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

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

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

 **APPEAL NO. 03/2021**

**Date of Registration : 13.01.2021**

**Date of Hearing : 03.02.2021**

**Date of Order : 08.02.2021**

**Before:**

**Er. Gurinder Jit Singh,**

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

**In the Matter of:**

Ashwani Kumar S/o Sh. Madan Lal,

Prime Farms Chowk, Bughipura,

G.T. Road, Moga-142001.

**Contract Account Number 3002347853**  ...Appellant

 Versus

Addl. Superintending Engineer,

DS, City Division, PSPCL, Moga.

 ...Respondent

Appellant : 1. Sh. Navtej Pal Dhingra,

 Appellant’s Representative (AR).

 2. Sh. Manjit Kumar,

 Appellant’s Representative (AR).

 3. Sh. Akshay Kansal

 Appellant’s Representative (AR).

Respondent: 1. Er. Amarjit Singh,

Addl. Superintending Engineer,

DS City Division, PSPCL, Moga.

 2. Er. Bhupinder Singh,

Assistant Engineer,

DS City Division, PSPCL, Moga.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 07.12.2020 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-187 of 2020, deciding that:

*“The Sundry amount of Rs. 1,59,037/- charged as per Transformer charges in the energy bill for the month of 05/2010 is not recoverable and be refunded to the petitioner without any interest.”*

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

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 13.01.2021 i.e. within thirty days of receipt of the decision dated 07.12.2020 of the CGRF, Patiala in Case No. CGP-187 of 2020 by the Appellant. In the present Appeal, the Appellant claimed interest on the amount of Transformer Charges ordered to be refunded by the Forum. As such, the Appellant was not required to deposit the requisite 40% of the disputed amount for filing the Appeal in this Court. Therefore, the Appeal was registered and copy of the same was sent to the Addl. Superintending Engineer/ DS City Division, PSPCL, Moga for sending written reply/ parawise comments with a copy to the office of the CGRF, Patiala under intimation to the Appellant vide letter nos. 51-53/OEP/A-03/2021 dated 13.01.2021.

**3.** **Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 03.02.2021at 12.00 Noon and an intimation in this regard was sent to both the sides vide letter nos. 95-96/OEP/A-03/2021 dated 25.01.2021. As scheduled, the hearing was held on 03.02.2021 in this Court and the order was reserved. Copies of the minutes of the proceedings were sent to the Appellant and the Respondent vide letter nos. 112-13/OEP/A-03/2021 dated 03.02.2021.

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

Before undertaking analysis of the case, it is necessary to go through written submissions made by the Appellant and reply of the Respondent as well as oral submissions made by the Appellant’s Counsel and the Respondent alongwith material brought on record by both the sides.

1. **Submissions of the Appellant**

**(a) Submissions made in the Appeal**

The Appellant made the following submissions in its Appeal for consideration of this Court:

1. The impugned order dated 07.12.2020 was dispatched by the Forum vide its Memo No. 2739/CGP-187/2020 dated 08.12.2020 through registered post bearing consignment no. RP939808124IN booked on 08.12.2020 and was received by the Appellant on 24.12.2020, which was evident from the track consignment data. Thus, the Appeal was within limitation.
2. The Appellant was having a Non Residential Supply Category Connection, bearing Account No. 3002347853, with sanctioned load of 280.852 kW. Earlier, the sanctioned load of the Appellant was 98.460 kW. The connection of the Appellant was checked by the Respondent on 29.12.2009 when it was found that the connected load of the Appellant was 190.852 kW. The Respondent issued notice bearing no. 2679 dated 04.01.2010 to the Appellant to deposit ₹ 1,54,893/- for regularization of unauthorized load and the same was deposited by the Appellant on 29.01.2010.
3. In the bill issued on 11.05.2010 for ₹ 1,87,510/- for the period from 29.03.2010 to 29.04.2010, a sum of ₹ 1,59,037/- was included as Sundry Charges without giving any notice to the Appellant. On inquiry by the Appellant from the Respondent, it was told by the officials of the Respondent that the amount of ₹ 1,59,037/- was on account of Transformation Charges. On 24.05.2010, the Appellant moved an application to the Respondent vide which, it requested that the Appellant would purchase its own transformer and also requested to withdraw the amount of ₹ 1,59,037/- charged on account of Transformation Charges. But, the Respondent had not withdrawn the said amount. To avoid disconnection and surcharge, the Appellant had deposited the amount of Transformation Charges alongwith current energy bill of ₹ 1,87,510/- on 26.05.2010. The Appellant had purchased its own transformer on 21.08.2010 and submitted bill of the transformer to the Respondent. The Respondent neither made any expenditure on the transformer nor refunded the Transformation Charges illegally got deposited from the Appellant. The Appellant had not made any request to the Respondent for availing LT Supply. Rather, the Appellant moved an application to the Respondent on 24.05.2010 intimating that it would purchase its own transformer and requested to refund the amount of Transformation Charges. The Respondent had not made any refund of the amount of Transformation Charges illegally got deposited from the Appellant. So, the Appellant lodged a complaint to the higher authorities of the Respondent against Sh. Jagdish Kumar, RA. The Appellant had not got refund of ₹ 1,59,037/- deposited on account of Transformation Charges. Therefore, the Appellant filed Petition No. CGP-187/2020 before the CGRF, Patiala for refund of ₹ 4,11,905/- (₹ 1,59,0373/- deposited on account of Transformation Charges and ₹ 2,52,868/- on account of interest on the amount of Transformation Charges, for the period from 06/2010 to 06/2019 @ 18% per annum). The Forum, vide impugned order, directed to refund ₹ 1,59,037/- without interest. Feeling aggrieved against the impugned order, the Appellant had filed the present Appeal.
4. The impugned order was not sustainable in the eyes of law. The same was whimsical and arbitrary and was, therefore, liable to be set aside and deserved to be modified.
5. Notice bearing No. 2679 dated 04.01.2010 issued by the Respondent vide which, the Appellant was asked either to purchase its own Transformer or to deposit Transformation Charges, was against the instructions and Commercial Circular No. 61/2008 dated 10.10.2008 of the Respondent. The Respondent had no discretion to release the load on LT after recovering Transformation Charges. The connection of the Appellant was checked on 29.12.2009 after issuance of the said Commercial Circular. The load of the Appellant was to be regularized only at 11 kV by installing own Transformer by the Appellant. The Appellant was compelled to deposit ₹ 1,59,037/- on account of Transformation Charges and it also purchased its own 200 kVA Transformer. As such, the Appellant was entitled to refund of ₹ 1,59,037/- charged and recovered as Transformation Charges through the energy bill for the month of 05/2010 alongwith interest @ 18% per annum from the date of deposit i.e 26.05.2010 till date on the amount of ₹ 1,59,037/- illegally got deposited from the Appellant as Respondent had utilized ₹ 1,59,037/- for the period from 26.05.2010 to till date. The Respondent can be compensated by recovering this amount of interest from the officers/officials of the Respondent personally who wrongly got deposited the Transformation Charges by violating the instructions contained in the above mentioned Circular.
6. The Appellant had spent ₹ 1,79,349-88 for purchase of its own 200 kVA transformer and also deposited ₹ 1,59,037/ as Transformation Charges. The Appellant had spent total amount of ₹ 3,38,386.88 (₹ 1,79,349.88 + ₹ 1,59,037/-) instead of ₹ 1,79,349.88 only.
7. There were sufficient and plausible reasons for the acceptance of the present Appeal.
8. In view of the submissions made above, the Appellant had prayed that impugned order dated 07.12.2020 be modified to the extent that sundry amount of ₹ 1,59,037/- charged and recovered from the Appellant as Transformation Charges in the energy bill for the month of 05/2010 was not recoverable and be refunded to the Appellant with interest @ 18% per annum from the date of deposit i.e. 26.05.2010 till date of payment.

(b) **Submission during hearing**

During hearing on 03.02.2021 the Appellant reiterated the submissions made in the Appeal and prayed to allow the same.

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

The Respondent submitted the following written reply for consideration of this Court:

1. The alleged cause of action regarding subject matter related to the year 2009-10. Hence, the Complaint/Appeal was time barred as per Regulation 2.25 of PSERC (Forum and Ombudsman) Regulations, 2016 which provided that the Forum shall entertain only those complaints where the representation was made within 2 years from the date of cause of action.
2. The consumer was having an NRS Category Connection, bearing A/c No.GC-25/65 (now 3002347853) with load of 98.460 kW under Sub urban Sub Division, Moga.
3. The connection of the consumer was checked vide Checking Report No. 19/201 dated 29.12.2009 and it was found that he was running excess load to the tune of 92.392 kW. Hence, AE/DS Sub urban Sub Division, Moga issued notice vide Memo No. 2679 dated 04.01.2010 to the consumer with the following demand:

|  |  |
| --- | --- |
| Detected Load  | 190.852 kW |
| Sanctioned Load  |  98.460 kW |
| Excess Load  |  92.392 kW |
| ACD | ₹ 43240 |
| SCC | ₹ 83153 |
| CT/PT Meter Security | ₹ 28500 |
| Total | ₹ 154893 |

1. It was further clarified in the above notice that alongside depositing ₹ 1,54,893/-, the consumer should submit a purchase bill regarding 200 kVA Transformer within 15 days, otherwise Transformation Charges of ₹ 1,50,000/- should be deposited separately. The consumer received the above notice on 11.01.2010 and for its compliance, reached the office of AE/DS Sub urban Sub Division, Moga on 29.01.2010 and wrote a note in his own hand on the said notice as under:

“ਮੈਂ ਬੇਨਤੀ ਕਰਦਾ ਹਾਂ ਕਿ ਫਾਈਲ, ਏਐਂਡਏ ਫਾਰਮ ਤੇ ਹੋਰ ਬਿੱਲ ਜੋ ਨੋਟਿਸ ਵਿੱਚ ਮੰਗੇ ਹਨ ਮੈਂ ਮਿਤੀ 1.2.2010 ਨੂੰ ਜਮ੍ਹਾਂ ਕਰਵਾ ਦੇਵਾਂਗਾ। ਕ੍ਰਿਪਾ ਕਰਕੇ ਪੈਸੇ ਜਮ੍ਹਾਂ ਕਰਵਾਏ ਜਾਣ।”

On the same day, the consumer deposited ₹ 1,54,893/- vide BA16 No. 372/92000. The consumer did not make full compliance of the notice thereafter. He neither deposited the demanded documents nor purchased the transformer or submitted any bill in this regard.

1. The Audit Party inspected the consumer case and prepared Half Margin No. 204 during 02/2010 considering the Power Factor (PF) as 0.90 and charged an amount of ₹ l,59,037/- on the sanctioned load @ ₹ 750/- per kVA. The compliance to observation of Half Margin was made by AE/DS, Sub urban Sub Division, Moga who charged the said amount as per ESIM No.19.3.2 through Sundry, which was reflected in his bill dated 11.05.2010 and was deposited by the consumer on 26.05.2010.
2. The Forum had acted beyond its jurisdiction as the cause of action related to the year 2009-10. Still, the compliance of said order of the Forum had been made.
3. The order dated 07.12.2020 did not require any modification as prayed by the Appellant. Rather, it was required to be fully set aside keeping in view the preliminary objection raised regarding maintainability of time barred representation in the Forum.
4. It was prayed that the Appeal of the Appellant may please be rejected and the order/judgment dated 07.12.2020 of the Forum may be fully set aside.

**(b)** **Submission during hearing**

During hearing on 03.02.2021, the Appellant reiterated the submissions made in the Appeal and prayed to allow the same.

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

The issue requiring adjudication is the legitimacy of the prayer of the Appellant for payment of interest @ 18 % per annum on the amount of ₹ 1,59,037/- got deposited as Transformation Charges on 26.05.2010 and ordered to be refunded by the Forum vide order dated 07.12.2020.

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

1. The relevant facts of the case are that NRS category connection of the Appellant was checked vide Checking Register No. 19/201 dated 29.12.2009 whereby, it was reported that connected load of the Appellant’s connection was 190.852 kW against the sanctioned load of 98.460 kW and excess load of 92.392 kW was running. Accordingly, the Respondent issued a notice vide Memo No. 2679 dated 04.01.2010 for depositing an amount of ₹ 1,54,893/- towards Service Connection Charges (SCC)/Security. It was mentioned in the said notice that alongside depositing ₹ 1,54,893/-, the consumer should submit a purchase bill regarding 200 kVA transformer within 15 days, otherwise, Transformation Charges of ₹ 1,50,000/- should be deposited separately. The amount of ₹ 1,54,893/- was deposited by the Appellant on 29.01.2010 but the transformer was not purchased by the Appellant. The Audit Party, during routine inspection, issued HM No. 204 in 02/2010 and charged an amount of ₹ 1,59,037/- on the sanctioned load @ Rs.750 per kVA. The Appellant applied for extension of load to 280.852 kW and CD as 280 kVA in May, 2010 and deposited Security on 09.08.2010 and demand notice was issued on 26.08.2010. The Appellant had purchased its own transformer on 21.08.2010 after applying for enhancement of load from 190.852 kW to 280.852 kW and not in compliance to the notice issued vide Memo No. 2679 dated 04.01.2010. Further, no rebate on billing was admissible and allowed from the date of deposit of Transformation Charges i.e. 26.05.2010 as the Supply was on LT side till 23.12.2010. As per material on record, the Appellant claimed the refund of Transformation Charges at a belated stage during 06/2019 only. Since the claim of the Appellant for refund of Transformation Charges and interest was not allowed by the Respondent, it approached the Forum in July 2020 for refund of Transformation Charges with interest. The Forum, after hearing both the sides, decided on 07.12.2020 that the Sundry Amount of ₹ 1,59,037/- charged as per Transformer Charges in the energy bill for the month of 05/2010 was not recoverable and be refunded to the Appellant without any interest.

(ii) The Appellant’s Counsel stated that Notice bearing No. 2679 dated 04.01.2010 issued by the Respondent asking the Appellant either to purchase its own Transformer or to deposit Transformation Charges, was against the instructions and Commercial Circular No. 61/2008 dated 10.10.2008 of the Respondent (PSPCL). The Respondent had no discretion to release the load on LT after recovering Transformation Charges. The connection of the Appellant was checked on 29.12.2009 after issuance of the said Commercial Circular. The load of the Appellant was to be regularized only at 11 kV by installing own Transformer by the Appellant. The Appellant was compelled to deposit ₹ 1,59,037/- on account of Transformation Charges and it also purchased its own 200 kVA Transformer. As such, the Appellant was entitled to refund of ₹ 1,59,037/- charged and recovered as Transformation Charges through the energy bill for the month of 05/2010. He claimed interest @ 18% per annum from the date of deposit i.e. 26.05.2010 till date on the amount of ₹ 1,59,037/- illegally got deposited from the Appellant as Respondent had utilized ₹ 1,59,037/- for the period from 26.05.2010 till date. The Respondent can be compensated by recovering this amount of interest from its officers/officials personally who wrongly got deposited the Transformation Charges by violating the instructions contained in the above mentioned Circular. The Appellant had spent ₹ 1,79,349-88 for purchase of its own 200 kVA transformer and also deposited ₹ 1,59,037/ as Transformation Charges. The Appellant had spent total amount of ₹ 3,38,386.88 (₹ 1,79,349.88 + ₹ 1,59,037/-) instead of ₹ 1,79,349.88 only. There were sufficient and plausible reasons for the acceptance of the present Appeal. The Appellant had prayed that impugned order dated 07.12.2020 be modified to the extent that sundry amount of ₹ 1,59,037/- charged and recovered from the Appellant as Transformation Charges in the energy bill for the month of 05/2010 was not recoverable and be refunded to the Appellant with interest @ 18% per annum from the date of deposit i.e. 26.05.2010 till date of payment.

(iii) The Respondent, in its defence, stated that the connection of the consumer was checked vide Checking Report No. 19/201 dated 29.12.2009 and it was found that he was running excess load to the tune of 92.392 kW. Hence, AE/DS Sub urban Sub Division, Moga issued notice vide Memo No. 2679 dated 04.01.2010 to the consumer charging it with a sum of ₹ 1,54,893/- on account of SCC, Security etc. It was further clarified in the above notice that alongside depositing ₹ 1,54,893/-, the consumer should submit a purchase bill regarding 200 kVA Transformer within 15 days, otherwise Transformation Charges of ₹ 1,50,000/- should be deposited separately. The consumer received the above notice on 11.01.2010 and for its compliance reached the office of AE/DS Sub urban Sub Division, Moga on 29.01.2010 and wrote a note in his own hand on the said notice as under:

 “ਮੈਂ ਬੇਨਤੀ ਕਰਦਾ ਹਾਂ ਕਿ ਫਾਈਲ, ਏਐਂਡਏ ਫਾਰਮ ਤੇ ਹੋਰ ਬਿੱਲ ਜੋ ਨੋਟਿਸ ਵਿੱਚ ਮੰਗੇ ਹਨ ਮੈਂ ਮਿਤੀ 1.2.2010 ਨੂੰ ਜਮ੍ਹਾਂ ਕਰਵਾ ਦੇਵਾਂਗਾ। ਕ੍ਰਿਪਾ ਕਰਕੇ ਪੈਸੇ ਜਮ੍ਹਾਂ ਕਰਵਾਏ ਜਾਣ।”

On the same day, the consumer deposited ₹ 1,54,893/- vide BA16 No. 372/92000. The consumer did not make full compliance of the notice thereafter. He neither deposited the demanded documents nor purchased the transformer or submitted any bill in this regard. The Audit Party inspected the case and prepared Half Margin No. 204 during 02/2010 considering the power factor as 0.90 and charged an amount of ₹ l,59,037/- on the sanctioned load @ ₹ 750/- per kVA. The compliance to observation of Half Margin was made by AE/DS, Suburban Sub Division, Moga who charged the said amount as per ESIM No. 19.3.2 through Sundry, which was reflected in his bill dated 11.05.2010 and was deposited by the consumer on 26.05.2010. The Forum had acted beyond its jurisdiction as the cause of action related to the year 2009-10. Still, the compliance of said order of the Forum had been made. The order dated 07.12.2020 did not require any modification as prayed by the Appellant. Rather, it was required to be fully set aside keeping in view the preliminary objection raised regarding maintainability of time barred representation in the Forum. It was prayed that the Appeal of Appellant may be rejected and the order dated 07.12.2020 of the Forum may be fully set aside.

I find that the Respondent did not object to the claim of the Appellant being time barred in the Forum. Besides, the Respondent did not take appropriate remedy to approach the appropriate body against the order dated 07.12.2020 of the Forum.

(iv) In this connection, it is worthwhile to peruse the observations of the Forum in its order dated 07.12.2020 reproduced below:

“Forum further observed that till date, the petitioner is getting Supply from his own 200 KVA transformer installed in the year 2010 and he has also paid the transformer charges of Rs. 1,59,037/- in the year 2010. Since the respondent has not made any expenditure on the transformer, as such Respondent is not entitled to retain the transformer charges of Rs. 1,59,037/- deposited by the petitioner. It has also been observed that the petitioner has not demanded the refund of transformer charges upto the year 2019 and reasons for the same were asked for by the forum during the course of proceeding also. The Petitioner expressed that he was not aware of rules and regulation of the department. Further, he was anguished from the harassment meted out to him by the officials of the respondent corporation and it was also observed that his grievance is more towards the officials of the department rather than the refund of amount of transformer charges. The petitioner has recently made representation/ complaint regarding refund of Transformer charges to various PSPCL offices in the year 2019 and complaint was dealt by office of CE/West, Bathinda and same has filed vide letter no. 2819 dated 11.02.2020 addressed to the petitioner without giving him any relief.

Forum further observed that the petitioner is a NRS consumer and the commercial policies regulated by PSERC regarding various types of Service charges/connection charges/billing etc. are available on the website of PSERC/PSPCL and are very well in public domain. Thus the petitioner did not came forward for refund of transformer charges at appropriate time and has claimed the refund after about 9 year period. The onus for not taking appropriate remedies also rests with the petitioner and therefore forum has opinion that no interest is payable to the petitioner.”

(v) After considering the oral and written submissions made by both the sides alongwith material/evidence brought on record, it is observed that the plea of the Appellant for allowing interest on the amount of Transformation Charges deposited by it with the licensee from 26.05.2010 till the date of payment is without merit as the Appellant did not represent in writing to the Respondent from 05/2010 to 06/2019 for refund of the said amount. The submissions of the Appellant that it was not aware of the rules/instructions of PSPCL does not carry conviction considering that the Appellant was a NRS category consumer who ought to be conversant with the same. Besides, all the instructions/regulations/tariff orders issued by the PSPCL/PSERC were available on the respective websites and the Appellant could not feign ignorance about the same. It is also possible that the Appellant may have considered in its interest to claim refund of the disputed amount at a belated stage from the PSPCL in the hope that it would, in the event of its Petition/Appeal being allowed by the Forum/Court of Ombudsman, get interest at higher/market rates instead of at Bank Rates which are comparatively on lower side. It is also observed that the Forum had already provided relief to the Appellant by considering the time barred grievance (date of cause of action 26.05.2010) of the Appellant and allowed refund of Transformation Charges of ₹ 1,59,037/- (deposited on 26.05.2010) vide order dated 07.12.2020. In compliance to this decision of the Forum, the amount of ₹ 1,59,037/- stands refunded to the Appellant as confirmed by the Respondent and also admitted by the Appellant during hearing on 03.02.2021. In view of the failure of the Appellant to prove/establish its contention for allowing the interest on the above amount claimed in the present Appeal, this Court is not inclined to interfere with the order dated 07.12.2020 of the Forum. The prayer of the Appellant for allowing interest @ 18 % per annum on the Transformation Charges already refunded is hereby rejected after due consideration.

**6.** **Decision**

As a sequel of above discussions, the order dated 07.12.2020 of the CGRF, Patiala in Case No. CGP-187 of 2020 is upheld. The above order already stands implemented as confirmed by the Respondent in its written reply and also during the hearing on 03.02.2021.

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

**8**. As per provisions contained in Regulation 3.26 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016, the Licensee will comply with the award/ order within 21 days of the date of its receipt.

**9.** 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)

 February 08, 2021 Lokpal (Ombudsman)

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