**COURT OF THE LOK PAL (OMBUDSMAN), ELECTRICITY, PUNJAB,**

 **PLOT NO. A-2, INDUSTRIAL AREA, PHASE-1,**

**S.A.S. NAGAR (MOHALI).**

 **APPEAL NO. 58/2020**

**Date of Registration : 07.12.2020**

**Date of Hearing : 23.12.2020**

**Date of Order : 23.12.2020**

**Before:**

**Er. Gurinder Jit Singh,**

**Lokpal (Ombudsman), Electricity, Punjab**.

**In the Matter of:**

M/s. Asian Bikes Pvt. Ltd.,

Opp. Ravi Dharam Kanda,

Eastman Impex Chowk,

Sua Road, Dhandari Kalan,

Ludhiana -141010.

**Contract Account Number: 3003018071**  ...Appellant

Versus

Addl. Superintending Engineer,

DS Estate Division (Special),

PSPCL, Ludhiana. ...Respondent

**Present For:**

Appellant : Sh. Jivtesh Nagi (Advocate),

 Appellant’s Counsel.

Respondent : 1. Er. Kulwinder Singh,

 Addl. Superintending Engineer,

 DS Estate Division (Special),

 PSPCL, Ludhiana.

 2. Sh. Krishan Singh

 Assistant Accounts Officer,

 DS Estate Division (Special),

 PSPCL, Ludhiana.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 25.06.2020 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL T-169 of 2020, deciding that:

*“Forum observed from the documents submitted by respondent that the decision of case CG 155/2017 of CGRF, Patiala was conveyed to the petitioner vide probable memo No. 3189 dated 03.11.2017 and as per para 3 of the letter, he was at liberty to file an appeal in court of Ombudsman, Electricity Punjab, Mohali within 30 days from receipt of Judgement/ proceeding.*

*Therefore, Forum observed that the case is not maintainable in this Forum as the appeal if any, is to be filed in the court of Ombudsman, Electricity Punjab,Mohali*.”

**2*.* Registration of the Appeal**

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 07.12.2020 i.e. after more than five months of the decision dated 25.06.2020 of the CGRF, Ludhiana in Case No. CGL T-169 of 2020. The Appellant’s Counsel submitted an application for condoning of delay in filing the present Appeal in this Court. The Appeal related to refund of service connection charges for extension in load of the Appellant. As such, the Appellant was not required to deposit the requisite 40% amount for filing the Appeal in this Court. Therefore, the Appeal was registered and copy of the same was sent to the Addl. Superintending Engineer, DS Estate Division (Special), PSPCL, Ludhiana for sending written reply/parawise comments with a copy to the office of the CGRF, Ludhiana under intimation to the Appellant vide letters bearing numbers 1174-1176/OEP/A-58/2020 dated 07.12.2020.

**3.** **Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 23.12.2020 at 12.30 PM and an intimation to this effect was sent to both the sides vide letter nos. 1224-25/OEP/A-58/2020 dated 16.12.2020. As scheduled, the hearing was held on 23.12.2020 in this Court, on the said date and time.

**4. Condonation of Delay**

(i) In the application for condoning the delay in filing Appeal in this Court, the Appellant’s Counsel stated that the applicant was filing the Appeal & was confident of its success. The claim detailed in the Appeal was put up before the CGRF, Patiala who passed an order dated 01.11.2017, wherein, liberty was granted to the Appellant to approach the CGRF again. Consequently, the claim of interest was put up before the CGRF, Ludhiana, which was disposed of vide order dated 25.06.2020. The aforesaid order dated 25.06.2020 was not supplied to the Appellant and an application was filed before CGRF, Ludhiana on 12.11.2020 to supply the order passed. It was delivered on 12.11.2020, which was not uploaded on the online data base either. The delay in filing the Appeal was because the CGRF, Ludhiana did not supply the order and the delay was neither intentional nor deliberate. There were sufficient reasons to accept the instant application and condone the delay, if any.

(ii) A clarification was sought by this Court from the office of CGRF, Ludhiana, vide letter no. 1228/OEP/A-58/2020 dated 17.12.2020 requesting for sending a copy of letter whereby, the order dated 25.06.2020 was sent to the Petitioner and also the office of CGRF was requested to send copy of documentary evidence viz post office receipt if the letter was sent by registered post. Further, the Forum was also requested to send a copy of acknowledgment of the letter/order received by the Petitioner or its Representative if it was delivered in person or through messenger.

In response, Secretary/ CGRF, Ludhiana, vide Memo No. 3617 dated 18.12.2020 intimated that the case of the Appellant was registered in the office of the CGRF, Patiala vide Case No. CG-155/2017 regarding dispute of excess service connection charges recovered and after hearing, was decided on 01.11.2017. Thereafter, the Appellant approached the CGRF, Ludhiana on 29.05.2020 for interest on refunded amount of service connection charges after passage of almost 31 months. After hearing both the sides, the Forum observed that if the Appellant was not satisfied with the decision of CGRF, Patiala, then, it should have filed an Appeal in this Court within stipulated period of 30 days but it was not done accordingly. Therefore, the CGRF, Ludhiana decided that the case was not maintainable and the same was conveyed to the Appellant in proceeding dated 25.06.2020.

The office of the CGRF, Ludhiana also intimated that proceedings dated 25.06.2020 was not sent through any registered/ordinary post and the Appellant took a snap/ photo of the proceedings & the record of same was not available with the office of CGRF, Ludhiana.

(iii) At the start of hearing on 23.12.2020, the issue of condoning of delay in filing the Appeal in this Court was taken up. The Appellant’s Counsel reiterated the submissions already made in the application for condonation submitted with the Appeal and prayed to condone the delay in the interest of justice.

(iv) The Respondent, in its reply, did not offer any comments on the said request of the Appellant and also did not raise any objection in this regard during hearing.

(v) In this connection, I have gone through Regulation 3.18 (ii) of PSERC (Forum and Ombudsman) Regulations, 2016 which reads as under:

 *“No representation to the Ombudsman shall lie unless:*

*The representation is made within one month from the date of receipt of the order of the Forum:*

*Provided that the Ombudsman may entertain a representation beyond one month on sufficient cause being*

*shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of one month.”*

(vi) It was observed that though the reasons given by the Appellant’s Counsel for delay in filing the Appeal in this Court were not convincing, non condonation of delay would deprive the Appellant of the opportunity required to be afforded to meet the ends of ultimate justice. With this in view, the delay in filing the Appeal in this Court beyond the stipulated period was condoned and the Appellant’s Counsel was allowed to present the Case.

**5. Submissions made by the Appellant and the Respondent**

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

1. **Submissions of the Appellant**

**(a) Submissions made in the Appeal.**

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

1. The Appellant was a registered company under the Companies Act, having its registered office, Opposite Ravi Dharam Kanda, Eastman Impex Chowk, Sua Road, Dhandari Kalan, Ludhiana. Therefore the Appellant company was competent to invoke the jurisdiction of this Court by filing the present Appeal under Regulation 2.45, read with Regulation 2.49 and 2.48 of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman), Regulations, 2016.
2. The Appellant was having a Large Supply (LS) connection, bearing Account No. 3003018071, with a Sanctioned Load (SL) of 990 kW and Contract Demand (CD) as 995 kVA.
3. Earlier, the connection of the Appellant was released on 20.08.2009 at a Sanctioned Load (SL) of 420 kW/kVA which was extended to Sanctioned Load (SL) of 990 kW and Contract Demand as 995 kVA on 11.06.2016.
4. The Appellant had applied for extension in load, for which, it had deposited ₹ 24,61,985/- on 15.10.2015 which was later found to be erroneous and excessive. This said excessive amount was lying with the Respondent from 15.10.2015 to 05.03.2018.
5. Consequently, the Appellant filed a Petition in the year 2017 before the CGRF, Patiala, for refund of the excess amount with interest. In reply dated 13.07.2017 to the said Petition, the Respondent admitted that an amount of ₹ 6,49,726/- was payable by the PSPCL on account of excess security charges. The reply was annexed as Annexure P/3. It is pertinent to mention that the Respondent did not include interest payable on the said amount, which was liable to be paid in terms of Regulation 9.3.6 of the Supply Code -2014.
6. Thereafter, the CGRF, Patiala passed the order dated 01.11.2017 and held that the Respondent may revise the amount payable by it and the Appellant was free to approach the Forum again if the grievance still persisted.
7. A partial amount of ₹ 4,27,343/- was refunded to the Appellant after 29 months vide bill dated 05.03.2018 without any interest. The amount was significantly less than the amount admitted by the Respondents in their reply to the Petition, which was ₹ 6,49,726/-.
8. The difference in the amount payable by the Respondent was unreasonable and erroneous. Furthermore, the interest payable on the said amount had not been paid by the Respondent either. Thereafter, the Respondent was liable to pay the remaining unpaid amount excessively charged as Security and the interest was payable on the entire amount payable by the Respondent.
9. As a result, the Appellant filed another Petition before the CGRF, Ludhiana since the order passed by the CGRF, Patiala initially stated in its order dated 01.11.2017 that if the grievance still persisted, the Appellant shall be at liberty to approach the CGRF. However, after the Appellant filed the aforesaid Petition. CGRF Ludhiana admitted the Petition, but did not pass any order, either in limine or on merits. On enquiry, the Appellant was informed that there shall be no formal order. The reply filed by the Respondent in the aforesaid Petition was annexed as Annexure P/6.
10. The delay of 29 months in the partial payment of ₹ 4,27,343/- instead of ₹ 6,49,726/- was clearly apparent and unexplained by the Respondent and by virtue of the Regulation 9.3.6, the Respondent was liable to pay interest on the aforementioned entire amount of ₹ 6,49,726/- along with the remaining unpaid amount. Regulation 9.3.6 of Supply Code-2014 pertaining to interest was reproduced as below for the perusal of the Court:-

*“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 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.]”*

1. It was pertinent to mention that the interest should be payable according to the aforesaid Regulation by the Respondent and not as per the amended Regulation since the period of dispute was prior to the enactment of the amended Regulation i.e. May 2018, and therefore, the amended Regulation shall not apply retrospectively. Therefore, the interest payable as per the Regulation was twice the SBI’s base interest rate+2%.
2. In the light of the above Regulation 9.3.6, the amount of ₹ 6,49,726/- had become due on 11.08.2016 (i.e. after 60 days from the date of release of extension on 11.06.2016) and a partial amount of ₹ 4,27,343/- was credited to the Appellant’s account on 05.03.2018 without interest. The Respondent, as such, erred as it only paid a partial amount of ₹ 4,27,343/-, that too without interest lying with Respondent for 29 months inspite of a clear provision as per Regulation 9.3.6, the approximate amount payable by the Respondent on the delayed refund was enumerated herein below:

The base rate of SBI as per the official website of SBI was

9.30% on 1st April 2016, which shall be applicable for the purpose of this case.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Principal Amount** | **Delay in payment**  | **Rate of Interest applicable**  | **Total interest payable**  | **Total Amount payable** |
| ₹ 6,49,726/- | 1 year, 7 months | 20.6%  | ₹2,05,746/-  | ₹ 8,55,472/- |

1. Out of the said amount of ₹ 8,55,472/-, the Respondent had credited the amount of ₹ 4,27,343/- and the remaining amount of ₹ 4,28,129/- was payable to the Appellant.
2. In view of the above averments made, it was prayed that the Appeal be allowed and interest on delayed refund be allowed to the Appellant.

**(b) Submission during hearing**

During hearing on 23.12.2020, the Appellant’s Counsel reiterated that the Appeal was maintainable and prayed to hear and allow the same.

1. **Submissions made by the Respondent**
2. **Submissions in written reply**

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

1. The Appellant had filed a Case bearing No. CG-155/2017 in the office of the CGRF, Patiala in 2017 for refund of excess service connection charges deposited by it for extension in load from 455.940 kW to 990 kW with extension in CD from 420 kVA to 995 kVA (extension of 534.060 kW and 575 kVA).
2. CGRF, Patiala had decided the case on 01.11.2017 and the same was conveyed to the Appellant vide memo no. 3191 dated 03.11.2017.
3. The revised estimate no. 7300622/17-18 amounting to ₹ 15,59,487/- was prepared and sanctioned by ASE/DS Estate Divn. (Spl.), Ludhiana in compliance to decision of CGRF, Patiala.
4. An amount of ₹ 4,27,343/- was refunded to the Appellant in the month of 03/2018 energy bill vide sundry SCA No. 331/157/R-161 as excess amount deposited as service connection charges as per revised estimate no. 7300622/17-18 as detailed below:
5. The consumer had deposited ₹ 19,53,110/- on account of cost as per old estimate no. 53234/2015-16 including cost of CT/PT ₹ 47,500/- total being ₹ 20,00,610/- vide BA 16 No. 33952 dated 15.10.2015.
6. The estimated cost of revised estimate no. 7300622/17-18 was ₹ 15,59,847/- including cost of CT/PT ₹ 34,080/-. Hence the refundable amount comes to ₹ 19,53,110/- ₹ 15,25,767/- (₹ 15,59,847-₹ 34,080) = ₹ 4,27,343/-
7. The Appellant had filed a case no. CGL-169/2020 in the office of CGRF, Ludhiana. It was decided vide order 25.06.2020 that the case was not maintainable. The Appellant had now filed this Appeal.
8. The amount of ₹ 6,49,726/-was calculated on the basis of old estimate and as per the decision of CGRF, Patiala, new estimate no. 7300622/17-18 for ₹ 15,59,847/- including cost of CT/ PT i.e. ₹ 34,080/- had been prepared and sanctioned. Hence, the refundable amount came to ₹ 19,53,110-15,25,767 = ₹ 4,27,343/- which had been correctly refunded to the Appellant in the month of 03/2018.
9. An amount of ₹ 4,27,343/- was correctly refunded to the Appellant in the month of 03/2018 energy bill vide SCA No. 331/157/R-161 as excess amount deposited as service connection charges as per revised estimate No. 7300622/17-18.
10. The case filed by the Appellant in CGRF, Ludhiana was dismissed due to its being not maintainable. It was added that the present case had not been filed within the prescribed period as the decision in CG 155/2017 was conveyed to the Appellant by the CGRF, Patiala vide memo No. 3180 dated 03.11.2017 and the excess amount was refunded to the Appellant in the bill for 03/2018 and it accepted this bill and had not given any representation regarding any discrepancy made regarding the refund.
11. The CGRF, Patiala had not allowed interest on refundable amount and the Appellant had not made any objection regarding this amount refunded. The Appellant also did not claim interest on this amount from the PSPCL by making any request letter on or after refund made in 03/2018. Hence, the Appeal was liable to be dismissed. Therefore, PSPCL was not liable to pay any penal interest as the Appellant had filed the case in CGRF, Patiala in 2017.
12. The Appeal of the Appellant be dismissed.

**(b) Submission during hearing**

During hearing on 23.12.2020, the Respondent contested the submissions made by the Appellant regarding maintainability and prayed to dismiss the Appeal of the Appellant.

**6. Analysis and Findings**

The issue requiring adjudication is the legitimacy of the prayer of the Appellant to entertain and decide/allow its Appeal for refund of difference of service connection charges and interest thereon as per applicable Regulations.

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

1. The Appellant’s Counsel submitted that the Appellant was a registered company registered under the Companies Act and having a Large Supply Category connection bearing Account No. 3003018071. The Appellant, whose connection was released on 20.08.2009 with sanctioned load of 455.940 kW and CD 420 kVA, got its load extended to 990 kW and CD as 995 kVA on 11.06.2016 after deposit of ₹ 24,61,985/- on 15.10.2015. The aforesaid deposit amount was subsequently found to be errornous/excessive. As a result, the Appellant filed a case, bearing No. CG-155 of 2017 in the office of the CGRF, Patiala for refund of excess service connection charges with interest. After hearing both the sides, the Forum passed order dated 01.11.2017 deciding as under:

*“CE/TA & I vide his office memo no.12023 dated 30.10.17 has submitted the report as decided during the proceedings dated 14.7.2017. Forum directs the respondent to revise the estimate as per direction contained in the ibid letter of CE/TA&I.*

*In case petitioner still has any grievance he is free to approach CGRF again.”*

While forwarding a copy of the above proceedings dated 01.11.2017, the Secretary, CGRF, Patiala, vide Memo No. 3189-90/CG-155/2017 dated 03.11.2017 addressed to ASE/DS, Estate Division, Ludhiana and M/s Asian Bikes Pvt. Ltd., mentioned inter-alia that:

“If the petitioner is not satisfied with the decision of CGRF, he has the right to file an appeal in the court of Ombudsman, Electricity Punjab, Mohali within 30 days from the receipt of judgement/proceeding.”

The Appellant’s Counsel submitted that amount of ₹ 4,27,343/- was refunded without interest to the Appellant in the bill dated 05.03.2018. This amount was significantly less than the amount of ₹ 6,49,726/- (without including interest) admitted by the Respondent in its reply submitted to office of CGRF, Patiala on 13.07.2017. Aggrieved, the Appellant filed a case bearing No. T-169 of 2020 in office of the CGRF, Ludhiana on 29.05.2020 in view of the directions given by CGRF, Patiala vide order dated 01.11.2017. CGRF, Ludhiana, vide order dated 25.06.2020, held that:

*“Forum observed from the documents submitted by respondent that the decision of case CG 155/2017 of CGRF, Patiala was conveyed to the petitioner vide probable memo No. 3189 dated 03.11.2017 and as per para 3 of the letter, he was at liberty to file an appeal in court of Ombudsman, Electricity Punjab, Mohali within 30 days from receipt of Judgement/ proceeding.*

*Therefore, Forum observed that the case is not maintainable in this Forum as the appeal if any, is to be filed in the court of Ombudsman, Electricity Punjab, Mohali*.”

The Appellant’s Counsel prayed to allow this Appeal and allow refund of excess service connection charges deposited and interest thereon.

1. It is observed that the CGRF, Patiala, vide order dated 01.11.2017 in CG-155 of 2017 decided that in case the Petitioner (now Appellant) had still any grievance, it was free to approach the Forum again. While forwarding the said decision, it was also made known to the Petitioner (now Appellant) that if the Petitioner (now Appellant) was not satisfied with the decision of CGRF, it had the right to file an Appeal in the court of Ombudsman, Electricity, Punjab, Mohali within 30 days from the receipt of judgement/proceeding.

I find that the Appellant, on getting the refund of ₹ 4,27,343/-by the Respondent vide bill dated 05.03.2018, did not represent to the Respondent or the concerned CGRF till 29.05.2020 for redressal of its grievance regarding refund of difference of service connection charges and interest thereon. Besides, the Appellant also did not prefer an Appeal in this Court to seek necessary remedy in this regard within the period stipulated in Memo No. 3189-90/CG-155/2017 dated 03.11.2017.

1. It is also observed that the Appellant has, in the present Appeal and also during hearing on 23.12.2020, not referred to any Regulation vesting this Court with the power to review/decide the case wherein the Forum had not registered/entertained the grievance of any consumer in which the date of cause of action is more than two years. The Appeal submitted in this Court is based only on merits of the case/grievance of the Appellant relating to refund of service connection charges and interest thereon. The Appellant had not explained the reasons for delay in filing the case before the Forum after a period of two years, two months & 24 days from the date of cause of action (05.03.2018) till the date of filing the case in the Forum (29.05.2020). Delay of each day is required to be explained with documentary evidence/ proof but the Appellant had failed to give any justification for delay. Rather, the Appellant’s Counsel, on being asked during hearing on 23.12.2020, admitted that it did not have the justification for non compliance of the directions given by the CGRF, Patiala vide memo no. 3189-90/CG-155/2017 dated 03.11.2017. Delay cannot be condoned in a mechanical way suo-motu without any request and justification from the Petitioner/Appellant.

I am of the view that the case can be adjudicated on merits in this Court only if the same is, prima facie, maintainable. Since the Appellant has not brought any evidence on record of this Court about maintainability of the present Appeal in this Court, it is not appropriate to deliberate and analyse the case on merits.

1. A perusal of the case file of the Forum has revealed that the Appellant did not submit any application alongwith its petition/complaint for entertaining the same giving reasons for filing it after more than two years of the date of cause of action. The Appellant only submitted the details of its grievance and request for allowing relief on merits but application/request for condonation of delay in filing the petition/complaint beyond limitation period was not submitted to the Forum.
2. It is observed that the Forum was within its jurisdiction to pass the order dated 25.06.2020 as per provisions contained in Regulation 2.27(c) of PSERC (Forum and Ombudsman) Regulations, 2016 which reads as under:

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

1. *In cases where the grievance has been submitted two years after the date on which the cause of action has arisen or after two months from the date of receipt of the orders of DSC; and”.*
2. From a perusal of the case file no. T-169/2020, it has been noticed that the Appellant had prayed for payment of ₹ 1,39,385/- as interest on delayed refund of difference of service connection charges but in the present Appeal, the Appellant had prayed for allowing payment of the remaining amount of ₹ 4,28,129/-. Thus, the Appellant had prayed to this Court for grant of additional/enhanced interest which is, otherwise not maintainable. The prayer in the Appeal had been changed which is not permissible as per law.
3. The Appeal against the decision dated 01.11.2017 of CGRF, Patiala was to be submitted in this court within 30 days of receipt of memo no. 3189-90 dated 03.11.2017. There is delay of more than three years in filing of this Appeal which remained unexplained.
4. From the above analysis, it is concluded that the order dated 25.06.2020 passed by CGRF, Ludhiana is in accordance with the applicable Regulations which, in turn do not provide for entertaining any representation in this regard by this Court. Accordingly, the present Appeal is devoid of merit and not maintainable & sustainable.

**7.** **Decision**

As a sequel of above discussions, the Appeal preferred by the Appellant is not maintainable in this Court and is hereby dismissed after due consideration of all facts, evidence and pleadings by both the parties alongwith the applicable Regulations.

**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.

(GURINDER JIT SINGH)

December 23, 2020 Lokpal (Ombudsman)

S.A.S. Nagar (Mohali) Electricity, Punjab.