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

**ELECTRICITY, PUNJAB,**

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

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

 **APPEAL NO. 13/2020**

**Date of Registration :24.02.2020**

**Date of Hearing :24.06.2020**

**Date of Order :26.06.2020**

**Before:**

 **Er. Gurinder Jit Singh,**

 **Lokpal (Ombudsman), Electricity, Punjab**.

**In the Matter of :**

M/s Garg Rice Mills,

Phul Road,

Rampura Phul

**Contract Account Number: B-61RP00007**

 ...Appellant

versus

Senior Executive Engineer,

DS Division, PSPCL,

Rampura Phul.

 ...Respondent

**Present For:**

Appellant : Sh. S.R. Jindal

 Appellant’s Representative (AR).

Respondent : 1. Er. Sudhir Kumar

 Senior Executive Engineer,

DS Division, PSPCL,

Rampura Phul.

 2. Sh. Manoj Yadav

Revenue Accountant (RA).

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 17.01.2020 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No.

T- 403 of 2019, deciding that:

 *“Respondent stated that regarding the claims of refund of petitioner, a court case No. CWP-30614/2019 filed by the petitioner is pending in the High Court, Punjab. Further the connection of the industry is lying permanently disconnected and petitioner does not intend to get re-connected.*

*As Such, the petition cannot be entertained at this stage.”*

**2*.* Registration of the Appeal**

The Appeal preferred by the Appellant challenging the order dated 17.01.2020 of the Forum was received in this Court on 24.02.2020 i.e within one month of receipt of the said decision by the Appellant. Since, the dispute raised in this Appeal related to refund of Threshold Limit and ToD units Rebate, the Appellant was not required to deposit any amount for filing the Appeal. Accordingly, the Appeal was registered in this Court and copy of the same was forwarded to the Respondent to submit written reply/parawise comments with a copy to the office of the CGRF, Patiala under intimation to the Appellant vide letter no. 168-170/OEP/A-13/2020 dated 25.02.2020.

**3.** **Proceedings**

A hearing to adjudicate the present dispute was fixed for 27.03.2020 at 12.30 PM and intimation to this effect was sent to both the sides vide Memo No. 202-203/OEP/A-13/2020 dated 02.03.2020. But, due to COVID-19 pandemic, the said hearing was adjourned till further orders. Subsequently, hearing was fixed for 24.06.2020 as per intimation sent vide Memo No. 430-31/OEP/A-13/2020 dated 10.06.2020. In response, the representatives of the Appellant and Respondent attended this Court on the said date and time. Copies of the proceedings were sent to both the parties vide Memo No. 482-83/OEP/A-13/2020 dated 24.06.2020.

**4.** **Submissions made by the Appellant and the Respondent**:

With a view to adjudicate the dispute, it is necessary to go through written submissions made in the Appeal by the Appellant and reply of the Respondent as well as oral submissions made by their respective representatives along with material brought on record by both the sides.

1. **Submissions of the Appellant**
2. **Submissions made in the Appeal**

The Appellant made the following submissions in the Appeal, received on 24.02.2020, for consideration of this Court:

1. A case for refund on account of threshold unit/ToD rebate, not

given in the previous bill, was sent to the office of the CGRF, Patiala, through registered post on 17.12.2019, which was registered by the Forum vide Memo No. 3217/T-403/2019 dated 31.12.2019 and Sr. XEN, DS Division, PSPCL, Rampura Phul was asked to submit parawise reply to the Petition under intimation to the Appellant.

1. The Forum, vide its proceeding dated 17.01.2020 attended

by the representatives of both the Appellant and the Respondent, decided not to entertain the said case as a case filed by the Appellant in the Hon,ble High Court of Punjab and Haryana, bearing No. CWP/30614 of 2019, was pending.

1. The connection of the Appellant was permanently disconnected

on 06.06.2019, but security deposit had not been adjusted in the final bill so far.

1. The Appellant had not run its industry during the season period

 of 2019-20.

1. The Appellant wanted to clear the dues of the PSPCL and failed

to get NOC so that account be adjusted first of all by getting due refunds on account of excess billing in the past. After adjustment of security, the Appellant wanted to clear the balance in easy installments so that the Appellant could dispose of machinery without any objection from the department.

1. The Appellant filed a case for refund on account of

threshold units amounting to ₹ 2,00,305/- for the years 2015-16 and 2016-17, as per Tariff Order issued by PSERC, with interest and rebate on account of ToD units for ₹ 3,50,000/- (in view of provision of CC No. 46/2014) with interest but the same was not entertained by the Forum on the plea that the Appellant had challenged in Hon’ble High Court the order of this Court in Appeal Case No. 20/2019 decided on 23.07.2019 relating to the excess billing on account of MQP-95 Meter remained installed from 04.10.2016 to 03.12.2018 at the premise of the Appellant.

1. Hon’ble PSERC, in Petition No. 47/2017 decided on 28.02.2018

that MQP-95 (L&T) Serial No. 16293411 remained installed for 26 months, whereas, it should have been replaced within three months, but was replaced on 03.12.2018 after 26 months period.

1. Aggrieved with the wrong/excess billing, the Appellant filed

a case in the office of the CGRF, Patiala as Case No. CG-426 of 2018 which was decided on 07.12.2018.

1. Thereafter, the Appellant filed an Appeal No. 20/2019 in this Court challenging the said order dated 07.12.2018 of the Forum. The Appeal Case was decided on 23.07.2019 by this Court.
2. The rebate on account of ToD allowed in March 2017 as per the Respondent’s reply was of ₹ 1,94,895/-, pertaining to the period only for 01.10.2015 to 31.03.2016. This was allowed in March, 2017 without interest, whereas, CC No. 59/2013 dated 30.12.2013 clearly mentioned that interest for delay be allowed. The rebate from 01.04.2016 to date had not been allowed in the bills. The reply of the Respondent that rebate had already been allowed in the bills was not acceptable.
3. The Forum be directed to hear the present case filed by the

Appellant as the refunds claimed had no relevance with the CWP pending in the Hon’ble High Court. However, a copy of petition filed and reply submitted by the Respondent before the Forum was also annexed for ready reference.

1. **Submission during Hearing**

The Appellant’s Representative reiterated the submissions made in its Appeal during hearing on 24.06.2020 and submitted an application stating as under:

“It is submitted that CWP-23686/2019 filed by the Appellant in the Hon’ble High Court of Punjab and Haryana is pending decision. It is clarified that CWP-30614/2019 mentioned in the decision dated 17.01.2020 of the CGRF, Patiala in Case No.T-403/2019 pertains to M/s Krishna Agro, Nabha.

In our present Appeal we have requested to remit the matter to CGRF, Patiala for consideration and decision on issues raised in Case No. T-403/2019 filed on 16.12.2019. It therefore requested that order may kindly be passed directing the CGRF, Patiala to hear the case on merits subject to outcome of the decision of the Hon’ble High Court in CWP-23686/2019.”

1. **Submissions of the Respondent**
2. **Submissions made in the Written Reply**

The Respondent, in its reply, sent by e-mail dated 02.06.2020, made the following submission for consideration of the Court:

1. The connection of the Appellant had been disconnected due to non payment of outstanding/defaulting dues. The amount outstanding against the Appellant was ₹ 36,74,725/- as on 29.05.2020.
2. The Appellant had claimed Threshold and ToD Rebate. Though the Appellant was not given Threshold Rebate but ToD Rebate was given to the Appellant in the bills for 2014-15. ToD Rebate from 01.10.2015 to 31.03.2016 amounting to ₹ 1,94,895/- was given on 27.03.2017 through SAP. ToD Rebate from 04/2018 onwards was being continuously given through SAP. ToD Rebate data from 01.04.2017 to 04/2018 was not available in the divisional office. However, ToD Rebate for this period will be given on availability of data from MMTS, Bhatinda.
3. The Appellant was not entitled to interest on ToD Rebate already given.
4. **Submissions during Hearing**

During hearing in this Court on 24.06.2020, the Respondent reiterated the submissions made in its written reply and stated that CWP No. 23686 of 2019 instead of CWP No. 30614 of 2019 was filed by the Appellant in the Hon’ble Punjab and Haryana High Court and decision was pending. However, on enquiry during hearing, the Respondent did not object to the submission made by the Appellant, in the Application given during hearing itself, to direct the CGRF, Patiala to consider/hear and decide the grievance of the Appellant on merits as the same had no relevance to CWP No. 23686 of 2019 pending in Hon’ble High Court. The decision of the Forum will be subject to the outcome of the aforesaid CWP No. 23686 of 2019 as agreed to by the Appellant.

**5.** **Analysis and Findings**

The issue requiring adjudication is the legitimacy of the prayer of the Appellant to direct the CGRF, Patiala to hear and decide the dispute case no. T-403 of 2019.

*My findings on the points emerged, deliberated and analysed are as under:-*

1. The Appellant filed a case, bearing No. T-403 of 2019, in the office of the CGRF, Patiala in December 2019 for allowing refund of excess amount paid against rebate meant for units consumed above Threshold Limits for the years 2015-16 and 2016-17 as per provisions of Tariff Orders issued by the Hon’ble PSERC. In the above mentioned Petition (T-403 of 2019), the Appellant had also claimed rebate of ToD units as per CC No. 46/2014 dated 04.09.2014 issued by the PSPCL. The Forum, in the proceedings dated 17.01.2020, decided that:

 “*Respondent stated that regarding the claims of refund of petitioner, a Court Case No. CWP-30614/2019 filed by the petitioner is pending in the High Court, Punjab. Further the connection of the industry is lying permanently disconnected and petitioner does not intend to get re-connected.*

*As such, the petition cannot be entertained at this stage.”*

1. During the hearing of the case in this Court on 24.06.2020, the

Appellant’s Representative submitted an application stating as under:

“With reference to the discussions related 24.06.2020. It is submitted that CWP-23686/2019 filed by the Appellant in the Hon’ble High Court of Punjab and Haryana is pending decision. It is clarified that CWP-30614/2019 mentioned in the decision dated 17.01.2020 of the CGRF, Patiala in Case No.T-403/2019 pertains to M/s Krishna Agro, Nabha.

In our present Appeal, we have requested to remit the matter to CGRF, Patiala for consideration and decision on issues raised in Case No. T-403/2019 filed on 16.12.2019. It is therefore requested that order may kindly be passed directing the CGRF, Patiala to hear the case on merits subject to outcome of the decision of the Hon’ble High Court in CWP-23686/2019.”

I find that Sr. Executive Engineer, DS Division, PSPCL, Rampura Phul, on being asked during hearing, did not object to the aforesaid submission by the Appellant’s Representative.

The Appellant wants to settle/clear the defaulting amount pending against him. As such, it is desirable to settle the claims of the Appellant at an early date so as to recover pending defaulting amount. This will be in the interest of PSPCL.

In view of the oral and written submissions of the representatives of both the sides as well as evidence brought on record of this Court, it is clear that the CWP No. 23686 of 2019 (and not CWP No. 30614 of 2019, referred to by the Forum in its order dated 17.01.2020) was filed by the Appellant and is now pending in Hon’ble Punjab and Haryana High Court. This CWP had no relevance to the facts and circumstances of the present dispute. It, thus, proves beyond doubt that the Forum erred in deciding that the Petition No. T-403/2019 could not be entertained because the matter was sub-judice.

**6. Decision**

As a sequel of above discussions, the order dated 17.01.2020 of CGRF, Patiala in Case No. T- 403 of 2019 is set aside. It is held that the issues raised in dispute Case No. T-403/2019 before CGRF, Patiala by the Appellant shall be heard and decided on merits by the CGRF, Patiala subject to the outcome of CWP 23686 of 2019 pending before the Hon’ble Punjab and Haryana High Court.

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

**8.** In case, the Appellant 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.

 (GURINDER JIT SINGH)

June 26, 2020 Lokpal (Ombudsman)

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