

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

APPEAL No. 43/2021

**Date of Registration : 26.04.2021
Date of Hearing : 19.05.2021
Date of Order : 19.05.2021**

Before:

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

In the Matter of:

M/s. Sanchit Enterprises,
D-37, Focal Point,
Phase-V, Ludhiana.

Contract Account Number: 3002810333

...Appellant

Versus

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

...Respondent

Present For:

Appellant: Sh. Parvesh Chadha,
Appellant's Representative.

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 24.12.2020 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. T-444/20 (Pre hearing), deciding that:

“In todays hearing, Forum observed that, in view of the Judgement of Hon. Punjab & Haryana High court, fresh orders have been passed by competent authority and now if the Petitioner is not satisfied with the orders passed in accordance with Judgement of Hon. High court, then he can approach the appellate authority.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 17.03.2021 i.e. after stipulated period of thirty days of receipt of the decision dated 24.12.2020 of the CGRF, Ludhiana in Case No. T-444/20 (Pre hearing) by the Appellant on 11.01.2021. The Appeal was not accompanied by receipts regarding payment of requisite 40% of the disputed amount with the Respondent for filing the Appeal in this Court as the Appellant had mentioned about deposit of ₹ 1,78,265/- on account of the requisite 40% of disputed amount of ₹ 10,75,454/-.

With a view to ensure confirmation about deposit of requisite 40% of disputed amount, the Addl. S.E/ DS Focal Point Division (Special), PSPCL, Ludhiana was requested vide letter nos. 381-82 dated 22.03.2021 to confirm the same by e-mail within two days. A copy of the said letter was also endorsed to the Appellant with the request to deposit the remaining amount with PSPCL for consideration of registration of the Appeal as the amount mentioned in the Appeal as having been deposited was not equivalent to 40% of the disputed amount. As no response to the said references made was received from either the Respondent or the Appellant, both sides were requested to attend this Court for pre hearing on 07.04.2021. During pre-hearing, the Respondent stated that the Appellant had not so far deposited the whole of the requisite 40% of disputed amount for filing the Appeal in this court. The Appellant's Representative, then, requested for giving some time to deposit the remaining amount. The Court accepted the request of the Appellant's Representative and directed him to ensure deposit of the remaining amount by 16.04.2021 and send a copy of receipt duly certified by Addl. S.E. (Respondent) by e-mail so that the Case can be considered for registration. The Appellant's Representative, vide e-mail dated 10.04.2021, had

sent copies of receipts dated 05.04.2021, 07.04.2021 and 09.04.2021 for ₹ 2,51,490/-, ₹ 500/- and ₹ 1,78,192/- respectively as evidence of deposit of requisite amount and the Appellant had earlier deposited ₹ 1,78,265/-. The Respondent, vide its e-mail dated 26.04.2021, confirmed deposit of requisite 40% of the disputed amount of ₹ 10,75,454/- by the Appellant with the Respondent. Therefore, the Appeal was registered and copy of the same was sent to Sr. Executive Engineer/ DS Focal Point (Spl.) Divn., 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. 675-677/OEP/A-43/2021 dated 26.04.2021.

3. Proceedings

- (i) With a view to adjudicate the dispute, a hearing was fixed in this Court on 12.05.2021 at 11.15 AM and an intimation to this effect was sent to both the parties vide letter nos. 728-29/OEP/A-43/2021 dated 04.05.2021. The Appellant's Representative, vide e-mail dated 11.05.2021, intimated that due to curfew restrictions imposed by DC, Ludhiana from 12.00 Noon to 05.00 AM next morning (for the period 07.05.2021 to 16.05.2021), he could not appear on 12.05.2021 and requested for giving new date. His request was accepted

and the hearing was rescheduled for 19.05.2021 at 10.30 AM.

An intimation to this effect was sent to both the sides on phone on the same day and also vide letter nos. 768-69/OEP/A-43/2021 dated 12.05.2021.

- (ii) As rescheduled, the hearing was held on 19.05.2021 in this Court and was attended by Representatives of both the sides.

4. Condonation of Delay

The Appellant's Representative in its application stated that copy of the order dated 24.12.2020 of the Forum was received by the Appellant, vide letter no. 3761 dated 31.12.2020, on 11.01.2021. After dismissal of its case by the Forum, the Appellant filed CWP No. 4453 of 2021 in the Hon'ble High Court as it (Appellant) was not satisfied with the fresh assessment order issued by the Respondent. The said CWP was decided on 25.02.2021. As such, the Appeal had been filed in this Court within 30 days of the decision of the Hon'ble High Court. The Appellant prayed that the delay, if any, in filing the Appeal may be condoned. The Respondent, in its written reply did not object to the request of the Appellant's Representative for condoning of delay in filing the Appeal in this Court.

In this connection, Regulation 3.18 of PSERC (Forum and Ombudsman) Regulations, 2016 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.”

The Court observed that refusal to condone the 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 was allowed to present the case.

5. Submissions made by the Appellant and the Respondent

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

(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. 3002810333 (New)/FP7600328 (Old).
- (ii) The present Appeal was filed against the decision of CGRF, Ludhiana in Case No. T-444/2020 decided on 24-12-2020 and sent to the Appellant vide memo no. 3760-3761 dated 31-12-2020 which was received by the Appellant on 11-01-2021.
- (iii) The Appellant had earlier two Medium Supply Category connections in its premises in the name of M/s. Sanchit Enterprises having Account No. 125/45 and M/s. Randhir Industries having Account No. 48/45. The Appellant had submitted its consent for the clubbing of both these connections on 08.09.1994 and it was not a clubbing case on/after a checking of PSEB (now PSPCL). The load of one connection, bearing Account No. 48/45 was 97.00 kW and second connection bearing Account No. 125/45 was having a load of 98.74 kW. The Appellant had applied for extension of load by 101.26 kW and after clubbing of both these connections, the total load of the Appellant became 297 kW and category was changed to Large Supply Category.

- (iv) The demand notice was issued by erstwhile PSEB (now PSPCL)-Respondent after compliance of usual formalities in March, 1995 with a direction to install own Transformer for converting voltage supply from LT to HT to go under tariff from MS to LS category.
- (v) The supply of the Appellant was converted to HT and extension in load was released in October, 1996 by installing own transformer and HT metering equipment was installed by the Respondent. The billing was changed and issued on LS tariff and the Appellant started paying bills on LS Tariff.
- (vi) During the process of clubbing-cum-extension of load, the site of both the connections was visited and checked by the Enforcement on 10-01-1996. As per the observations pointed out in checking, the below noted notices were issued by the then AEE/ DS Focal Point Sub Division, Ludhiana:-
- a) Notice no. 690 dated 17.01.1996 against Account no. 125/45 to deposit ₹ 50,282/- as the meter was reported to be slow by 48.02% as detected by ERS meter.
 - b) Notice no. 691 dated 17.01.1996 against Account no. 48/45 to deposit ₹ 26,349/- as the meter was reported to be slow by 32.19% and ₹ 38,500/- on account of UE as the detected load was 103.55 kW against SL-94.25 kW, these

charges were relating to regularization of excess load of 9.30 kW.

- (v) The Appellant had not agreed with the notices and deposited 1/3rd of the disputed amounts as ₹ 16,760/-, ₹ 12,653/- and ₹ 8,733/- vide receipt nos. 225/18689, 222/18689 and 223/18689 on 19.01.1996 respectively for the review of notices in CLDSC as per provisions of CC no. 10/98. To save the disconnection due to nonpayment of the amounts, the Appellant requested the SE/ DS City Circle, Ludhiana to list the cases in CLDSC.
- (vi) A request was submitted to SE/ DS CLDSC, Ludhiana vide no. SE/IO/Energy Bill/96 dated 23.05.1996 to get both the Meters checked in the presence of the Appellant from the Chief Electrical Inspector as the Appellant had disagreed with the declaration/detection of slowness of meters by Enforcement on 10.01.1996. It was added that meters were removed in the absence of Appellant. It was mandatory to remove the meters/CT's in the presence of consumer and get packed/sealed in a box to check in ME Lab as was found in the same condition but sorry to say, nothing was done according to the rules and instruction of the Respondent/ Electricity Act. No checking was made in ME Lab in presence of the Appellant.

No ME Lab report was supplied to the Appellant to explain its position before issue of notice nos. 690 and 691 dated 17.01.1996. Kindly provide the ME Lab reports and DDL done at that time to work out exact slowness of both meters.

(vii) The request dated 23.05.1996 was also not replied by the SE/DS City Circle, Ludhiana as well as both meters were not got tested from CEI, Patiala (Punjab), if so, please provide copy of that testing conducted without its presence, which was mandatory. Please provide the copies alongwith test results of both meters & test results of ME Lab and DDL's.

(viii) Both these cases were taken up in CLDSC meeting held on 22.08.1996 and decided as under:-

- a) That there is NO error found in load as this was within limit of both as such written off the amount of regularization of excess load is not chargeable and written off.
- b) That committed that there is a blatant error is that not checking of meters neither by ME Lab nor from CEI, to Punjab, Patiala (who is the final authority as per Elec Act.) merely charging the amount on the report of enforcement and ordered that the charges levied to both connections are in order and recoverable.

- c) That also order that these charges to be revised subject to LS Tariff instead of MS tariff.
- (ix) The Appellant had filed an Appeal before CE/ DS ZLDSC Central Zone, Ludhiana against the orders passed by the CLDSC. The ZLDSC had upheld the decision of CLDSC in the meeting held on 31.05.2000. The Final notice no. 5892 dated 07.08.2000 was issued to deposit a sum of ₹ 3,39,324/-. The relevant sections of Instruction No. 35 are reproduced below:

“35. CLUBBING OF MORE THAN ONE CONNECTION IN THE SAME PREMISES 35.5

Whenever an existing consumer on his own, applies for clubbing of two or more connections running at the same premises, clubbing of all such connections may be allowed by the officers competent to sanction the total load after clubbing

35.6 *After clubbing, the consumer shall be required to submit new test report as the test reports already submitted for different connections shall not remain valid or the newly clubbed connection.”*

- (x) The Respondent had not fulfilled all these instructions, neither tested the Meters in presence of the Appellant nor obtained DDL to ascertain the exact slowness before charging the amount to both accounts/meters. The Respondent did not get

meters tested from CEI as per request of the Appellant to SE/ DS City Circle, Ludhiana dated 23.05.1996 nor supplied DDL's. The amount thus charged was illegal and not acceptable.

- (xi) The charging of LS Tariff was also illegal and not recoverable according to instructions as the supply was converted from LT to HT in October, 1996 and according to instruction 35 of ESIM stated above the tariff can be charged from the date of implementation of supply by installing HT metering equipment, therefore the amount could not be recoverable. The Respondent could only charge when they detect the clubbing and issued notice as per instruction No. 35.8 of ESIM for the clubbing of connections, which is reproduced as under:

“35.8 Wherever, clubbing of connections is declared by Enforcement or DS officer(s), the concerned Sr. Xen /ASE (DS) shall report the matter within one week to the clubbing committee and the committee shall submit the report within one month thereafter. The consumer shall be charged on account of clubbing, if required, only after the decision of SE/DS or CE/DS as the case may be. Videography must be done in such cases.”

(xii) The Appellant had itself applied for clubbing and extension in load and physically made in October, 1996. So the charges levied from 01/1996 to October, 1996 were illegal and not admitted and also levied Difference of Tariff MS to LS 09/94 to 12/05 ₹ 43,664/- in the notice issued as per CLDSC decision vide no. 5892 dated 07.08.2000 to deposit ₹ 3,39,324/-.

(xiii) The Appellant had filed CWP no. 10894 of 2000 in the Hon'ble Punjab & Haryana High Court and the same was decided on 15.07.2019 holding as under:-

“The checking of meter done by the Senior Executive Engineer, Hoshiarpur on January 1996 and its results has been approved and the appeal has been turned down. The ground taken by the petitioner before the authorities regarding slow running of meter have not been considered or dealt with recording reason to hold against the petitioner when the two meters in dispute were sent to ME Lab for the testing without associating the petitioner with the process when it should have been. Since the orders are non-speaking and cryptic and do not disclose the reason which have weighed in the mind of the court except by blindly accepting the work of the authorities warrants interference to the extent that it is deemed fit that the matter should to the authorities under the new Act after following due

procedure and affording an opportunity of hearing to the petitioner.

(3) Accordingly, the petition is allowed and the impugned orders are set aside with the liberty to the competent authority to Pass a fresh order in accordance with Law.”

(xiv) Thereafter, a notice no.310 dated 04.02.2020 was received from AEE/ Comm. Focal Point Division (Spl.), Ludhiana to appear on 06.02.2020 for affording opportunity of hearing in response to decision of CWP-10894 of 2000. The Appellant had appeared on 06.02.2020 and requested for a next date at least of 20 days as the documents were with its Counsel at Chandigarh and could not be collected in a short time notice. The detailed reply in writing was given on 12.03.2020.

(xv) AEE/ Comm. Focal Point Division (Spl.), Ludhiana vide memo no.2449 dated 15.07.2020 issued notice that amount charged was correct and recoverable. A sum of ₹ 3,39,324/- was charged to be deposited alongwith interest and total amount was ₹ 10,75,454/-. The said order was not issued as per decision of the Hon'ble High Court and lacked following points:-

a) No such speaking order was passed and supplied with the memo no. 2449 dated 15.07.2020.

- b) As per Court orders, the assessment was to be dealt under new Act. The new Electricity Act, 2003 was applicable at present and account was to be overhauled as per ESIM-2018 vide Instruction Nos.57 & 58.
- (xvi) More than 20% payment of disputed amount was already deposited (33% amount ₹ 1,78,265/- deposited for CLDSC review) as such no further amount was required to be deposited.
- (xvii) The Appellant had filed an Appeal before ZLDSC but the ZLDSC had not considered the case in the Committee on the plea that case was more than ₹ 5 lac and replied vide memo no.6889 dated 30.09.2020 by post but was not received by the Appellant. The Appellant had obtained copy from Focal Point Division (Spl.), Ludhiana. The Appellant was directed to file appeal in the Forum, as such an Appeal was filed before the Forum at Ludhiana. The principal amount was ₹ 4,09,957/- which was increased to ₹10,75,454/- by charging interest.
- (xviii) The ibid notice had no meaning as per orders of the Hon'ble Punjab & Haryana High Court, Chandigarh vide CWP-10894 of 2000. The Hon'ble High Court had set aside the amount charged but ordered to review the case as per new Electricity Act-2003. The Testing of both meters may now be made in

presence of the Appellant if already not done in PSPCL ME Lab or from CEI to Punjab Govt.

- (xix) The Appellant had filed CWP-4453 of 2021 against the decision of the Forum in Case No. T-444/2020 decided on 24.12.2020 which was decided on 25.02.2021 with a direction to appeal before the Appropriate Appellate Authority. Thus, the Appeal had been filed in this Court within 30 days after passing of the following order by the Hon'ble High Court in CWP-4453 of 2021 decided on 25.02.2021:-

“After arguing for a short while, learned counsel for the petitioner seeks permission to withdraw the present petition with liberty to the petitioner to avail the remedy of filing the appeal to assail the impugned order dated 15.07.2020 (Annexure P-9) as mentioned in the order dated 24.12.2020 (Annexure P-10) passed by the Consumer Grievance Redressal Forum of the Respondent Department.

Accordingly, the instant petition stands dismissed as having been withdrawn, with the liberty aforesaid.”

- (xx) The Respondent had not issued memo no. 2449 dated 15.07.2020 as per new Electricity Act-2003 as ordered by the Hon'ble High Court in CWP-10894 of 2000 but issued as per previous Act/ instructions. The notice was required to be issued

as per New ELECTRICITYACT-2003, which was explained as under:-

a) The present instruction no.57 of ESIM-2018 clear to act as per Supply Code-2014 Regulations no. 21.3.2 as under:-

“21.3.6 Testing of Inaccurate Meters

a) The distribution licensee shall have the right to test any consumer meter and related equipment, either at site or in the laboratory, if there is a reasonable doubt about its accuracy and the consumer shall co-operate with the distribution licensee in conducting the test. The consumer shall have the right to be present during such testing. A copy of the test results indicating the accuracy of the meter shall be provided to the consumer.

b) A consumer may also request the distribution licensee to test the meter, if he doubts its accuracy. The distribution licensee shall undertake such testing either at site or in the laboratory within seven (7) days on payment of fee by the consumer as specified in the Schedule of General Charges approved by the Commission. The standard reference meter of better accuracy class than the meter under test shall be used for site testing of consumer meter upto 650 volts. The testing of consumer meter above 650 volts should cover entire metering system including

CTs, VTs and may be carried out in the laboratory. The onsite testing may be carried out as per regulations 18(2) of CEA (Installation and Operation of Meters) Regulations, 2006, as amended from time to time. A copy of the test results indicating the accuracy of the meter shall be provided to the consumer immediately.

c) If after testing, the meter is found to be inaccurate then the fee deposited in accordance with para (b) above shall be refunded by adjustment in the electricity bills for the immediately succeeding months. In case the meter is found to be correct then such fee shall be forfeited by the distribution licensee.

d) In case a consumer is not satisfied with the site testing of the meter installed in his premises or the meter cannot be tested by the distribution licensee at site then the meter shall be removed and packed/sealed in the presence of consumer or occupier of the premises for testing in the laboratory and another duly tested meter shall be installed at the premises of such a consumer. In the event the distribution licensee or the consumer apprehends tampering of meter and/or its seals then the packing containing the meter shall be jointly sealed by the

distribution licensee and the consumer/occupier of the premises.

e) In case of testing of a meter removed from the consumer premises in the licensee's laboratory, the consumer would be informed of the proposed date of testing through a notice at least three (3) days in advance. In such cases, the seals shall be removed/ broken in the presence of the consumer or his/her authorised representative and testing undertaken in the laboratory of the distribution licensee or any accredited laboratory within fifteen (15) days from the date of removal of meter from consumer's premises. However, such testing can be carried out by the distribution licensee in the absence of consumer if he/she fails to associate with testing even after issue of two registered reminders or he/she gives his/her written consent for such testing without his/her presence. The signature of the consumer, or his authorized representative, if present, would be obtained on the test results sheet and a copy thereof supplied to the consumer. If the meter is found to be inaccurate or tampered, the same shall be re-packed & sealed and kept in safe custody till disposal of case in order to preserve evidence.

57.3 The damaged/burnt meter alongwith first report will be forwarded to ME Laboratory by AE/AEE/XEN (DS) within one week after the damaged / burnt meter is replaced after recovering the cost of the meter from the consumer. The officer Incharge of ME Laboratory after carrying out the test checks, shall send his report to AE/AEE/XEN(DS) concerned within 15 days in case of various categories of consumers except MS, LS & BS categories of consumers for which report shall be given by Enforcement/MMTS for taking further action, if any, in the matter. Cost of replacement of the PSPCL's meter on hire with the consumers, which might get damaged due to floods or any act of God will not be recovered.”

(xxi) AEE/ Comm., Focal Point Division (Spl.), Ludhiana had not quoted the reference of ME Lab Testing, which was necessary as per Supply Code-2014 no.21.3.6 (a) (b) & (e) i.e.

- i) ME Challan no. & date of its testing,
- ii) In the presence of petitioner, notice issued as per clause (e) of Reg. 21.3.6 of Supply Code-2014 to accompany the Lab during testing (Had they issued provide copy with its acknowledgement).
- iii) The refusal of appearance,

- iv) Any consent of petitioner to test the meter without his presence.
 - v) No DDL had been taken.
 - vi) No reason was recorded as to why the meters were not got tested from CEI Pb. when it was requested to DSC/ SE OP Circle, Ludhiana.
 - vii) As per Inst.58 of ESIM i.e. accuracy of meter was not tested in ME lab. The charges were relived without going to proper process and instructions. AEE-com. was not competent to revise the notices as the assessment was to be made and notice was to be issued under the signature of Sr.XEN/Add.SE as per ESIM -2018.
- (xxii) CLDSC decision to charge the LS Tariff was not admitted as the same was beyond the instruction no. 35 of ESIM-2018. The Appellant had itself applied for clubbing of both connections and not against any checking conducted by the Respondent. The relevant clauses of the clubbing have been examined supra.
- (xxiii) The clubbing was done after installation of own Transformer of the Appellant and supply was changed from LT to HT in October, 1996, as such, the charging of LS tariff from January, 1996 to October, 1996 was illegal and not recoverable. Therefore, notice no. 2449 dated 15-07-2020 was not according

to rules and regulations of the Respondent framed by PSERC as the clubbing was applied on 08-09-1994 and demand notice was issued by Respondent in March, 1995. The actual clubbing was effected in October, 1996 when supply was converted from LT to HT.

(xxiv) It was prayed that the amount charged was incorrect and be revised as per present Act after completing formalities and the Appellant was ready to pay as regards to slowness of meter. The load checked of both connection be compared with total load which was considered by CLDSC and the load surcharge of ₹ 38,500/- be waived off. Further, the difference of tariff from MS to LS was also not recoverable and be withdrawn. As per provision of ESIM-2018 (Instruction 35), LS tariff was applicable from the date when actually supply converted from LT to HT. The interest calculated on gross amount by deducting amount paid during the proceedings of the case may please be ignored as the same has been set aside already by the Hon'ble High Court. The interest calculated was basically wrong, which is explained as under:-

Sr. No.		Charged Amount (₹)
1.	Principal amount charged	= ₹ 4,09,957.00
2.	Amount paid during case	= ₹ 1,78,692.00
3.	Balance i-ii	= ₹ 2,31,692.00
4.	Less amount as per CLDSC	= ₹ 38,500.00
5.	Net balance	= ₹ 1,93,192.00
6.	Add Diff. Of Tariff MS To LS 09/1994 to 12-05	= ₹ 43,664.00
7.	Add interest	= ₹ 1,48,927.00
8.	Total amount	= ₹ 3,33,924.00
9.	Interest on item(vii)	= ₹ 7,36,130.00 (compounding interest on (vii))
10.	Total notice	= ₹ 10,75,454.00

The due amount of slowness of meters after getting test results from ME Lab. in presence of the Appellant and of DDL reports be recovered only with fresh interest be calculated as per new due amount after the date of decision of Hon'ble High Court. No load surcharge was leviable. No difference of Tariff from LT to HT was payable.

(b) Rejoinder to Written Reply

The Appellant's Representative vide e-mail dated 11.05.2021, submitted the following rejoinder to written reply of the Respondent:

- (i) Hon'ble Punjab and Haryana High Court issued order in CWP-10894 of 2000 by set asiding the notice issued with the liberty to the competent authority to pass a fresh order in accordance with law. It was also mentioned for passing fresh assessment

under new Act. Also pointed out discrepancies like testing of two meters without associating the Appellant.

- (ii) The PSPCL issued fresh order again in the same line without any change according to new Act of Electricity-2003 vide memo no. 2449 dated 15.07.2020. No Speaking Order was passed.
- (iii) As per new EA-2003, the declaring of slowness at site be again tested in ME Lab either in the presence of consumer or with his written consent to check/test the meter in his absence. But in Appellant's case, it was not tested in its presence. No consent was given. So, there was violation of ESIM-2018 Instruction no. 54.6. It was also requested before CLDSC to get results from CEI Patiala but not considered and retested. The ZLDSC also upheld the decision of CLDSC.
- (iv) As per Para 8 of ground of Appeal, clubbing of both MS connections with extension in load was applied by the Appellant and not on any checking of erstwhile PSEB now PSPCL staff. As such, action was to be taken as per ESIM-2018 Instruction Nos. 35.5 & 35.6 The load was released after clearance of T/F by CEI, Patiala and submission of fresh Test Report. There was no question to charge LS tariff since submission of A & A forms for clubbing of load. The amount

revised as per decision of CLDSC was quite wrong and needs to be set-aside.

- (v) The amount of ₹ 1,24,300/- raised by audit party vide 3 nos. HM no. 770 dated 20.12.1994, 780 dated 06.04.1995 & 785 dated 05.07.1995 was not clearly readable from the copies supplied with the reply, needs to be supplied fresh copies to ascertain the charges whether payable or not.
- (vi) The notice issued vide no. 2449 dated 15.07.2020 was not according to the orders passed by Hon'ble High Court, as such, be set-aside in the interest of justice.
- (vii) The Respondent calculated wrong interest because amount due was not correct as explained in Para No. 9 of Appeal and the same had not been justified in reply.
- (viii) The due amount of slowness of meters after getting test results from ME Lab. in Appellant presence with DDL reports be recovered only with Fresh Interest amount as per new due amount after the date of decision of Hon'ble High Court. No load surcharge was leviable. No Difference of Tariff from LT to HT was payable.

(c) Submission during hearing

During hearing on 19.05.2021, the Appellant's Representative 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, bearing Account No. 3002810333 was a Large Supply Category Consumer. The consumer, M/s Sanchit Enterprises had two electricity connections running in its factory premises bearing account No. 48/45 in the name of M/s Randhir Industries having sanctioned load 94.250 kW and Account No. (Old) 125/45 having sanctioned load 98.947 kW in the name of M/s Sanchit Enterprises.
- (ii) The connections of the consumers were checked by Sr. Xen Flying Squad, Hoshiarpur on 11.01.1996 and found that 2 no. MS category connections bearing A/c No. 48/45 and 125/45 with connected load of 103.352 kW and 54.586 kW were running against the sanctioned load of 94.250 kW and 98.947 kW respectively. The meters of A/c No. 48/45 was found

running slow by 32.19% and meter of A/c no. of 125/45 was also found running slow by 48.02%. Both the connections were found running in the same premises.

- (iii) The A/c no. of 48/45 was overhauled as per CC No. 45/94 for six month against meter slowness (32.19%) amounting to ₹ 26,349/- and the amount charged on account of excess load running ($103.352 \text{ kW} - 94.250 \text{ kW} = 9.102 \text{ kW}$) amounts to ₹ 38,500/-. The total amount charged for the A/c No. 48/45 equals to ₹ 64,849/-. A notice was sent to the consumer vide no. 691 dated 17.01.1996 for depositing the said amount.
- (iv) The account no. 125/45 was also overhauled on account of 48.02% slowness, amounting to ₹ 50,282/-. A notice to this effect was issued vide memo no. 692 dated 17.01.1996.
- (v) The consumer had applied for clubbing of both the connected loads vide application no. 27226 dated 06.09.1994 with connected load as 295.911 kW and CD as 250 kVA. A Demand Notice, bearing no. 1637, was issued to the consumer for compliance within 7 days. However, the consumer did not deposit the amount mentioned in the demand notice.
- (vi) The consumer was not satisfied with the amount charged to it on both of his electricity connections on account of meter slowness and excess load found running at its factory premises.

The consumer then, put up its case in CLDSC on 22.08.1996.

Accordingly, CLDSC decided as follows:

“Both the cases belong to one consumer and as such CLDSC had discussed it as one case. In the meeting, the consumer intimated that he had already applied for clubbing of both the connections i.e. a/c no. 48/45 and 125/45. It was decided that load surcharge in case of a/c no. 48/45 should not be levied as detected load on both these connections is within their sanctioned load and secondly, the bill should be revised on LS Tariff from the date of application for clubbing. The consumer has also been charged Rs. 26,340/- against a/c 48/45 and Rs. 50,282/- against a/c 125/45. These charged were found to be in order but are subject to revision on LS Tariff.”

- (vii) As per the said CLDSC decision the consumer was charged ₹ 26,349/- against A/c No. 48/45 and ₹ 50,282 /- against A/c No. 125/45. The charges were found to be in order but are subject to revision of LS Tariff. So, the consumer was charged ₹ 1,55,024/- on account of 20% LT Surcharge and difference of tariff of MS and LS for the period 01/1996 to 09/1996 vide SCA No. 64/86.

(viii) Both the connections were clubbed vide SCO No. 99/37 dated 23.09.1996 on 27.09.1996. But the consumer filed a suit against the CLDSC decision.

(ix) Accordingly to the Court's Orders, the consumer deposited ₹ 85,263/- vide receipt no. 501 dated 06.01.1997 and the case was sent to the Zonal DSC committee as on 28.02.2000 for discussion. The committee discussed the case on 31.05.2000 and decided with the following remarks for M/s Randhir Industries:

"1. The amount of Rs. 1,24,300/- charged as per HM no. 770,780,785 dated 16.01.1995 is correct and payable.

2. From the amount charged of Rs. 1,15,131/- and Rs. 1,70,526/- only amount of load detected more than Sanctioned Load for a/c no. 48/45 is not recoverable as detected load of both these connections was within their sanctioned load. However, bills should be revised on Large Supply Tariff from the date of application of clubbing i.e. 09/1994."

(x) For M/s Sanchit Enterprises, the committee decided to uphold the decision of CLDSC Committee. As per the above Zonal Level DSC decision, a notice bearing 5892 dated 07.08.2000 was issued to the consumer from the office of Xen, Focal Point to deposit the balance amount ₹ 3,39,324/-. Instead of

depositing the amount, the consumer approached the Hon'ble High Court of Punjab & Haryana and got stay orders against the disconnection of connection. The matter was finally decided by Hon'ble High Court as on 15.07.2019. Final decision quoted below as:

“Accordingly, the petition is allowed and the impugned orders are set aside with liberty to the competent authority to pass fresh order in accordance with the law.”

- (xi) In compliance to the High Court decision as above, the Competent Authority (Addl. S.E.) after giving an opportunity of hearing to the Appellant in the above case, had come to the following conclusion:

In view of the decision given by the Hon'ble Dispute Settlement Committee at Circle and Zonal Level, and as per the checking report of Xen Flying Squad, Hoshiarpur, the undersigned came to the conclusion that the amount charged to the consumer against meter slowness is found to be appropriate and the consumer is asked to deposit the net amount of ₹ 10,75,454/- which includes the interest taken from 07.08.2000 up to 31.03.2020 on the principal amount of ₹3,39,324/- as well.

- (xii) This dispute case was also decided by Circle Level DSC and Zonal level DSC Committee's stating that the amount charged to the consumer for meter slowness was correct and payable.
- (xiii) The consumer had applied for clubbing of both the connected loads vide application no. 27226 dated 06.09.1994 with connected load= 295.911 kW and CD= 250 kVA. A Demand Notice bearing no. 1637 dated 09.03.1995 and a reminder bearing memo no. 692 dated 17.01.1996 were issued to the consumer for compliance within 7 days. However, the consumer did not deposit the amount mentioned in the demand notice. The amount charged to the consumer for the difference of LS and MS tariff from 01/1996 to 09/1996 was as per the decision of CLDSC committee.
- (xiv) The Case is submitted before the Court for decision.

(b) Submission during hearing

During hearing on 19.05.2021, the Respondent reiterated the submissions made by it in the written reply and contested the submissions of the Appellant in the Appeal and rejoinder with the request to dismiss the Appeal.

6. Analysis and Findings

The issues requiring adjudication as per prayer of the Appellant are as below:-

- a) Amount be revised as per present Electricity Act, 2003 after completing formalities. The Appellant was ready to pay as regards to slowness of meter.
- b) Load checked of both connections be compared with total sanctioned load and load surcharge of Rs. 38500/- be waived off.
- c) The difference of tariff from MS to LS was not recoverable, hence, be withdrawn. LS tariff was to be made applicable from the date when actually supply was converted from LT to HT as per provisions of Instruction No. 35 of ESIM-2018.
- d) Interest calculated by the Respondent be ignored as the same had been set aside by the Hon'ble High Court. Fresh interest amount be calculated as per new due amount after date of decision of the Hon'ble High Court.

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

- (i) The present Appeal poses a challenge to the decision in proceedings dated 24.12.2020 relating to Case No. T-444/2020

filed in CGRF, Ludhiana praying for quashing of demand raised by the Respondent vide Memo No. 2449 dated 15.07.2020 on the plea that the same was not raised as per judgement dated 15.07.2019 in CWP No. 10894 of 2000. The Appellant submitted that order dated 24.12.2020 of the Forum deciding, inter-alia, that “in view of the Judgement of Hon. Punjab & Haryana High Court, fresh orders have been passed by competent authority and now if the Petitioner is not satisfied with the orders passed in accordance with Judgement of Hon. High court, then he can approach the appellate authority” is not just and fair. The Appellant contended that the Hon’ble High Court, vide decision dated 15.07.2019, directed to pass a fresh order for assessment under new Act. The above order also pointed out discrepancies like testing of two meters without associating the Appellant. The Appellant pointed out that the Forum had not properly gone through the submissions made by it in its Petition (T-444/2020) and did not verify the genuineness or otherwise of the compliance done by the Respondent in regard to directions given by the Hon’ble High Court vide order dated 15.07.2019.

- (ii) In this connection, it is worthwhile to peruse the decision dated 15.07.2019 in CWP No. 10894 of 2000 of the Hon'ble High Court which reads as under:

“1. The petitioner-Company had two commercial electric connections on its factory premises. On its request, they were clubbed subjecting it to revised billing of large supply tariff cases from the date of application for clubbing. As far as tariff for large supply is concerned that is governed by the tariff rate. However, on January 11, 1996 the Flying Squad made a spot inspection of the factory premises of the petitioner and found that both the meters were running slow. The petitioner was not associated with the spot inspection. So it is not known what sort of equipment was used to gauge the meter speed. On May 23, 1996 the petitioner made a representation to the Superintendent Engineer DS, City Circle PSEB, Ludhiana for checking/testing of the meters account No.48/45 and account No.125/45 by the Chief Electrical Inspector, the dispute being pending before him, which relates to slow functioning of the meter. He requested that meter be got checked and tested under supervision of the Chief Electrical Inspector to arrive at the truth of the dispute. The fact remains that meter was never got checked by the Metering Equipment Lab (ME Lab). The

erstwhile Board (now PSPCL) does not dispute this position. In the absence of a reliable ME Lab test result implicit faith cannot be placed on the work of the Flying Squad at the time of spot inspection and that too done behind the back of the petitioner without explaining to them the process used for measuring the speed. The bill raised by the respondents is based on slow running. This, the petitioner disputes is highly inflated bill and highly exaggerated and which is not based on reliable evidence of slow running. Till this stage it was the Circle Level Dispute Settlement Committee that decided against the petitioner in its meeting held on August 22, 1996. The appeal to the Zonal Level Dispute Settlement Committee heard the petitioner on May 31, 2000 through counsel and passed the following order impugned in the petition:-

“Sh Swatantar Kalra and Sh. Kuldip Singh attended and were properly heard. The consumer connection was checked by Sr. Xen., Hoshiarpur on 11.01.1996 and reported that 2 no. connections under A/C No. 48/45 and 125/45 with Medium supply are running in the same premises. Both these meters need to be clubbed. Further both these meters were running slow 32.19% and 48.02%. The Circle Level dispute

settlement committee in this meeting dated 22.08.1996 decided as below:-

i) Lord surcharge in case of A/c no. 48/45 should not be levied on detected load on both these connections is within their sanctioned load.

ii) Bill should be revised on LS tariff from the date of application for clubbing.

The committee discussed the case in detail and came to the conclusion to uphold the circle level DSC decision dated 22.08.1996.”

2 The checking of meter done by the Senior Executive Engineer, Hoshiarpur on January 11, 1996 and its results has been approved and the appeal has been turned down. The ground taken by the petitioner before the authorities regarding slow running of meter have not been considered or dealt with by recording reasons to hold against the petitioner when the two meters in dispute were sent to the ME Lab for testing without associating the petitioner with the process when it should have been. Since the orders are non-speaking and cryptic and do not disclose the reasons which have weighed in the mind of the Court except by blindly accepting the work of the authorities warrants interference to the extent that it is deemed fit that the matter should be remanded to the

authorities under the new Act after following due procedure and affording an opportunity of hearing to the petitioner.

3 Accordingly, the petition is allowed and the impugned orders are set aside with liberty to the competent authority to pass a fresh order in accordance with law.”

(iii) It is observed that AEE/Commercial, Focal Point, Division (Special), PSPCL, Ludhiana, vide Memo No. 2449 dated 15.07.2020 addressed to the Appellant, passed the following order/direction:

“So, in compliance to the High Court decision as above, the undersigned after giving an opportunity of hearing to the petitioner in the above case, has come to the following conclusion:-

In view of the decision given by the honourable Dispute Settlement Committees at Circle and Zonal Level and as per the checking report of Xen Flying Squad, Hoshiarpur, the undersigned has come to the conclusion that the amount charged to the consumer against meter slowness is found to be appropriate and the consumer is asked to deposit the net amount of Rs. 10,75,454/- which includes the interest calculated from 07.08.2000 up to 31.03.2020 on the principal amount of Rs. 3,39,324/- as well.”

(iv) Written submissions made by the Appellant as well as the Respondent alongwith material brought on record of this Court have been gone through. The arguments of both parties have been considered. The decision/ order conveyed by the Respondent to the Appellant vide Memo. No. 2449 dated 15.07.2020 is non-speaking and issues raised by the Appellant in the personal hearing and observations of the Hon'ble Punjab & Haryana High Court in Judgement dated 15.07.2019 in CWP No. 10894 of 2000 have not been addressed in this order (dated 15.07.2020). Hon'ble High Court had virtually remanded back the matter to the Authority under the new Act for taking decision after following due procedure and affording an opportunity of hearing to the Petitioner (Appellant in the present Appeal). The Forum has been established for redressal of grievances of the consumers as per Section 42(5) of the Electricity Act, 2003. The Appellant was not satisfied with the orders passed by the Competent Authority of the Respondent vide Memo No. 2449 dated 15.07.2020 and thus filed petition (Case No. T-444/2020) in CGRF, Ludhiana. It is observed that the Forum has not considered/adjudicated the dispute which was required to be decided on merits as per judgement dated 15.07.2019 of Hon'ble High Court in CWP No. 10894 of 2000

. The Forum was expected to go through the said judgement dated 15.07.2019 minutely whereafter, the Forum should have passed a speaking/ detailed order on the issues involved after giving an opportunity of hearing to both parties. Detailed deliberations were not held and due process of law was not followed in the Forum in respect of issues raised by the Appellant in the case filed before the Forum. With a view to meet the ends of ultimate justice, this Court is inclined to remand back this Appeal case to the CGRF, Ludhiana for hearing, adjudicating and passing of speaking orders in respect of issues raised before this Court as per PSERC (Forum & Ombudsman) Regulations, 2016. This dispute case is now more than 25 years old and remained under litigation in various Courts. As such, it is required to be decided by the Forum with due expedition.

7. Decision

As a sequel of above discussions, the order dated 24.12.2020 of the CGRF, Ludhiana in Case No. T-444/2020 is set-aside. The Appeal case is remanded back to CGRF, Ludhiana with a direction to hear and decide this case on merits expeditiously as per PSERC (Forum & Ombudsman) Regulations, 2016.

8. The Appeal is disposed of accordingly.

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.

May 19, 2021
S.A.S. Nagar (Mohali)

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

