

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

APPEAL No. 42/2021

Date of Registration : 23.04.2021

Date of Order : 12.05.2021

Before:

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

In the Matter of:

Raj Kumar S/o Sh. Lal Bihari,
Simranjit Nagar, Street No. 2,
New Subhash Nagar, Akata Colony,
Ludhiana-141001.

Contract Account Number: 3002808814 (NRS)

...Appellant

Versus

Additional Superintending Engineer,
DS Sunder Nagar Division (Special),
PSPCL, Ludhiana.

...Respondent

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 08.03.2021 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-037 of 2021, deciding that:

“As the amount has already been deposited without any objection and the recovery suit is still pending with the Hon’ble Court, with next date of hearing as 19.03.2021, therefore, as

per Reg. 2.27 of PSERC (Forum and Ombudsman) Regulations-2016, the case is not maintainable in this Forum.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 12.04.2021 i.e. within the stipulated period of thirty days of receipt of the decision dated 08.03.2021 of the CGRF, Ludhiana in Case No. CGL-037 of 2021 by the Appellant on 15.03.2021. The Appellant stated that it had already deposited the whole disputed amount of ₹2,52,903/- vide Receipt No. 102348 dated 19.06.2019 for ₹1,92,433/- and Receipt No. 152814395 dated 23.12.2020 for ₹60,470/-. Subsequently, the Appellant also deposited ₹ 5,270/- on 06.05.2021 online after being pointed out (as balance amount) by the Respondent. Therefore, the Appeal was registered and copy of the same was sent to the Addl. Superintending Engineer/ DS Sunder Nagar Division (Special), 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. 670-672/OEP/A-42/2021 dated 23.04.2021.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 12.05.2021 at 11.00 AM and an intimation to this effect was sent to both the sides vide letter nos. 726-27/OEP/A-42/2021 dated 04.05.2021. The Appellant's Representative sent an e-mail dated 10.05.2021 stating that owing to imposition of 17 hours curfew restriction (12.00 Noon to 05.00 AM next morning) from 10.05.2021 to 17.05.2021 in Ludhiana, he would not be able to attend the Court on 12.05.2021. He also requested that Appeal be decided on merits by exempting personal appearance on the scheduled date of hearing. The Respondent also sent Memo No. 1214 dated 11.05.2021 (received vide e-mail) requesting this Court to decide the case on the basis of written reply/documents already submitted.

4. Submissions made by the Appellant and the Respondent

Before undertaking analysis of the case, it is necessary to go through written submissions made by the Appellant and reply of the Respondent as well as oral submissions made by the Appellant's Representative and the Respondent alongwith 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 Non Residential Supply Category Connection, bearing Account No. 3002808814, with sanctioned load of 15.60 kW.
- (ii) The order of the Forum was against the rules/regulations of the Respondent and was also against the natural justice.
- (iii) The Appellant had challenged before the Forum, the following demands raised by the Respondent: -
 - i) ₹ 60,470/- deposited vide Receipt No. 152814395 dated 23.12.2020; and
 - ii) ₹1,92,433/- deposited vide Receipt No. 102348 dated 19.06.2019

The amount of ₹ 60,470/- admittedly related to recovery proceedings which was deposited by the Appellant on telephonic message and now, he did not want to file any Appeal.

- (iv) The Appeal of the Appellant was against the deposit of ₹1,92,433/- which was got deposited in 06/2019 when there was no recovery suit against the Appellant.
- (v) The Respondent, in its reply before the Forum, had admitted (page 7 para iii) that recovery suit was filed for ₹ 60,350/- only. Further, the recovery suit was initiated on 31.08.2020 whereas the above amount of ₹ 1,92,433/- was deposited by the Appellant more than a year ago i.e. on 19.06.2019.
- (vi) The Forum had erred in deciding the issue that amount of ₹1,92,433/- was also relating to recovery suit proceedings. There was no evidence on record which proved that the Respondent had filed recovery suit for ₹ 1,92,433/-.
- (vii) The Respondent had admitted in para 5 of the reply that in SAP System “PDCO request cannot be implemented/completed until consumer deposited all his dues”. From this condition, it was very much clear that the amount of ₹1,92,433/- was got deposited under the compelled circumstances with a fear that billing would not be closed until deposit of amount in full. Since the Appellant was in urgent need of new SP connection in the same place and the Respondent enforced a condition that PDCO will be closed in SAP System only after deposit of above amount in full, so to get the new connection, the

Appellant had to pay the amount after getting an assurance that excess amount would be refunded.

- (viii) The amount was deposited by the Appellant, being a law abiding citizen, with an assurance that if any amount was paid in excess, it would be got settled later on. However, it was particularly submitted that even deposit of money in good faith did not debar the right of the Appellant of filing representation before any Appellate Authority/ Forum/ DSC.
- (ix) As per CCHP, the consumer can approach the Forum directly in respect of matters falling under jurisdiction of the Forum as per Regulation 2.27 of PSERC (Forum and Ombudsman) Regulations-2016. No case can be rejected straightway without giving a consideration. But, in the present case, there was no case pending for the amount of ₹ 1,92,942/- in any Court, so, there was no reason to reject the grievances for this amount.
- (x) Recovery suit had been filed for ₹ 60,350/- only without the knowledge of the Appellant who only got to know about the recovery suit when he approached the Forum.
- (xi) Virtually, if we observe that case for ₹ 60,350/- was pending before the other authority, it was not considerable for decision. But there was no dispute pending in any For a for ₹ 1,92,942/-. Therefore, this dispute plea could be considered for decision.

- (xii) The Appellant had requested this court to direct the Forum to decide the case on merits and the Appellant had a right to Appeal if he was not satisfied with the decision of the Forum.

(b) Submissions in the Rejoinder

The Appellant, vide e-mail dated 05.05.2021, sent a rejoinder to the written reply stating as under:

- (i) The Respondent had cleared the position by stating that when the amount of ₹ 1,92,942/- was got deposited in 6/2019, there was no recovery suit filed against the Appellant at that time. Therefore, the decision of the CGRF, Ludhiana to reject the complaint on the basis of inter connecting the issue with recovery suit was clear denial of justice for which, this Court was requested to take appropriate action as deemed fit.
- (ii) The Respondent had again confirmed that recovery suit was filed for ₹ 60350/- only which means the amount of ₹ 1,92,942/- had no interference with recovery suit. As already prayed to this Court in the present Appeal, the Appellant does not want to contest for the amount of ₹ 60350/- deposited on receiving message of recovery suit. The claim was now only against the decision of the Forum which had wrongly

connected the amount of ₹ 1,92,942/- (deposited for ₹ 1,92,433/-) with recovery suit.

- (iii) The Respondent had also now confirmed that the recovery suit was filed on 31.8.2020 whereas the above amount of ₹ 1,92,433/- was deposited much before than a year i.e. on 19.06.2019.
- (iv) The Respondent had confirmed that there was no basis/link of ₹ 1,92,433/- to co-relate it with recovery suit. Therefore, the decision of the Forum that “case is not maintainable in the Forum” was highly objectionable, illegal, and against the natural justice.
- (v) As admitted by the Respondent and already prayed in the present Appeal, the Appellant had to deposit the amount of ₹ 1,92,433/- under the compelled circumstances as PDCO on consumer request could not be implemented/completed with any pending dues in consumer's account. In the present case, the Appellant applied for a new SP connection on the same place and also requested for disconnection of this running connection as per written request dated 22.05.2019. On this, the Respondent prepared checking report dated 22.05.2019 with the remarks that connection be disconnected on consumer's request. It was particularly, brought to the kind

notice of the Forum that the Appellant deposited all the outstanding bills at the time of submitting PDCO request and this amount of ₹ 1,92,433/- was raised and got deposited after PDCO request by raising a special bill even without sending the amount to SAP system as sundry and without issuing any arrear bill. The Appellant was, then, left with no alternative. He was either to pay the amount as asked for (to meet the pre-condition of SAP system to close the PDCO after deposit of full amount) or alternatively, to wait for release of new connection on the same place. Thus, there was clear evidence that the amount was deposited under the compelled circumstances and these circumstances snatched the right of Appellant for filing any objection of this unlawful recovery. Had the Forum minutely considered these circumstances, the Appellant would have got a suitable relief without knocking the door of this court. Therefore, this Court is requested to decide the case on merits either here or by giving suitable directions to the Forum to hear the Appellant. A very sympathetic consideration was prayed for.

(c) Additional Submissions

The Appellant's Representative sent an e-mail dated 10.05.2021 stating as under:

“THE ABOVE APPEAL CASE IS FIXED FOR HEARING ON 12.5.2021 IT IS PRAYED BEFORE THIS HON'BLE OMBUDSMAN THAT DUE TO IMPOSITION OF 17 HOURS CURFEW IN DISTT. LUDHIANA (FROM 12. NOON TO 5 AM NEXT DAY) EFFECTIVE FROM 10.5.2021 TO 17.5.2021 AS PER ORDERS OF LOCAL ADMINISTRATION AND ALSO DUE TO PANIC OF CORONA PANDEMIC, I WILL NOT BE ABLE TO ATTEND THE HON'BLE COURT PHYSICALLY ON 12.5.2021. IT IS FURTHER PRAYED THAT THE APPEAL BE DECIDED ACCORDINGLY KEEPING IN VIEW THE MERITS BY EXEMPTING PHYSICAL APPEARANCE AS EXPLAINED ABOVE. ANY DECISION WILL BE DULY ACCEPTABLE AS PRESCRIBED UNDER RULES.”

(B) Submissions of the Respondent

(a) Submissions in written reply

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

- (i) An electric connection under Non Residential Supply category, bearing Account No. 3002808814 with load of 15.60 kW, was sanctioned in the name of the Appellant.
- (ii) In the month of 04/2018, meter of the Appellant was found defective and this defective meter was replaced vide DRA No. 100005711552 dated 10.04.2018.
- (iii) The Meter of the Appellant was checked in ME Lab vide ME Lab Challan No. 3196 dated 03.05.2018. As per the report of ME Lab, meter of the Appellant was found dead stop. It was

also mentioned in ME Lab Challan that DDL and final reading could not be ascertained on AC and DC mode.

- (iv) The Account of the Appellant was overhauled by Audit Party for the period 11/2017 to 09/2018 vide Half Margin No. 1095 dated 24.12.2018 and a sum of ₹ 1,92,942/- was charged to the Appellant. The Appellant had deposited the said amount on 19.06.2019 without raising any dispute.
- (v) In the month of 08/2018, meter of the Appellant was changed vide DRA No. 100006319937 dated 09.08.2018 as it was found defective. The meter was checked in ME Lab vide ME Lab Challan No. 2522 dated 27.09.2018. As per ME Challan, meter was found dead stop. In the month of 11/2018 vide DRA No. 100006963590 dated 13.11.2018, meter was again changed as the meter was found defective. The meter was checked in ME Lab vide ME Challan No. 2935 dated 28.03.2019. As per ME Challan, meter was found dead stop.
- (vi) The connection of the Appellant was disconnected vide PDCO No. 100008635517 dated 22.07.2019 due to non-payment of outstanding amount. The Meter of the Appellant was checked in ME Lab vide ME Challan No. 3501 dated 10.10.2019. Final reading of 8088 kVAh/8700 kWh was recorded by ME Lab.

- (vii) The Respondent had filed recovery suit against the Appellant for recovery of outstanding amount of ₹ 60,350/- and not for ₹1,92,942/- which was deposited by the Appellant in 06/2019. The Appellant had deposited this amount vide Receipt No. 152814395 dated 23.12.2020 without raising any dispute but he did not deposit the amount with interest. Now an amount of ₹5,250/- as on 03.05.2021 was still payable by the Appellant to the Respondent.
- (viii) The Appellant had raised the dispute of the amount charged by Audit Party amounting to ₹ 1,92,942/-. The Appellant had approached the Forum but his case was rejected by the Forum.
- (ix) The Appellant had deposited the amount of the recovery suit amounting to ₹ 60,350/- when it came to his notice that recovery suit had been filed against him and summons were issued by the Civil Judge (Jr. Divn.), Ludhiana. The Appellant had no right to file any Appeal before this Court and the same deserved dismissal.

(b) Additional Submissions

The Senior Xen, DS Sunder Nagar Division (Special), PSPCL, Ludhiana (Respondent) sent Memo No. 1214 dated 11.05.2021 (received vide e-mail) stated, inter-alia, as under:

“ਆਪਜੀ ਨੂੰ ਬੇਨਤੀ ਕੀਤੀ ਜਾਂਦੀ ਹੈ ਕਿ ਇਸ ਕੇਸ ਦੇ ਸਬੰਧ ਵਿੱਚ ਦਫਤਰ ਵੱਲੋਂ ਖਪਤਕਾਰ ਦਾ ਕੇਸ ਤਿਆਰ ਕਰਕੇ ਭੇਜਿਆ ਜਾਂ ਚੁੱਕਾ ਹੈ ਜੀ। ਮੁਦੱਈ ਵੱਲੋਂ ਇਸ ਕੇਸ ਵਿੱਚ ਕੱਲ ਮਿਤੀ 12.05.2021 ਨੂੰ ਹਾਜ਼ਰ ਨਾਂ ਹੋਣ ਸਬੰਧੀ ਦੱਸਿਆ ਗਿਆ ਹੈ। ਇਸ ਲਈ ਨਿਮਨਹਸਤਾਖਰ ਵੱਲੋਂ ਜੋ ਵੀ ਇਸ ਕੇਸ ਦੇ ਫੈਕਟਸ/ਪਟੀਸ਼ਨ ਉੱਪਰ ਟਿੱਪਣੀ ਕੀਤੀ ਗਈ ਹੈ ਉਸ ਦੇ ਆਧਾਰ ਤੇ ਫੈਸਲਾ ਕਰ ਦਿੱਤਾ ਜਾਵੇ ਜੀ।”

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of the decision of the CGRF, Ludhiana in Case No. CGL-037 of 2021 about its maintainability on the ground that recovery suit filed by PSPCL was still pending in a Civil Court.

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

- (i) The Appellant had, in the present Appeal, contested the decision dated 08.03.2021 of CGRF, Ludhiana in Case No. CGL-037 of 2021 whereby, it was held that the said Petition filed by the Petitioner (now Appellant) challenging the charging of ₹ 1,92,942/-, due to overhauling of the account for the period from 11/2017 to 09/2018 by the Audit Party vide HM No. 1095 dated 24.12.2018, was not maintainable as per Regulation 2.27 of PSERC (Forum and Ombudsman)

Regulations-2016. The Appellant, in the present Appeal and rejoinder to written reply, submitted that the Forum observed that the case for recovery of ₹ 60,350/- was pending before the civil court, as such, it was not considerable for decision. The Appellant added that the present dispute did not relate to the said recovery suit for ₹ 60,350/-. In fact, there was no dispute pending in any Fora for ₹ 1,92,942/- which was the subject matter of the present dispute. Therefore, this dispute was considerable for decision in this Court. The Appellant prayed to this Court to either hear the case here on merits or direct the Forum to hear the Petitioner and decide the matter.

- (ii) The Respondent, in its written reply, stated that in the month of 04/2018, meter of the Appellant was found defective and this defective meter was replaced vide DRA No. 100005711552 dated 10.04.2018. The Meter of the Appellant was checked in ME Lab vide ME Lab Challan No. 3196 dated 03.05.2018. As per the report of ME Lab, meter of the Appellant was found dead stop. It was also mentioned in ME Lab Challan that DDL and final reading could not be ascertained on AC and DC mode. The Account of the Appellant was overhauled by Audit Party for the period 11/2017 to 09/2018 vide Half Margin No. 1095 dated 24.12.2018 and a sum of ₹ 1,92,942/- was charged

to the Appellant. The Appellant had deposited the said amount on 19.06.2019 without raising any dispute. In the month of 08/2018, meter of the Appellant was changed vide DRA No. 100006319937 dated 09.08.2018 as it was found defective. The meter was checked in ME Lab vide Challan No. 2522 dated 27.09.2018 and the same was found dead stop. In the month of 11/2018 vide DRA No. 100006963590 dated 13.11.2018, meter was again changed as the same was found defective. The meter was checked in ME Lab vide ME Challan No. 2935 dated 28.03.2019. As per ME Challan, meter was found dead stop. The connection of the Appellant was disconnected vide PDCO No. 100008635517 dated 22.07.2019 due to non-payment of outstanding amount. The Meter of the Appellant was checked in ME Lab vide ME Challan No. 3501 dated 10.10.2019. Final reading of 8088 kVAh/8700 kWh was recorded by ME Lab. The Respondent had filed recovery suit against the Appellant for recovery of outstanding amount of ₹ 60,350/- and not for ₹ 1,92,942/- which was deposited by the Appellant in 06/2019. The Appellant had deposited this amount vide Receipt No. 152814395 dated 23.12.2020 without raising any dispute but he did not deposit the amount with interest. The Appellant had raised the dispute of the amount charged by Audit Party

amounting to ₹ 1,92,942/-. The Appellant had approached the Forum but his case was rejected by the Forum.

- (iii) With a view to adjudicate the dispute, a hearing was fixed in this Court on 12.05.2021 at 11.00AM and an intimation to this effect was sent to both the sides vide letter nos. 726-27/OEP/A-42/2021 dated 04.05.2021. Thereafter, the Appellant's Representative sent an e-mail dated 10.05.2021 that owing to imposition of 17 hours curfew restriction (12.00 Noon to 05.00 AM next morning) from 10.05.2021 to 17.05.2021 in Ludhiana, he would not be able to attend the Court on 12.05.2021. He also requested that Appeal be decided on merits by exempting personal appearance on the scheduled date of hearing. The Respondent also sent Memo No. 1214 dated 11.05.2021 (received vide e-mail) requesting this Court to decide the case on the basis of written reply/documents already submitted.
- (iv) After going through written and oral submissions made as well as the material brought on record by both the sides, it is observed that the present dispute relates to the amount of ₹ 1,92,942/- for the period from 11/2017 to 09/2018 due to overhauling of the account of the Appellant by the Audit Party vide HM No. 1095 dated 24.12.2018. The Appellant deposited ₹ 1,92,942/- on 19.06.2019. Subsequently, the Appellant had

also deposited ₹ 5,270/- (interest) on 06.05.2021. Since the disputed amount (₹ 1,92,942/-) was deposited by the Appellant without raising any objection at relevant point of time, no recovery suit was required to be filed by the Respondent.

It is observed that this dispute relating to ₹ 1,92,942/- had no relation whatsoever to the recovery suit for the amount of ₹ 60,350/- charged to the Appellant and deposited by him on 23.12.2020 for which, a recovery suit filed by the Respondent in a Civil Court is pending. The Respondent had already written to its Counsel to withdraw this case vide memo no. 92 dated 12.01.2021. Thus, the Forum erred in deciding that “As the amount has already been deposited without any objection and the recovery suit is still pending with the Hon’ble Court, with next date of hearing as 19.03.2021, therefore, as per Reg. 2.27 of PSERC (Forum and Ombudsman) Regulations-2016, the case is not maintainable in this Forum.”

- (v) In this connection, it is worthwhile to peruse Regulation 2.27 of PSERC (Forum and Ombudsman) Regulations-2016 which reads as under:

“2.27 The Forum may reject the grievance at any stage, through a speaking order, under the following circumstances:

- a) *In cases where proceedings in respect of the same matter and between the same Complainant and the Licensee are pending before any court, tribunal, arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority;*
- b) *In cases which fall under Sections 126, 127, 135 to 140, 142, 143, 146, 152 and 161 of the Act or the matters relating to open access granted under the Act.*
- c) *In cases where the grievance has been submitted two years after the date on which the cause of action has arisen or after two months from the date of receipt of the orders of DSC; and*
- d) *In the case of grievances which are:*
- *Frivolous, vexatious, malafide;*
 - *Without any sufficient cause; or*
 - *Where there is no prima facie loss or damage or inconvenience caused to the Complainant or the consumers who are represented by an association or group of consumers.*

Provided that no grievance shall be rejected unless the Complainant has been given an opportunity of being heard.”

From the perusal of the above, it is evident that the order dated 08.03.2021 of the Forum was erroneous and was not based on factual position on record and also not in accordance with the Regulation referred to above.

- (vi) In view of the above analysis, this Court is inclined to set aside the decision dated 08.03.2021 of the CGRF, Ludhiana in Case No. CGL-037 of 2021. It will be just and fair to remand back the case relating to disputed amount of ₹ 1,92,942/- filed by the Appellant to CGRF, Ludhiana for consideration and decision as per PSERC (Forum and Ombudsman) Regulations-2016. Further, the Appellant is not willing to file any petition/ appeal in respect of ₹ 60,350/- already deposited along with interest for which the Respondent had filed recovery suit in Civil Court. The Respondent had already written to its Counsel to withdraw the case from the Civil Court.

6. Decision

As a sequel of above discussions, the decision dated 08.03.2021 of the CGRF, Ludhiana in Case No. CGL-037 of 2021 is set aside. It is decided to remand back the case filed by the Appellant relating to disputed amount of ₹ 1,92,942/- to the CGRF, Ludhiana for consideration and decision as per PSERC (Forum and Ombudsman) Regulations-2016.

7. The Appeal is disposed of accordingly.
8. In case, the Appellant or the Respondent is not satisfied with the above decision, it is at liberty to seek appropriate remedy against this order from the Appropriate Bodies in accordance with Regulation 3.28 of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016.

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

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