

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

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

APPEAL No. 44/2022

Date of Registration : 22.08.2022

Date of Hearing : 29.08.2022

Date of Order : 29.08.2022

Before:

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

In the Matter of:

M/s N.K. Sharma Enterprises Pvt. Ltd.,
Charanji Enclave, Ambala-Chandigarh Highway,
Zirakpur.

Contract Account Number: Z74-GC74-00541(DS)

...Appellant

Versus

Addl. Superintending Engineer,
DS Division, PSPCL,
Zirakpur.

...Respondent

Present For:

Appellant:

1- Sh. K. D. Parti,
Appellant's Representative.
2- Sh. P.C. Aggarwal,
Appellant's Representative.

Respondent :

Er. H.S. Oberai,
Addl. Superintending Engineer,
DS Division, PSPCL,
Zirakpur.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 21.07.2022 of the Corporate Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. TP-137 of 2022, deciding that:

“After going through the case, Forum observed that dispute pertains to the year 2016, hence is older than 2 years and the Petitioner has never approached any authority within two years and filed this Petition in CGRF on dated 20.12.2021. Therefore, same cannot be considered being time barred as per regulation 2.9.1 (i) of PSERC (Forum & Ombudsman) (2nd Amendment) Regulations, 2021.

The present petition is dismissed being not maintainable.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 22.08.2022 i.e. within the period of thirty days of receipt of the decision dated 21.07.2022 of the CCGRF, Ludhiana in Case No. TP-137 of 2022, received by the Appellant on 24.07.2022. The requisite 40% of the disputed amount was not required to be deposited in this case as it was a refund case. Therefore, the Appeal was registered on 22.08.2022 and copy of the same was sent to the

Addl. SE/DS Division, PSPCL, Zirakpur for sending written reply/ parawise comments with a copy to the office of the CCGRF, Ludhiana under intimation to the Appellant vide letter nos. 903-905/OEP/A-44/2022 dated 22.08.2022.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 29.08.2022 at 12.00 Noon and intimation to this effect was sent to both the parties vide letter nos. 910-911/OEP/A-44/2022 dated 23.08.2022. As scheduled, the hearing was held in this Court and arguments of both the parties were heard.

4. Submissions made by the Appellant and the Respondent

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

(A) Submissions of the Appellant

(a) Submissions made in the Appeal

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

- (i) The Appellant was having a DS Category Connection, bearing Account No. Z74-GC74-00541 with sanctioned load of 3536 kW/ CD 3928 kVA.
- (ii) The Appellant applied for the said connection in pursuance of which a Demand Notice No. 3279 dated 27.01.2016 was issued to him, wherein, a demand of ₹ 33,92,219/- was raised by the Respondent. The connection was proposed to be released by erecting a new independent feeder of 11 kV and hence such a hefty amount was demanded by the Respondent.
- (iii) In compliance of the Demand Notice, the Appellant deposited the amount of ₹ 33,92,219/- on 30.01.2016 for his connection to be released as proposed by the Respondent. However, the connection was not released as per the terms proposed by the Respondent i.e. by erecting an independent feeder, but through an existing feeder, catering to several other societies. This resulted in frequent power interruptions and inconvenience to the residents of the society. This amounted to gross deficiency in service on part of the Respondent department, as they did not fulfill the requirement of releasing the connection through an independent feeder, for which such a hefty amount was charged from the Appellant.

- (iv) While releasing the connection of the Appellant, the Respondent only incurred a fraction of the amount that was demanded from the Appellant through the Demand Notice. Now, since over 5 years have already elapsed and the Respondent had not taken any action for erection of new 11 kV independent feeder for providing supply to the Appellant. As such, the excess amount retained by the Respondent be refunded alongwith interest as per the provisions of the Supply Code, 2014.
- (v) The Appellant made a representation dated 15.11.2021 before the Chief Engineer (South), PSPCL, Patiala for redressal of the matter, however, no response was received or opportunity was provided to the Appellant.
- (vi) As per Regulation 9.3.6 of the Supply Code 2014, after execution of work of electric line or electrical plant, in event of Security(works)/service charges being in excess of the recoverable amount, the excess of amount shall be determined by the Respondent department within 60 days from the date of releasing the connection. In case the Respondent failed to do so, they shall be liable to pay interest on the excess amount @ twice the SBI's base rate (on 1st April of the relevant year) +2% for the period delayed beyond 60 days from the date of

releasing the connection until its realisation. The said Regulation had been reproduced herein below:-

9.3.6 After execution of work of the electric line or electrical plant as the case may be, the distribution licensee shall be entitled to demand from the applicant the total amount of expenditure actually incurred (recoverable amount) and adjust Security (works) against such recoverable amount. In the event of Security (works) being in excess of the recoverable amount, the excess amount shall be determined by the distribution licensee within sixty (60) days from the date of release of connection and refunded by adjustment against electricity bills of the immediately succeeding months. In case the distribution licensee fails to refund the excess amount and adjust it against electricity bills of the immediately succeeding months, the distribution licensee shall be liable to pay interest on the excess amount at twice SBI's Base Rate prevalent on first of April of the relevant year plus 2% for the period of delay beyond sixty (60) days of the date of release of connection till the excess amount is adjusted. The amount of such interest shall be adjusted against the electricity bills thereafter.

- (vii) In terms of the aforementioned Regulation, the Respondent had failed to determine the excess amount paid by the Appellant as

per the Demand Notice and had promptly retained the said amount, violating the mandate of the said Regulation. As such, the Respondent was liable to refund the excess amount paid by the Appellant with interest in terms of the aforementioned Regulation.

- (viii) The Appellant filed a Petition before the Forum, which was registered vide Case No. TP-137/2022. However, the Forum arbitrarily and mechanically dismissed the Petition vide order dated 21.07.2022 on technical terms, without going into the merits of the case. The Forum not only failed to take into account the fact that the Respondent breached the terms upon which a demand of such a hefty amount was made, but they also refused to pay the remaining amount back to the Appellant. A bare perusal of the aforementioned Regulation would make it clear that the Respondent department, on account of failing to refund the excess amount to the Appellant within the stipulated time period had retained the excess amount to itself and as such, was liable to return the same to the Appellant with interest. This act of the Respondent amounted to a continuous and recurring breach for as long as they retained the excess amount of money paid by the Appellant in violation of the aforementioned Regulation and hence the limitation

period commenced perpetually. It was pertinent to mention that the Regulation clearly subjected the Respondent department to return the excess amount to the consumer, therefore, by failing to do so, the Respondent had violated the aforementioned Regulation and the Appellant could not be held responsible for it.

- (ix) Furthermore, the Forum vide its impugned order, also failed to take into account the fact the Respondent was liable to pay a huge amount to the Appellant and his claim and contentions cannot be simply dismissed on technical grounds. Having the excess amount paid by the Appellant refunded to him in terms of the aforementioned Regulation was his substantive right and claim, which could not be dismissed on technical grounds and without application of judicial mind. It was a well settled principle of civil law that procedure is a handmaiden of justice. Therefore, procedure was to ensure prevalence of justice, however, the Forum had misdirected itself into taking the aid of procedure to defeat the ends of justice. As such, the impugned order passed by the Forum without application of judicial mind was illegal, arbitrary and liable to be set aside.
- (x) The Appellant prayed that the excess amount paid by the Appellant in compliance of the Demand Notice no. 3279 dated

27.01.2016 for erection of a new independent feeder, which was never provided by the Respondent, be refunded with interest in terms of Regulation 9.3.6 of the Supply Code 2014.

- (xi) The Appellant further prayed that the Respondent be subjected to place on record the relevant record and details of expenses incurred by them in releasing the connection of the Appellant.

(b) Submission in Rejoinder

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

- (i) As per IWR, the expenditure shown was around ₹ 23 lacs, however, this amount was a matter of record and excess amount kept by the Respondent should be refunded with interest.
- (ii) The Appellant already requested that as per Supply Code Regulation No. 9.3.6, the Respondent should refund the excess amount after 60 days of release of connection. So, the statement of the Respondent that the Appellant did not approach/request for refund was not acceptable.
- (iii) The 11 kV feeder erected at the cost of the Appellant was being used for giving power supply to the various other customers. Neither, the Appellant had been asked before

tapping the power line nor the proportionate cost returned to the Appellant as per the Supply Code Regulation 9.5.5 and 9.5.6 respectively.

- (iv) The Appellant was having a running load of only less than 1 MVA and the maximum demand of feeder had gone up to 250 ampere during the peak period.
- (v) The Appellant had to suffer huge power interruptions and cut a sorry figure before its occupants as the breakdowns had increased due to overloading of the feeder.
- (vi) The Appellant prayed that the excess amount kept by the Respondent should be refunded with interest in the next bill. The extra load on the feeder given without intimation to the Appellant be get removed immediately so that the Appellant may have uninterrupted power Supply.

(c) Submission during hearing

During hearing on 29.08.2022, the Appellant's Representative (AR) reiterated the submissions made in the Appeal and prayed to allow the same. AR agreed with the calculation, provided by the Respondent during the hearing of ₹ 27,59,052/- as total expenditure incurred against ₹ 33,92,219/- deposited by the Appellant in respect of Estimate No. 53346/2015-16. AR

submitted during hearing on 29.08.2022 that the connection was released on 28.06.2016.

(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 DS Category Connection, bearing Account No. Z74-GC74-00541 with sanctioned load of 3536 kW/ CD 3928 kVA.
- (ii) To issue a connection to the Appellant, a new 11 kV Feeder was proposed for which Estimate No. 631421 amounting to ₹ 30,00,413/- was approved. The Appellant deposited ₹ 33,92,219/- vide transaction no. 135170 against this Estimate.
- (iii) The claim of the Appellant was wrong. The electricity connection for this residential colony to the Appellant was approved from the newly proposed 11 kV Savitry Green-II Feeder.
- (iv) The claim of the Appellant was wrong. The PSPCL incurred ₹ 27,59,052/- for laying 11 kV independent feeder. The electricity connection for this residential colony to the

Appellant was approved from newly proposed 11 kV Savitry Green-II Feeder.

- (v) Various opportunities were given to the Appellant regarding the dispute including in the Forum but the same was dismissed by the Forum.
- (vi) The total amount deposited by the Appellant in this project was ₹ 33,92,219/- and total expenditure incurred by the department in this project was ₹ 27,59,052/-. However, no representation regarding refund of extra amount had been received in this office till date from the Appellant.
- (vii) The Appellant deposited ₹ 33,92,219/- vide transaction no. 135170 for the electricity connection for this residential society and total amount incurred by the department to issue this connection was ₹ 27,59,052/- against this Estimate.
- (viii) The Forum had rightly dismissed the case as per Regulation 2.9.1 (i) of PSERC (Forum & Ombudsman) (2nd Amendment) Regulations, 2021 and ESIM Clause 2.25, reproduced as under:-

“The Forum shall entertain only those complaints where the representation is made within 2 years from the date of cause of action in case the complainant approaches the Forum

directly or within 2 months from the date of receipt of the orders of respective Dispute Settlement Committee constituted under CCHP.

Provided that the Forum may, for reasons to be recorded in writing, entertain a complaint which does not meet the aforesaid requirements.”

(b) Submission during hearing

During hearing on 29.08.2022, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal. The Respondent admitted that no refund of excess amount had been given to the Appellant till date as the same was not asked by the Appellant. The date of release of connection was confirmed as 28.06.2016 though SCO of this connection was not available in the record of the Respondent.

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of the claim of the Appellant regarding refund of excess amount of Security (Works) alongwith interest as per Regulation 9.3.6 of Supply Code-2014.

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

- (i) The Appellant's Representative (AR) reiterated the submissions made in the Appeal. He pleaded that the Appellant had applied for the DS single point connection and a demand notice no. 3279 dated 27.01.2016 for ₹ 33,92,219/- was issued to it by the Respondent. The connection was proposed to be released by erecting a new independent feeder and hence such a hefty amount was demanded by the Respondent. In compliance of the demand notice, the Appellant deposited the amount of ₹ 33,92,219/- on 30.01.2016 for release of connection as proposed by the Respondent by erecting a new 11 kV independent feeder. However, the connection was not released as per the terms proposed by the Respondent i.e. by erecting an independent feeder but from an existing feeder, catering to several other societies. This resulted in frequent power interruptions and inconvenience to the residents of the Society. While releasing the connection of the Appellant, the Respondent only incurred a fraction of the amount that was demanded from the Appellant through demand notice and deposited by the Appellant. AR pleaded that over 5 years had already been elapsed and the Respondent had not taken any

action for erection of new 11 kV independent feeder for providing supply to the Appellant. As such, the excess amount retained by the Respondent should be refunded alongwith interest as per Regulation 9.3.6 of the Supply Code 2014. Regulation 9.3.6 provided that after execution of work of electric line or electrical plant, in event of Security (works)/ service charges being in excess of the recoverable amount, the excess of amount shall be determined by the Respondent department within 60 days from the date of release of connection. In case the Respondent failed to do so, they shall be liable to pay interest on the excess amount at SBI's Base Rate prevalent on 1st of April of the relevant year plus 2% for the period of delay beyond 60 days of the date of release of connection until its realization. He argued that the Respondent had failed to determine the excess amount paid by the Appellant as per the demand notice and had promptly retained the said amount, violating the mandate of the said Regulation 9.3.6. As such, the Respondent was liable to refund the excess amount paid by the Appellant with interest in terms of the aforementioned Regulation. The Appellant had filed a Petition before the CCGRF, which was registered vide Case No. TP-137/2022. However, the Forum arbitrarily and mechanically

dismissed the Petition vide order dated 21.07.2022 on technical terms, without going into the merits of the case. He argued that the Forum not only failed to take into account the fact that the Respondent breached the terms upon which a demand of such a hefty amount was made but they also refused to pay the remaining amount back to the Appellant. The Respondent, on account of failing to refund the excess amount to the Appellant within the stipulated time period, had retained the excess amount for itself and as such was liable to return the same to the Appellant with interest. This act of the Respondent amounted to a continuous and recurring breach for as long as they retained the excess amount of money paid by the Appellant in violation of the aforementioned Regulation 9.3.6 and hence the limitation period commenced perpetually. He further argued that the Regulation clearly subjected the Respondent to return the excess amount to the consumer, therefore, by failing to do so, the Respondent had violated the aforementioned Regulation 9.3.6 and the Appellant cannot be held responsible for it. As such, the impugned order passed by the Forum without application of judicial mind was illegal, arbitrary and liable to be set aside. AR prayed that the excess amount paid by the Appellant in compliance of the Demand

Notice No. 3279 dated 27.01.2016 for erection of a new independent feeder, which was never provided by the Respondent, be refunded with interest in terms of Regulation 9.3.6 of the Supply Code 2014. He further prayed that the Respondent be subjected to place on record the relevant record and details of expenses incurred by them in releasing the connection of the Appellant.

- (ii) On the other hand, the Respondent controverted the pleas raised by the Appellant in its Appeal and reiterated the submissions made by the Respondent in the written reply. The Respondent argued that to issue a connection to the Appellant, a new 11kV Feeder was proposed for which Estimate No. 631421 of ₹ 30,00,413/- was approved. The Appellant deposited ₹ 33,92,219/- vide transaction No. 135170 against this Estimate. The total expenditure incurred by the department to issue the connection to the Appellant was ₹ 27,59,052/-. However, no representation regarding refund of extra amount had been received in his office till date from the Appellant. He further argued that the Forum had rightly dismissed the case as per Regulation 2.9.1 (i) of PSERC (Forum & Ombudsman) (2nd Amendment) Regulations, 2021 and ESIM Instruction No. 2.25. He prayed for the dismissal of the Appeal.

- (iii) The Forum in its order dated 21.07.2022 observed as under:

“After going through the case, Forum observed that dispute pertains to the year 2016, hence is older than 2 years and the Petitioner has never approached any authority within two years and filed this Petition in CGRF on dated 20.12.2021. Therefore, same cannot be considered being time barred as per regulation 2.9.1 (i) of PSERC (Forum & Ombudsman) (2nd Amendment) Regulations, 2021.

The present petition is dismissed being not maintainable.”

- (iv) I have gone through the written submissions made by the Appellant in the Appeal as well as Rejoinder, written reply of the Respondent as well as oral arguments of both the parties during the hearing on 29.08.2022. It is observed by this Court that as per Clause 7 of the NOC as granted by the Chief Engineer/ Commercial, PSPCL, Patiala to the Appellant, Electricity supply to the colony of the Appellant was to be given by erecting separate 11kV feeder from 66 kV Sub-Station Dhakoli and the total cost was to be paid by the Appellant. Accordingly, the estimate for the 11kV feeder was made and the demand notice was issued to the Appellant. Both the parties agreed during hearing that the Appellant deposited ₹ 33,92,219/- against Estimate No. 53346/2015-16 and the total expenditure incurred by the Respondent on this Estimate was ₹ 27,59,052/-. Both the parties also agreed on 28.06.2016 as the date of release of connection.

- (v) The Appellant had pointed out in its Appeal that as per Regulation 9.3.6 of Supply Code, 2014, the Respondent was required to determine the excess amount within 60 days of release of connection and should have refunded it by adjustment against the electricity bills of immediately succeeding months. The Appellant had relied upon Regulation No. 9.3.6 of Supply Code, 2014 for payment of interest in this Appeal Case. I agree with the contention of the Appellant. The Respondent was duty bound to refund the excess amount recovered from the Appellant after 28.08.2016 as per procedure laid down in Regulation No. 9.3.6 of Supply Code-2014 as amended from time to time. But the Respondent had failed to perform its duty till to-date. It is nowhere written in the regulations that the Appellant had to apply for their refund. Hence, the Respondent is required to refund the excess amount of ₹ 6,33,167/- alongwith the interest on this excess amount for the period of delay beyond sixty days of the date of release of connection (28.06.2016) till this excess amount is refunded to the account of the Appellant as per Regulation 9.3.6 of Supply Code, 2014 to be read with amendments as issued from time to time.

- (vi) This is a clear case of violation of the Supply Code. The Respondent had failed to refund the excess amount as per regulations framed by the PSERC.
- (vii) The Forum also erred in disallowing the refund of excess amount recovered from the Appellant and interest thereon as the provisions contained in the Regulation 9.3.6 of Supply Code, 2014 are very clear. It would be unfair to the Appellant if the refund of excess amount and interest thereon is not allowed in this case. As such, I am not inclined to agree with the decision dated 21.07.2022 of the Forum.
- (viii) The Appellant had raised new issues like tapping of 11 kV feeder for release of new connections without his consent, return of proportionate cost of 11 kV lines used for other consumers, removal of extra load from the feeder allowed without his consent etc. These issues which were not earlier raised in main petition cannot be raised in this Appeal. As such, these issues are not being discussed in the Appeal Case.

6. Decision

As a sequel of above discussions, the order dated 21.07.2022 of the CCGRF, Ludhiana (Forum) in Case No. TP-137 of 2022 is hereby set-aside. The Respondent is directed to refund the excess amount of ₹ 6,33,167/- alongwith the interest for the

period of delay beyond sixty days of the date of release of connection (28.06.2016) till this amount is refunded to the account of the Appellant as per Regulation 9.3.6 of Supply Code, 2014 as amended from time to time.

7. The Appeal is disposed of accordingly.
8. As per provisions contained in Regulation 3.26 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016, the Licensee will comply with the award/order within 21 days of the date of its receipt.
9. In case, the Appellant or the Respondent is not satisfied with the above decision, it is at liberty to seek appropriate remedy against this order from the Appropriate Bodies in accordance with Regulation 3.28 of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2016.

August 29, 2022
S.A.S. Nagar (Mohali)

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