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

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

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

 **APPEAL NO. 10/2021**

**Date of Registration : 09.02.2021**

**Date of Hearing : 12.03.2021**

**Date of Order : 17.03.2021**

**Before:**

**Er. Gurinder Jit Singh,**

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

**In the Matter of:**

M/s. Vohra Solvex Pvt. Ltd.,

Sadiq Road, Faridkot.

**Contract Account Number: 3000854976**  ...Appellant

 Versus

Senior Executive Engineer,

DS Division, PSPCL,

Faridkot.

 ...Respondent

**Present For:**

Appellant: Sh. Ashok Dhawan,

 Appellant’s Representative.

Respondent : 1. Er. Mandeep Singh,

 Senior Executive Engineer,

 DS Division,

PSPCL, Faridkot.

 2. Er. Gaurav Kakkar.

 Assistant Executive Engineer,

DS City Division, PSPCL,

Faridkot.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 09.12.2020 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-299 of 2020, deciding that:

*“i) Rebate on account of consumption of electricity above threshold units claimed by the Petitioner during the years 2014-15 & 2015-16 is not considerable for decision now being time barred in view of clause no. 2.25 of PSERC (Forum & Ombudsman ) Regulation , 2016.*

*ii) Upto date Interest on ACD / Security amount of Rs. 70,436/- from the date 12.05.2011 and interest for the period 01.01.2008 to 31.03.2008 on the existing security deposit at that time is payable at the rates admissible from year to year basis after pre-audit.*

*iii) The refund on account of excess charging of tariff by the Respondent in the month of 05/2018 is not considerable for decision now being time barred in view of clause no. 2.25 of PSERC (Forum & Ombudsman) Regulation, 2016.”*

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

A scrutinyof the Appeal and related documents revealed that the Appeal was received in this Court on 09.02.2021 i.e. after stipulated period of thirty days of receipt of the decision dated 09.12.2020 of the CGRF, Patiala in Case No. CGP-299 of 2020 by the Appellant on 16.12.2020. An application for condonation of delay in filing the Appeal in this Court was also received with the Appeal. The Appellant was not required to deposit the requisite 40% of the disputed amount as the dispute related to refund on account of threshold rebate/excess charging of tariff/ interest on securities. Therefore, the Appeal was registered and copy of the same was sent to the Senior Executive Engineer/ DS Division, PSPCL, Faridkot for sending written reply/ parawise comments with a copy to the office of the CGRF, Patiala under intimation to the Appellant vide letter nos. 156-158/OEP/A-10/2021 dated 09.02.2021.

**3.** **Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 12.03.2021 at 12.45 PM and an intimation to this effect was sent to both the sides vide letter nos. 235-36/OEP/A-10/2021 dated 01.03.2021. As scheduled, the hearing was held in this Court, on the said date and time. The case was closed for orders after hearing both sides. Copies of the minutes of the proceedings were sent to the Appellant and the Respondent vide letter numbers 300-301/OEP/A-10/2021 dated 12.03.2021.

**4. Condonation of Delay**

At the start of hearing on 12.03.2021, the issue of condonation of delay in filing the Appeal beyond the stipulated period was taken up. The Appellant’s Representative submitted that decision dated 09.12.2020 of the CGRF, Patiala was received by the Appellant on 16.12.2020 but due to some family problems, the Appellant (Proprietor of the unit) was not available for about one and halfmonth and the resultant delay was due to the reasons beyond the control of the Appellant and not intentional. It was, therefore, requested to condone the delay otherwise the Appellant would be deprived of justice.

I find that the Respondent did not object to the condonation of the delay in filing the Appeal in this Court either in its written reply or during hearing in this Court.

In this connection, I have gone through Regulation 3.18 of PSERC (Forum and Ombudsman) Regulations, 2016 which reads as under:

*“No representation to the Ombudsman* shall lie unless:

*(ii) The representation is made within 30 days from the date of receipt of the order of the Forum.*

*Provided that the Ombudsman may entertain a representation beyond 30 days on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of 30 days.”*

It was observed that non condonation of delay in filing the Appeal would deprive the Appellant of the opportunity required to be afforded to defend the case on merits. Therefore, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court beyond the stipulated period was condoned and the Appellant’s Representative was allowed to present the case.

**5. 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 Representative 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 Appellant was having a Large Supply Category connection, bearing Account No. 3000854976 with sanctioned load of 349.768 kW and CD as 397 kVA.
2. The Appellant had raised the issue regarding non adjustment of Threshold Rebate as per provisions of Commercial Circular Nos. 49/2014 & 31/2016 and other instructions/ circulars issued by the Respondent from time to time. But the Forum wrongly, merely on the ground that application for such rebate was not given by the Appellant and being a case more than 2 years old declared it as time barred. The issue discussed by the Forum regarding Threshold Units Rebate as per judgment was reproduced as under:

“The petitioner has stated that he has not been given Threshold units rebate of 34916 units for the year 2014-15 and 146265 units for the year 2015-16 as per CC No. 49/2014 and 31/2016 and other circulars issued from time to time and has demanded a total amount of Rs. 2,12,036/- + interest of Rs. 98,348/- = Rs. 3,10,394/-. Respondent vide his office memo no. 8126 dated 09.10.20 and 8881 dated 05.11.20 has statedthat petitioner is eligible for Threshold Rebate on 34916 units for the year 2014-15 and the rebate has not been earlier given to him. For the year 2015-16, Threshold units rebate was not applicable as there were no instructions regarding threshold Rebate for the year 2015-16. The consumer has never intimated and applied for Threshold Rebate to PSPCL in the past and this fact has been admitted by the petitioner in his petition also.Forum considered the contention of the Petitioner and Respondent brought out in written and verbal submissions during the course of proceeding. Forum has observed that the petitioner is a LS consumer receiving regular energy bills from the Respondent Corporation from time to time and in all the bills, the details of various amounts charged/ rebates given were invariably depicted. The petitioner did not point out or represent to the respondent the issue of non receipt of Threshold Units Rebate during the year 2014-15 & 2015-16 and even after that upto the year 2020. Thus, the petitioner did not take appropriate remedy at appropriate time and has failed to exercise its obligation to approach respondent in time for attending this issue. The onus for not taking appropriate remedies rests on the petitioner, a LS consumer. He failed to point out to the respondent to take timely action for giving him Threshold units Rebate. As such, any rebate on account of consumption of electricity above Threshold Units by the Petitioner during the years 2014-15 & 2015-16 is not considerable for decision now being time barred.”

1. It was unfair on the part of the Forum to make discrimination between two petitioners when the nature of the petition was same e.g. Case No. CGP-343 of 2019 was also the same for non adjustment of rebate @ ₹ 1/- unit for the year 2014-15 and 2015-16 as the Case No. CGP-343 was instituted on 11.12.2019 and the decision of the same read as under:

“Threshold rebate for the year 2015-16 be given to the petitioner as per the provision of tariff order and the calculation be got pre-audited.”

1. The Forum discriminated against the Appellant in both cases and this Court is requested to do justice with the Appellant as in both the cases of Threshold, the Respondent had clearly admitted that Appellant did not receive rebate of ₹ 1/- plus electricity duty plus other taxes. The Appellant had requested to allow it the benefit of Threshold for ₹ 2,12,036/- plus interest ₹ 98,348/- because the amount involved had already been paid though energy bills by the Appellant.
2. The bill for the month of 05/2018 was wrongly prepared @ ₹ 5.81/- unit without subsidy being given and the Respondent accepted that the bill was wrongly prepared and a sum of ₹ 67,513/- was refundable to the Appellant. The last due date i.e. within limitation period of two years was 18.06.2020 and the Appellant filed the petition before the Forum during 08/2020 and delay of 2 months (beyond 2 years) was not intentional but beyond the control of the Appellant due to spread of COVID-19 Pandemic. For three months,the Court did not function and transport was also not available, hence, a minor delay was not condoned by the Forum. The Respondent had no objection to refund ₹ 67,513/-. So, it was unfair on the part of the Forum to decide that the claim for the month of 05/2018 was time barred.
3. Neither any intimation was given to the Consumer regarding Threshold limit nor was copy of the circular provided. It was the duty of the concerned RA/ SDO before delivery of the LS bills to check the same thoroughly regarding correctness of the bills but the officers/ officials failed to check the bills. When well qualified official was unable to check, then, how an ordinary man could check whether his bill was correct or not. No provision was made in Commercial Circular No. 49/54, 31/2016 that benefit will only be allowed to those consumers who will submit an application for this. It was wrong that any detailed calculation was written on the bill.
4. The issue regarding updation of ACD/AACD and interest has been resolved.

**(b) Submissions in Rejoinder to written Reply**

1. Reply given by Sr. Xen/DS Division, Faridkot, vide Memo No. 1449 dated 25.02.2021, relating to the interest for the period 01.01.2008 to 31.03.2008 on ACD/Meter Security was incorrect. This was because, as per Chief Engineer/Commercial’s Memo No. 1038/43 dated 19.05.2019 and Memo No. 49/54 dated 08.01.2020, it was clarified vide para no. 2 of the said letter that interest for this period was admissible and payable. If so, then, bill alongwith sundry no. for the month in which same was allowed may be intimated. As per Appellant’s record, the same was still due, because the same had never been paid in the history of erstwhile PSEB/PSPCL. That’s why, the clarification was given by the office of the Chief Engineer/Commercial as per letters attached. The issue had already been decided by the Forum in favour of the Appellant.
2. It was wrong that claim of rebate of threshold for the FY 2014-15 and 2015-16 was time barred. It had already been mentioned and copy of Judgment no. CGP-343 of 2019 (which was filed on 11.12.2019 and decided in the samemonth) had allowed that rebate for the FY 2015-16. So, it was against principle of natural justice to discriminate in the same circumstances.
3. It was wrong that claim of refund for ₹ 67,531/- on account of incorrect calculation was time barred because the period of 2 months delay was due to spread of COVID-19 as natural calamity beyond the control of the Appellant. Moreover, the CGRF, Patiala did not function for 3 months. It was further requested that no recovery/refund was time barred as the limitation to file a recovery of cash was 3 years. Moreover, there was no limitation for the correctness of accounts and it was also the responsibility of the SDO/RA to serve the correct bill.
4. Therefore, the Court is requested to allow the Appeal in the interest of justice and provide the following relief:
5. Adjustment of rebate for threshold limit for the year 2014-15 for ₹ 39,455/- as per CC No. 49/2014.
6. Adjustment of rebate for the year 2015-16 for ₹ 1,72,581/-.
7. Interest of ₹ 98,348/- against refund of ₹ 39,455+ ₹ 1,72,581/- = ₹ 2,12,036/- as per Regulation 33.1.3 of the Supply Code-2014.
8. Refund of ₹ 67,531/- on account of excess recovery against bill for the month of 05/2018.
9. Interest of ₹ 11,387/- for the period 01.01.2008 to 31.03.2008 against ACD/Security for ₹ 3,77,000/- as per orders of CGRF, Patiala in case no. CGP-299 of 2020.

**(c)** **Submission during hearing**

During hearing on 12.03.2021, the Appellant’s Representative reiterated the submissions made in the Appeal/Rejoinder and prayed to allow the relief prayed for therein.

1. **Submissions of the Respondent**
2. **Submissions in written reply**

The Respondent submitted the following written reply vide memo no. 1451 dated 22.02.2021 for consideration of this Court:

1. A Large Supply Category connection, bearing Account No. 3000854976 with sanctioned load of 349.768 kW and CD as 397 kVA had been running at the business premises of the Appellant.
2. The Appellant had filed a Petition before the Forum regarding threshold rebate for the years 2014-15 and 2015-16 as per CC No. 49/2014. As per record of the Respondent, the Appellant had neither intimated nor applied for threshold rebate to the Respondent. No application was received from the Appellant in the past regarding threshold rebate for FY 2014-15 and FY 2015-16. The Appellant had admitted in the Petition before the Forum that it never submitted an application to the concerned office regarding the rebate nor he received the same. Thus, the Appellant was not entitled to the said rebate and interest on it as the matter was time barred in view of Regulation 2.25 of the PSERC (Forum and Ombudsman) Regulations, 2016.
3. As per decision of the Forum, the Security (Consumption) and Security (Meter) amount of ₹ 70,436/- had been updated in the account of the Appellant. Further, interest amounting to ₹ 48,175/- payable on it from 05/2011 till date had been given to the Appellant after pre-audit.
4. The claim of the Appellant for excess charging of Tariff in the month of 05/2018 was not considerable under Regulation 2.25 of PSERC (Forum and Ombudsman) Regulations, 2016 as the Appellant never approached the Respondent or Forum for a long time and the delay in this respect was not condonable. The Appellant should have informed the Respondent in this respect well in time.
5. The Respondent had already implemented the decision of the Forum. Therefore, the Appellant was not entitled to anything more than that already granted to it by the Forum.

**(b) Submission during hearing**

During hearing on 12.03.2021, the Respondent reiterated the submissions made by it in the written reply.

**6.** **Analysis and Findings**

The issue requiring adjudication is the legitimacy of

1. Rebate on account of consumption of electricity above Threshold limits for the FY 2014-15 and FY 2015-16.
2. Refund of tariff charged in excess in the bill for 05/2018.
3. Interest on ACD/Security for the period from 01.01.2008 to 31.03.2008.

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

**Issue (i)**

1. The Appellant’s Representative contested the decision of the Forum not to allow its claim for rebate on account of consumption of electricity above threshold limit for the FY 2014-15 and FY 2015-16 on the ground of being time barred. He stated that decision of the Forum was discriminatory as it had, in Case No. CGP-343 of 2019 filed on 11.12.2019 and decided in the same month, allowed Threshold Rebate for FY 2015-16 in a similar case. He requested to allow the said rebate for FY 2014-15 and FY 2015-16 as admissible in terms of provisions contained in CC No. 49/2014 and CC No. 31/2016.
2. The Respondent, in its defence, stated that the Appellant had filed a Petition before the Forum regarding threshold rebate for the year 2014-15 and 2015-16 as per CC No. 49/2014. As per record of the Respondent, the Appellant had neither intimated nor applied for threshold rebate to the Respondent. No application was received from the Appellant in the past regarding threshold rebate for FY 2014-15 and FY 2015-16. The Appellant had admitted in the Petition before the Forum that it never submitted an application to the concerned office regarding the rebate nor he received the same. Thus, the Appellant was not entitled to the said rebate and interest on it as the matter was time barred in view of Regulation 2.25 of the PSERC (Forum and Ombudsman) Regulations, 2016.
3. In this connection, it is worthwhile to peruse the observations of the Forum on this issue which read as under:

“Forum has observed that the Petitioner is a LS consumer receiving regular energy bills from the respondent corporation from time to time and in all the bills, the details of various amounts charged / rebates given were invariably depicted. The petitioner did not point out or represent to the respondent the issue of non receipt of Threshold Units Rebate during the year 2014-15 & 2015-16 and even after that upto the year 2020. Thus the petitioner did not take appropriate remedy at appropriate time and has failed to exercise its obligation to approach respondent in time for attending this issue. The onus for not taking appropriate remedies rests on the petitioner, a LS consumer. He failed to point out to the respondent to take timely action for giving him Threshold units Rebate. As such, any rebate on account of consumption of electricity above Threshold Units by the Petitioner during the years 2014-15 & 2015-16 is not considerable for decision now being time barred.”

1. It is, thus, evident that the Appellant being a LS Category consumer, failed to rise to the occasion at the appropriate time and did not pinpoint the admissibility of the requisite rebate for FY 2014-15 and FY 2015-16 circulated by the licensee while issuing Tariff Order for the respective year. The Appellant approached the Forum by filing Petition No. CGP-299 of 2020 in 10/2020. After hearing both the sides, the Forum decided on 09.12.2020 that the issue of Rebate for consumption of electricity above the threshold limits for FY 2014-15 and FY 2015-16 was not considerable for decision as the same was time barred in terms of provisions contained in Regulation 2.25 of PSERC (Forum and Ombudsman) Regulations, 2016.
2. It is observed that adjudication of any dispute must stand scrutiny of law and any unlawful reasoning by the Appellant for a decision in its favour is not just and fair. Instead of finding lacunae in the working of the licensee, the Appellant must be reasonable and try its utmost to fulfill its obligations. As such, this Court is inclined not to interfere with the order of the Forum on this issue. Accordingly, the issue is decided against the Appellant.

**Issue (ii)**

1. The Appellant’s Representative next contended that the bill for the month of 05/2018 was wrongly prepared @ ₹ 5.81/- unit without subsidy being given and the Respondent accepted that the bill was wrongly prepared and a sum of ₹ 67,513/- was refundable to the Appellant. The last due date i.e. within limitation period of two years was 18.06.2020 and the Appellant filed the petition before the Forum during 09/2020 and delay of 2 months (beyond 2 years) was not intentional but beyond the control of the Appellant due to spread of COVID-19 Pandemic. For three months, the Court did not function and transport was also not available, hence, a minor delay was not condoned by the Forum. The Respondent had no objection to refund ₹ 67,513/-. So, it was unfair on the part of the Forum to decide that the claim for the month of 05/2018 was time barred.
2. The Respondent submitted that the Appellant did not approach it well in time and the delay in this regard was not condonable as also decided by the Forum.
3. The observations of the Forum on this issue are reproduced as under:

“Forum has observed that the Petitioner is a LS consumer receiving regular energy bills from the respondent corporation from time to time and in all the bills, the details of tariff charged given were invariably depicted. The petitioner did not point out or represent to the respondent the issue of high Tariff charged in the bill of the month of 05/2018 at that time and has approached this forum in September, 2020. Thus the petitioner did not take appropriate remedy at appropriate time and has failed to exercise its obligation to approach respondent in time for attending this issue. The onus for not taking appropriate remedies rests on the petitioner, a LS consumer. As such, any refund on account of excess charging of tariff by the Respondent in the month of 05/2018 is not considerable for decision now being time barred.”

1. A perusal of the oral and written submissions made alongwith evidence brought on record by both the sides reveals that limitations for filing representation in Forum for seeking remedy against charging of excess tariff charged in the bill for 05/2018 expired on 18.06.2020 as per Regulation 2.25 of PSERC (Forum and Ombudsman) Regulations, 2016. The plea of the Appellant’s Representative that the Forum did not function during COVID-19 lockdown period is not correct and not convincing. The fact of the matter is that offices of PSPCL and CGRF, Patiala did not function during the period from 23.03.2020 to 07.05.2020. However, the Appellant had the option to send its representation to the Forum by e-mail. Moreover, the Appellant’s Representative did not give any reason or justification for not making any representation after the receipt of bill for 05/2018 (due date 18.06.2018) till 20.03.2020 i.e. before imposition of COVID-19 lockdown. The Appellant had not filed any request before the Forum for condoning the delay beyond two years in respect of this issue. Therefore, the order of the Forum on this issue that refund of tariff charged excess in the bill for 05/2018 is not considerable for decision does not warrant interference by this Court. Accordingly, this issue is decided against the Appellant.

**Issue (iii)**

1. The Forum, vide order dated 09.12.2020, decided that “interest for the period 01.01.2008 to 31.03.2008 on the existing security deposited at that time is payable at the rates admissible from year to year basis after pre-audit.”
2. In the present Appeal, the Appellant stated that this issue had been decided in favour of the Appellant by the Forum. But, in its rejoinder and during hearing on 12.03.2021, the Appellant’s Representative submitted that interest on ACD/ Security for the period 01.01.2008 to 31.03.2008 had not been allowed till date.
3. The Respondent, on being asked during hearing, contended that the said interest had been allowed to the Appellant but assured that he would look into the matter and will ensure to give interest, if not already given. In view of the above, this issue is disposed off accordingly.

**7.** **Decision**

As a sequel of above discussions, the order dated 09.12.2020 of the CGRF, Patiala in Case No. CGP-299 of 2020 is upheld.

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

**9**. 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.

**10.** 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)

March 17, 2021 Lokpal (Ombudsman)

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