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

 **ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 50/2020**

 **Date of Registration : 14.10.2020**

 **Date of Hearing : ­­11.11.2020**

 **Date of Order : 18.11.2020**

**Before:**

 **Er. Gurinder Jit Singh,**

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

**In the Matter of:**

 Senior Divisional Electrical Engineer,

Northern Railways, DRM office,

 Rail Vihar, Ambala Cantt.

**Contract Account Number: 3002309263**

 ...Appellant

Versus

Addl. Superintending Engineer,

DS Division,

PSPCL, Bhatinda.

 ...Respondent

**Present For:**

 Appellant : 1. Sh. Jaideep Verma, Advocate,

 Appellant’s Counsel.

 2. Sh. Himanshu,

 SSE/P/NR/BTI,

 Appellant’s Representative.

Respondent : 1. Er. Hardeep Singh Sidhu,

 Addl. Superintending Engineer,

 DS Division, PSPCL,

 Bhatinda.

 2. Sh. Varinder Singla,

 Upper Division Clerk.

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 11.09.2020 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-32 of 2020, deciding that:

*“The amount of Rs. 86,85,678/- charged to the petitioner as fixed charges as per Commercial Circular No. 46/2017 on account of difference of load of 2000 KVA (i.e. 3750-1750 KVA) for the period 1.1.2018 to 16.10.2019 is justified and recoverable”.*

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

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 14.10.2020 i.e. within one month of receipt of the decision dated 11.09.2020 of the CGRF, Patiala in Case No. CGP-32 of 2020.The Appellant had already deposited ₹ 71,51,781/- against the disputed amount of ₹ 86,85,678/-i.e. more than the requisite 40% of the disputed amount for filing the Appeal in this Court. Accordingly, the Appeal was registered and copy of the same was sent to the Addl. Superintending Engineer/DS Division, PSPCL, Bhatinda for sending written reply/parawise comments with a copy to the office of the CGRF, Patiala under intimation to the Appellant vide this office letter nos. 980-82/OEP/A-50/2020 dated 15.10.2020.

**3.** **Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 06.11.2020 at 12.00 Noon and intimation to this effect was sent to both the sides vide letter nos. 1040-41/OEP/A-50/2020 dated 29.10.2020. But, on the request of the Respondent vide e-mail dated 05.11.2020, the hearing was adjourned to 11.11.2020 at 11.30 AM. Both the sides were informed accordingly vide this office letter nos. 1065-66/OEP/A-50/2020 dated 06.11.2020. As scheduled, the hearing was held on 11.11.2020 in this Court, on the said date and time. Copies of the minutes of the proceedings were sent to the Appellant and the Respondent vide this office letter nos.1097-98/OEP/A-50/2020 dated 11.11.2020.

**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 in this Court on 14.10.2020, for consideration:

1. The Appellant-Railways was having a Bulk Supply category electricity connection, bearing account No. 3002309263, with sanctioned load of 1540 kW/CD as 1500 kVA in its name running under DS Division, PSPCL, Bhatinda. The copy of the decision was dispatched by the Forum on 15.09.2020 and received by the Appellant on 21.09.2020 and thus, the Appeal was filed within limitation period as prescribed under regulations.
2. The order dated 11.09.2020 passed by CGRF, Patiala was unjust, improper, illogical, cryptic, erroneous and illegal on the face of it and thus liable to be set aside.
3. The Appellant required uninterrupted power supply for train operations, passengers’ amenities and staff. Therefore, the Appellant had made provision of stand-by distribution transformers at all Sub-stations. Therefore, 03 transformers with total load 1750 kVA were installed at Railway Station, Bhatinda and 02 transformers of capacity 1000 kVA each were stand-by in case of emergency. The said 02 transformers were not connected with load and were kept for replacement only if other transformers went out of order.
4. On 27.08.2010, the Respondent conducted the inspection and reported that the Appellant had connected all 05 transformers of capacity 3750 kVA whereas 02 transformers, having capacity 2000 kVA (each of 1000 kVA) were stand-by. The Respondent had wrongly assessed the total connected load as 3750 kVA which included the load of 02 stand-by transformers and illegally levied penalty of ₹ 62,30,787/-. The Respondent had not directly demanded the said amount, rather, added the amount in the monthly electricity bills from September, 2011 to September, 2012 and recovered from the Appellant.
5. On 26.04.2013, the Appellant had signed the Application & Agreement (A & A Form) of the PSPCL to revise load from 1750 kVA to 3750 kVA but the Respondent had not revised the load.
6. In 2018, the Respondent implemented Two Part Tariff Scheme approved by PSERC as per which, consumer was required to pay fixed charges on the basis of sanctioned contract demand and additional energy charges based on actual consumption. The Respondent had rightly considered the sanctioned contract demand of 1750 kVA. However, subsequently, PSPCL demanded additional ₹ 86,85,678/-(₹ 16,59,136/-, ₹ 35,89,541/, ₹ 19,03,104/- & ₹ 15,32,887/-) in running bills illegally by considering the sanctioned contract demand of 3750 kVA without any basis.
7. The Appellant was under the impression that PSPCL (Respondent) was a Public Body of the State and Railway Board (Appellant) was Public Body of the Union of India. Both were Public Bodies and worked for the public. Hence, the Respondent will not raise any illegal demand against Railways. The Respondent had never demanded, directly the aforesaid amounts, rather, added the amount in running bills. Thus, the Appellant could not smell out any foul play and deposited the amount of ₹ 71,51,781/-.
8. In September, 2019, the Appellant found that the Respondent had illegally charged aforesaid amount from the Appellant. The Appellant raised its grievance vide letters dated 08.08.2019 and 05.09.2019 but the Respondent had not given any reply to the said letters and adopted a casual and ignoring attitude.
9. Feeling aggrieved, the Appellant filed Petition No. CGP-32 of 2020 against the Respondent before CGRF, Patiala qua amount of ₹ 62,30,787/-, ₹ 16,59,136/- and ₹ 35,89,541/- but the Forum refused to entertain the claim of ₹ 62,30,787/-, being beyond its jurisdiction.
10. The Respondent had appeared and filed a vague reply with averments that the Appellant signed A & A form dated 26.04.2013 with PSPCL to revise load to 3750 kVA but this load could not be updated in its system as the Appellant was asked to apply for feasibility clearance vide letter No. 922 dated 10.04.2013. The Appellant could not respond to the said letter and neither gave any revised test report for reducing load. The Appellant had accepted the connected load of 3750 kVA installed in its premise. As the load of 3750 kVA was not uploaded in the SAP system, therefore, monthly bills raised to the Appellant were with the load of 1750 kVA instead of 3750 kVA. Thereby, amount of ₹ 35,89,541/-, ₹ 16,59,136/-, ₹ 19,03,104/- & ₹ 15,32,887/- had rightly been demanded from the Appellant.
11. The PSPCL had never revised the load of the Appellant from 1750 kVA to 3750 kVA. The Appellant had filled the A & A form dated 26.04.2013 but PSPCL had never considered it. Thereby, in the SAP system of PSPCL and in monthly running bills sanctioned load was 1750 kVA. There was not even iota of evidence on the record which revealed that 3750 kVA load was ever sanctioned. Therefore, the recovery based upon load 3750 kVA was apparently illegal.
12. The Forum had given a clear-cut finding that A & A form remained in limbo from 26.04.2013 to 2018. This meant that PSPCL had not taken any decision on the A & A form upto the implementation of new Tariff Scheme implemented in 2018. It was duly proved from the record produced by the PSPCL that upto 2018, sanctioned load was 1750 kVA. Thereby, while implementing the new tariff scheme, PSPCL had rightly charged the fixed charges on the basis of sanctioned contract demand 1750 kVA. However, subsequently PSPCL illegally considered the sanctioned load as 3750 kVA without any base and wrongly raised recoveries against Appellants merely to give wrongful gain to PSPCL.
13. A bare perusal of A & A form dated 26.04.2013 revealed that the same had been tampered with by the PSPCL as higher officers of the PSPCL made recommendations on 30.01.2013 prior to submission of form. Actually, in 2018 new tariff scheme was implemented and the officers of the PSPCL had tampered with the A & A form in 2018 in back dates and raised recovery against Appellant by applying sanctioned contract demand as 3750 kVA.
14. The entire stand of PSPCL was that load could not be updated in the system as the Appellant was asked to apply for feasibility clearance vide letter No. 922 dated 10.04.2013 and Appellant failed to do so. The stand of the PSPCL also proved false as the Appellant signed the A&A form on 26.04.2013 but as per PSPCL in response to the said A & A form, they asked the Appellant to apply for feasibility clearance vide letter No. 922 dated 10.04.2013 which was factually not possible as letter dated 10.04.2013 was 16 days prior to the date of A & A form i.e. 26.04.2013, therefore, the said letter was also tampered. The Appellant categorically denied that the said letter dated 10.04.2013was never served upon the Appellant. The onus of proof regarding service of the letter dated 10.04.2013 rested with PSPCL. However, PSPCL failed to produce any proof that said letter having ever been served upon the Appellant. Therefore, entire stand taken by the PSPCL qua demand of feasibility clearance proved false. The sanctioned load of 1750 kVA was rightly uploaded in the system. The Forum had over looked the said material facts. Therefore, the Forum had made a glaring illegality while deciding the matter.
15. The judgment dated 11.09.2020 of the Forum was self-contradictory as the Forum had held that A & A form dated 26.04.2013 remained in limbo upto implementation of new tariff scheme. Therefore, no decision was taken by the PSPCL on A & A form upto 2018. Hence, the sanctioned load was 1750 kVA at the time of implementation of new tariff scheme. Therefore, no question arose to charge from the Appellant more than that and therefore the impugned judgment was self-contradictory.
16. The Appellant had filed petition before the Forum for recovery of ₹ 62,30,787/- alongwith other recoveries challenged in the Appeal. However, the Forum refused to entertain the claim for the said amount being beyond their jurisdiction. Thereafter, regarding said claim, the Appellant is going to avail the appropriate remedy as per law. The Appellant had preferred the present Appeal and had challenged the aforesaid recoveries. The Forum had given finding regarding the claim of ₹ 62,30,787/- as it refused to entertain the same. Therefore, the finding given by the Forum was beyond its jurisdiction.
17. In September, 2019; the Appellant found that PSPCL had illegally charged aforesaid amount. Immediately, the Appellant raised its grievance vide letters dated 08.08.2019 and 05.09.2019 but the Respondent did not give any reply to said letters and adopted a casual and ignoring attitude.
18. The Forum had not considered the pleadings and documentary evidence produced by the parties while passing the order dated 11.09.2020. The judgment had not touched the core issue involved between the parties. Hence, the said judgment was not sustainable in the eyes of law.
19. The Appellant had no other efficacious remedy except to approach this Court.
20. It was prayed that the judgment dated 11.09.2020 of the Forum may be set aside and to declare the recoveries of ₹ 16,59,136/-, ₹ 35,89,541/-, ₹ 19,03,104/- and ₹ 15,32,887/- as illegal, null and void.
21. **Submissions during Hearing**

During hearing on 11.11.2020, the Appellant’s Representative reiterated the submissions already made in the Appeal and prayed to allow the same.

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

The Respondent, in its written reply sent vide Memo No. 13298 dated 28.10.2020, made the following submissions for consideration of the Court:

1. The Appellant was having an electric connection bearing Contract Account No. 3002309263, in the name of Divisional Superintendent/Northern Railways, Bhatinda under Bulk Supply Category.
2. The Appellant was registered with the Respondent on 11.05.1972. The Appellant had extended its load to 1540 kW and CD as 1750 kVA on 23.09.2003 vide SJO No. 10/9175.
3. The premises of the Appellant were checked on 27.08.2010 by Enforcement Team, Bhatinda which reported that total connected load of the Appellant was 3750 kVA against the sanctioned load of 1750 kVA at that time. Therefore, an amount of ₹ 62,30,787/- was charged in compliance to CC No. 36/2006 and CC No. 13/2010. The amount was charged in the bills of the Appellant and the Appellant paid the whole amount in installments with monthly electricity bills for the period 09/2011 to 09/2012.
4. The Appellant had signed A&A form for extension of load to 3750 kVA on 30.01.2013 but this load could not be updated in system as the Appellant was asked to apply for feasibility clearance vide letter No. 922 dated 10.04.2013. The Appellant had not given any revised Test Report after reducing load, so, the Appellant had accepted the load of 3750 kVA installed at its premises. With the implementation of CC No. 46/2017 (New Tariff order in terms of Two-Part Tariff) applicable from 01.01.2018, the Appellant was required to pay for both the energy charges and fixed charges in the monthly bills. As the load of 3750 kVA was not updated in the SAP system, therefore, monthly bills raised to the Appellant, were for the load of 1750 kVA instead of 3750 kVA. The Audit Party, during their audit of the Sub Division, raised 4 No. Half Margins during the period from 01.01.2018 to 16.10.2019. The Appellant had reduced its contract demand from 3750 kVA to 1500 kVA after filing A&A form on 10.09.2019. The total chargeable amount mentioned in Half Margins was

₹ 86,85,678/- (₹ 19,03,104/- + ₹ 16,59,136/- + ₹ 35,89,541/- +

₹ 15,33,897/-) out of which, the Appellant had made payment of amounts mentioned in 3 No. Half Margins for ₹ 71,51,781/-(₹ 19,03,104/- + ₹ 16,59,136/-+ ₹ 35,89,541/-) in the bills. The Fourth Half Margin was raised on 07.01.2020 vide Memo No. 233 dated 31.01.2020 against which, payment was not made. These Half Margins were raised to charge the amount against the fixed charges for the difference of 2000 kVA (3750-1750 kVA) in the electricity bills. Hence the amount charged to the Appellant was correct and recoverable as per the instructions of PSPCL.

1. It was incorrect to state that the judgment passed by CGRF, Patiala was unjust, improper and illogical.
2. The Appellant was having sanctioned load of 1500 kVA and not 1750 kVA (CD reduced from 3750 kVA to 1500 kVA).
3. It was incorrect to state that 2 No. transformers of 1000 kVA capacity each were not connected with the load because during checking by the Enforcement Team, Bhatinda on 27.08.2010, it was particularly mentioned that all the 5 transformers were found in running condition in the presence of Appellant’s Representative whose signatures were obtained on the checking report.
4. It was incorrect to state that the amount levied as penalty of ₹ 62,30,787/- was illegal. The said amount was calculated as per CC No. 36/2006 and CC No. 13/2010. The Appellant was issued the Notice to pay the amount as per norms of the Respondent and thereafter, the amount was charged in bills for the months of 09/2011 to 09/2012 and the Appellant paid the said amount. Hence, there were no compelling circumstances.
5. The Appellant had signed A&A form to revise its load from 1750 kVA to 3750 kVA on 26.04.2013 and this proved that the Appellant intentionally paid the penalty amount in the monthly bills.
6. With the implementation of CC No. 46/2017 (New Tariff Order in terms of Two-Part Tariff) applicable from 01.01.2018 under which, the Appellant was required to pay for both the energy charges and fixed charges in the Monthly Bills. As the load of 3750 kVA was not updated in the SAP system, monthly bills raised to the Appellant were for the load of 1750 kVA instead of 3750 kVA. Prior to CC No. 46/2017, the Appellant was charged for Energy Charges or MMC whichever was higher.
7. It was correct that the Appellant was a Public Body of the Union of India and Respondent was a Public Body of the State and the amount of ₹ 86,85,678/- raised was in accordance with the Commercial Circulars of the Respondent (PSPCL).
8. It was incorrect that the Respondent had adopted casual and ignoring attitude to the Appellant. During the visit of the Representative of the Appellant to the office of the Respondent, he was made well aware of all the regulations according to which, the amount was charged to the Appellant from time to time.
9. It was incorrect to state that A&A form remained in limbo from 26.04.2013 to 2018. Before 01.01.2018, monthly bills raised to Appellant were of energy charges or MMC whichever was higher. Therefore, the bills raised to the Appellant from 2013 to 2018 were always higher than MMC charges but after implementation of CC No. 46/2017 (New Tariff Order in terms of Two Part Tariff) applicable from 01.01.2018 under which, the Appellant was required to pay the energy charges and fixed charges both in the monthly bills.
10. It was incorrect to state that Respondent had tempered with A&A form. It was incorrect to state that the Appellant signed A&A form on 26.04.2013 as A & A form was signed before 30.01.2013 by the Appellant. It was incorrect to state that Memo No. 922 dated 10.04.2013 was not served upon the Appellant as the Respondent had applied the form CS-1(R) on 26.04.2013 under the signatures of SSE/Elect., Bhatinda Junction and Asstt. Electrical Engineer/G, Northern Railways, Ambala Cantt.
11. The amount charged to the Appellant was correct and recoverable.
12. **Submission during Hearing**

During hearing on 11.11.2020, the Respondent reiterated the submissions made in the written reply and prayed for the dismissal of the Appeal.

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

The issue requiring adjudication is the legitimacy of the amount of ₹ 86,85,678/- charged to the Appellant as Fixed charges for the period from 01.01.2018 to 16.10.2019, due to difference of load of 2000 kVA (i.e. 3750-1750 ), as per Commercial Circulars issued by PSPCL from time to time.

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

1. The relevant facts of the case are that the Appellant-Railways was registered as consumer with the Respondent on 11.05.1972 and got its load extended to 1540 kW and 1750 kVA as CD with effect from 23.09.2003. The connection of the Appellant was checked on 27.08.2010 by the Enforcement which reported that connected load of the Appellant’s connection was 3750 kVA (with 05 distribution transformers installed and running) against the sanctioned contract demand of 1750 kVA at that time. As a result, a sum of ₹ 62,30,787/- was charged to the Appellant who paid the same in installments with the monthly electricity bills for the period from 09/2011 to 09/2012. Thereafter, the Appellant requested the Respondent on 30.01.2013 (through A & A Form) for sanction of extension in Contract Demand (CD) from 1750 kVA to 3750 kVA. In response, the Appellant was asked to submit feasibility clearance by the Respondent vide its office letter no. 922 dated 10.04.2013. The Appellant submitted the requisition form (PSPCL CS-1 ( R ) ) on 26.04.2013 which was recommended by AE/ Commercial-2 , PSPCL, Bhatinda. But the said A & A Form was not registered/updated in PSPCL system and feasibility clearance was not granted by the Competent Authority. However, energy bills for the period 2013 to 2017 were issued on the basis of energy charges or MMC whichever was higher taking into account the contract demand of 1750 kVA. These bills were paid by the Appellant. Subsequently, as per Tariff Order FY 2017-18 approved by the PSERC, Two Part Tariff was made applicable from 01.01.2018 vide CC No. 46/2017 issued by PSPCL. As per this Two Part Tariff Scheme, the Appellant was required to pay fixed charges on the basis of sanctioned contract demand and additional energy charges based on actual consumption. During the audit of the accounts of the Sub Division, the Audit Party raised 4 No. Half Margins relating to the period from 01.01.2018 to 16.10.2019 (the date after which, the Appellant had reduced its contract demand to 1500 kVA after filing A&A form on 10.09.2019). The total chargeable amount mentioned in the said Half Margins was

₹ 86,85,678/- (₹ 19,03,104/-+ ₹ 16,59,136/- + ₹ 35,89,541/- + ₹ 15,33,897/-). Out of the said amount of ₹ 86,85,678/-, the Appellant had made payment of amounts mentioned in 3 No. Half Margins for ₹ 71,51,781/- (₹ 19,03,104/- + ₹ 16,59,136/-+ ₹ 35,89,541/-) through the electricity bills. The Fourth Half Margin was raised vide Memo No. 233 dated 31.01.2020 against which, payment was not made. These Half Margins were raised to charge/levy the amount against the fixed charges for the difference of CD of 2000 kVA (3750-1750 kVA) in the electricity bills. Aggrieved, the Appellant approached the Forum who, vide order dated 11.09.2020, upheld the amount charged to the Appellant.

1. The Appellant’s Counsel submitted that the PSPCL had never revised the load of the Appellant from 1750 kVA to 3750 kVA. The Appellant had filled the A & A form on 26.04.2013 but PSPCL had never considered it. Accordingly, in the SAP system of PSPCL and in monthly running bills, sanctioned contract demand was 1750 kVA. There was not even iota of evidence on the record which revealed that 3750 kVA contract demand was ever sanctioned. Therefore, the recovery based upon CD of 3750 kVA was apparently illegal. The Forum had given a clear-cut finding that A & A form remained in limbo from 26.04.2013 to 2018. This meant that PSPCL had not taken any decision on the A & A form upto the implementation of new Tariff Scheme implemented in 2018. It was duly proved from the record produced by the PSPCL that upto 2018, sanctioned load was 1750 kVA. Thereby, while implementing the new tariff scheme, PSPCL had rightly charged the fixed charges on the basis of sanctioned contract demand of 1750 kVA. However, subsequently, PSPCL illegally considered the sanctioned load as 3750 kVA without any base and wrongly raised recoveries against the Appellant merely to give wrongful gain to PSPCL.A bare perusal of A&A form dated 26.04.2013 revealed that the same had been tampered with by the PSPCL as higher officers of the PSPCL made recommendations on 30.01.2013 prior to submission of form. Actually, in the year 2018, new tariff scheme was implemented and the officers of the PSPCL had tampered with the A & A form in 2018 in back dates and raised recovery against the Appellant by applying sanctioned contract demand as 3750 kVA. The entire stand of PSPCL was that load could not be updated in the system as the Appellant was asked to apply for feasibility clearance vide letter No. 922 dated 10.04.2013 and the Appellant failed to do so. The stand of the PSPCL also proved false as the Appellant signed the A & A form on 26.04.2013 but as per PSPCL version, in response to the said A & A form, they asked the Appellant to apply for feasibility clearance vide letter No. 922 dated 10.04.2013 which was factually not possible as letter dated 10.04.2013 was 16 days prior to the date of A&A form i.e. 26.04.2013. Therefore, the said letter was also tampered. The Appellant categorically denied that the said letter dated 10.04.2013 was ever served upon the Appellant. The onus of proof regarding service of the letter dated 10.04.2013 rested with PSPCL. But, PSPCL failed to produce any proof that the said letter had ever been served upon the Appellant. Therefore, the plea taken by the PSPCL qua demand of feasibility clearance proved false. The sanctioned load of 1750 kVA was rightly uploaded in the PSPCL system. The Forum had over looked the said material facts. Therefore, the Forum had made a glaring illegality while deciding the matter. The judgment dated 11.09.2020 of the Forum was self-contradictory as the Forum had held that A & A form dated 26.04.2013 remained in limbo upto implementation of new tariff scheme. Therefore, no decision was taken by the PSPCL on A & A form upto 2018. Hence, the sanctioned load was 1750 kVA at the time of implementation of new tariff scheme. Therefore, no question arose to charge from the Appellant more than that the impugned judgment of the Forum was self-contradictory. The Forum had not considered the pleadings and documentary evidence produced by the parties while passing the order dated 11.09.2020. The judgment had not touched the core issue involved between the parties. Hence, the said judgment was not sustainable in the eyes of law.
2. The Respondent, in its defence, submitted that it was wrong to observe that A & A form remained in limbo from 26.04.2013 to 2018. Before 01.01.2018, monthly bills raised to the Appellant were of energy charges or MMC whichever was higher. Therefore, the bills raised to the Appellant from 2013 to 2017 were always higher than MMC charges but after implementation of CC No. 46/2017 (New Tariff Order in terms of Two Part Tariff) applicable from 01.01.2018 , the Appellant was required to pay the energy charges and fixed charges both in the monthly bills. The Appellant’s counsel falsely stated that Respondent had tempered with A & A form and also that it had signed A & A form on 26.04.2013 as A & A form was signed before 30.01.2013 by the Appellant. The Appellant’s Counsel wrongly pleaded that Memo No. 922 dated 10.04.2013 was not served upon the Appellant as the Respondent had applied the form CS-1(R) on 26.04.2013 under the signatures of SSE/Elect., Bhatinda Junction and Asstt. Electrical Engineer/G, Northern Railways, Ambala Cantt. The amount charged to the Appellant was correct and recoverable as also decided by the Forum.

The Addl. S.E., DS Division, PSPCL, Bhatinda, on being asked during hearing on 11.11.2020, stated that approval/ sanction for extension in CD from 1750 kVA to 3750 kVA, was not taken from the Competent Authority as per material available on record of the Division. Further, the feasibility clearance from the Competent Authority for release of extension in load/ contract demand was not obtained even though full Service Connection Charges and Security (Consumption) were recovered from the Appellant during the period 09/2011 to 09/2012. The Respondent could not produce the copy of any notice given to the Appellant on the basis of checking of Enforcement done on 27.08.2010. The respondent failed to produce any copy of notice served to the Appellant for removal of extended load after checking done on 27.08.2010. He also intimated that no punitive action was taken against the defaulting officers/officials of PSPCL.

1. As per material on record, the Audit Party charged the disputed amount to the Appellant on the basis of Two Part Tariff Structure approved by PSERC which was circulated by PSPCL vide the following Commercial Circulars:
2. Commercial Circular No. 46/2017 which was issued vide Memo No. 1244/48/ Tariff FY 2017-18 dated 10.11.2017.
3. Commercial Circular No. 23/2018 which was issued vide Memo No. 798/802/Tariff FY 2018-19 dated 24.04.2018.
4. Commercial Circular No. 24/2019 which was issued vide Memo No. 333/337/Tariff FY 2019-20 dated 31.05.2019.
5. With a view to adjudge/adjudicate the legitimacy of the plea of the Appellant that it was not liable to pay the disputed amount of ₹ 86,85,678/- charged as Fixed Charges for the difference in contract demand of 2000 kVA for the period 01.01.2018 to 16.10.2019,it is worthwhile to peruse the instructions contained in ESIM 2011 reproduced below:

Instruction No. 4.1

*“The application of a prospective/existing consumer for a new connection/ extension in load or contract demand above 500 KVA shall require feasibility clearance from the competent authority before registration of the application. The applicant will also intimate the proposed commissioning schedule along with the requisition form which will be available in the notified offices of PSPCL free of cost or website. Accordingly, his request shall be entertained on requisition from CS-I(R) (Annexure-6 of COS) for feasibility clearance (7 copies) with requisite amount of earnest money @ of 10% of the applicable initial security as per schedule of general charges (adjustable towards initial security). Application shall be received directly in the office of SE (DS) who will get the earnest money deposited in the nearest Distribution Sub-Division convenient to the applicant.”*

Instruction No. 4.3

*“SE (DS) will ensure that all the requisitions are processed and feasibility clearance issued within 30 days as specified in the Regulation - 5 of Supply Code (or amendment thereof)in respect of cases falling within his competency. SE (DS) will process the requisitions in his office and will not pass it on to Sr.Xen/ Addl. SE (DS) or Xen/AEE/AE (DS). He will forward the requisition falling beyond his competency to the Chief Engineer/Commercial with a copy to CE/Planning alongwith requisite data within 7 days for feasibility clearance within thirty days. Where the feasibility clearance is likely to take more than 30 days, SE/DS shall seek the approval of Commission within 15 days of receipt of requisition, and CE/Commercial shall be informed in all such cases.”*

Instruction No. 4.6 (ii)

*“If the total contract demand after taking into consideration the increase in demand, exceeds 2 MVA, the case shall be referred by Dy.CE/SE (DS) to CE (Comml.) with a copy to CE/Planning only if the increase in demand exceeds 500 kVA for feasibility clearance. Copy of the proposal shall also be sent to CE/TL & CE/SS where load is to be fed at 33/66/132/220 KV.”*

Instruction No. 4.7 of ESIM- 2011 states as under:

***“4.7 Permission for Registration of Application/Feasibility Clearance:***

1. *Consequent upon the receipt of permission / feasibility clearance for registration of application, necessary intimation with regard to compliance by the applicant will be given by AE/AEE/XEN (DS) within one month to the authority granting permission / feasibility clearance.*
2. *After issue of feasibility clearance, the period for registration of A & A Forms alongwith initial security and security meter shall be 30 days only which can be extended up to 60 days (including 30 days allowed in the first instance) by SE/Dy.CE (DS). No request for further extension beyond above period shall be entertained and feasibility clearance / permission shall stand cancelled and earnest money will be forfeited.”*
3. A perusal of Maximum Demand recorded in respect of the Appellant’s connection for the years 2010 to 2019, as per the following consumption data supplied by the Respondent, revealed that MDI did not exceed the sanctioned contract demand of 1750 kVA:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **New Reading Date** | **Old Reading Date** | **MDI (kVA)** | **New Reading Date** | **Old Reading Date** | **MDI (kVA)** |
| 01/02/2010 | 01/01/2010 | 0.00 | 9/1/2015 | 8/1/2015 | 1220.85 |
| 01/03/2010 | 01/02/2010 | 0.00 | 9/30/2015 | 9/1/2015 | 1099.45 |
| 01/04/2010 | 01/03/2010 | 0.00 | 10/30/2015 | 9/30/2015 | 0.81 |
| 01/05/2010 | 01/04/2010 | 996.95 | 11/30/2015 | 10/30/2015 | 621.15 |
| 01/06/2010 | 01/05/2010 | 1045.65 | 1/1/2016 | 11/30/2015 | 657.40 |
|  01/07/2010 | 01/06/2010 | 1049.10 | 2/1/2016 | 1/1/2016 | 727.05 |
| 01/08/2010 | 01/07/2010 | 1071.70 | 3/2/2016 | 2/1/2016 | 693.05 |
| 01/09/2010 | 01/08/2010 | 1093.20 | 4/1/2016 | 3/2/2016 | 722.75 |
| 01/10/2010 | 01/09/2010 | 1048.80 | 4/30/2016 | 4/1/2016 | 909.70 |
| 09/11/2010 | 01/10/2010 | 906.10 | 5/31/2016 | 4/30/2016 | 1045.05 |
| 10/12/2010 | 09/11/2010 | 840.80 | 7/1/2016 | 5/31/2016 | 1169.80 |
| 01/01/2011 | 10/12/2010 | 803.05 | 8/1/2016 | 7/1/2016 | 1174.00 |
| 04/02/2011 | 01/01/2011 | 931.30 | 9/1/2016 | 8/1/2016 | 1130.55 |
| 01/03/2011 | 04/02/2011 | 778.85 | 10/1/2016 | 9/1/2016 | 974.65 |
| 01/04/2011 | 01/03/2011 | 828.55 | 1/2/2017 | 10/1/2016 | 610.00 |
| 01/05/2011 | 01/04/2011 | 1044.25 | 1/31/2017 | 1/2/2017 | 695.75 |
| 01/06/2011 | 01/05/2011 | 1124.85 | 2/28/2017 | 1/31/2017 | 605.65 |
| 01/07/2011 | 01/06/2011 | 1292.60 | 4/1/2017 | 2/28/2017 | 701.25 |
| 01/08/2011 | 01/07/2011 | 1239.60 | 5/1/2017 | 4/1/2017 | 881.45 |
| 01/09/2011 | 01/08/2011 | 1337.90 | 5/31/2017 | 5/1/2017 | 1028.80 |
| 01/10/2011 | 01/09/2011 | 1246.95 | 7/1/2017 | 5/31/2017 | 1081.80 |
| 01/11/2011 | 01/10/2011 | 1182.20 | 7/31/2017 | 7/1/2017 | 1097.25 |
| 01/12/2011 | 01/11/2011 | 1154.35 | 8/31/2017 | 7/31/2017 | 1072.80 |
| 04/01/2012 | 01/12/2011 | 1383.80 | 10/1/2017 | 8/31/2017 | 982.50 |
| 02/02/2012 | 04/01/2012 | 1383.80 | 11/1/2017 | 10/1/2017 | 822.00 |
| 01/03/2012 | 02/02/2012 | 998.60 | 12/3/2017 | 11/1/2017 | 567.55 |
| 02/04/2012 | 01/03/2012 | 795.20 | 1/2/2018 | 12/3/2017 | 588.75 |
| 01/05/2012 | 02/04/2012 | 937.35 | 1/15/2018 | 1/2/2018 | 800.00 |
| 02/06/2012 | 01/05/2012 | 1158.70 | 1/16/2018 | 1/15/2018 | MCO |
| 03/07/2012 | 02/06/2012 | 1206.00 | 1/31/2018 | 1/16/2018 | 654.04 |
| 02/08/2012 | 03/07/2012 | 1210.30 | 2/28/2018 | 1/31/2018 | 573.96 |
| 01/09/2012 | 02/08/2012 | 1139.25 | 3/31/2018 | 2/28/2018 | 594.20 |
| 01/10/2012 | 01/09/2012 | 1083.15 | 4/30/2018 | 3/31/2018 | 787.20 |
| 05/11/2012 | 01/10/2012 | 903.45 | 5/31/2018 | 4/30/2018 | 971.02 |
| 05/12/2012 | 05/11/2012 | 810.60 | 6/28/2018 | 5/31/2018 | 998.29 |
| 02/01/2013 | 05/12/2012 | 782.00 | 7/31/2018 | 6/28/2018 | 1055.59 |
| 01/02/2013 | 02/01/2013 | 860.40 | 8/31/2018 | 7/31/2018 | 1079.27 |
| 01/03/2013 | 01/02/2013 | 723.85 | 9/30/2018 | 8/31/2018 | 975.10 |
| 01/04/2013 | 01/03/2013 | 683.50 | 10/31/2018 | 9/30/2018 | 975.10 |
| 01/05/2013 | 01/04/2013 | 645.10 | 11/30/2018 | 10/31/2018 | 552.49 |
| 01/06/2013 | 01/05/2013 | 1018.50 | 12/31/2018 | 11/30/2018 | 631.35 |
| 01/07/2013 | 01/06/2013 | 1093.20 | 1/31/2019 | 12/31/2018 | 678.45 |
| 01/08/2013 | 01/07/2013 | 1095.70 | 2/28/2019 | 1/31/2019 | 598.12 |
| 01/09/2013 | 01/08/2013 | 1068.60 | 3/31/2019 | 2/28/2019 | 538.29 |
| 03/10/2013 | 01/09/2013 | 1023.55 | 4/30/2019 | 3/31/2019 | 813.47 |
| 02/11/2013 | 03/10/2013 | 912.60 | 5/31/2019 | 4/30/2019 | 939.18 |
| 01/12/2013 | 02/11/2013 | 659.80 | 6/30/2019 | 5/31/2019 | 1043.43 |
| 03/01/2014 | 01/12/2013 | 751.00 | 7/21/2019 | 6/30/2019 | 1076.82 |
| 03/02/2014 | 03/01/2014 | 751.00 | 8/21/2019 | 7/21/2019 | 1007.92 |
| 01/03/2014 | 03/02/2014 | 751.05 | 9/21/2019 | 8/21/2019 | 1073.06 |
| 01/04/2014 | 01/03/2014 | 648.50 | 10/16/2019 | 9/21/2019 | 933.80 |
| 01/05/2014 | 01/04/2014 | 834.20 | 10/21/2019 | 10/16/2019 | 933.80 |
| 04/06/2014 | 01/05/2014 | 943.10 |  |  |  |
| 01/07/2014 | 04/06/2014 | 990.45 |  |  |  |
| 02/08/2014 | 01/07/2014 | 1064.30 |  |  |  |
| 01/09/2014 | 02/08/2014 | 1078.70 |  |  |  |
| 02/10/2014 | 01/09/2014 | 967.20 |  |  |  |
| 01/11/2014 | 02/10/2014 | 898.40 |  |  |  |
| 01/12/2014 | 01/11/2014 | 662.15 |  |  |  |
| 01/01/2015 | 01/12/2014 | 753.80 |  |  |  |
| 02/02/2015 | 01/01/2015 | 720.75 |  |  |  |
| 02/03/2015 | 02/02/2015 | 623.20 |  |  |  |
| 01/04/2015 | 02/03/2015 | 649.35 |  |  |  |
| 5/1/2015 | 4/2/2015 | 811.00 |  |  |  |
| 5/31/2015 | 5/1/2015 | 1003.95 |  |  |  |
| 7/1/2015 | 5/31/2015 | 1002.45 |  |  |  |
| 8/1/2015 | 7/1/2015 | 1133.15 |  |  |  |

1. After going through oral and written submissions as well as material/evidence brought on record by both the sides, it is observed that:
2. No feasibility clearance was obtained from the office of CE/ Commercial for release in extension of contract demand upto 3750 kVA as per Instruction No. 4.3 of ESIM-2011.
3. No Demand Notice in regard to A & A forms of the Appellant seeking extension of contract demand from 1750 kVA to 3750 kVA in the year 2013 was issued by the Respondent.
4. No Test Report, mandatorily required for extension in contract demand, was obtained from the Appellant by the Respondent.
5. No Sundry Job Order/Service Connection Order was issued by the Respondent for release of extension in Contract Demand from 1750 kVA to 3750 kVA.
6. Approval / Sanction of the Competent Authority viz. EIC/CE/DS, Bhatinda was not taken for release of extension of Contract Demand from 1750 kVA to 3750 kVA as required under Instruction No. 16.2 of ESIM -2011.
7. The energy bills issued to the Appellant from the year 2010 to 2018 showed Contract Demand as 1750 kVA.
8. Contract Demand, stated by the Respondent to have been enhanced/extended as 3750 kVA in the year 2013, was not shown in energy bills issued to the Appellant.
9. Consumption Data of the Appellant’s connection for the disputed period i.e. 01.01.2018 to 16.10.2019 does not give any indication that the Appellant had exceeded contract demand beyond 1750 kVA.
10. From the above analysis, it is concluded that the Respondent failed to provide any valid documentary evidence to prove that Contract Demand of the Appellant’s connection was ever sanctioned as 3750 kVA after submission of A & A forms and Requisition Forms for feasibility clearance during the year 2013although all the necessary Service Connection Charges / Securities were recovered from the Appellant during the period 09/2011 to 09/2012 through electricity bills. Rather, the Respondent defaulted in discharging its duties and responsibilities in accordance with its own instructions. The Respondent failed to release the extension in contract demand as per Supply Code applicable from time to time. The Respondent failed to apply to PSERC for extension in time for release of this extension in load/ contract demand which is mandatory in case of delay in release of extension in contract demand due to any valid reason. Fixed Charges are levible on the basis of Sanctioned Contract Demand only as per formula approved by PSERC in Tariff Orders. Contract Demands applied by the Consumers but not sanctioned by PSPCL as per its own instructions cannot be made the base for raising electricity bills. It is not at all just and fair to charge Fixed Charges (as per applicable Two Part Tariff Structure) to the Appellant for the difference in Contract Demand of 2000 kVA (3750-1750 kVA)for the period 01.01.2018 to 16.10.2019 without ensuring its sanction/approval by the Competent Authority. Thus, charging of the disputed amount to the Appellant by the Respondent which was held recoverable by the Forum, vide order dated 11.09.2020, is not sustainable in the eyes of law.

**6. Decision**

As a sequel of above discussions, the order dated 11.09.2020 of CGRF, Patiala in Case No. CGP-32 of 2020 is set aside. It is held that the Appellant is not liable to pay Fixed Charges (as per Two Part Tariff Structure) for the period from 01.01.2018 to 16.10.2019 for the difference in Contract Demand of 2000 kVA (3750-1750 kVA) because 3750 kVA contract demand (forming the basis of charging of the disputed amount)was not ever sanctioned by the Competent Authority of PSPCL although the Appellant had deposited all the necessary charges for this purpose during the period 09/2011 to 09/2012. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustments as per instructions of the PSPCL.

**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)

November 18, 2020 Lokpal (Ombudsman)

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