

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

APPEAL No. 20/2021

Date of Registration : 03.03.2021

Date of Hearing : 07.04.2021

Date of Order : 12.04.2021

Before:

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

In the Matter of:

M/s. Ajay Forgings,
E-769-770, Phase-VII,
Focal Point, Ludhiana.

Contract Account Number: 3002809745

...Appellant

Versus

Senior Executive Engineer,
DS Focal Point Division (Special),
PSPCL, Ludhiana.

...Respondent

Present For:

Appellant: Sh. Jivtesh Singh Nagi, (Advocate)
Appellant's Counsel.

Respondent : Er. Jagdeep Singh
Senior Executive Engineer,
DS Focal Point Division (Special),
PSPCL, Ludhiana.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 04.01.2021 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-362 of 2020, deciding that:

- i. *As the total load has been sanctioned by the competent authority under PIU category, therefore the amount charged as difference of PIU and general category tariff vide notice no. 6248 dated 20.12.2019 amounting to Rs. 517452/-, is correct and recoverable.*
- ii. *As admitted by the Respondent, Refund of the wrong fixed charges from 21.07.2020 to 03.08.2020, before the sanction of extension of load, amounting Rs. 122805/-, is allowed after getting it pre-audited.*
- iii. *Further, as no demand surcharge has been charged due to excess MDI/ CD, as claimed by the Petitioner, so there is no dispute in this regard.”*

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 03.03.2021 i.e. after stipulated period of thirty days of receipt of the decision dated 04.01.2021 of the CGRF, Ludhiana in Case No. CGL-362 of

2020 by the Appellant on 09.01.2021. An application for condoning of delay in filing the Appeal in this Court was also received alongwith the Appeal. The Appellant was not required to deposit the requisite 40% of the disputed amount being a refund case. Therefore, the Appeal was registered and copy of the same was sent to the Senior Executive Engineer/ DS Focal Point Division (Spl.), PSPCL, Ludhiana for sending written reply/parawise comments with a copy to the office of the CGRF, Ludhiana under intimation to the Appellant vide letter nos. 263-265/OEP/A-20/2021 dated 03.03.2021.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 31.03.2021 at 12.15 PM and an intimation to this effect was sent to both the sides vide letter nos. 371-72/OEP/A-20/2021 dated 22.03.2021. However, on the request of the Counsel for the Appellant vide e-mail dated 24.03.2021, hearing was adjourned to 07.04.2021 at 11.45 AM. Both the sides were informed accordingly vide letter nos. 453-54/ OEP/ A-20/2021 dated 30.03.2021. As rescheduled, the hearing was held in this Court on the said date and time. Arguments of both parties were heard and the order was reserved. Copies of the minutes of the proceedings were sent to the Appellant and the

Respondent vide letter nos. 504-05/OEP/A-20/2021 dated 07.04.2021.

4. Condonation of Delay

At the start of hearing on 07.04.2021, the issue of condoning of delay in filing the Appeal beyond the stipulated period was taken up. The Appellant's Counsel had filed an application alongwith the Appeal praying that the Appellant had visited Delhi from 10th to 17th February, 2021 for some official work and had to remain quarantine for 15 days after returning from Delhi. Hence, the Appeal could not be filed within the stipulated time period. In the wake of COVID-19 Pandemic, the Hon'ble Supreme Court, while taking suo-moto cognizance and exercising its inherent powers under Article 142 of the Constitution, passed an order dated 23.03.2020, wherein it was stated that irrespective of the limitation prescribed under the General Laws or Specific Laws, whether condonable or not shall, stand extended w.e.f. 15.03.2020 until further orders. In the light of the above mentioned order passed by the Hon'ble Supreme Court, the limitation after 15.03.2020 shall be extended. Therefore, the limitation period, by virtue of the order passed by the Hon'ble Supreme Court stands extended automatically. The delay caused in filing of the instant Appeal

was due to a valid reason and since the delay was only of 23 days, non condonation would result in undue denial of justice to the Appellant. The delay in filing the Appeal was neither intentional nor deliberate and warrants to be condoned in light of the order passed by the Hon'ble Supreme Court and the facts detailed above. There was sufficient and plausible reasons for the acceptance of the present application and to condone the delay in filing the present Appeal.

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 condoning 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 Counsel 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 along with material brought on record by both the sides.

(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 Category Connection, bearing Account No. 3002809745 with sanctioned load of 1600 kW and Contract Demand (CD) as 1770 kVA.
- (ii) The Appellant had applied for extension in load in 2017 and submitted a test report on 27.05.2017 having general load as 249 kW and PIU load as 750 kW. The Respondent had wrongly sanctioned the entire load as PIU, instead of mixed load, as depicted in the test report.

- (iii) Consequently, the Appellant was being wrongly charged the fixed charges for PIU load despite having mixed load on account of the load that was wrongly sanctioned by the Respondent.
- (iv) The Appellant had again applied for extension of its load from 999 kVA to 1770 kVA and accordingly submitted another test report wherein general load of 750 kW/ CD 830 kVA and PIU load of 850 kW/ CD 940 kVA had been shown. The Respondent had again sanctioned the entire load as PIU, instead of mixed load, that should have been sanctioned in consonance with the test report duly submitted by the Appellant.
- (v) Consequently, the Appellant had to pay fixed charges for PIU on the total load, despite having a mixed load shown in the test report. The Appellant had made a representation to the Respondent on 01.09.2020 to address the issue. The Respondent neither responded to the representation nor took any action to fix the issue raised in the said representation.
- (vi) The Appellant had filed petition before the Forum but the same was dismissed vide impugned order dated 04.01.2021. The Respondent had erred and wrongly sanctioned the load as PIU load instead of mixed load.

- (vii) The Appellant had submitted the test report depicting mixed load but Respondent wrongly sanctioned PIU load alone and Respondent alone can be held accountable for the said negligence as the A&A form was finalized by the concerned Clerk of the Respondent. Because of the wrongly sanctioned load, the Appellant had suffered hefty financial losses. Therefore, the Respondent was negligent in sanctioning wrong load as PIU instead of mixed load, which was solely the fault of the Respondent since the Respondent was to finalize the A&A form in consonance with the test report. But they had sanctioned load as PIU wrongly in contravention with the test report.
- (viii) The Forum had erred in not taking into account the facts detailed herein above and furthermore, the Forum had not passed any specific finding in its order as to who was to be held accountable for sanctioning the load wrongly inspite of the fact there being a test report clearly depicting mixed load, which, in terms of the facts of the instant case, should be the Respondent for the afore mentioned reasons.
- (ix) After passing of the impugned order, the Appellant was constrained to apply for bifurcation of load vide representation dated 08.01.2021 without prejudice to its right to Appeal or

avail any other legal remedy available to the Appellant. The load had not been bifurcated by the Respondent so far.

- (x) The Respondent be directed to treat the load of the Appellant as mixed load and not PIU load w.e.f. 27.05.2017 when first test report was submitted and further to refund the amount charged in excess as fixed charges on PIU load instead of mixed load with interest in terms of Regulation 35 of Supply Code-2014. The Respondent be directed to take action on the representation dated 08.01.2021 of the Appellant.

(b) Submission in rejoinder to written reply

The Appellant submitted as under in the rejoinder to written reply for consideration of this Court:

- (i) It had been admitted by the Respondent that extension was sought but the Respondent had deliberately chosen to remain silent on the fact that the test report clearly depicted mixed load of general 249 kW and 750 kW and therefore, the Respondent had violated Instruction No. 18.1 of ESIM relied upon by the Respondent in para no. 5 of its reply wherein, it had been categorically stated that connection shall be released after compliance of demand notice and test report. The Respondent, while releasing the extended load, had failed to take into

account the test report. Thus, the Respondent violated the said Regulation/ Instruction and wrongly released the total load as PIU instead of mixed load.

- (ii) The Test Report categorically showed general load to be 750 kW and load from billet heaters to be 850 kW. Therefore, the averments made in the written reply in this regard were not maintainable.
- (iii) The Respondent had simply stated in its reply that the Appellant was correctly billed but failed to provide any valid reasons for it. The Respondent had not denied that the connection was wrongly extended as PIU load instead of mixed load. The Respondent had wrongly stated that the Appellant had not applied for bifurcation of load.
- (iv) The Appellant had applied for bifurcation of load on 22.01.2021 and deposited processing fee of ₹ 2,950/- for the said purpose. The Respondent had admitted that A&A form for bifurcation had been sent for approval and therefore, contradictory facts had been stated therein.

(c) Submission during hearing

During hearing on 07.04.2021, the Appellant's Counsel reiterated the submissions made in the Appeal 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 a Large Supply Category Connection, bearing Account No. 3002809745 with sanctioned load of 999 kW/CD as 999 kVA as per A & A dated 04.05.2017. Thereafter, revised load of 1600 kW and CD as 1770 kVA was approved vide A & A dated 28.01.2019 by the Competent Authority under Induction Furnace means PIU. Therefore, the rate was set as Power Intensive Unit for the complete load.
- (ii) The Forum had decided the case against the Appellant by holding that as the total load had been approved by the Competent Authority under PIU category, therefore, the amount charged as difference of PIU and General Category tariff vide Notice No. 6248 dated 20.12.2019 amounting to ₹ 5,17,452/- was correct and payable.
- (iii) The Appellant had applied for extension in load from 490 kVA to 999 kVA vide Application No. 2369649 dated 04.05.2017. The Respondent, being the Competent Authority, as per Instruction No. 16.2 of ESIM, had approved the A&A as

Forging Unit, which came under PIU category. Further, the Appellant had applied for extension of its load from 999 kVA to 1770 kVA and was approved by Competent Authority under PIU Category.

- (iv) As per test report dated 24.07.2019 submitted by the Appellant, no load bifurcation was mentioned in it i.e. only existing load- 999 kVA , extended load -777 kVA, total load- 1770 kVA was mentioned. As per Instruction No. 18 of ESIM, the Respondent releases the connection to the consumers after the compliance of demand notice and submission of test report. As per Instruction No. 18.1 of ESIM, the Respondent does not carry out the inspection of all categories of connections (except AP) for verification of test report submitted by a consumer through a Licensed Electrical Contractor for availing new connection.
- (v) As per A&A form, duly approved by the Competent Authority, the rate category was set as Power Intensive Unit and therefore, the Appellant was charged fixed charges also. The Forum, vide its decision dated 04.01.2021, had quoted in point no. (i) on page 11 that as the total load had been approved by the Competent Authority under PIU category, therefore, the amount charged as difference of PIU and General Category

tariff vide notice no. 6248 dated 20.12.2019 amounting to ₹5,17,452/- was correct and payable.

- (vi) The Appellant had deposited the total security under PIU category and total load had been sanctioned under PIU category. Moreover, the Appellant had not requested/ applied for any bifurcation of PIU/ General load/ CD till date. A copy of receipt for ACD deposited by the Appellant through online mode with charges of ₹ 1,500/- per kVA i.e. for PIU load was also attached.
- (vii) The A&A form of the Appellant, for bifurcation of load, would be implemented in SAP system as and when, it would be approved by the Competent Authority of the Respondent.

(b) Reply of Respondent to Rejoinder by Appellant

The Respondent submitted defence reply to the rejoinder of the Appellant as under:

- (i) The Appellant had itself written a letter to PSPCL regarding RID No. 16246 dated 23.06.2016 stating that it had wrongly applied industry type as 'General Industry' and was requesting the department to change its load into POWER Intensive Industry type for extension of load to 999 kVA.
- (ii) The amount charged to the consumer was correct and payable.

- (iii) The rate category was set Power Intensive as per the A & A form approved by the Competent Authority. Therefore, the consumer was charged Fixed Charges accordingly.
- (iv) The Appellant was itself admitting that in 2021, it had applied for Load Bifurcation and had deposited processing fee of Rs. 2950/- for that. As such, the Appellant should have applied for load bifurcation, in case its industry was working at mixed load earlier as well. However, no such request for load bifurcation was ever received in the office of the Respondent.

(c) Submission during hearing

During hearing on 07.04.2021, the Respondent reiterated the submissions made by it in the written reply and requested for dismissal of the Appeal of the Appellant.

6. Analysis and Findings

The issues requiring adjudication are the legitimacy of the prayer of the Appellant for issuance of directions to the Respondent to

- (i) treat its load as mixed load instead of PIU load with effect from 27.05.2017 and to refund the amount so charged in excess with interest.

- (ii) act on the representation dated 08/22.01.2021 requesting the Respondent for bifurcation of load as PIU and General load.

My findings on the issues emerged, deliberated and analyzed are as under:

Issue (i)

- (i) The Appellant's Counsel had, in the present Appeal, prayed to this Court for issuance of directions to the Respondent to treat the load of the Appellant's connection as mixed load and not PIU load with effect from 27.05.2017 when first Test Report was submitted and further to refund the amount charged in excess as fixed charges on PIU load instead of mixed load with interest in terms of provisions of Regulation 35 of Supply Code-2014. The Appellant's Counsel argued that it had been admitted by the Respondent that extension was sought but the Respondent had deliberately chosen to remain silent on the fact that the test report clearly depicted general load as 249 kW and PIU load as 750 kW and therefore, the Respondent had violated Instruction No. 18.1 of ESIM relied upon by the Respondent in para no. 5 of its reply wherein, it had been categorically stated that connection shall be released after compliance of demand notice and test report. The Respondent,

while releasing the extended load, had failed to take into account the test report. Thus, the Respondent violated the said Regulation and wrongly released the total load as PIU instead of mixed load. The test report categorically showed general load to be 750 kW and load from billet heaters to be 850 kW. Therefore, the averments made in the written reply in this regard were not maintainable. The Respondent had simply stated in its reply that the Appellant was correctly billed but failed to provide any valid reasons for it. The Respondent had not denied that the connection was wrongly extended as PIU load instead of mixed load. The Respondent had wrongly stated that the Appellant had not applied for bifurcation of load.

- (ii) The Respondent in its defence, submitted that the Appellant had written a letter dated 25.06.2016 regarding RID No. 16246 dated 23.06.2016 stating as under:

“This is hereby requested that we are running the Power connection of 489.9 kV bearing customer a/c no E32FP5600724 in the name of Ajay Forgings, E 769, phase VII, focal point, Ludhiana. Now recently we have applied online for the extension of load to 990 kV with you. (RID No 16246 Dtd 23-6-2016) in that application we wrongly mention by industry type as general industry, but now we are willing to

install induction Billet Heater. So we hereby request you to kindly change our industry type to power intensive unit after extension of load.”

The Respondent added that amount charged to the Appellant was correct and payable. The rate category was set Power Intensive as per A&A form approved by the Competent Authority (Load Sanctioning Authority). Therefore, the Appellant was charged accordingly. The Appellant itself admitted that in 1/2021, it had applied for load bifurcation and had deposited processing fee of ₹ 2950/- for that. Thus, the Appellant should have applied for load bifurcation in case, its industry was working at mixed load earlier as well. However, no such request for load bifurcation was ever received by the Respondent.

- (iii) As per material brought on record of this Court, A&A Form dated 04.05.2017 was signed between Addl. S.E, DS Focal Point Division (Special), Ludhiana, AEE/Commercial, DS Focal Point Division (Special), Ludhiana and Representative of the Appellant. In the said agreement, the following Load, CD

etc. were approved:

Load =999 kW,

Contract Demand=999 kVA,

Supply Voltage = 11 kV

Type of industry =Forging Unit (PIU),

T/F Capacity =1x1250 kVA.

- (iv) The Court noted that another A&A dated 28.01.2019 was signed between Dy. C.E/DS, City East Circle, PSPCL, Ludhiana, Additional S.E/DS, Focal Point Division (Special), Ludhiana, AEE/Commercial, DS Focal Point Division (Special), Ludhiana and Representative of the Appellant. The load was approved by the Chief Engineer/ DS, Central Zone, PSPCL, Ludhiana. In this agreement, approval was given as per following details:

Total Load=1600 kW,

Contract Demand =1770 kVA,

Supply Voltage= 11kV,

T/F Capacity= 2000 kVA,

Kind of industry = PIU.

- (v) It is observed that the Appellant itself informed the Respondent vide letter dated 25.06.2016 about its plan to install Billet Heater in its Unit and accordingly, requested the Respondent to consider its application for extension of load/CD to 999 kW/999 kVA under PIU category instead of General Industry . As a result, A&A dated 04.05.2017 for load/CD as 999 kW/999 kVA was sanctioned under PIU category. The Appellant deposited the security applicable for PIU load and paid the bills as raised from time to time without any challenge. Since the Power Intensive Load was sanctioned by the Load Sanctioning Authority as per the request of the Appellant, this court is not inclined to give directions to the Respondent to treat its load as mixed load with effect from 27.05.2017 as prayed in the Appeal.
- (vi) The Court also observed that on the request of the Appellant, another A & A dated 28.01.2019 was signed by the Appellant with PSPCL for sanction of extension in load/CD to 1600 kW and 1770 kVA respectively and for this extension, the Appellant had deposited the security applicable to PIU load. This extension in load was effected on 03.08.2020. Thereafter, the Appellant also paid the energy bills raised as per PIU Tariff

in terms of provisions of Tariff Order for FY 2020-21 without challenging any of these bills.

- (vii) It is observed that the Appellant had not understood the instructions contained in General Conditions of Tariff and Schedule of Tariff relating to the Tariff Orders for FY 2017-18, 2018-19, 2019-20 and 2020-21 whose perusal revealed that billing on the basis of PIU load and General Load in proportion to it was only to be applied where General and PIU load had been separately sanctioned by the Load Sanctioning Authority in the A & A Form. In the present case, the whole load was sanctioned by the Load Sanctioning Authority under PIU Category and billing was done correctly.
- (viii) The averments made by the Appellant's Counsel particularly in rejoinder to written reply (specifically that the Appellant was not at fault and that the load sanctioning authority had wrongly sanctioned the load without bifurcation) are not convincing and hence are not sustainable. Ever since release of the Appellant's LS category connection, it did not point out in writing that bifurcation of load applied for by it had not been reflected in the bills which in turn, were paid regularly. LS category consumer is expected to be sincere, responsible and vigilant in discharging its obligations instead of incorrectly pointing out

lacunae in the working of the Distribution Licensee. Thus, the Appellant cannot absolve itself of the responsibility and liability for the disputed amount billed to it as per instructions of PSPCL/PSERC.

- (ix) From the above analysis, it is concluded that the entire load of the Appellant was sanctioned by the Load Sanctioning Authority under PIU category. The Appellant had not submitted new A&A Forms by bifurcating the PIU load & General Load till 22.01.2021. It is evident that the total load of the Appellant falls under PIU category and there was no other General Industry (General Load) except PIU load. The proportionate billing of PIU and general tariff was to be done only if it was separately sanctioned in the A & A Form by the Load Sanctioning Authority as per provisions of the respective Tariff Orders. The Forum had rightly decided that the demand raised vide Notice No. 6248 dated 20.12.2019 was correct & recoverable from the Appellant.
- (x) The plea of the Appellant in this case regarding non-bifurcation of load between PIU and General load during the disputed period is not just and fair. As such, the claim of the Appellant regarding refund of the amount charged in excess as fixed charges on PIU load instead of mixed load with interest with

effect from 27.05.2017 is devoid of merit and is hereby rejected after due consideration of all the facts/documentary evidence of the case.

- (xi) The decision of the Forum on this issue does not warrant any interference by this Court. Accordingly, this issue is decided against the Appellant.

Issue (ii)

- (i) The Appellant's Counsel had prayed for issuance of directions to process its application dated 22.01.2021 for bifurcation of load between General and PIU loads.
- (ii) The Court observed that said application dated 22.01.2021 was submitted by the Appellant to the Respondent after decision dated 04.01.2021 in Petition No. CGL-362/2020 filed before CGRF, Ludhiana and was not a part of the said Petition.
- (iv) The Respondent was directed during hearing on 09.04.2021 to process the said application of the Appellant expeditiously as per instructions.
- (v) This issue is disposed of accordingly.

7. Decision

As a sequel of above discussions, it is decided that:

- (i) the order dated 04.01.2021 of the CGRF, Ludhiana in Case No. CGL-362 of 2020 is upheld.
- (ii) the Respondent shall process the application dated 22.01.2021 of the Appellant for bifurcation of load between PIU and General load expeditiously as per prevalent instructions.

8. The Appeal is disposed of 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.

April 12, 2021
S.A.S. Nagar (Mohali)

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