

**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 the Electricity Act, 2003)**

**APPEAL No. 65/2021**

**Date of Registration : 27.08.2021**

**Date of Hearing : 07.09.2021**

**Date of Order : 07.09.2021**

**Before:**

**Er. Gurinder Jit Singh,**

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

**In the Matter of:**

M/s. Sidharth Exporters,  
Mohkam Arrian Road,  
Jalalabad-152024

**Contract Account Number: 3000855886 (LS)**

...Appellant

Versus

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

...Respondent

**Present For:**

Appellant: Sh. Ashok Dhawan,  
Appellant's Representative.

Respondent : 1. Er. Phuman Singh  
Senior Executive Engineer,  
DS Division, PSPCL,  
Jalalabad.

2. Er. Ramesh Makkar,  
AEE/ DS City S/D, Jalalabad.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 23.07.2021 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-240 of 2021, deciding that:

*“After giving due considerations to the facts brought out in the petition and during proceedings by the PR and respondent, forum decides that the issues of providing Threshold rebate to the Petitioner for the FYs 2014-15 & 2015-16 and subsequent interest on the same are not considerable for decision now being time barred in view of clause no. 2.27 of PSERC (Forum & Ombudsman) Regulation, 2016.”*

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

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 27.08.2021 i.e. within stipulated period of thirty days of receipt of the decision dated 23.07.2021 of the CGRF, Patiala in Case No. CGP-240 of 2021. The Appellant was not required to deposit requisite 40% of the disputed amount as the Appeal was on account of refund of the amount. Therefore, the Appeal was registered and copy of the same was sent to the Sr. Xen/ DS Division, PSPCL, Jalalabad

for sending written reply/ parawise comments with a copy to the office of the CGRF, Patiala under intimation to the Appellant vide letter nos. 1190-92/OEP/A-65/2021 dated 27.08.2021.

### **3. Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 07.09.2021 at 12.00 Noon and an intimation to this effect was sent to both the parties vide letter nos.1223-24/OEP/A-65/2021 dated 01.09.2021. As scheduled, the hearing was held on 07.09.2021 in this Court. Arguments were heard of both parties.

### **4. Submissions made by the Appellant and the Respondent**

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

#### **(A) Submissions of the Appellant**

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

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

- (i) The Appellant was having a Large Supply Category Connection, bearing Account No. 3000855886 with sanctioned load of 699.523 kW and Contract Demand (CD) as 700 kVA within the jurisdiction of AE/ DS City Sub Division, PSPCL, Jalalabad.
- (ii) The Appellant noticed that PSPCL had not complied with some of its own policies and the Appellant was deprived of benefit of Threshold Scheme for the years 2014-15 and 2015-16.
- (iii) The PSPCL had allowed rebate of ₹ 1/- per unit plus other relevant charges e.g. ED etc. for the consumption exceeding Threshold limit as per CC No. 49/2014 for the year 2014-15 which was also extended to the year 2015-16 vide tariff order dated 05.05.2015. The concerned office did not allow/ adjust the benefit of threshold for the year 2014-15 to the Appellant amounting to ₹ 2,57,563/- and for the year 2015-16 amounting to ₹ 12,82,482/-. The said amount was excessively recovered by the Respondent and paid by the Appellant. Hence, the total adjustable amount of ₹ 15,40,045/- was required to be adjusted in bills of the Appellant as rebate for Threshold Scheme as mentioned above but was not adjusted, hence resulted in heavy loss of lacs. This amount had already been paid by the Appellant, therefore, it attracted payment of interest amounting

₹ 8,67,153/- as per instructions of PSPCL-Regulation 35.1.3 of the Supply Code-2014 @ rates applicable from time to time i.e. @ SBI base rate of the relevant year.

- (iv) The Forum had decided this case in a biased and prejudiced manner. The Forum was to consider this case against the decision of this Court in Appeal no. 52/2021. The case was decided again without giving any consideration to the merits of the case. Now the case had been decided giving reference of clause no. 2.27 of PSERC (Forum & Ombudsman) Regulation, 2016 which is reproduced here as under:

*“In case where the grievances have 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 order of DSC.”*

The Forum had not taken due care on the merits of the case and had decided only on the basis of 2 points as detailed hereunder:-

- a) The case where the grievances have been submitted two years after the date on which the cause of action has arisen or after 2 months from the date of receipt of order of DSC.



But as per law of Limitation Act, 1963, clause no. 17-  
“The period of limitation shall not begin to run until the plaintiff or applicant has discovered it, or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production.”

b) In the present case, the plaintiff/ applicant has discovered it on 10.03.2021 when Appellant got its audit of electricity accounts and found that it was not given the benefit of threshold rebate for the years 2014-15 and 2015-16 despite clear cut instructions given by the Chief Engineer/ Commercial, Patiala vide Commercial Circular No. 49/2014. The Appellant served a notice on the same date i.e. 10.03.2021 for adjustment of threshold rebate for the years 2014-15 and 2015-16, which was duly received in the offices of AE/ DS City S/D, Jalalabad and Sr. Xen/ DS Divn., Jalalabad. Hence two years period if made applicable becomes 25.03.2021 to 24.03.2023. Thus as per Limitation Act, 1963; case was well within the said period of 2 years and cannot be considered as a case for time barred period. Therefore, it was not fair and legal to declare the claim of adjustment of threshold

rebate as time barred claim. Thus, decision of the Forum was wrong.

- (v) The case was related to non-adjustment of rebate on account of threshold limit for the years 2014-15 and 2015-16, which was to be adjusted in the account for Account No. 3000855886 and the account was running till date. Therefore, it cannot be considered as time barred as it was not a recovery suit rather it was adjustment and correction of accounts for a mistake committed by the Respondent.
- (vi) Further, the version of the Forum that the Appellant being a LS consumer was expected to remain vigilant, was without any logic, merit and legal status. As per agreement of supply, no such clause exists in the Agreement that all circulars and instructions will have to be known to the Appellant and the Appellant will be held responsible for the misdeeds and non-compliance of the circulars by the Respondent.
- (vii) The Appellant was not given copy of the circulars no. 49/2014 etc. as the instructions regarding peak load/change of tariff etc. were got noted from the Appellant. The Respondent had battery of experts in its Departments like IT Cell, CBC consisting of ASE, AE/ AAE, AAO and UDC and further at the Sub Division level AE/ AEE, RA and UDC. These large number of experts

which were in double digit could not check the irregularities in the bills and nobody among them was able to detect that instructions of the CE/ Commercial as laid down from time to time were not being complied with, however, same was expected from an ordinary man that he should detect the defects in bills and further this ordinary man was being expected by the Forum to remain vigilant about non-compliance of circulars and instructions.

- (viii) Whenever, there was a loss to the Department, responsibility was fixed by the Department for the financial loss and whenever there was loss incurred upon the Consumer/ Appellant, nobody was held accountable and only Petitioner/ Appellant was held responsible for the non-compliance of instructions. This was against the natural principle of justice, as the sufferer was held only responsible.
- (ix) No details of causes were given on the bill regarding Sundry Charges/ Allowances nor it was possible for an ordinary person to study the tedious circulars of the Department and nowhere such instructions exist that a LS Consumer should remain vigilant regarding so called circulars/ instructions which were given in large numbers every year and further many of them amended from time to time. It was not necessary for an



Industrialist to be so much vigilant as expected by the Forum, as alleged in the judgment.

- (x) It was pertinent to add that the Case No. CGP-343/2019 was filed in the month of December, 2019 and the case was related to the same issue regarding non-compliance and adjustment of threshold rebate for the year 2015-16 and the same was allowed by the same Forum. The Respondent had applied different rules to same category of consumers for the same cause of action. The Forum had allowed the desired benefit to the Petitioner in CGP-343 of 2019. The said case was also filed and decided by the Forum after more than 2 years of cause of action then how the discrimination could be done to the Appellant on the same issue and same cause of action.
- (xi) It was wrong to deny the Petition under Regulation 2.27 of the PSERC (Forum and Ombudsman) Regulation, 2016 as the Appeal was filed within 2 years of the cause of action which is due upto 24.03.2023.
- (xii) The Appellant was also entitled for the payment of interest amounting to ₹ 8,67,153/- as claimed in the Appeal and as admissible under Regulation 35.1.3 of the Supply Code-2014. It was not a suit for recovery rather it was correction of accounts, which was missed by the Respondent, violating the instructions

of the CE/ Commercial, Patiala issued vide Commercial Circular No. 49/2014.

- (xiii) ESIM Regulation No. 93.5 empowers the refund committees to deal with the old period refund cases, as under:

*“93.5 After submission of audit note by the Audit Party in the sub division regarding arrears to be debited to the consumer accounts and amount pertaining to the audit period, AEE/ AE may or may not accept it after discussions with the Audit Officer. In case of any divergent view between the Audit and the field officers, the Committees as under shall decide such cases (whether the amount as worked out by Audit was chargeable or not) as per the financial powers to the Committees as under. These Committees shall also decide refund cases pertaining to the Audit period.*

<i>Sr. No.</i>	<i>Authority to approve</i>	<i>Amount Involved</i>
<i>a)</i>	<i>Committee consisting of Add. SE/ Sr. Xen / DS concerned as Chairman alongwith AO/ Field and concerned Xen/AEE/ AE/ DS</i>	<i>up to ₹ 25,000/</i>
<i>b)</i>	<i>Committee consisting of Dy. CE/ SE/ DS concerned as Chairman along with Dy. CAO/ Dy. CA and Addl. SE/ Sr. Xen/ Sales dealing with concerned Circle</i>	<i>Above ₹ 25,000/- and up to ₹ 1,00,000/-</i>
<i>c)</i>	<i>Committee consisting of EIC / CE/ DS concerned alongwith CAO/ CA of Finance and Dy. CE/ Sales of Commercial Wing</i>	<i>Above ₹ 1,00,000/-</i>

*After decision of disputed cases “Pertaining to Audit period” by the above Committees and debiting the consumer*

*accounts, if challenged by the consumer shall be dealt by the Dispute Settlement Committees.”*

- (xiv) The analysis of the Regulation shows that above Committees deal with the refunds of old period cases and nowhere any limitation period was prescribed nor any matter regarding the period how old it may be, was mentioned. When the Respondent was served the notice dated 10.03.2021, they should have referred the case to the Refund Committees concerned instead of adopting Regulation No. 2.25/ 2.27 of the ESIM declaring the claim as time barred. This shows that the Respondent had not acted in a justified manner by ignoring own Rules/ Regulations and had not shown interest to refund the disputed amount. No time period had been fixed by PSPCL in dealing with such cases which was due to own mistakes of the Respondent.
- (xv) PSPCL being a Government Public Welfare Department cannot dislodge the most genuine claim of the Appellant with mere excuses of ESIM Regulation 2.25/ 2.27.
- (xvi) The Appellant had prayed to decide the Appeal on facts and merits of the case.

**(b) Submission in rejoinder to written reply**

The Appellant submitted as under in the rejoinder to written reply of the Respondent for consideration of this Court:

- (i) The Respondent in its written statement had alleged that the dispute was more than 2 years old from the date of cause of action and as such, the Forum had rightly rejected the case of the Appellant. It was totally wrong, because in 9 No. cases bearing No. 247/2021, 266/2021, 267/2021, 268/2021, 277/2021, 278/2021, 294/2021, 295/2021 and 269/2021 decided by the Forum in the month of August, 2021 were more than 2 years old, even maximum belonged to the period from 2015 to onwards. It was mentioned that all the said cases were decided by the Forum in favor of the Petitioners.

**(c) Submission during hearing**

During hearing on 07.09.2021, the Appellant's Representative reiterated the submissions made in the Appeal as well as in its rejoinder and prayed to allow the same. The rejoinder was submitted during the hearing and a copy of the same was handed over to the Respondent. The Appellant's Representative admitted that he was aware about threshold rebate during the year 2016-17 onwards.



**(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 Large Supply Category Connection bearing Account No. 3000355886 (old Account No. LS-60) with sanctioned load of 699.523 kW and CD as 700 kVA.

(ii) The Appellant had filed Case No. 240/2021 in the Forum demanding threshold rebate for the years 2014-15 and 2015-16.

The Forum had rightly decided the case of the Appellant being time barred because the period of dispute belonged to four to five years old and the Appellant had not given any request in the office of the Respondent (AE/ DS City S/D, Jalalabad) within the stipulated period. The Appellant had applied on 10.03.2021 before filing the case in the Forum. The threshold rebate for the period 2020-21 had already been granted to the Appellant.

(iii) The Appellant had earlier filed an Appeal in this Court as Appeal No. 52/2021 and the same was decided by this Court directing the Forum to decide the dispute of the Appellant after following the due procedure as per applicable regulations after giving the Appellant an opportunity of being heard.



(iv) The Forum had rightly decided the case of the Appellant being time barred after giving due consideration to the pleas of the Appellant because the period of dispute belongs to four to five year old. The Appellant had not given any request within the stipulated period in the office of the Respondent. The Forum had decided that the issue of providing threshold rebate to the Appellant for the years 2014-15 and 2015-16 and subsequent interest on the same was not considerable because it was a time barred in view of Regulation No. 2.27 of PSERC (Forum & Ombudsman) Regulation, 2016. The threshold rebate for the FY 2021-22 had already been granted to the Appellant on his request dated 10.03.2021 in this regard.

(v) It was prayed that the Appellant was not entitled for anything more than that already granted to him by the Respondent and as such, the Appeal of the Appellant may be dismissed being time barred.

**(b) Submission during hearing**

During hearing on 07.09.2021, the Respondent reiterated the submissions made in the written reply and prayed for dismissal of the Appeal of the Appellant.

## 5. Analysis and Findings

The issue requiring adjudication is the legitimacy of claim of the Appellant for grant of Threshold Rebate for the financial years 2014-15 and 2015-16 at this stage after a lapse of period of more than 5-6 years.

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

- (i) The Appellant's Representative (AR) contested the decision of the Forum regarding not to allow its claim for rebate on account of consumption of electricity above threshold limit for the FY 2014-15 and FY 2015-16 on the ground of being time barred. He pleaded that the decision of the Forum was discriminatory as it had decided in similar Case No. CGP-343 of 2019 to allow threshold rebate for the FY 2015-16. He had requested to allow the said rebate for the FYs 2014-15 and 2015-16 as admissible in terms of provisions contained in CC No. 49/2014. The AR further argued that the Respondent had not allowed/ adjusted the benefit of threshold rebate for the year 2014-15 which was amounting to ₹ 2,57,563/- and for the year 2015-16 amounting to ₹ 12,82,482/-. The said amount was required to be adjusted in its bills as rebate for threshold

scheme. The Appellant's Representative also requested for grant of interest on the said amount. AR further reiterated the submissions already made in its Appeal.

- (ii) The Respondent controverted the pleas raised by the Appellant in its Appeal. The Respondent argued that the claim of the Appellant for the grant of threshold rebate for the years 2014-15 and 2015-16 was time barred. The Appellant had never filed any request in the office of the Respondent before 10.03.2021 for the grant of the said rebate. He had drawn the attention of this Court towards Regulation No. 2.27 of PSERC (Forum & Ombudsman) Regulation, 2016 which stipulates that the Forum may reject the grievance at any stage through a speaking order where the grievance has not been submitted within two years after the date on which the cause of action has arisen after giving an opportunity of being heard to the Appellant. The said opportunity had already been granted to the Appellant by the Forum.
- (iii) The Respondent further argued that the eligible rebate for the FY 2020-21 had already been granted to the Appellant by the Respondent. The Respondent prayed for the dismissal of the Appeal of the Appellant on the ground of being time barred and further reiterated the submissions already made in its reply.

(iv) The Appellant is a Large Supply Category Industrial Consumer and he is supposed to know all the regulations, tariff orders and instructions of the Licensee (PSPCL) relating to its connection. All the regulations and tariff orders are available on the websites of PSERC and PSPCL. Commercial Circulars and important instructions are also available on the website of PSPCL. PSPCL cannot get all the regulations/ tariff orders/ instructions noted from the Consumers. As per A&A forms, the Appellant had to follow the regulations and tariff orders. All the electricity bills served to the Appellant invariably depicted rebates allowed. In case of missing rebates in the monthly bills, the Appellant was supposed to avail the facility of Challenging the bills as per Supply Code regulations. The Appellant had not challenged the bills relating to the FYs 2014-15 & 2015-16. He did not file any representation in the office of the Respondent for Threshold Rebate before 10.03.2021. There was no concealment of any document/ instructions relating to Threshold Rebate by the Respondent. The Appellant failed to scrutinize the monthly electricity bills in time and it could not take timely action to get the mistake rectified as per regulations. Now, the claim of the Appellant for thresh hold rebate for FYs 2014-15 & 2015-16 cannot be considered as per PSERC (Forum &



Ombudsman) Regulations, 2016. Cause of action is 5/6 years old and it is not 24.03.2023 as pleaded by the Appellant.

- (v) The Appeal Case is to be decided as per PSERC Regulations and Tariff orders. The decision of the Forum in Case No. 343/2019 is not binding on this Court. Further, this case does not fall in the purview of the Refund Committees. Instruction No. 93.5 of ESIM is not applicable on this case.
- (vi) The list of cases submitted with rejoinder filed by the Appellant have no relevance because the issues raised in the Appeal are to be decided strictly as per Regulations No. 3.24 of PSERC (Forum & Ombudsman) Regulation, 2016. Further, the new facts brought out in the rejoinder which were not mentioned in the original Petition filed before the Forum, cannot be considered while deciding the Appeal case.
- (vii) In this connection, it is worthwhile to peruse the observations of the Forum on this issue as per Proceeding-cum-Order dated 23.07.2021, which reads as under: -

*“PR submitted four copies of rejoinder against rely to the petition submitted by Representative of PSPCL in the proceeding dated 09.07.2021 and the same have been taken on record. One copy thereof handed over to the respondent.*



*After going through the petition filed by the petitioner, forum has observed that the petitioner is asking for allowing of threshold rebate for the FY 2014-15 amounting to Rs. 2,57,563/- and for the FY 2015-16 amounting to Rs. 12,82,482/- and subsequent payment of interest of Rs. 8,67,157/- on the excess amount deposited by him. Forum further observed that the petitioner has earlier filed the same case as case no. T-169/2021 which was not considered by the forum for decision being time-barred under clause no. 2.25 of PSERC (Forum & Ombudsman) Regulation, 2016. Subsequently, the petitioner filed an appeal before the Hon'ble Ombudsman as Appeal No. 52/2021 and Hon'ble Ombudsman while deciding the appeal directed the forum to decide the dispute case of Appellant after following the due procedure and as per applicable regulations after giving the complainant an opportunity of being heard.*

*PR during the proceedings stated that the consumer has not represented to Respondent during the period 2015 to 2020 regarding non-allowing of Threshold Rebate before coming to Forum and this fact has also been confirmed*

*by Respondent. Forum observed that the petitioner is a LS consumer receiving regular energy bills from the respondent corporation from time to time and in all the bills, the details of amount charged/ rebate given were invariably depicted. The bills were paid by the petitioner regularly but the petitioner did not point out or represent to the respondent about non-allowing of Threshold Rebate during all this period. Thus the petitioner did not take appropriate remedy at appropriate time. Further all the regulations are very well placed on the website of Respondent Corporation which are within the domain of the petitioner. The petitioner was expected to be vigilant, updated and prompt in discharging his obligations. He failed to point out to the respondent to take timely action for allowing him the Threshold Rebate.*

*The clause No. 2.27 of PSERC (Forum & Ombudsman) Regulations 2016 stipulates that the Forum may reject the grievance at any stage through a speaking order where the grievance has been submitted two years after the date on which the cause of action has arisen, after giving an opportunity of being heard to the complainant.*

*After giving due consideration to the facts brought out in the petition and during proceedings by the PR and respondent forum decides that the issues of providing Threshold rebate to the Petitioner for FYs 2014-15 & 2015-16 and subsequent interest on the same are not considerable for decision now being time barred in view of clause no. 2.27 of PSERC (Forum & Ombudsman) Regulation, 2016”.*

This Court agrees with above observations/ findings of the Forum.

- (viii) Moreover, the Appellant's Representative admitted during hearing on 07.09.2021 that he was aware about threshold rebate during the year 2016-17 onwards. It is not understood why the Appellant failed to represent about threshold rebate within two years of cause of action?
- (ix) It is concluded that there is no truth in the averments of the Appellant. As such, any rebate on account of consumption of electricity above Threshold Units by the Appellant during the years 2014-15 & 2015-16 is not considerable for decision now because the issue is more than two years old from the date of cause of action.

- (x) The Forum had rightly decided that the issue of rebate for consumption of electricity above the threshold limits for FY 2014-15 and FY 2015-16 was not considerable for decision as the same was time barred in terms of provisions contained in Regulation Nos. 2.25 & 2.27 of PSERC (Forum and Ombudsman) Regulations, 2016.
- (xi) I observe that adjudication of any dispute must stand scrutiny of law / regulations and any unlawful reasoning by the Appellant for a decision in its favour is not just and fair. Instead of finding lacunae in the working of the Licensee, the Appellant must be reasonable and try its utmost to fulfill its obligations. As such, this Court is inclined not to interfere with the order of the Forum on this issue. Accordingly, the issue is decided against the Appellant.

**6. Decision**

As a sequel of above discussions, the order dated 23.07.2021 of the CGRF, Patiala in Case No. CGP-240 of 2021 is upheld.

- 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.

September 07, 2021  
S.A.S. Nagar (Mohali)

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