

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

APPEAL No. 49/2021

Date of Registration : 21.05.2021
Date of Hearing : 09.06.2021
Date of Order : 16.06.2021

Before:

**Er. Gurinder Jit Singh,
Lokpal (Ombudsman), Electricity, Punjab.**
In the Matter of:

M/s. Godrej & Boyce Mfg. Co. Ltd.,
Plot A-40, Phase VIII-A, Industrial Area,
Mohali-160059.

Contract Account Number: 3000244292

...Appellant

Versus

Additional Superintending Engineer,
DS Division (Special), PSPCL, Mohali.

...Respondent

Present For:

- Appellant:
1. Sh. G. S. Mittal,
Appellant's Representative.
 2. Sh. Punit Sharma,
Appellant's Representative.
 3. Sh. Rajiv Sehgal,
Appellant's Representative.

- Respondent : 1. Er. Gurpreet Singh,
Addl. Superintending Engineer,
DS Division (Special), PSPCL, Mohali.
2. Er. Paramjit Singh,
Assistant Executive Engineer.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 28.04.2021 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-48 of 2021, deciding that:

“The fixed charges due to extension in CD from 4500 to 5500 KVA are not leviable from 01.01.18 but are leviable w.e.f. 31.01.19 after installation of required metering system at petitioner’s premises. The demand of fixed charges be worked out accordingly and amount be recovered from the petitioner.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 21.05.2021 i.e. within the stipulated period of thirty days of receipt of the decision dated 28.04.2021 of the CGRF, Patiala in Case No. CGP-48 of 2021 by the Appellant. The Appellant was not required to deposit any amount as it had already deposited the entire disputed amount in two instalments and that too before filing of the Petition before the Forum. Necessary confirmation in this regard was also given by the Respondent vide Memo No. 8675 dated 07.06.2021. Therefore the Addl. Superintending

Engineer/ DS Division (Special), Mohali was requested to send written reply/ parawise comments with a copy to the office of the CGRF, Patiala under intimation to the Appellant vide letter nos. 816-818/OEP/A-49/2021 dated 21.05.2021.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 09.06.2021 at 11.00 AM and an intimation to this effect was sent to both the parties vide letter nos. 870-71/OEP/A-49/2021 dated 01.06.2021. As scheduled, the hearing was held in this Court on the said date and time. Arguments of both parties were heard and order was reserved. Copies of the proceedings were sent to the Appellant and the Respondent vide letter nos. 899-900/OEP/A-49/2021 dated 09.06.2021.

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 and the Respondent alongwith material brought on record by both parties.

(A) Submissions of the Appellant

(a) Submissions made in the Appeal

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

- (i) The Appellant was having a Large Supply Category Connection bearing Account No. 3000244292 with sanctioned load of 10446 kW and CD as 4500 kVA (revised as 11946 kW and CD as 5500 kVA w.e.f. 28.12.2020) with supply voltage at 66 kV.
- (ii) The Appellant had applied for extension of load on 01.04.2016 from 10446 kW to 11946 kW and CD from 4500 kVA to 5500 kVA on Portal of PBIP/PSPCL. The application was accepted, and demand notice was issued by Dy. Chief Engineer/ DS Circle, Mohali vide letter no. 232 dated 21.04.2016. In compliance to demand notice, the Appellant had deposited requisite charges of ₹ 11,44,461/- on 23.02.2017 and also submitted requisite documents.
- (iii) After compliance of demand notice, the Appellant had received another letter no. 586 dated 27.03.2017 from AEE/Commercial S/D, PSPCL Mohali with a direction to make available meter and CT/PT of accuracy 0.2S so that case of extension in load be

processed. The Appellant in compliance to this letter, had got the requisite metering equipment/CT/ PT of 0.2S accuracy installed on 31.01.2019 and also informed the Respondent on 02.02.2019 to release the extension of load/CD which was kept on hold only due to non-installation of this 0.2S accuracy class metering system. But the Respondent neither took any action nor any reply was sent to the Appellant. The Appellant had again requested on 12.03.2019 and followed up with another letter on 03.05.2019 to release the load/CD but the Respondent did not reply to any of the above letters.

- (iv) On the persistent reminders and repeated requests verbal as well as written, the Respondent told verbally that an SJO had been created in SAP system as per SJO No.100008314111 dated 22.5.2019 and the Appellant would be able to use the enhanced CD as and when it was got updated in the monthly bills. But till 10/2019, neither CD was enhanced in bills nor any intimation was received by the Appellant.
- (v) The Appellant had again approached the Respondent in 12/2019. He was informed that since confirmation of deposited amount on PBIB was pending, it might take some more time in updating the Load/CD. However, all these were verbal discussions and nothing in writing was given to the Appellant.

Under these circumstances, when the Respondent was not ready to give anything in writing, there was no alternative with the Respondent except to rely upon on the gathered information from time to time. The Appellant had showed a good faith in the Respondent instead of getting into legal remedies which resulted into loss to him.

- (vi) As nothing was pending from the side of the Appellant and it was the duty of the Respondent to release the enhanced Load/CD and intimation was also to be given to the Appellant but no action was taken by the Respondent to enhance the load/CD in the bills. The Appellant had again approached in January, 2020 to know the status of its case then AEE/Commercial S/D, Mohali showed a copy of letter no. 4138 dated 20.11.2019 written by his office to higher office and also confirmed that CD job order would be completed only on receipt of confirmation of above deposits i.e. issuance of U-cheques, verification from relevant office of Accounts Wing of the Respondent. The copy of the said letter had also been attached with the Appeal as Annexure A-5.
- (vii) From the preceding paras, it was crystal clear that Respondent had not increased the load/CD neither in its own record nor any intimation was sent to Appellant and the said job order was

completed/closed in SAP system after due verification of deposited amount on 28.12.2020 which had been got confirmed by AEE/Commercial S/D, Mohali through e-mail on 28.12.2020 and that too only due to intervention in the matter by Enforcement Agency checking on 24.12.2020 who took a serious notice for not completing the job order causing inordinate delay and harassment to the Appellant. The e-mail was attached as Annexure A-6 with the Appeal.

- (viii) The present dispute arose only when unfortunately, even after proving the sufficient cause as explained above that nothing was pending at the level of the Appellant and all the lapses were on the part of the Respondent who failed to comply with the instruction of PSPCL/PSERC and the delay was also totally on the part of the Respondent, the Respondent with a clever design and to save its own skin and to conceal its own lapses, issued Sundry Notice No. 5446 dated 28.12.2020 and raised a demand of ₹ 85,94,870/- on account of fixed charges from 01.01.2018 to 28.12.2020 (by presuming that CD had been increased from 4500 kVA to 5500 kVA w.e.f. 01.01.2018) and by ignoring all the fundamental policies/rules/regulations of PSPCL/PSERC and imposed a levy for availing the facility which had never been given to the Appellant nor sanctioned by

the Respondent in its own record. Even the Respondent's own correspondence with higher offices was clear evidence that the CD/Load had never been allowed by the Respondent and nor intimated to the Appellant to use it up till 28.12.2020.

- (ix) In another case bearing No. CGP-173 of 2020 decided by the Forum on 07.08.2020 in favour of the Appellant regarding billing surcharge issue, the Respondent had confirmed before the Forum by giving a legal statement that sanctioned load was 10446 kW and contract demand was 4500 kVA. Thus any demand raised by the Respondent by taking CD as 5500 kVA (prior to 12/2020) itself proves that demand was illegal and had no weightage in the eyes of law and was quash able on this ground also.
- (x) Thus the notice issued, was clearly in violation of PSPCL's own Policies. It was illegal, illogical, erroneous and was challengeable in the eyes of law. The copy of undertaking submitted by the Respondent to the Forum in 07/2020 was attached as Annexure A-8.
- (xi) On receipt of such notice from the Respondent, the Appellant had filed a complaint before the Forum at Patiala and defended its case strongly. The Forum had observed that it was a clear

case of deficiency in service but allowed partial relief only. The Forum had erred in considering the true facts of the case.

(xii) As per order of the Forum, the Respondent had been ordered not to charge any fixed charges from 01.01.2018 to 30.01.2019.

The Appellant accepts the verdict of the Forum upto this, that no fixed charges from 01.01.2018 to 30.01.2019 was leviable and also did not want to file any Appeal upto this extent and also pray before this Court to direct the Respondent to release the amount already deposited which had not been refunded at the time of filing this Appeal as per the decision of the Forum.

(xiii) So far as the decision of the Forum to charge the fixed charges from 31.01.2019 instead of actual date of release of load/CD i.e. 28.12.2020 was concerned, it was/ is highly objectionable, unjustified, improper, illegal, illogical and also against the natural justice.

(xiv) The Forum had ordered to charge fixed charges from 31.01.2019 i.e. the date of installation of required metering system at Appellant's premises but while taking such decision, the Forum had erred in observing that installation of metering equipment was only a part of the formality to be completed by the Appellant and there was no rule/regulation of the Respondent to charge fixed charges only on the basis of

metering equipment installation date, specifically in a case when CD extension SJO was created on 28.5.2019 i.e. after installation of metering equipment. It was further submitted that on the one side, the Forum had observed that the compliance of SJO was to be done within 45 days i.e. upto 06.07.2019 as per ESIM Clause No. 22.1 (B) which was not done up to 28.12.2020 and on the other side, the Forum allowed the Respondent to charge it from 31.01.2019 when the Respondent had not even created a job order which was created on 28.05.2019 and closed on 28.12.2020. Thus the decision of the Forum was itself against its own observation and liable to be set aside only on this ground.

- (xv) The Forum had blamed the Appellant that “petitioner really does not needed to use extended Load/CD in the Years 2019 and 2020.” (page 10 para first of the decision of the Forum). This observation of the Forum was also not based on the real circumstances of the case. If the situation was so, the Appellant would have easily submitted request for cancellation of its extension application and would have also got back deposited amount. But the Appellant did not do so meaning thereby the Appellant was in utmost need of this demand as per its own business requirement. The observation of the Forum that

actually “usage of demand in 2019-2020 was not required” was on presumptive basis. The Forum had not observed the reason of applying for extension of Load/CD even when there was low utilization of demand in past and also having a remedy for cancellation of applied load/CD. Any consumer can apply for higher CD keeping in view his business expansion plan and there was no bar under the existing PSPCL rules. Even after installation of Solar Plant of 1 MW during the Year 2019, the Appellant didn't submit any cancellation request which was also evident that the Appellant was in utmost need of this higher CD. The Forum had taken wrong decision on wrong presumptions without going into actual circumstances of the case as explained above. On the other side, had the Respondent sanctioned it in due course of time as per prescribed rules, the Appellant would have been able to expand his business but the Appellant had been forced to keep its business plan restricted due to CD limitations which caused irreparable loss to the business promotion of the Appellant.

- (xvi) Neither any rule/regulation of the PSPCL/ PSERC allow to sanction the CD from deem date nor there was any such clause in the demand notice issued to the Appellant. The Forum had not given reference of any rule/regulation of Supply

Code/ESIM under which the load as well as CD can be sanctioned from the deemed date, which had been taken as 31.01.2019 in the instant case.

(xvii) In a similar nature of case, this Court had already given a decision and also disallowed the orders of the Forum in Appeal Number 15/2020 dated 12.06.2020 titled as Kangaro Industries Ludhiana Vs ASE/ DS Estate Division (Spl.), Ludhiana. The operative part of the decision was reproduced for ready reference as under:

“I agree with the Appellant that the Respondent defaulted in ensuring timely compliance of its own instructions by delaying the release of extension in Load/CD and their uploading/entry on SAP System.

Besides, the Contract Demand (CD) of the Appellant's connection during the period from 11.04.2018 to 17.05.2018 remained within the limit of Contract Demand sanctioned prior to extension of the same. The instructions of the ESIM relied upon by the Respondent for raising the demand of ₹ 8,07,290/- had not been approved by PSERC. There is no provision of deem date of release of extension in load/CD in the Supply Code-2014. Extension in load/CD was to be done within 30

days of compliance of Demand Notice in this case as per Supply Code. There was no recording of kWh/kVAh reading and resetting of MDI to zero in this case on the so called deem date of release of extension i.e. 11.04.2018. This was done on 17.05.2018 as recorded on SJO No. 118810006 dated 11.04.2018. Extension of load/CD was effected on 17.05.2018 and Appellant representative had signed SJO on 17.05.2018 as a witness to release of extension in load/CD. Further, the Respondent had not informed the Appellant about deem date of release of load/CD in the Demand Notice. The Respondent had not informed the Appellant about deem date of release of extension in load/CD even after compliance of Demand Notice. SJO was issued to give effect to release of extension in load/CD which was effected on 17.05.2018. Release of this extension prior to 17.05.2018 cannot be considered. Deem date of release of extension in load/CD is not just & fair. Accordingly, the fixed charges to be charged to the Appellant for the extended load/CD shall be charged from 17.05.2018 instead of 11.04.2018.”

(xviii) Similarly in another identical case, this Court again quashed the orders of the forum by giving an exemplary decision in Appeal

Number 50/2020 dated 18.11.2020 titled as “Northern Railway Vs. Sr. Xen/DS Divn. Bathinda” The operative part of the decision was as under:

“As a sequel of above discussions, the order dated 11.09.2020 of CGRF, Patiala in Case No. CGP-32 of 2020 is set aside. It is held that the Appellant is not liable to pay Fixed Charges (as per Two Part Tariff Structure) for the period from 01.01.2018 to 16.10.2019 for the difference in Contract Demand of 2000 kVA (3750-1750 kVA) because 3750 kVA contract demand (forming the basis of charging of the disputed amount) was not ever sanctioned by the Competent Authority of PSPCL although the Appellant had deposited all the necessary charges for this purpose during the period 09/2011 to 09/2012. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustments as per instructions of the PSPCL.”

- (xix) The Appellant’s case was identical to both above mentioned cases and deserved similar relief fundamentally on natural justice basis and the Appellant prayed for justice to it.
- (xx) The Forum had noticed that there was deficiency in service on the part of the Respondent and had recorded that “All the relevant record produced before the Forum proves beyond

doubt that the load/CD of the petitioner was enhanced on 28.12.2020 in records and that too when the Enforcement Wing raised the issue during its checking on 24.12.2020”

(xxi) The above observation clearly prove that the Appellant had to face hardship due to “deficiency in service” and further charging of any amount prior to 24.12.2020 would lead to further financial loss for no fault on its part. Thus the orders of the Forum regarding charging of fixed charges prior to 28.12.2020 was straightaway quashable being a contradictory decision of its own views.

(xxii) It was the duty of the Respondent to complete the job order and nothing was to be done by the Appellant. The Appellant had neither failed to comply with any orders of the Respondent whenever and whatever received nor violated any rules/regulation of the PSPCL. The Appellant should not be forced to pay this penalty as the Appellant had already suffered a lot due to “deficiency in service.” Further instead of getting into legal remedies, the Appellant showed a good faith in the Respondent only which resulted into loss to the Appellant.

(xxiii) The Appellant had prayed that the amount charged be taken back with all its relevant relief as admissible under rules

including the compensation as admissible under “deficiency in service” which had already been proved by the Forum.

(b) Submissions in the Rejoinder

In its rejoinder to the written reply of the Respondent, the Appellant submitted the following, vide e-mail dated 08.06.2021, for consideration of this Court:

- (i) In its reply, the Respondent again admitted by stating that compliance of load/CD extension job order was done only on 28.12.2020 after due verification of deposited amounts.
- (ii) The Forum also observed in its order that as “All the relevant record produced before the Forum proves beyond doubt that the load/CD of the petitioner was enhanced on 28.12.2020.”
- (iii) Forum the above, it was now well established that compliance of job order of load/CD extension was only done on 28.12.2020 and also proved beyond doubt that the Appellant was having CD as 4500 kVA up to 27.12.2020 with load as 10446 kW.
- (iv) The Fixed Charges were recoverable as per Two Part Tariff policy introduced by PSPCL/PSERC w.e.f. 01.01.2018 as per CC No. 47/2017.

CC 47/2017, its clause 9.2.1(Tariff) read as under:

“for consumers covered under contract demand system as per condition 10 below, the fixed charges shall be levied on 80% of

the sanctioned contract demand or Actual demand recorded during the billing cycle/month (restricted to sanctioned maximum demand) whichever is higher. In case the consumer exceeds its sanctioned Contract Demand during a billing cycle/month, he shall be liable to pay demand surcharge as provided in Schedule of Tariff for relevant category.”

Further clause 10.1 of above circular defines about contract demand as under:

Clause 10.1 (CC 47/2017):

“Contract demand shall mean the maximum demand in kVA sanctioned to the consumer”

As per above two clauses, fix charges are recoverable only on the basis of **SANCTIONED contract demand**. Further for billing purpose **SANCTIONED** contract demand is to be taken for levying of fix charges. Our sanctioned demand was 4500 KVA and we had already paid fix charges through bills. The respondent had charged the amount on the basis of 5500 KVA demand which was not a “sanctioned contract demand upto 27.12.2020” and was sanctioned only on 28.12.2020 (as explained in para (i) and (ii) above and therefore does not cover under above clause 10.1 and charging of amount was

clear violation of above tariff policy framed by PSERC. In fact, the above demand neither allowed by the respondent to use nor actually utilised. We did not go beyond the actual sanctioned CD of 4500 KVA in the last 5 years, not even a single time. Therefore, charging of the amount for such a facility which was never legally sanctioned by respondent nor actually used was highly unjustified, illegal, and against the natural justice.

- (v) Although the Forum had observed that it was a clear case of **'DEFICIENCY IN SERVICE'** and also observed that demand had been sanctioned on 28.12.2020, but the Forum allowed relief only from 01.01.2018 to 31.01.2019. The Forum had not quoted any Regulation of Supply Code under which, it allowed the Respondent to charge Fixed charges from 31.01.2019 to 27.12.2020. When mere installation of metering equipment does not give any right to a consumer to use enhanced CD, then, charging of amount on the basis of installation of metering equipment was also contrary to the order of the Forum issued against the set principles of billing in case of load/CD extension cases. In this case, neither the Respondent complied with the SJO nor sanctioned the demand, nor conveyed to us, and nor updated it in the bills till 27.12.2020, thus any amount,

if charged without completing above formalities was illegal and was straightway quash-able.

- (vi) The disputed notice issued by the Respondent also did not mention any rule/regulation of PSPCL under which, the amount was shown as chargeable. This is also violation of Instruction No. 93.1 of ESIM 2018 reproduced below:

“Instruction No.93.1 of ESIM 2018 providing that in such cases the copy of relevant instructions under which the charges have been levied shall also be supplied to the consumer....”

- (vii) Even in the checking dated 24.12.2020 of Enforcement Wing, the checking authority only ordered to do compliance of the pending Job Order, the Enforcement did not issue directions to charge any amount.
- (viii) So far as applying of load/CD in 2011-2012 was concerned, it was submitted that the Respondent issued notice on the basis of load /CD applied by the Appellant on 01.04.2016. Further, when the Appellant never sought for any relief for 2011-12 load/CD and applied afresh, on 01.04.2016 and already A&A accepted and demand notice issued without any controversy at the time of applying for extension on 10.04.2016, then, it was

nothing else than just to divert the attention of the higher authority to escape from the present lapses of the Respondent and proved also an illegal action to justify the demand now raised which was invalid, unjustified, not sustainable and was straightway quash-able.

- (ix) There is no provision in Supply Code to sanction CD from a retrospective date or deemed date. This court had already given a good decision as per Appeal No.15/2020 as under “....there is no provision of deemed date of release of extension in load/CD in the supply code 2014...”
- (x) The Respondent had also not allowed refund as per the Forum’s decision till date, rather added the whole amount in subsequent bill, and the Appellant had to deposit it to avoid surcharge/interest, therefore, it was prayed to allow refund with interest as per regulation 35.1.3 of Supply Code-2014 as the PSPCL had also earned interest on deposited amount on the basis of an illegal demand.

(c) Submission during hearing

During hearing on 09.06.2021, the representatives of the Appellant reiterated the submissions made in the Appeal and

prayed to allow the relief claimed in the Appeal/Rejoinder to Written reply.

(B) Submissions of the Respondent

(a) Submissions in written reply

The Respondent, in its defence, made the following submissions for consideration of this Court:

- (i) The Appellant was having a Large Supply Category Connection with existing sanctioned load of 11446.910 kW and CD as 5500 kVA.
- (ii) The Appellant applied for extension in load from 7137.910 kW to 10446.910 kW and in CD from 4500 kVA to 5500 kVA in the year 2012 (27.01.2012). In compliance, the extension in load from 7137.910 kW to 10446.910 kW was sanctioned on 17.10.2012. But extension in CD from 4500 kVA to 5500 kVA could not be done due to technical error. As a result, billing continued to be done as per the earlier sanctioned CD of 4500 kVA.
- (iii) The Appellant applied on 01.04.2016 to Punjab Bureau of Investment Promotion, Chandigarh for extension in load from 10446.910 kW to 11946.910 kW and in CD from 4500 kVA to 5500 kVA. The Appellant also again deposited the amount due.

- (iv) ASE, Punjab Bureau of Investment Promotion, Chandigarh, vide letter no. 5325 dated 01.03.2017, forwarded the case of the Appellant for compliance to the ASE, DS Division (Special), S.A.S. Nagar. Thereafter, the said case was forwarded to AEE/Commercial, DS Division (Special), SAS Nagar for necessary action.
- (v) AEE/Commercial, vide letter no. 481 dated 15.03.2017, informed the ASE, DS Division (Special), SAS Nagar that the Appellant be directed to replace the Meter and CT/PT unit. Accordingly, the Appellant was asked, vide letter no. 586 dated 27.03.2017, to get a new Meter and CT/PT of 0.2S accuracy installed so that extension in load/CD applied could be released.
- (vi) On 31.01.2019, the Appellant informed the Sr. Xen, DS Division, S.A.S. Nagar about installation of new Meter and CT/PT Unit of 0.2S accuracy. Thereafter, the Appellant, vide letter dated 20.11.2019, requested ASE, DS Division (Special), SAS Nagar to verify the amounts of ₹ 59,000/-, ₹ 2,38,500 and ₹ 11,44,461/- deposited with Punjab Bureau of Investment Promotion, Chandigarh. Necessary verification was done by the DS Division (Special), S.A.S Nagar on 28.12.2020.

- (vii) The connection of the Appellant was checked by the ASE, Enforcement-cum-EA & MMTS, Sangrur vide Checking Register No. 40/3890 dated 24.12.2020 whereby, the Respondent was directed to make compliance of Job Order relating to extension in CD of the Appellant due to which, the Appellant was charged ₹ 85,94,870/- on 14.01.2021 owing to implementation of Two Part Tariff w.e.f. 01.01.2018, which was correct and recoverable. The Appellant did not agree with the amount charged in 01/2021 and filed a case in O/o CGRF, Patiala. The said case was decided vide order dated 06.04.2021.
- (viii) Not satisfied with the decision of the Forum, the Appellant filed the present Appeal. The Respondent applied for extension in load in SAP System on 22.05.2019 but due to technical defect, verification of security could not be done in time and compliance of Job Order could not be done in time. After compliance of directions dated 24.12.2020 of the Enforcement, AEE Technical-2, DS Division (Special), SAS Nagar complied with the Job Order and load applied as 11946.910 kW and CD as 5500 kVA was sanctioned. The decision of the Forum was correct.

(b) Additional Submissions of the Respondent

In compliance to directions issued vide letter no. 885/OEP/A-49/2021 dated 04.06.2021, the Respondent submitted the following, vide Memo No. 8675 dated 07.06.2021:

- (i) Details of Maximum Demand of the Appellant's connection from 01.01.2016 to 01.05.2021 were annexed.
- (ii) The connection installed at the premises of the Appellant was checked on 24.12.2020 by Addl. S.E./ Sr. Xen, Enforcement-cum-EA &MMTS, PSPCL, Sangrur who issued directions for compliance of Job Order for extension in its CD.
- (iii) The Appellant was charged ₹ 85,94,870/- on 14.01.2021 as Fixed Charges (under Two Part Tariff) from the year 2018. The Appellant did not agree with the amount charged to it and approached the Forum who, vide order dated 06.04.2021, decided that Fixed Charges for the period from 31.01.2019 to 28.12.2020 were recoverable from the Appellant.
- (iv) The Appellant had deposited the whole disputed amount of ₹ 85,94,870/- on 29.01.2021.
- (v) The decision of the Forum will be implemented by refunding ₹ 27,36,710/- in the forthcoming bill.

(c) Submission during hearing

During hearing on 09.06.2021, the Respondent reiterated the submissions made by it in the written reply and contested the submissions of the Appellant in the Appeal/Rejoinder and had requested for dismissal of the Appeal of the Appellant.

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of the prayer of the Appellant for refund of Fixed Charges for the period from 31.01.2019 to 28.12.2020 on account of extension in contract demand from 4500 kVA to 5500 kVA and compensation for deficiency in service on the part of the Respondent.

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

- (i) The present dispute arose when the Appellant was served with a notice vide Memo No. 5446 dated 28.12.2020 by the AEE/ Commercial, PSPCL, S.A.S Nagar stating as under:

“ਤੁਹਾਡੇ ਵਲੋਂ investment bureau ਵਿਚ ਲੋਡ ਵਾਧੇ ਲਈ ਮਿਤੀ 01.04.2016 ਨੂੰ ਆਪਲਾਈ ਕੀਤਾ ਸੀ ਜਿਸਦੇ ਸਬੰਧ ਵਿਚ ਕਾਰਵਾਈ ਕਰਣ ਲਈ ਆਪ ਜੀ ਨੂੰ 66 kv ct pt change ਕਰਨ ਲਈ ਲਿਖਿਆ ਗਿਆ ਸੀ ਜਿਹੜੇ ਕਿ ਤੁਹਾਡੇ ਵਲੋਂ ਜਨਵਰੀ

2019 ਵਿਚ change ਕੀਤੇ ਗਏ ਸੀ । ਇਸ ਉਪਰੰਤ C.D ਵਧਾਉਣ ਲਈ ਆਪ ਜੀ ਦੇ ਦਫਤਰੀ ਪੱਤਰ ਨੰ: G &B /2019/005 ਮਿਤੀ 04.04.2019 ਨਾਲ ਬੇਨਤੀ ਕੀਤੀ ਗਈ ਸੀ ਉਸਤੇ ਕਾਰਵਾਈ ਕਰਦੇ ਹੋਏ ਸੈਪ ਸਿਸਟਮ ਵਿਚ ਜਾਬ ਆਡਰ ਨੰ:100008314111 ਮਿਤੀ 22.05.2019 generate ਕੀਤਾ ਗਿਆ । ਉਸਦੀ compliance ਕਰਦੇ ਹੋਏ ਆਪ ਜੀ ਨੂੰ ਸਮਾਂ 01.01.2018 ਤੋਂ 28.12.2020 ਤੱਕ ਦੇ ਵਾਧੂ C.D 5500 kva ਮੁਤਾਬਿਕ ਫਿਕਸ ਚਾਰਜਿਜ 8594870 ਚਾਰਜ ਕਰਣੇ ਬਣਦੇ ਹਨ । ਇਸ ਲਈ ਆਪ ਜੀ ਨੂੰ ਲਿਖਿਆ ਜਾਂਦਾ ਹੈ ਇਹ ਰਕਮ 8594870/- (Eighty five lakh ninety four thousand eight hundred seventy rupees) ਇਸ ਦਫਤਰ ਵਿਚ 15 ਦਿਨਾਂ ਦੇ ਵਿਚ ਜਮਾਂ ਕਰਵਾਉ ਜੀ ।”

The Appellant deposited the whole of the disputed amount on 29.01.2021 (as confirmed by the Respondent vide Memo No. 8675 dated 07.06.2021) and filed a case in the Forum on 01.02.2021. The Forum, vide its order dated 28.04.2021, decided as under:

“The fixed charges due to extension in CD from 4500 to 5500 KVA are not leviable from 01.01.18 but are leviable w.e.f. 31.01.19 after installation of required metering system at petitioner’s premises. The demand of fixed charges be worked out accordingly and amount be recovered from the petitioner.”

As per above decision, a sum of ₹ 27,36,710/- (Fixed Charges from 01.01.2018 to 30.01.2019) was refundable to the Appellant and will be adjusted in the forthcoming bill as intimated by the Addl. S.E/Sr. Xen, DS Division(Special), PSPCL, S.A.S Nagar vide letter no. 8675/ਡੀ.ਬੀ-86 dated 07.06.2021.

- (ii) The disputed Notice dated 28.12.2020 was issued to the Appellant after the connection of the Appellant was checked by ASE/Sr. Xen, Enforcement cum EA & MMTS PSPCL, Sangrur vide ECR No. 40/3890 dated 24.12.2020 whereby it was, inter-alia, reported that:

“ਖਪਤਕਾਰ ਦੇ ਦੱਸਣ ਅਨੁਸਾਰ 1 ਮੇਗਾਵਾਟ ਦੇ ਸੋਲਰ ਪੈਨਲ ਲੱਗੇ ਹਨ। ਖਪਤਕਾਰ ਦੇ CD ਦੇ ਵਾਧੇ ਸਬੰਧੀ ਜਾਬ ਆਡਰ ਦੀ ਕੰਪਲਾਇਸ ਕਰਕੇ ਇਸ ਦਫਤਰ ਨੂੰ ਸੂਚਿਤ ਕੀਤਾ ਜਾਵੇ।”

- (iii) On being directed during hearing on 09.06.2021, the Respondent submitted Load Change Order dated 28.12.2020 signed by the AEE, DS Tech-3, Sub Division, PSPCL, S.A.S. Nagar after compliance of Sundry Job Order for extension in CD as 5500 kVA.
- (iv) The Respondent also submitted on 09.06.2021 a statement giving details of Actual Maximum Demand of the Appellant's

connection recorded during the years 2012-13 to 2021-22 as under:

Year	Actual Maximum Demand (kVA)
2012-13	3321.12
2013-14	3326.9388
2014-15	3312
2015-16	3286.5
2016-17	3567.96
2017-18	3131
2018-19	3750.86
2019-20	3419
2020-21	3128
2021-22	3474

- (v) Written as well as oral submissions alongwith evidence brought on record of this Court by both the sides have been gone through. The Court noted that the Respondent had conveyed in writing vide letter no. 8675/डी.बी-86 dated 07.06.2021 and also during hearing on 09.06.2021 that the order dated 28.04.2021 of the Forum was in the process of being implemented and adjustment of the refundable amount of ₹ 27,36,710/- (Fixed Charges from 01.01.2018 to 30.01.2019) will be made in the forthcoming bill of the Appellant. Thus, the Respondent

virtually admitted that the claim of the Appellant regarding refund of the disputed amount as per decision of the Forum was not disputed by it. Besides, the Respondent did not take appropriate remedy, after receipt of the aforesaid decision of the Forum, by approaching the appropriate body for setting aside the same.

- (vi) As per evidence on record, compliance of Sundry Job Order No. 100008314111 dated 22.05.2019 for extension in Contract Demand (CD) from 4500 kVA to 5500 kVA was done on 28.12.2020 which implied that CD was actually extended to 5500 kVA w.e.f. 28.12.2020 itself.
- (vii) It is observed that the Maximum Demand of the Appellant's connection did not exceed the sanctioned contract demand (CD) of 4500 kVA from 01.01.2018 (date from which, levy of fixed charges was made applicable by PSPCL in such cases) to 27.12.2020 (a day prior to date of compliance of SJO by PSPCL).
- (viii) It is also observed that the Forum erred in deciding to direct the Respondent to recover fixed charges from 31.01.2019 (date of installation of metering equipment) to 28.12.2020 (date of extension of CD as 5500 kVA) without referring to any provisions of Tariff Order/Supply Code. Besides, the Forum

did not consider the pleading of the Appellant that CD shown in the bills for the disputed period was 4500 kVA and not 5500 kVA on the basis of which, fixed charged from 01.01.2018 were raised against the Appellant vide Notice dated 28.12.2020. There is no provision in the Supply Code for Deemed Date of Extension in Load which has been taken as 31.01.2019 by the Forum. Extension in load is to considered with effect from the date of compliance of SJO No. 100008314111 dated 22.05.2019. Compliance of this job order was done on 28.12.2020 when it was pointed out by Enforcement in its Checking report no. 40/3890 dated 24.12.2020. Timely compliance of job order was not done by the Respondent inspite of follow up action by the Appellant. The Respondent may take action against the officers/ officials who have delayed the release of extension in Contract Demand.

- (ix) The Appellant rightly stated in its rejoinder to the written reply that the disputed notice issued by the Respondent also did not mention any rule/regulation of PSPCL under which, the amount was shown as chargeable. The issuance of the said notice was in violation of Instruction No.93.1 of ESIM-2018.

It is observed that even on being asked during hearing on 09.06.2021, the Respondent failed to refer to any instructions of PSPCL as per which, Notice dated 28.12.2020 for charging the disputed amount was issued to the Appellant.

- (x) The Court noted the contention of the Appellant that the Respondent had referred to application of the Appellant for extension in load/CD in 2011-2012. The Respondent had admitted in the written reply that extension of CD from 4500 kVA to 5500 kVA applied during the year 2011-12 could not be done due to Technical error. As such, this has no relevance in the present dispute case. The Respondent issued notice on the basis of load /CD applied by the Appellant on 01.04.2016. Further, when the Appellant never sought for any relief for 2011-12 load/CD and applied afresh, vide A & A on 01.04.2016 which was accepted and demand notice was issued without any controversy at that time, then, it was nothing else than just to divert the attention of the higher Authority/Court to escape from its present lapses. The Appellant added that this amount to an illegal action on the part of the Respondent so as to justify the demand raised now which was invalid, unjustified, not sustainable and was straightway quash-able.

The Court observes that the said points came up for discussion during hearing on 09.06.2021 and the Respondent admitted the lapse regarding acceptance of fresh application for extension in CD to 5500 kVA on 01.04.2016 without linking up the case for similar extension applied by the Appellant during 2011-12. At the same time, the Respondent stated that the Appellant was also responsible in this regard.

- (xi) The Appellant, in its Appeal, prayed for payment of compensation as admissible under “deficiency in service” as observed by the Forum.

The Court finds that the Appellant did not seek appropriate remedy in this regard by making a representation to the Respondent as per provisions contained in Supply Code-2014. Accordingly, the prayer of the Appellant is devoid of merit and cannot be allowed.

It is also observed that the Appellant did not specifically claim interest on the disputed amount by referring to applicable regulations in its Appeal and had prayed for grant of interest in its rejoinder to the written reply of the Respondent. The claim of the Appellant in this regard is an afterthought and rejected after due consideration.

(xii) From the above analysis, it is concluded that:

- a) The Respondent failed to prove as to how the demand of disputed amount of ₹ 58,58,160/- for the period 31.01.2019 to 28.12.2020 (included in original demand of ₹ 85,94,870/- from 01.01.2018 to 28.12.2020) was justified when extension in CD from 4500 kVA to 5500 kVA was actually released on 28.12.2020 as admitted by both parties. The Respondent mentioned the sanctioned contract demand as 4500 kVA in its electricity bills issued during the disputed period. The disputed/levied fixed charges are not sustainable in the eyes of law and are not in conformity with instructions/regulations of PSPCL/PSERC.
- b) Issuance of Notice dated 28.12.2020 for levy of fixed charges on the Appellant for the disputed period without reference to any instructions/regulations is not in order. Accordingly, the Court is inclined to quash Notice dated 28.12.2020 issued by the Respondent charging the Appellant with Fixed Charges amounting to ₹ 85,94,870/- from 01.01.2018 to 28.12.2020.
- c) The decision dated 28.04.2021 of the Forum to order recovery of Fixed Charges due to extension in CD from 4500 kVA to 5500 kVA with effect from 31.01.2019 (date of installation of metering equipment) is without reference to any instructions/

regulations of PSPCL/PSERC and is against the documentary & other evidence on record.

- (xiii) In view of the above, the Appellant is not required to be charged balance amount of ₹ 58,58,160/- (₹ 85,94,870/- minus ₹ 27,36,710/-) for the period 31.01.2019 to 28.12.2020 from the Appellant as decided by the Forum. The Appellant shall not be allowed compensation as prayed for by it. Besides, no interest on the refundable disputed amount (Fixed Charges) from 01.01.2018 to 28.12.2020 shall be payable to the Appellant.

6. Decision

As a sequel of above discussions, the order dated 28.04.2021 of the CGRF, Patiala in Case No. CGP-48 of 2021 is modified. It is held that:

- (i) Fixed Charges levied vide Memo No. 5446 dated 28.12.2020 due to extension in CD from 4500 kVA to 5500 kVA for the period 01.01.2018 to 28.12.2020 are not recoverable from the Appellant because extension in CD was actually done/effected on 28.12.2020 as admitted by both parties.
- (ii) No compensation is payable to the Appellant as prayed.

- (iii) No interest on the refundable disputed amount (Fixed Charges) from 01.01.2018 to 28.12.2020 shall be payable to the Appellant.
- (iv) The Respondent is directed to refund, without interest the amount of Fixed Charges for the period 01.01.2018 to 28.12.2020 got deposited in excess as per instructions of PSPCL.
- (v) The decision of the Forum directing the Respondent to hold Inquiry to fix responsibility of the delinquent officers/officials is in order and the same be conducted in a time bound schedule.
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.

June 16, 2021
S.A.S. Nagar (Mohali)

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

