

**COURT OF THE LOK PAL (OMBUDSMAN),
ELECTRICITY, PUNJAB,
PLOT NO. A-2, INDUSTRIAL AREA, PHASE-1,
S.A.S. NAGAR (MOHALI).**

**(Constituted under Sub Section (6) of Section 42 of
Electricity Act, 2003)**

APPEAL No. 11/2022

**Date of Registration : 02.03.2022
Date of Hearing : 15.03.2022/ 22.03.2022
Date of Order : 22.03.2022**

Before:

**Er. Gurinder Jit Singh,
Lokpal (Ombudsman), Electricity, Punjab.**

In the Matter of:

**M/s. Punjab Agro Industries,
Kohar Singh Wala Road, Guru Harsahai.
Contract Account Number: 3007509401 (New)
M53-CG01-00026 (Old)
...Appellant**

Versus

**Sr. Executive Engineer,
DS Division, PSPCL,
Jalalabad.
...Respondent**

Present For:

Appellant: None

**Respondent : Er. Phuman Singh,
Sr. Executive Engineer/ DS Division,
PSPCL, Jalalabad.**

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 28.01.2022 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-01 of 2022, deciding that:

- *“Rebate on account of consumption of electricity above threshold units claimed by the Petitioner during the years 2016-17 is not considerable for decision now being time barred in view of clause no. 2.27 of PSERC (Forum & Ombudsman) Regulation, 2016.*
- *Regarding sum of Rs. 21,37,846/- which were over recovered than the amounts of bills for the period 2/2018 to 4/2021 from petitioner, the respondent and petitioner has jointly reconciled the matter and found Rs.17,67,846/- payable to petitioner on account of excess payments deposited by the petitioner and the petitioner has also agreed with this amount, which be allowed after pre-audit.*
- *Respondent has agreed to pay the interest of Rs.2,20,393/-, on amounts of security and during proceedings, petitioner has agreed to it, so no interference is required by Forum on this issue.*
- *Admissible TOD rebate for the months 3/2019 and 4/2019, as admissible as per CC no. 25/2018, be allowed to petitioner, after pre-audit.*
- *However, forum is not inclined to allow any interest on above issues.”*

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 02.03.2022 i.e. within the period of thirty days of receipt of the decision dated 28.01.2022 of the CGRF, Patiala in Case No. CGP-01 of 2022 received by the Appellant on 03.02.2022. This was a refund case so the requisite 40% of the disputed amount was not required to be deposited by the Appellant before filing of the Appeal. Therefore, the Appeal was registered on 02.03.2022 and copy of the same was sent to the Addl. SE/ DS Division, PSPCL, Jalalabad for sending written reply/ parawise comments with a copy to the office of the CGRF, Patiala under intimation to the Appellant vide letter nos. 190-92/OEP/A-11/2022 dated 02.03.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 15.03.2022 at 01.00 PM and an intimation to this effect was sent to both the parties vide letter nos. 215-16/OEP/A-11/2022 dated 07.03.2022. As scheduled, the hearing was held in this Court on 15.03.2022 and arguments of both the parties were heard. A copy of proceedings dated 15.03.2022 was sent to both parties vide letter nos. 246-247/ OEP/ A-11/

2022 dated 15.03.2022. An opportunity was given to both parties to reconcile the refunds as per orders of the Forum. The next date of hearing was fixed as 22.03.2022 at 2.00 PM. The Appellant's Representative didn't attend the hearing on 22.03.2022 but submitted additional submissions which were taken on record. The Respondent submitted in the Court that the decision of the Forum has been implemented. Further, deliberations in this case were closed.

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 deliberations made by the Appellant's Representative and the Respondent along with material brought on record by both the parties.

(A) Submissions of the Appellant

(a) Submissions made in the Appeal

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

- (i) The Appellant was having a Large Supply connection under General Category, bearing Account No. M53-CG01-00026

with sanctioned load of 493.225 kW and Contract Demand as 423 kVA in its name.

- (ii) That ₹ 17,67,846/- had been over recovered than the amounts of the bills for the period February, 2018 to April, 2021. The Forum ordered to refund the amount. However, interest on overcharged amount had not been allowed. The Appellant was entitled for interest of ₹ 3,96,264/- for the said period as per rules of PSPCL.
- (iii) The Appellant had deposited Security (Consumption) and Security (Meter) from time to time. As a result of which, the Appellant had been paid less interest from time to time amounting to ₹ 2,66,279/- and was further entitled to adjustment of ₹ 8,42,659/- on account of interest on interest as payable as per rules and provisions of the Supply Code, from time to time.
- (iv) The Appellant was adjusted/ credited on account of Threshold Rebate for the year 2016-17 a sum of ₹ 8,66,923/- but actually the Appellant was entitled to ₹ 13,86,138/-, hence a sum of ₹ 5,09,376/- was less credited. Thus, further entitled for credit of interest for the above mentioned amount of ₹ 2,66,911/- on account of interest.
- (v) To allow ToD Rebate for ₹ 88,000/- approximately.

- a) No ToD Rebate was allowed for the month 03/2019, so the same may be allowed.
- b) No detail of ToD Rebate was mentioned on the bill for the month of 04/2019, so the calculation sheet may be provided to check the legitimacy of the bill, as the same was not provided by the concerned office.
- (vi) The case was instituted on 20.09.2021 and was decided on 28.01.2022 by the Forum. A close and brief study of the order showed that case was decided by ignoring all principles of justice. It was not based upon any principle of justice rather it was just disposed of by ignoring the interest of the Appellant and just to save the financial interest of PSPCL. It proved that the order of justice seems less but more an order of injustice. The order not only ignored the fundamental principles of justice i.e. free and fair, rather it also ignored the rules and directions of PSPCL given from time to time and discrimination was also seen while deciding the issues. The order dated 28.01.2022 ignored the merits of the case. On many issues, the Respondent was exempted from submission of the calculations based/ point wise reply nor the Respondent was asked that how the mistakes occurred and why the Respondent failed to comply with the directions of the PSPCL? It seems to

be a pre-decided case of the Forum and the problems being faced by the Appellant have increased with this order as the industry was already facing a large number of problems such as international recession due to Covid-19 Pandemic and imposition of harsh policy such as GST etc.

- (vii) The Appellant was paying every bill well in time and nothing was payable to PSPCL rather excess amounts were being recovered every month by the Respondent i.e. ₹ 17,67,846/- and this issue had been decided by the Forum in favour of the Appellant. However, the compliance was awaited from the Respondent, although the order was clear to post refund within 21 days. The outstanding balance as shown in the bill belonged to the Respondent and had nothing to do with any recovery from the Appellant as the same was evident from the letter issued by the Respondent vide its office memo no. 7427 dated 25.09.2020. The excess payment was recovered from the Appellant from time to time despite the fact that each and every bill was being got checked from the office and part payment was being sanctioned from the office concerned. Now, when the Appellant got checked its account, it found that since 03/2018 to 04/2021, every month excess amount was being recovered continuously than the actual amount which had

become payable. But to the surprise of the Appellant, total sum of ₹ 17,67,846/- was excess recovered from it during the period 03/2018 to 04/2021. So, the refund was sanctioned by the Forum and as already said compliance was still awaited.

(viii) Thus, excess amount was knowingly recovered as every bill was being checked and sanctioned from a well-qualified Revenue Accountant of the Respondent. It was crystal clear that amount was taken in excess of the actual amount with a malafide intention and therefore, PSPCL was responsible for such a misdeed. Hence, interest became liable to be credited to the Appellant's account as per provisions and rate fixed from time to time as mentioned in Regulation 35.1.3 of the Supply Code-2014. To decline interest as ordered by the Forum was not only against own instructions of the Respondent but also against fundamental principles of justice. Because excess amount was recovered not by mistake rather with a bad intention.

(ix) It was crystal clear that ₹ 17,67,846/- was recovered more than the actual amount and this fact had already been admitted by the Respondent in the Forum. However, the Appellant was surprised to see the orders of interest which had accrued as per the provisions of Regulation 35.1.3 of the Supply Code-2014

i.e. ₹ 3,96,264/- was declined by the CGRF, Patiala. Therefore, it was humbly requested to allow interest amounting to ₹ 3,96,264/- and more upto the date of actual payment.

- (x) The Connection of the Appellant was released in the year 1982-83 and from time to time, the requisite amount of Security (Consumption) and Security (Meter)/ ACD used to be deposited while extension in load/ Demand or after introduction of the Supply Code w.e.f. 01.01.2008. The Appellant further deposited the requisite amount of AACD as per demand of PSPCL. However, the same had not been updated properly on the bill nor the Appellant was given the benefit of interest for the non-updated amount of ACD/AACD admissible under Regulation No. 17 of the Supply Code-2007/2014. Due to non-updation of ACD/ Meter Security on time, the Appellant received a less amount of interest amounting to ₹ 2,66,279/-. However, the Respondent had shown its inability to trace the record for ₹ 58,650/- charged by the audit so agreed to pay interest amounting to ₹ 2,20,393/- and the Appellant agreed to receive ₹ 2,20,393/-. But the same was still awaited. In this regard, it was requested that as directed by the CE/ Commercial vide its office Memo No. 297/307 dated 26.03.2021, as *“However, if record of Security (Consumption) & Security*

(Meter) is not available in concerned Sub-Divisions, then concerned SDO, RA,CC shall have to furnish a certificate on plain paper as per enclosed format. The record of such certificates shall be maintained properly by Revenue Accountant (RA) of concerned Sub-Division. Thereafter, Security (Consumption) & Security (Meter) shall be updated as per the rates prevailing in the year in which consumer's connection was released after taking the approval of ASE/ Sr. Xen/ DS concerned subject to pre-audit through AO/field. The increase or decrease in consumer's load/demand and change in meter shall be considered while updating the Security (Consumption) & Security (Meter). This process shall be completed within 15 days from the date of issue of these instructions. The rates of Security (Consumption) & Security (Meter) in different years are compiled & enclosed herewith for reference. Further, it may also be ensured to credit the interest on Security.”So, the Respondent was requested to complete the said process and allow interest for ₹ 2,66,279/- including the amount of interest as per order of the Forum.

- (xi) In this regard, it was submitted that the Appellant claimed interest on interest on the pending interest for ₹ 2,66,279/- as discussed above and full justification had already been given

regarding interest as per Supply Code-2007/2014 and it was also requested that claim was as per rules and regulations as laid down by PSERC and adopted vide Supply Code-2007 & Supply Code-2014 and the instructions issued as per Regulation 17 and such instructions supersede all other instructions in this regard. So, the claim was fully justified as claimed in the petition before the Forum. It was important that no verdict was given in the order for the reasons best known to the Forum so the original reference was produced to seek justice, as mentioned below:-

“As per regulation 17.4 of the Supply Code, 2007 & regulation 17.3 of the Supply Code, 2014; interest on interest is payable for the period of delay on the amount of interest as and when it becomes due. The above references are reproduced here as under: –

a) As per Supply Code–2007

“17. Interest on Security (consumption)

17.1 The Licensee will pay interest on Security (consumption) at the SBI’s Long Term PLR prevalent on first of April of the relevant year, provided that the Commission may at any time by notification in official Gazette of the State specify a higher rate of interest.

17.2 The Licensee will indicate the amount becoming due to a consumer towards interest on the Security (consumption) in the first bill raised after thirtieth of April every year.

17.3 The interest will be credited to the account of a consumer annually on first day of April each year and will be adjusted on first May of every year against the outstanding dues and/or any amount becoming due to the Licensee thereafter.

17.4 In the event of delay in effecting adjustments due to the consumer as per Regulation 17.3, the Licensee will for the actual period of delay pay interest at twice the SBI's Short Term PLR prevalent on first of April of the relevant year."

b) As Per Supply Code-2014

"17. INTEREST ON SECURITY (CONSUMPTION) AND SECURITY (METER)

17.1 1 [The distribution licensee shall pay interest on Security (consumption) and Security (meter) at the [SBI Base] Bank Rate (as on 1st April of each year) as notified by RBI.]

17.2 The interest on Security (consumption) and Security (meter) shall be credited to the account of a consumer annually on first day of April each year and shall be adjusted/ paid in first bill raised after first April every year against the outstanding dues and/or any amount becoming due to the distribution licensee thereafter.

17.3 1 [In the event of delay in effecting adjustments due to the consumer as per regulation 17.2, the distribution licensee shall for the actual period of delay pay interest at Bank Rate (as on 1st April of each year) as notified by RBI plus 4%."

Therefore, a sum of ₹ 8,42,659/- became due as per above mentioned reference. The demand for interest on interest was correct and based on the provisions of PSPCL as per Supply Code as mentioned above. However, no orders regarding

interest on interest were passed by the Forum. Since the demand for pending interest had already been accepted though for a little lesser amount, hence the demand for ₹ 8,42,659/- was genuine and as per PSPCL's own rules and regulations as mentioned above.

(xii) The Forum had ordered to allow the rebate for time of day as per Commercial Circular No. 25/2018 but the same had not been refunded despite lapse for 21 days mandatory period. Moreover, the Respondent was requested to allow interest as admissible under Regulation 35.1.3 of the Supply Code also.

(xiii) The Appellant was allowed ₹ 8,66,923/- against the admissible amount for ₹ 13,76,299/- during the month 2/2017 as per policy of the PSPCL as per Commercial Circular No. 31/2016 against the increase in consumption fixed as threshold limit. However, an analysis of the bill for the months 2/2017 & 3/2017 reveals that a sum of ₹ 5,09,376/- were less paid, as no threshold was allowed for the month 03/2017 as per CC No. 31/2016. Further, a sum of ₹ 1,54,178/- was excess charged/ recovered on account of ED. Therefore, on account of less payment of threshold and excess recovery as mentioned above, a total sum of ₹ 5,09,376/- was refundable. Because the Appellant had to pay ₹ 5,15,456/- in more amount of bills than admissible during

the months of 02/2017 & 03/2017, so it became liable for payment of interest under Regulation 35.1.3 of the Supply Code-2014. The Forum had ordered it as time barred case under Regulation 2.25 of PSERC, it was not true but also against the law of land. In this regard, it was requested that “As per Commercial Circular No. 31/2016, the threshold rebate was allowed to the eligible consumers by the PSPCL as under:-

“It shall be allowed for any consumption during the financial year exceeding the consumption worked out on the following methodology. The maximum annual consumption in any of the last two financial years shall be taken as threshold.”

- (xiv) The Consumption for the year 2014-15 was 390276 kVAh units and for the year 2015-16, consumption was 352804 kVAh units. Therefore, consumption for the year 2014-15 taking as Threshold base was to be deducted from the total consumption of 2016-17=1386138 kVAh units. Hence, entitled for $1386138 - 390276 = 993862$ units as threshold rebate. However, it was allowed for 833580 kVAh units only during the bill for 02/2017 and as per bill, it was also mentioned on the bill. However, as per policy of the PSPCL, it was likely to be continued for the month 03/2017 also, which was left out fraudulently or by mistake as **no threshold rebate was allowed for the month of**

03/2017 against the instructions and guidelines of CC No. 31/2016 of PSPCL. Thus, it was not done with good intention. It was added that bill was prepared by CBC Cell, Bathinda which was checked by the office of the CE/ IT Cell, Patiala and further it was checked by UDC/ RA/ SDO-Distribution at Sub Divn. level & signed by the RA/ SDO of the concerned office. But the bill for the months 02/2017 & 03/2017 were signed by the AEE/ CBC, Bathinda only which means neither the SDO nor RA had checked the said bill. The bills for 02/2017 and 03/2017 contained serious mistakes and story of negligence and **both bills did not carry the details and calculations as the same was claimed by the Respondent before the Forum, Patiala.** For example, during the month of 02/2017 the detail of Rebates was as under:

₹ 8,66,923/- were deducted from the bill amount **12372/SOP** ₹ 1,56,405/- on a/c of ED + IDF, was charged for threshold which becomes **1264.19%** against chargeable amount @ **18% of SOP.** Had the bill checked by SDO/ RA/ UDC in the Sub Division or in the CBC, the mistakes could have been avoided. It means less refund for ₹ 5,09,376/- was less allowed, and all this happened despite the fact that detail was mentioned

on the bill, as claimed by the Respondent. Neither any detail of applicable rates nor calculations were mentioned.

(xv) It was added that total eligible units for threshold rebate were 995862 units whereas threshold rebate was allowed only for 833580 units and thus a sum of ₹ 8,66,923/- not only by mistake and but also with bad intention, which was never disclosed on the bill. The Forum rejected the claim as time barred very wrongly and the onus was shifted to the Appellant for not claiming it early and further it wrongly accepted the plea of the Respondent that all the details were mentioned on the bill, which was white day lie because as mentioned above neither proper detail were mentioned on the bills nor rates or detailed calculations that how the threshold rebate was calculated, even totals of the bill and the calculation work was not checked neither by CBC/ nor by the Sub Divn properly. It seems to be pre-decided case by the Forum and even the Respondent was not asked to verify the facts and nor the calculation sheet was sought from the Respondent. The Forum also had not considered the rejoinder submitted by the Appellant.

(xvi) In this regard, it is humbly submitted that the Forum erred in deciding the issue as under:-

“In view of above, Forum is of considered opinion that issue of allowing of any rebate on account of consumption of electricity above Threshold Units by the Petitioner is not considerable for decision now being time barred in view of clause no. 2.25 of PSERC (Forum & Ombudsman) Regulation, 2016 amended from time to time. Therefore, the number of mistakes committed in the order, are discussed as under:-

“2.25 The Forum may reject the grievance (other than claim for compensation) at any stage, through a speaking order, under the following circumstances:

c) In cases where the grievance has been submitted to the Corporate or Zonal or Circle or Divisional Forum, as per the monetary jurisdiction, two years after the date on which the cause of action has arisen or submitted to Corporate Forum after two months from the date of receipt of the orders of Zonal or Circle or Divisional Forum; and.”

Therefore, it is clear that regulation 2.25 refers to the jurisdiction of the Forum and not about the limitation period of the cases and the jurisdiction of the Forum which can be extended by the forum itself for the reasons to be recorded in writing. ***It means the regulation 2.25 of ESIM has nowhere described about the time period of the claim so far limitation***

is concerned. Second important question was how the Respondent had calculated the period of 2 years, which was contrary to the provisions for limitation period, as described **in the Constitution of the India, under Act of Limitation-1963.** As per law of Limitation Act-1963 of the Constitution of India, clause no. 17 – “The period of limitation shall not begin to run until the plaintiff or applicant has discovered it, or in the case of a concealed document, until the plaintiff or the or the applicant first had the means of producing the concealed document or compelling its production.” Thus, Respondent had wrongly presumed it a time barred case. The Appellant had discovered when he got checked/ audited electricity accounts in 09/2021, therefore, as per law of land as mentioned period of 3 years becomes 09/2021 to 08/2024.

- (xvii) It was further requested that due to expansion of the Pandemic disease Covid-19, The Hon’ble Supreme Court of India passed an order dated March 23, 2020 extending the limitation period w.e.f. 15.03.2020 to 14.03.2021 which was further extended from 15.03.2021 to onwards by the order dated 14.03.2021 and now upto 31.05.2022. This ruling was/is binding to Central/ all States legislation and Tribunals of the country. It was specifically added that period of limitation was applicable for

recovery suit and not for adjustment of accounts even period of recovery suit for cash/ property etc. was 3 years. It was further added that limitation even if it was considered for running account, 3 years period was 01.04.2017 to 31.03.2020 and after that Orders of the Hon'ble Supreme Court of India till 31.05.2022. **Whereas actually it was becoming 09/2021 to 08/2024.** Thus, the contention of the Forum was beyond understanding and against the law of land. It was just an excuse to debar the Appellant from the genuine rights and rather can be seen as an attempt to give undue benefit to the PSPCL against the law of land. **Therefore, it was wrong that Appellant had not checked the bills for 02/2017 and 03/2017, as the sole responsibility for delivering a wrong bill lies on the Respondent and not upon the Appellant.** Moreover, no such warning was mentioned on the bill, neither any clause existed in the Agreement form nor any regulation/circular/ clause of PSPCL stands in this regard. **It was self-concocted doctrine that being LS consumer it should be vigilant otherwise it will be responsible, as there was no bar on the Industrialist to be well qualified.** Moreover, the Respondent never arranged any seminar nor any letter was issued to the Appellant that it will be responsible for

all misdeeds of the Respondent, as a general principle it was a basic rule that it was the responsibility of the office to make employees disciplined and not to shift their responsibility upon the shoulders of the Appellant, one should not have any doubt in the mind that such a behaviour of the management will encourage them to be more negligent towards work and duty. Even a battery of experts as mentioned above could not detect the mistakes in the bills for 02/2017 & 03/2017. So, it was very much clear that mistakes committed by employees of Respondent, cannot be transferred with a self-made argument that being LS consumer one should be vigilant and if it was unable to detect mistakes in a bill which was not supported by any proper calculation sheets and it being a less educated person was unable to detect it upto 2 years then why the refundable amount will be forfeited as no law of land support such an excuse, which was not supported by any circular or agreement clause nor by any principle or law of land. To presume so, may be one's own personal thinking but not applicable in the eyes of law. Because it was not in the jurisdiction of the Forum to declare a claim as time barred at maximum the Forum may refer it to the Department or to the Refund Committee which deals with old period refund cases as

per Clause no. 93.5 of ESIM without any bar on the time period. Therefore, it was humbly requested that as above mentioned and as per calculation sheet attached, a sum of ₹ 5,09,376/- was refundable to the Appellant and as per Regulation 35.1.3 of the Supply Code-2014, an amount of interest amounting to ₹ 2,66,911/- was also payable. Further, interest upto the date of payment should be paid, otherwise the Appellant will suffer irreparable losses.

(xviii) It was further added that during the year-2011, the Appellant had cleared all outstanding payment and had also paid surcharge and even interest during the time as per notice of AE/ DS City Sub-Divn., Guru Harsahai in a past disputed case regarding peak load penalty and after that each and every bill stands paid on time, after taking permission from the office. But the outstanding balance remained outstanding despite the fact that it had already been certified by ASE/ DS Divn., Jalalabad vide letter under reference that all current bills and after 2011 had been paid well in time. But, with each and every bill the outstanding balance went on increasing due to the defective accounting system of the Respondent's office, because no attempt was made to clear the wrongly accrued surcharge and interest on current bill paid on time from the year

2011 to date. The authorities concerned were apprised so many times about the distress and agony being faced due to outstanding balance but nobody took interest to clear outstanding balance which was due to negligence of the officials/ officers concerned. The Appellant was facing humiliation and unaccountable pain due to this outstanding balance, as this leads to disgrace in the society that perhaps this firm had gone bankrupt which decreases the social respect in the society. Taking the undue advantage of the outstanding balance many a time much more amount was being deposited than the current amount. The Appellant was not so educated and could not understand it that more than ₹ 20 lacs had been recovered more than the actual bill. It was clearly evident from the orders of the Forum as per order CGP-01/2022. Now, the given time for implementation of the order has already passed, yet office concerned was reluctant to refund the ordered amount on the pretext that it will be given back only when another outstanding amount will be cleared where was fault of the appellant? As a single Rupee was not payable from the outstanding huge balance of more than 84 lacs showing on bills every month, which was very much clear from the orders of the Forum, more than 20 lacs were refundable for the period

03/2018 to 04/2021 only. So, it was humbly requested to direct the authorities concerned to comply with the orders of the Forum strictly and also to allow other issues as mentioned above. It was strongly certified that the excess amount and other mistakes were discovered during the month of September, 2021 and never before this.

- (xix) It was humbly prayed to allow this appeal in the interest for justice and save the Appellant from humiliation and undue harassment.

(b) Submission in Rejoinder

In its Rejoinder to the written reply of the Respondent, the Appellant submitted the following for consideration of this Court:-

- (i) The Respondent had clearly mentioned in the history of the case that the outstanding balance was continuously increasing after dispute case for the year 2011 against which the Appellant had complied with the decision of this Court and had paid the full amount of ₹ 1,41,589/- as per notice issued by AE/ DS City S/D, Guruharsahai vide No. 240 dated 15.02.2021, which included the amount of surcharge and interest also. The Respondent had also mentioned that during and after period of dispute, the Appellant had paid all current bills from time to

time as desired and approved by AE/ DS City S/D. The outstanding balance went on increasing and was further increasing day by day as the surcharge and interest was being increased every month for last more than 10 years, which should have been cleared in the year 2011 as nothing was payable after payment of balance amount, surcharge and interest as per demand of the Respondent. Thus, the amount of refund as ordered by the Forum vide order dated 28.02.2022 against Petition No. CGP-01/2022 stood valid.

- (ii) A sum of ₹ 17,67,846/- had been credited to Appellant's account. Because excess amount recovered from the Appellant amounting to ₹ 17,67,846/- was lying against the outstanding balance i.e. more than ₹ 82 lacs plus ₹ 17,67,846/- as stated in reply and not a single rupee out of ₹ 17,67,846/- had been posted as sundry allowance against any bill of the Appellant so far, if so then they should produce the copy of the bills against which refund had been credited. The outstanding amount belongs to the Respondent and not to the Appellant. However, ₹ 17,67,846/- was to be refunded to the Appellant as per orders of the Forum. The Respondent had tried to mislead the Court. The amount of ₹ 17,67,846/- was still to be refunded. So, it was requested to instruct the Respondent to refund ₹ 17,67,846/-

through cheque as a special case, if they were unable to refund through sundry allowance.

- (iii) It was wrong that refund on account of interest for ₹ 2,20,393/- had been given.
- (iv) It was wrong that refund for ₹ 96,041/- on account of ToD rebate for the months of 03/2019 and 04/2019 was given to the Appellant.
- (v) It was requested to consider the Appeal and the Rejoinder in the light of facts of the case.

(c) Additional submission of the Appellant

The Appellant submitted Additional submissions for consideration of this Court and the same are reproduced below:-

“It is most humbly prayed that the representative of the Appellant had joined the proposed meeting in the office of AE, City Sub Division, PSPCL, Guruharsahai on dated 16-03-2022 and after a lot of discussion common opinion could not be formed, despite the fact that defendant’s office have backtracked from the written arguments presented before the Hon’ble CGRF, Patiala and that office have given written assurance to refund/ adjust from the future bills, however the defendant’s office now bent upon to dislodge the genuine

refund of Rs. $17,67,846 + 2,20,393 + 96,041 = 20,84,280/-$ by reducing from the outstanding balance as the refund of Rs. 20,84,280/- will not reach to the Appellant in any circumstances.

As Appellant had already requested that all the bills since the year 2011 to date have already been paid and this fact had been confirmed in writing by the defendant's office before the Hon'ble CGRF, Patiala. It is added that a detailed list prepared by the defendant's showing all details of monthly bills amount, amount paid by the Appellant alongwith receipt number was submitted before the Hon'ble CGRF, Patiala. It means nothing is payable rather said amount of Rs. 20,84,280/ is payable to the Appellant as decided by the CGRF order dated 28.01.2022.

When nothing is payable against bills since the year 2011, then how the defendant's office can refuse to refund/ adjust Rs.20,84,280/ in other words it will be considered as non-compliance of the orders of the Hon'ble CGRF, Patiala. So, you are requested to accept the appeal as this argument of the defendants to reduce the refund money from the outstanding balance is neither legal nor justiceable, because the outstanding balances are result of the non-compliance of the orders of the Hon'ble Ombudsman against case No. 41/2011. The

outstanding balances are just to harass the Appellant socially, mentally and financially. Appellant is unable to attend the Court office tomorrow due to some personal reasons. So, you are most humbly again requested to allow the refund Rs.20,84,280/- alongwith interest as admissible under rules of PSPCL.”

(d) Submissions during hearing

During hearing on 15.03.2022, the Appellant’s Representative (AR) reiterated the submissions made in the Appeal as well as in the Rejoinder and prayed to allow the same.

(B) Submissions of the Respondent

(a) Submissions in written reply

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

- (i) The Appellant was having Large Supply Category connection running under General Category in the name of Appellant bearing Account No. M53CG01-00026 with sanctioned load of 493.225 kW and CD as 423 kVA.
- (ii) The Forum had rightly decided Case No. CGP-01/2022 on 28.01.2022 and the decision was received on 03.02.2022 by the Appellant. Although the Appellant had not given any request

within stipulated period in the office of AE/ DS City Sub-Divn., Guruharsahi still the Forum gave sufficient benefit in the favor of Appellant. Actually the dispute of Appellant started from the month of 05/2010 to till date and outstanding amount against the Appellant was approximately ₹ 82.00 Lac and the account of Appellant was overhauled from 05/2010 till date but the Appellant filed his grievances in the Forum for the period 02/2018 to 05/2021 and the same was decided by the Forum with a direction to give refund of ₹ 17,67,846/-. So, the refund case for ₹ 17,67,846/- was forwarded by AE/ DS City Sub Divn. Guruharsahi to the AO/ Faridkot for pre-audit vide Memo No. 291 dated 11/02/2022 but the same was returned back to AE/ DS City vide Memo No. 390 dated 25.02.2022 in which at point no. 1 stated that excess amount deposited by the Appellant had already been credited to the Appellant's account against outstanding balance of the Appellant. Hence this appeal was against the order of the Forum. *The brief history from beginning of dispute is as under: -*

- (iii) A Sum of ₹ 2,60,200/- charged to the Appellant on account of Peak load violation as informed by Sr. Xen/ MMTS, Moga vide Memo No. 741 Dated 25.03.2010 and the same was charged to the Appellant's account no. M56CG01-00026 in the month of

05/2010. But the Appellant did not agree to the amount charged and filed a dispute Case No.CGP-86/2011 in the Forum by depositing 20% (i.e. ₹ 52,040/-) of disputed amount (₹ 2,60,200/-). The case was decided by the Forum on 24.08.2011 in the favour of PSPCL. The Appellant had not agreed with the decision and filed an Appeal No. 41/2011 against the decision in this Court by depositing 40% (₹ 1,03,970/-) of disputed amount (₹ 2,60,200/-). The case was again decided in the favour of PSPCL by this Court on 03.01.2012 and directed the Respondents that the amount excess/short, if any, may be recovered/refunded from/to the Appellant with interest under the provisions of ESR-147.

- (iv) A Notice No. 240 dated 15.02.2012 was issued by AE/ DS City S/D, Gurharsahai to the Appellant for depositing ₹ 1,04,160/- on account of disputed amount and interest ₹ 37,429/- (₹ 1,04,160/- + ₹ 37,429= ₹ 1,41,589/-) on account of balance of disputed amount as per decision of this Court. The Appellant deposited the same on 15.03.2012. The account of the Appellant was overhauled from the start of dispute from 05/2010 up to the amount paid on 15.03.2012 i.e. ₹ 1,41,589/- as per final notice. Because the Appellant paid all the current bills during disputed period (05/2010 to 03/2012). The account

of the Appellant could not be overhauled due to shortage of staff and no Revenue Accountant was appointed.

- (v) The Appellant was receiving the bills including previous arrears regularly and approached the office of AE/ DS City S/D Guruharsahai to know the current amount of bill. The current bill was marked on the bill for each month and then the same was deposited by the Appellant regularly as a result of that procedure, the surcharge of bill and interest added in the previous arrears increased up to date is near about ₹ 82 Lac.
- (vi) The Appellant filed a Case No. T/275 dated 26.08.2020 for ₹ 54,63,273/- in the Forum and the Forum directed the Appellant to deposit 20% of disputed amount but the Appellant had not deposited any amount so the case was not registered in the Forum.
- (vii) The Appellant filed a Case No. T/349 of 2021 dated 20.09.2021 for ₹ 40,68,890/- in the Forum with following grievances:-

Refund for ₹ 21,37,846/- on account excess amount recovered than actual bills and interest ₹ 3,53,601/-

Refund for ₹ 4,68,505/- on account of less adjustment for rebate of threshold for the year 2016-17.

Refund for ₹ 2,66,279/- on account of less paid interest against ACD/AACD and ₹ 8,42,659/- as interest on interest.

Refund for TOD Rebate for the months 03/2019 & 04/2019

- (viii) In respect of the decision of the Forum, the Respondent submitted that the decision of the Forum had been implemented. The Appellant had not given any request in the office of AE City Sub-division Guruharsahai, so the Forum rightly decided that the Threshold rebate for the year 2016-17 was time barred in view of clause 2.25 of PSERC (Forum and Ombudsman) Regulations-2016.
- (ix) The Respondent submitted that the excess amount of ₹ 17,67,846/- paid by the Appellant had already been credited to the Appellant's account against its outstanding balance.
- (x) The Respondent submitted that the interest on security of ₹ 2,20,393/- had been given to the Appellant vide SCA No. 317/171/R-10 and the same had been forwarded to XEN, CBC for approval.
- (xi) The Respondent further submitted that the TOD Rebate for the months of 03/2019 and 04/2019 amounting to ₹ 96,041/- had also been given to the Appellant vide SCA No. 317/171/R-10 and the same had been forwarded to XEN, CBC for approval.

(b) Submission during hearing

During hearing on 15.03.2022 & 22.03.2022, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal.

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of claim of the Appellant regarding refund of interest less received due to delay in updation of ACD/Meter Security, interest on this interest less received, refund of amount of Threshold Rebate less received for the year 2016-17, refund of amount excessively charged and refund of TOD Rebate for the months of 03/2019 and 04/2019 alongwith the interest.

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

- (i) The Appellant's Representative (AR) reiterated the submissions made by the Appellant in the Appeal as well as in the Rejoinder. He pleaded that the decision of the Forum was not based on any principle of justice and the petition of the Appellant was disposed off by the Forum by ignoring the interests of Appellant and just to save the financial interests of PSPCL.

- (ii) On the other hand, the Respondent controverted the pleas raised by the Appellant in its Appeal and reiterated the submissions made by the Respondent in the written reply. The Respondent argued that the Forum had rightly decided the Petition of the Appellant and the plea of the Appellant that the Forum had decided the case by ignoring the interests of Appellant and just to save the financial interests of PSPCL was totally wrong as the Forum had given sufficient benefits in the favour of the Appellant.
- (iii) I have gone through the written submissions made by the Appellant in the Appeal as well as in the Rejoinder/ additional submissions and submissions made by the Respondent in its reply as well as oral arguments of both the parties during the hearing on 15.03.2022 & 22.03.2022. The issue wise observations of this Court are as under:-
- (iv) **Excess amount recovered from Bills and interest thereon:**
The Appellant had filed case for refund of ₹ 21,37,846/- alongwith interest of ₹ 3,53,601/- in its petition before the Forum. During the proceedings of the Forum, the Appellant and the Respondent had jointly reconciled the matter and found ₹ 17,67,846/- payable to the Appellant. As such, the Forum did not interfere with this amount because the same was agreed by

both the Appellant and the Respondent, but disallowed the interest on this agreed amount. Against this, the Appellant filed an Appeal before this Court to allow interest of ₹ 3,96,264/- and more upto the date of actual payment as per Regulation 35.1.3 of the Supply Code-2014. The Respondent had submitted in written reply that the excess amount of ₹ 17,67,846/- paid by the Appellant had already been credited to the account of the Appellant against its outstanding balance.

I agree with the decision of the Forum on this issue. The claim of the Appellant for interest to be given on refund amount is not tenable as the Appellant did not act timely and it did not represent to the Respondent before the year 2021. The Appellant had not challenged the bills in dispute by depositing the requisite fee. So, the interest is not payable. Regulation 35.1.3 of Supply Code, 2014 is not applicable in this case. I am not inclined to interfere with the decision of the Forum on this issue.

- (v) **Refund of Threshold Rebate less received alongwith interest:** The Appellant had filed case for refund of ₹ 3,55,198/- as claim for less credit of Threshold rebate for the year 2016-17 as per CC No. 31/2016 alongwith interest of ₹ 1,13,307/- in its petition before the Forum. The Forum in its

decision mentioned that the Respondent vide his office Memo Nos. 8177 dated 08.10.2021 and 174 dated 09.01.2022 had stated that the claim of the Appellant for less credit of Threshold Rebate and interest thereon for the year 2016-17, being more than two years old, became time barred under Regulation 2.25 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016. The Appellant had never intimated in writing about less amount paid relating to threshold rebate and had never applied for Threshold Rebate for the year 2016-17 to the Respondent in the past. Considering the arguments of the Respondent as reliable, the Forum decided to treat this claim of the Appellant as time barred under Regulation 2.25 of PSERC (Forum and Ombudsman) Regulations-2016. The Appellant filed an appeal against this decision of the Forum before this Court and contended that the Forum had wrongly rejected the claim of the Appellant as time barred as the mistake came to the notice of the Appellant during audit of electricity accounts during the month of 09/2021 and as per clause 17 of Limitation Act-1963- “The period of limitation shall not begin to run until the plaintiff or applicant has discovered it, or in the case of a concealed document, until the plaintiff or the applicant first had

the means of producing the concealed document or compelling its production.”

It is observed that the Appellant is a Large Supply Category Industrial Consumer. As such, the Appellant was supposed to know all the regulations, tariff orders and instructions of the Licensee (PSPCL) relating to its connection. All the regulations and tariff orders were/ are available on the Websites of PSERC and PSPCL. Commercial Circulars and important instructions are also available on the website of PSPCL. PSPCL cannot get all the regulations/ tariff orders/ instructions noted from the Consumers. As per A&A forms, the Appellant had to follow the regulations and tariff orders. All the electricity bills served to the Appellant invariably depicted rebates allowed. In case of missing rebates in the monthly bills, the Appellant was supposed to avail the facility of challenging the bills as per Supply Code Regulations. The Appellant had not challenged the bill of 03/2017 for Threshold Rebate which was not given and also did not file any representation in the office of the Respondent for less Threshold Rebate given for FY 2016-17 before filing the petition in the Forum. There was no concealment of any document/ instructions relating to Threshold Rebate by the Respondent. The Appellant failed to scrutinize the monthly electricity bills in time and it could

not take timely action to get the mistake rectified as per Regulations. Now, the claim of the Appellant for less threshold rebate for FY 2016-17 cannot be considered as per PSERC (Forum & Ombudsman) Regulations, 2016. The Appeal Case is to be decided as per PSERC Regulations and Tariff orders. Further, this Appeal case of the Appellant does not fall in the purview of the Refund Committees. Regulation 35.1.3 of Supply Code, 2014 is not applicable in this case. There appears to be no truth in the averments of the Appellant that the mistakes in the bills came to their knowledge only during audit of electricity accounts during the month of 09/2021 as the accounts of all the business men are required to be audited every year and there is no such audit of electricity accounts in the Law which is conducted after four years. Any grievance relating to less rebate on account of consumption of electricity above threshold limits during the year 2016-17 is not considerable now for decision because these issues are more than two years old from the date of cause of action (April,2017). The decision of the Forum is in line with Regulation No. 2.25 of PSERC (Forum & Ombudsman) Regulations, 2016. I observe that adjudication of any dispute must stand scrutiny of law/ regulations 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. Also, the Appellant cannot increase the amount of claim in the Appeal than the amount actually sought in the original petition. Since the original demand of the Appellant is liable to be rejected on this issue, so there is no question of allowing interest on it. Hence, this Court is not inclined to interfere with the orders of the Forum on the issues raised in the Appeal relating to less threshold rebate received for the FY 2016-17.

- (vi) **Refund of Difference of Interest against ACD/AACD and interest on this interest:** The Appellant had filed case for refund of ₹ 2,66,279/- as interest on ACD not properly updated by the Respondent alongwith interest on this interest amounting to ₹ 8,42,659/- in its petition before the Forum. The Forum mentioned in its decision that during the proceedings of the Forum, the Respondent had admitted that an amount of ₹ 2,20,393/- on account of interest on security deposits was payable to the Appellant for period from 01.01.2008 to 31.03.2014 and the Appellant also agreed to it, so the Forum decided that no further intervention was needed, but the Forum disallowed the interest on interest as claimed by the Appellant.

Against this, the Appellant filed an Appeal before this Court to allow interest of ₹ 8,42,659/- as per Regulation 17 of the Supply Code- 2007 and 2014.

This Court observed that since the amount of interest of ₹ 2,20,393/- as agreed by both the parties has already been given by the Respondent vide SCA No. 317/171/R-10, so interference of this Court is not required on this issue. But as regards to contention of the Appellant regarding penal interest / interest on interest as per Regulation 17.4 of Supply Code, 2007 and Regulation 17.3 of Supply Code, 2014; this Court is of the view that the Appellant did not take appropriate remedy at an appropriate time. The Security amounts are invariably shown on the monthly electricity bills served to the Appellant but he had never represented in the office of the Respondent for updation/ correction of Security amounts. The bills were not challenged for rectification of errors. Delay on the part of the Appellant to file the representation for correction/ updation of securities should not result in additional income to the Appellant at the cost of the Respondent (PSPCL). As such, the issue of allowing penal interest/ interest on interest on the Security (Consumption) and Security (Meter) for the disputed period is decided against the Appellant after due consideration.

In view of the above, I am not inclined to interfere in the decision dated 28.01.2022 of the Forum on this issue as well.

- (vii) **TOD Rebate for the month of 03/2019 and 04/2019 alongwith interest:** The Appellant had stated before the Forum that TOD Rebate was not allowed to it for the month of 03/2019 as per CC No. 25/2018 and calculation sheet of actual benefit of TOD for the month of 04/2019 should be provided to check the accuracy of TOD rebate given. In response to it, the Forum mentioned in its decision dated 28.01.2022 that the Respondent admitted that the TOD Rebate of 03/2019 was not given due to defective push button of the meter and during 04/2019, the meter was changed and as the complete DDL report was received from the concerned office, the admissible TOD Rebate would be allowed to the consumer, so the Forum decided that no further intervention was needed. The Appellant submitted in the Appeal that the TOD Rebate be given as admitted by the Respondent before the Forum alongwith the interest as per Regulation 35.1.3 of the Supply Code.

This Court observed that since the Appellant has submitted in its reply that the amount of TOD Rebate of ₹ 96,041/- has already been given by the Respondent vide SCA No. 317/171/R-10, so interference of this Court is not needed on

this issue. But as regards to contention of the Appellant regarding interest on this amount as per Regulation 35.1.3 of Supply Code, 2014; this Court is of the view that the Appellant did not raise the issue of interest in its Petition before the Forum. As such, it cannot raise this new issue at this stage in the Appeal. Also, the Appellant did not take appropriate remedy at an appropriate time. So, there is no question of allowing interest on it. Hence, this Court is not inclined to interfere with the orders of the Forum on this issue.

- (vii) In view of the above, this Court is not inclined to interfere with the decision dated 28.01.2022 of the Forum in Case No. CGP-01 of 2022.

6. Decision

As a sequel of above discussions, the order dated 28.01.2022 of the CGRF, Patiala in Case No. CGP-01 of 2022 is hereby upheld.

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.

March 22, 2022
S.A.S. Nagar (Mohali)

(GURINDER JIT SINGH)
Lokpal (Ombudsman)
Electricity, Punjab.

