S.E. DS Division, PSPCL, Samrala was directed to consult the records of the concerned Sub division and intimate, by e-mail, as to whether any such request was received.

In response, the Addl. S.E., DS Division, PSPCL, Samrala intimated, vide e-mail dated 03.09.2019, as under:

*“As per records of Katani Kalan Sub division, the letter/reminder was received by SDC as per diary No.09/71 on dated 08.02.2016. But after that neither consumer inquired about the reply nor concerned office intimated to the consumer*”.

 I find that though the Respondent is responsible for not finalizing the accounts of the Petitioner in time, the Petitioner, being a Large Supply Category Consumer, was expected to be conversent with the rules / regulation and ought to have requested and pursued the matter with the Licensee at appropriate time instead of keeping mum for so many years i.e. from 2007 to 2015.

 *I observe that since a letter dated 08.02.2016 has been found entered in the Diary of the Katani Kalan DS Sub division, interest as per Supply Code Regulations-2014, as amended from time to time is required to be paid to the Petitioner from 08.02.2016 till the date of refund of the amount deposited in excess.*

**5. Conclusion**

From the above analysis, it is concluded that:

1. The amount of Rs 28,95,782/-, on the erection of Feeder execution of the work for release of extension to the Petitioner, worked out by the CGRF, Patiala is the actual expenditure duly pre-audited and correct for workingout the amount (deposited in excess) to be refunded.
2. Interest is required to be paid to the Petitioner from 08.02.2016 till the date of making refund as at Sr. No (i) above, as per Supply Code Regulations-2014, as amended from time to time.

**6.** **Decision:**

**As a sequel of above discussions, the order dated 12.04.2019 amended vide Order dated 24.05.2019 of the CGRF, Patiala in Case No. CG- 12 of 2019 is modified in terms of conclusion arrived at in Para-5 above. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short after adjustment, if any, without interest**

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

**8**. 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 06, 2019 Lok Pal (Ombudsman)

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