

**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. 69/2021**

**Date of Registration : 16.09.2021**  
**Date of Hearing : 06.10.2021/21.10.2021/27.10.2021**  
**Date of Order : 27.10.2021**

**Before:**

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

**In the Matter of:**

Shaheed Kartar Singh Sarabha Charitable Hospital,  
V&PO Sarabha,  
Distt. Ludhiana.

**Contract Account Number: U13ZD1300003 (NRS)**

...Appellant

Versus

Additional Superintending Engineer,  
DS Division, Adda Dakha,  
PSPCL, Ludhiana.

...Respondent

**Present For:**

Appellant: Sh. Aditya Grover,  
Appellant's Counsel.

Respondent: Er. Jasjit Singh,  
Asstt. Engineer,  
DS Sub Division,  
PSPCL, Sudhar.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 29.07.2021 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-083 of 2021, deciding that:

*“The amount of Rs. 10011612/-, charged to the consumer due to 25% extra tariff for the period 01.02.2010 to 23.12.2020, is correct and recoverable.”*

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

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 16.09.2021 i.e within thirty days of receipt of decision dated 29.07.2021 of the CGRF, Ludhiana by the Appellant through its Advocate on 17.08.2021 from the Forum. The Appellant had produced an Affidavit in support of receipt of decision of the CGRF on 17.08.2021. The Appellant had deposited 20% of the disputed amount i.e ₹ 20,02,323/- vide Receipt No. 34 dated 16.02.2021 and remaining 20% i.e ₹ 20,02,323/- was deposited vide Receipt No. 270 book No. 53330 dated 16.09.2021. Thus, the Appellant had deposited 40% of the disputed amount for filing the Appeal in this Court. Therefore, the Appeal was registered on 16.09.2021 and copy of the same was sent to the Addl. SE/ DS Division, Adda Dakha, PSPCL, Ludhiana for sending

written reply/ parawise comments with a copy to the office of the CGRF, Ludhiana under intimation to the Appellant vide letter nos. 1288-90/OEP/A-69/2021 dated 16.09.2021.

### **3. Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 06.10.2021 at 01.00 PM and an intimation to this effect was sent to both the parties vide letter nos. 1397-98/OEP/A-69/2021 dated 30.09.2021. As scheduled, the hearing was held on 06.10.2021 in this Court on the said date and time. The proceedings dated 06.10.2021 was sent to both parties vide memo no. 1423-24/OEP/ A-69 /2021 dated 06.10.2021. The next date of hearing was fixed on 13.10.2021 at 02.30 PM but this date was postponed to 21.10.2021 on the basis of Memo No. 4031 dated 08.10.2021 received from the Respondent because he was not in a position to submit the documents/ information asked on 06.10.2021. The hearing was held on 21.10.2021 at 02.30 PM and proceedings were sent to both parties vide Memo No. 1526-27/ OEP/ A-69/2021 dated 21.10.2021. The Respondent was not able to submit the complete documents/ information on the basis of which the demand was raised. As such, next date was fixed on 27.10.2021 at 02.30 PM and arguments of both parties were heard today.

#### **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 Counsels 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 Non- Residential Supply Category Connection bearing Account No. GC1300006 (Old) and Account No. U13ZD1300003 (New) with sanctioned load of 377.680 kW and CD as 419.867 kVA under DS Adda Dakha Division, PSPCL, Ludhiana.
- (ii) The Appellant was a Charitable Hospital viz. Shaheed Kartar Singh Hospital at Village Sarabha. The Hospital was owned/ run/managed by Shaheed Kartar Singh Sarabha Charitable Trust (Regd.), V&PO Sarabha, District Ludhiana.
- (iii) The present Appeal was being filed by the Appellant through its trustee S. Tehal Singh Kailey, who had been duly authorized

by way of resolution dated 24.08.2021 passed by the Executive Body during the meeting held on 24.08.2021.

- (iv) The Appellant had pleaded for setting aside impugned order dated 29.07.2021 passed by the Forum in Case No. CGL-083/2021 and the demand of ₹ 1,00,11,612/- wrongly raised by Respondent through revised notice bearing Memo No. 91 dated 22.01.2021 with further relief not to charge 25% extra energy charges from the Appellant even for the further period being exempted in case of Government/Charitable hospital.
- (v) The brief facts are that Respondent had issued a notice bearing No. 46 dated 08.01.2021 seeking demand of ₹ 1,31,09,499/- from the Appellant on account of 25% extra energy charges.
- (vi) That consequently vide communication dated 14.01.2021, the Appellant represented the matter with the Respondent inter alia demonstrating that the Appellant was a Charitable Hospital since inception and accordingly the rates applicable to the Charitable Hospital for consumption of electricity be made applicable to the Appellant.
- (vii) Further, the said demand of ₹ 1,31,09,499/- itself stood revised by the Respondent to the tune of ₹ 1,00,11,612/- by way of revised notice bearing Memo No. 91 dated 22.01.2021 on the alleged pretext of 25% increased energy charge in terms of

Commercial Circular No. 7/2010 dated 01.02.2010 for having electricity supply from 11 kV independent feeder.

- (viii) That eventually, being aggrieved, the Appellant was constrained to challenge the said demand wrongly raised by the Respondent to the tune of ₹ 1,00,11,612/- by way of revised notice bearing Memo No. 91 dated 22.01.2021 by filing Petition before the Forum seeking setting aside of the impugned demand with directions to the Respondent not to charge 25% increased energy charge even in future also. The Appellant at the time of filing the Appeal was also sought to deposit the mandatory 20% amount of the disputed amount and ultimately a sum of ₹ 20,02,323/- was deposited vide receipt no. 34 dated 16.02.2021 by the Appellant with the Respondent.
- (ix) That in response thereto, the Respondent submitted its reply to the Petition before the Forum whereby the Respondent made an attempt to justify its illegal act. The Appellant filed its rejoinder before the Forum in response to the reply filed by the Respondent.
- (x) The Respondent had submitted brief history and reply to the rejoinder filed by the Appellant before the Forum, which was duly replied by the Appellant by way of a composite response and written arguments in the Petition before the Forum.

- (xi) Further, the Appellant submitted clarification on the points raised in the reply filed by the Respondent in the written arguments submitted by the Appellant.
- (xii) The impugned demand raised by the Respondent was totally illegal, arbitrary, unjust and unsustainable in the eyes of law but the Forum without proper application of judicious mind dismissed the Petition filed by the Appellant and upheld the impugned demand raised by the Respondent upon the Appellant by way of order dated 29.07.2021. It was sufficed to state that the Counsel for the Appellant came to be in a receipt of the impugned order dated 29.07.2021 on 17.08.2021.
- (xiii) That for filing the present Appeal, the Appellant had already deposited 20% of disputed amount i.e. ₹ 20,02,323/- vide BA16 on 16.02.2021 and further applied for depositing remaining 20% amount i.e. ₹ 20,02,323/- with Respondent vide letter dated 08.09.2021 alongwith demand draft bearing No. 721892 dated 07.09.2021. However, the same stood refused by the Respondent vide its letter dated 08.09.2021.
- (xiv) The impugned order dated 29.07.2021 passed by the Forum and the impugned demand wrongly imposed by the Respondent, were totally illegal, arbitrary, unjust and unsustainable in the eyes of law.

(xv) The Forum had failed to appreciate the fact that as per Instruction No: 72.5.3 of Electricity Supply Instruction Manual, the Appellant-Hospital was exempted from the levy of 25% extra energy charges being a Charitable Hospital. Thus, the impugned demand raised by the Respondent cannot be charged to the Appellant. Instruction No: 72.5.3 of Electricity Supply Instruction Manual is reproduced below:-

**"The Additional Surcharge of 25% levied on Private Hospitals and MRI/ City Scan centers covered under schedules non residential supply (NRS) and bulk supply (BS) getting supply through independent feeders. All Govt. Hospitals and Hospital run by Charitable institutions covered under bulk supply schedule (vii) and Section 80-G of Income Tax Act, 1961 shall be exempted from levy of 25% extra tariff".**

(xvi) The Forum had failed to appreciate the fact that as per Regulation No: 32.2 of Supply Code-2014, which was reproduced hereunder, the Appellant humbly submits that the impugned charges wrongly imposed by the Respondent were totally illegal and also time barred in terms of clause 32.2 of the Supply Code, which was reproduced below:

**“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer under Regulation 32.1 shall be recoverable after the period of two years from the**



**date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of the charges for electricity supplied and the distribution licensee shall not disconnect supply of electricity in such cases.”**

In the instant case, the impugned demand raised by PSPCL at this stage was time barred as earlier the impugned demand was never raised by the PSPCL nor the PSPCL had ever raised/ shown the impugned demand in the consumption bills served upon the Consumer/ Appellant.

(xvii) The Forum had failed to appreciate the fact that as per Section 56(2) of the Electricity Act-2003 which was reproduced hereunder, the PSPCL was not entitled to charge this impugned amount at this stage since in the notice served upon the Appellant, the Respondent had added the period of overhauling the account as 01.02.2010 to 23.12.2020:-

**"Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of the charges for electricity supplied and the licensee shall not cut off supply of electricity. "**

(xviii) The Forum had failed to appreciate the fact that the

Respondent didn't provide the monthwise detail of the

impugned charges claimed. As such, the Appellant reserves its every right to contest the same on receipt of the total detail of the claimed amount.

- (xix) The CGRF had failed to appreciate the fact that as per the applicable provisions of the law as well as applicable terms of principles of natural justice, the impugned demand was unsustainable and in no manner can be recovered from the Appellant.
- (xx) The Forum while passing the impugned demand had failed to appreciate that the PSERC while passing order dated 01.12.2020 in Petition No. 39 of 2010 has held that the Circular No. 07 of 2010 issued by PSPCL had been issued on a misinterpretation of the Commission's findings and was not compatible with the Commission's conclusion and ultimately held that exemption from levy of 25% extra tariff would be available to all Government Hospitals and Hospitals run by Charitable Institutions exempted under Section 80G of the Income Tax Act, 1961. The operative part of the ibid order was reproduced below:

“ .....

*3. The Commission has carefully considered the plea of the petitioner and the reply tendered by PSPCL. The request for condonation of the period of limitation was*

*found to be justified and has been allowed. On the merits of the matter, the Commission observes that in para 5.6 of the Tariff Order of 2009-10, the Commission has discussed the objection raised by a private hospital to the levy of 25% extra tariff on privately managed Heart Care, MRI/CT Scan centres and Super Specialty hospitals availing continuous supply. In the concluding portion of this para (5.6.3), the Commission has held that there is justification in levy of 25% extra tariff on institutions indicated above. It is, thus, obvious that the Commission has upheld the position as was prevailing after the issue of Circular No.3/2000 even though it is not specifically so stated. In this view of the matter, the Commission concludes that Circular No.7 of 2010 has been issued on a mis-interpretation of the Commission's findings and is not compatible with the Commission's conclusion in para 5.6.3, referred to above. In the circumstances, it is clarified that the exemption from levy of 25% extra tariff would be available to all government hospitals and hospitals run by charitable institutions exempted under section 80G of the Income Tax Act, 1961.*

.....”

Once the Circular dated 07 of 2010 had been held to be bad by the Hon'ble PSERC in its ibid order, thus any such demand based on the same was patently bad and unsustainable in the eyes of law at the very outset. Thus, the impugned order passed by the Forum and the impugned demand raised by the

Respondent based on Circular No. 07 of 2010 deserved to be set aside at the very outset.

- (xxi) As per the ESIM 1<sup>st</sup> edition updated uptill 31.03.2011, energy charges shall be increased by 25% in case of existing private Hospitals & MRI/CT Scan Centers getting continuous supply through independent feeders under NRS as also under BS Schedule. It has been further clarified that All Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 shall be exempted from levy of 25% extra energy charges. Further, ESIM, 2017 updated till 30.06.2017 similarly provides for the same provision that All Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 shall be exempted from levy of 25% extra energy charges. Further ESIM, 2018 updated till 30.6.2018 provides for the same provision that All Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 shall be exempted from levy of 25% extra energy charges. Thus, it was conceded in the ESIM that both in case of NRS and BS category, the Private Hospitals shall be charged with 25% extra energy charges, however, the same nowhere provides charging of 25% extra

energy charges from Government/Charitable Hospital and has categorically been exempted from levy of the same upon Government/Charitable Hospital.

(xxii) The General Conditions of Tariff and Schedules of Tariff for the year 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 issued by Hon'ble PSERC vide its orders, interalia enunciates that the energy charges shall be increased by 25% in case of existing Private Hospitals & MRI/CT Scan Centres getting continuous supply through independent feeders under NRS Schedule and with regard to BS Schedule it has been further clarified that All Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 shall be exempted from levy of 25% extra energy charges. Thus, once it was categorically provided in the Tariff Order that only private hospitals shall be charged with 25% extra energy charges, therefore by no stretch of imagination, Government/Charitable Hospitals can be levied with 25% extra energy charges.

(xxiii) During the year 2019-20, the Respondent came out with another Commercial Circular No. 25/2019 dated 31.05.2019 regarding Revision of General Conditions of Tariff and Schedules of Tariff issued by Hon'ble PSERC for FY 2019-20,

whereby again it was enunciated to the effect that the energy charges shall be increased by 25% in case of Private Hospitals and MRI/CT Scans Centres getting continuous supply through independent feeders under NRS/ BS Schedule. It was pertinent to mention that it was apparent that the Hon'ble PSERC while passing the tariff order was conscious of the fact that 25% increased energy charges shall not be levied upon All Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 and the benefit of the exemption of 25% increased energy charges rendered to All Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 shall continue even during the year 2019-20.

(xxiv) The Hon'ble PSERC while passing the Tariff Order for the year 2020-21, enunciated by the Respondent (PSPCL) by way of Commercial Circular No. 28/2020 dated 03.06.2020, maintained status quo with regard to 25% energy charges levied on private hospitals and apparently while interpreting that 25% increased energy charges shall not be levied upon All Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961, and the benefit of the exemption of 25% increased energy charges

rendered to All Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 shall continue even during the year 2020-21.

(xxv) While rendering the Tariff Orders, it was discernible that the Hon'ble PSERC had intended that 25% increased energy charges shall not be levied upon all Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 and to levy the same only upon the Private Hospitals and MRI/ CT Scans Centres getting continuous supply through independent feeders under BS Schedule. However, the Respondent while acting in contravention of the same, had arbitrarily raised the impugned demand on account of 25% extra energy charges upon the Appellant for the period 01.02.2010 to 23.12.2020, which was totally unsustainable and deserves to be set aside at the very outset.

(xxvii) The Appellant reserves its right to raise any other ground at any stage during the pendency of the present appeal.

(xxviii) It was prayed to set aside the order dated 29.07.2021 passed by the Forum in Case No. CGL-083/2021 as well as demand of ₹ 1,00,11,612/- wrongly raised by the Respondent through revised notice bearing Memo No. 91 dated 22.01.2021. It was

further prayed not to charge 25% extra energy charges from the Appellant even for the further period being exempted in case of Government/Charitable Hospital.

**(b) Submission during hearing**

During hearing on different dates, the Appellant's Counsel reiterated the submissions made in the Appeal and prayed to allow the relief claimed.

**(B) Submissions of the Respondent**

**(a) Submissions in written reply**

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

- (i) The Appellant was having a Non -Residential Supply Category connection in the name of Shaheed Kartar Singh Hospital with sanctioned load of 377.680 kW and CD as 419.867 kVA. The supply to the Appellant was being provided through 11 kV MES Halwara Independent feeder after it was allowed by Chief Engineer/ SO&C (Power Regulation & Control), PSEB, 220 kV Sub Station, Ablowal, Patiala's Office Memo No. 44/SO/PRC/LD/PC-221/Loose dated 04.01.2006 which clearly states that the Appellant shall be charged with extra tariff by



25% & and it was released on 15.11.2006 vide SJO no. 10/25413.

- (ii) The Respondent issued a Notice to the Appellant of ₹ 7,25,379/- in 2008 for 25% extra tariff but the Appellant failed to deposit the same. The billing of the Appellant was shifted from manual to computerized system from March,2009 to CBC Cell. The 25% extra tariff was not charged to the Appellant from March, 2009 to December, 2020.
- (iii) The Appellant was issued a provisional Notice No. 46 dated 08.01.2021 for ₹ 1,31,09,499/- which was further revised to ₹ 1,00,11,612/- vide Notice No. 91 dated 22.01.2021 as per RBS No. 101/2021 dated 21.01.2021 issued by CBC. The Notice was again revised to include ₹ 7,25,379/- remaining unpaid by the Appellant upto December, 2008 & further ₹ 72,009/- from December, 2008 to March, 2009 amounting ₹ 1,08,09,000/- vide Notice No. 449 dated 20.04.2021.
- (iv) The Appellant did not agree with the said Notice and filed a Petition in the Forum. The case was decided by the Forum in its hearing dated 29.07.2021 in which it was held that the amount charged to the Appellant was correct & hence recoverable. The Notice of the same was sent to the Appellant vide Memo no. 1322 dated 18.08.2021.

- (v) Instruction No. 72.5.3 of Electricity Supply Instruction Manual clearly states that the additional Surcharge of 25% to be levied on Private Hospital and MRI/ City Scan Centers covered under schedules NRS and Bulk Supply getting supply through Independent Feeders. All Govt. Hospital and Hospital run by Charitable Institutions covered under Bulk Supply & Section 80-G of Income Tax Act, 1961 shall be exempted from same. But the connection of the Appellant was running under commercial category & hence 25% additional surcharge was leviable. The sanction to the Appellant to get supply from Independent Feeder was provided by Chief Engineer/ SO&C (Power Regulation & Control), PSEB, 220 kV S/ Stn., Ablowal, Patiala's office Memo No. 44/ SO/PRC/LD/PC-221/ Loose dated 04.01.2006 which clearly states that the Appellant shall be charged with extra tariff by 25%. So, the decision by the Forum was as per prevailing Instructions of PSPCL.
- (vi) Regulation 32.2 reproduced by the Appellant pertains only to the amount mentioned in Regulation No. 32.1 i.e. the amount billed to the Appellant which was reproduced as under:

*“Where a consumer fails to deposit the billed amount with the Distribution Licensee by the due date mentioned in the bill, the Distribution Licensee may, after giving not less than fifteen clear days Notice in writing to such*

*consumer and without prejudice to his other rights to recover such amount by suit, disconnect supply to the Appellant.”*

- (vii) A revised Notice was sent to the Appellant vide Memo No. 91 a dated 22.01.2021 where the reference had been given of RBS No. 101/2021 provided by CBC, Ludhiana in which month wise detail of the amount charged to the Appellant was given. The Appellant never demanded the monthwise calculation sheet from the Respondent. The RBS was provided to the Appellant during the case proceedings in the Forum.
- (viii) The Forum while issuing order had gone through various Circulars & Regulations provided by the Appellant and the Respondent & the decision was as per prevailing instructions of PSPCL.
- (ix) Petition No. 39/2010 of Dayanand Medical College & Hospital was different from that of the Appellant. The supply of the Appellant was fed through 11 kV Independent MES feeder from 2006 onwards as per Chief Engineer/ SO&C (Power Regulation & Control), PSEB, 220 kV S/ Stn., Ablowal, Patiala's office Memo No. 44/ SO/PRC/LD/PC-221/Loose dated 04.01.2006 in which it was specifically provided to charge 25% extra tariff for supply from Independent 11 kV feeder.

- (x) The Appellant was provided special facility to get its supply from 11 kV independent MES feeder, Halwara subject to recovery of 25% extra tariff from the consumer. The Appellant never raised any objections at the time when it was given supply from Independent Feeder subject to charging of 25% extra tariff.
- (xi) As already stated, the Appellant was having a NRS connection and the Tariff Orders issued from time to time clearly states that benefit of exemption from 25% extra tariff will be available to Govt. Hospital & Hospital run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 covered under Bulk Supply Category.
- (xii) As per Tariff Orders issued by the PSERC for the year 2020-21 reproduced by the Appellant clearly states under NRS & Bulk Supply Category to charge 25% extra tariff for Private Hospital & MRI Centers being fed through Independent feeders getting Continuous supply.

**(b) Additional Submissions made by the Respondent**

The Respondent vide email dated 24.09.2021 had made additional submissions to the already sent reply to the Appeal, as under:-

(i) It was stated that the subject cited connection was being used by the Appellant not only for Hospital purposes but also the connection was being used for Education Institution & for Hostel purpose also. Therefore, as per Tariff Orders & various instructions provided in the Appeal, it was stated that no exemption from extra 25% tariff was available to the Appellant as the connection was being used for various purposes with Hospital being a part of it. It was prayed to consider this fact as a part of reply of petition also.

**(b) Additional submissions during hearing on 21.10.2021**

The Respondent submitted the following information on 21.10.2021 relating to circulars or orders of PSERC on the basis of which demand vide letter no. 91 dated 22.01.2021 was raised:

“In response to the minutes of hearing dated 06.10.2021, it is hereby stated that the respondent had written letter no. 3965 dated 07.10.2021 to the office of Chief Engineer/ Commercial, PSPCL & letter no. 3967 dated 07.10.2021 to Addl. SE/ Tariff & Regulation to provide the instructions of PSERC & PSPCL by which amount is charged to the appellant. But no reply regarding same has been received till date. The respondent has further himself has looked for the instructions as required by the Hon’ble Court. On the basis of record already available & some of the record found online, it is hereby stated as under:

The Sub Division Office issued a provisional notice no. 46 dated 08.01.2021 for Rs. 13109499/- which was

further revised to 10011612/- vide notice no. 91 dated 22.01.21 as per RBS No. 101/2021 dated 21.01.21 issued by CBC. This amount was charged for the period of 02/2009 to 12/2020. As the appellant was granted special status of supply from Independent Feeder by Chief Engineer/ SO&C, Power Regulation & Control Dte., PSEB, 220 kV S/Stn, Ablowal, Patiala's office Memo No. 44/SO/PRC/LD/PC-221 Dt. 01.01.2006 which clearly states that the consumer shall be charged with extra tariff by 25% & the same was released on 15.11.2006 vide SJO no. 10/25413. So, a supplementary notice of Rs. 797388/- was sent to appellant vide letter no. 1603 dated 06.10.2021 for the period of 12/2006 to 02/2009. As per record available to this office, for disputed period as per notice no. 91 dated 22.01.21 amounting Rs. 10011612/-, CC No.45/2010 dated 21.12.2010 states that the Hospitals run by Charitable Institutions exempted under section 80G of Income Tax Act are exempted from extra tariff of 25%. ESIM 2011 instructions no. 73.4 states for charging of extra tariff of 25% on private Hospitals & MRI/ CT Scan centres covered under NRS & Bulk Supply Category. After that ESIM or tariff orders are silent regarding instructions from where it can be ascertained whether extra tariff is changeable in appellant case or not upto year 2013-14. From tariff orders issued for years 2014-15 onwards, in the Schedule of Tariff NRS, It is clearly stated that the Extra tariff of 25% will be applicable to hospitals getting supply from Independent feeders. The Exemption from the same is only available to consumers (Hospitals run by Charitable Institutions covered under Section 80 G of Income Tax Act) covered under Bulk Supply Category. From Tariff Order for 2019-20 onwards, the exemption is also withdrawn from BS category too. It is also stated that as per letter no. 1594 dated 05.10.2021 from AEE, Sudhar Sub Division, the appellant had never given any documentary proof regarding exemption u/s 80G of Income Tax Act, 1961 available to them. The appellant has only provided letter regarding exemption U/s 80(G) only after the notice of amount for enhanced tariff was served to the appellant. The case was decided by the Hon'ble Forum in the meeting dated on 29.07.2021 in which it was held that the amount charged to the appellant was correct & hence recoverable.

As, the written reply from the office of Chief Engineer/ Commercial is still not received, the above stated facts & available records are for the kind consideration & further necessary action of the Hon'ble Court”.

**(c) Further submissions dated 26.10.2021**

The Respondent had made the following submissions vide its letter bearing No. 1658 dated 26.10.2021: -

The connection of the Appellant had been running on Independent Feeder. As per Commercial Circular No. 07/2010 from the date of its issuance on 01.02.2010 to 23.12.2020, the Appellant was not billed with additional energy charges to the tune of 25% on the already issued bills. Therefore, the Appellant was issued notice No. 91 dated 22.01.2021 for payment of ₹ 1,00,11,612/- on account of lesser energy charges. As per directions given by this Court on 21.10.2021, the charged amount for the Year 2009 to 03/2014 to the tune of ₹ 43,86,677/- has been cancelled and the remaining amount of ₹ 56,24,935/- is chargeable.

**(d) Submission during hearing**

During hearing on different dates, the Respondent reiterated the submissions made by it in the written reply as well as additional and further submissions and contested the submissions of the Appellant's Counsel. The Respondent had pleaded for dismissal of the Appeal of the Appellant.

**5. Analysis and Findings**

The issue requiring adjudication is the legitimacy of Notice No. 91 dated 22.01.2021 issued by the Respondent whereby it had raised demand of ₹ 1,00,11,612/- from the Appellant on account of 25% extra tariff for the period from 01.02.2010 to 23.12.2020.

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

- (i) The Appellant's Counsel argued that the Appellant was having a Non- Residential Supply Category Connection bearing Account No. GC1300006 (Old) and Account No. U13ZD1300003 (New) with sanctioned load of 377.680 kW and CD as 419.867 kVA. It is a Charitable Hospital known as Shaheed Kartar Singh Hospital situated at Village Sarabha. The Hospital is owned/ run and managed by Shaheed Kartar Singh



Sarabha Charitable Trust (Regd.), V&PO Sarabha, District Ludhiana. The present Appeal was filed by the Appellant through its trustee S. Tehal Singh Kailey, who has been duly authorized by way of resolution dated 24.08.2021 passed by the Executive Body during the meeting held on 24.08.2021. The Appellant had pleaded for setting aside impugned order dated 29.07.2021 passed by the Forum and stated that the demand of ₹ 1,00,11,612/- was wrongly raised by the Respondent through revised notice bearing Memo No. 91 dated 22.01.2021 with further relief not to charge 25% extra energy charges from the Appellant even for the further period being exempted in case of Government/ Charitable hospital.

- (ii) He stated that the Respondent had issued a notice bearing No. 46 dated 08.01.2021 seeking demand of ₹ 1,31,09,499/- from the Appellant on account of 25% extra energy charges. The Appellant represented vide communication dated 14.01.2021 that the Appellant was a Charitable Hospital since inception and accordingly, the rates applicable to the Charitable Hospital for consumption of electricity be made applicable to the Appellant. Lateron, the said demand of ₹ 1,31,09,499/- was revised by the Respondent to the tune of ₹ 1,00,11,612/- vide impugned notice bearing Memo No. 91 dated 22.01.2021 on

the alleged pretext of 25% increased energy charges in terms of Commercial Circular No. 7/ 2010 dated 01.02.2010 for having electricity supply from 11 kV independent feeder. The Appellant's Counsel had also argued that impugned demand raised by the Respondent was totally illegal, arbitrary, unjust and unsustainable in the eyes of law but the Forum without proper application of judicious mind dismissed the Petition filed by the Appellant and upheld the impugned demand raised by the Respondent upon the Appellant by way of order dated 29.07.2021.

- (iii) The Forum had failed to appreciate the fact that as per Instruction No: 72.5.3 of Electricity Supply Instruction Manual, the Appellant-Hospital was exempted from the levy of 25% extra energy charges being a Charitable Hospital. Thus, the impugned demand raised by the Respondent cannot be charged to the Appellant. Further, as per Regulation No. 32.2 of Supply Code-2014, the impugned charges wrongly imposed by the Respondent were totally illegal and also time barred. The impugned demand raised by the Respondent was time barred as earlier the impugned demand was never raised by the PSPCL nor the PSPCL had ever raised/ shown the

impugned demand in the consumption bills served upon the Appellant.

- (iv) The Forum had failed to appreciate the fact that as per Section 56(2) of the Electricity Act, 2003, the PSPCL was not entitled to charge this impugned amount at this stage since in the notice served upon the Appellant, the Respondent had added the period of overhauling the account as 01.02.2010 to 23.12.2020.
- (v) The Forum had failed to appreciate the fact that Respondent didn't provide the monthwise detail of the impugned charges claimed. As such, the Appellant reserves its every right to contest the same on receipt of the total detail of the claimed amount.
- (vi) The Forum had failed to appreciate that the PSERC while passing order dated 01.12.2020 in Petition No. 39 of 2010 has held that the Circular No. 07 of 2010 issued by PSPCL had been issued on a misinterpretation of the Commission's findings and was not compatible with the Commission's conclusion and ultimately held that exemption from levy of 25% extra tariff would be available to all Government Hospitals and Hospitals run by Charitable Institutions exempted under Section 80G of the Income Tax Act, 1961.

Once the Circular No. 07 of 2010 had been held to be bad by the Hon'ble PSERC in its ibid order, thus any such demand based on the same was patently bad and unsustainable in the eyes of law at the very outset. Thus, the impugned order passed by the Forum and the impugned demand raised by the Respondent based on Circular No. 07 of 2010 deserved to be set aside at the very outset.

- (vii) As per the ESIM 1<sup>st</sup> edition updated uptill 31.03.2011, energy charges shall be increased by 25% in case of existing private Hospitals & MRI/CT Scan Centers getting continuous supply through independent feeders under NRS as also under BS Schedule. It has been further clarified that All Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 shall be exempted from levy of 25% extra energy charges. Further, ESIM, 2017 updated till 30.06.2017 similarly provides for the same provision that all Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 shall be exempted from levy of 25% extra energy charges. Further ESIM, 2018 updated till 30.6.2018 provides for the same provision that all Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section

80-G of Income Tax Act, 1961 shall be exempted from levy of 25% extra energy charges. Thus, it was conceded in the ESIM that both in case of NRS and BS category, the Private Hospitals shall be charged with 25% extra energy charges, however, the same nowhere provides charging of 25% extra energy charges from Government/Charitable Hospitals and has categorically been exempted from levy of the same upon Government/Charitable Hospitals.

- (viii) The General Conditions of Tariff and Schedules of Tariff for the years 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 issued by Hon'ble PSERC vide its orders, interalia enunciates that the energy charges shall be increased by 25% in case of existing Private Hospitals & MRI/CT Scan Centres getting continuous supply through independent feeders under NRS Schedule and with regard to BS Schedule it has been further clarified that All Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 shall be exempted from levy of 25% extra energy charges. Thus, once it was categorically provided in the Tariff Order that only private hospitals shall be charged with 25% extra energy charges, therefore by no stretch of

imagination, Government/Charitable Hospitals can be levied with 25% extra energy charges.

- (ix) During the year 2019-20, the Respondent came out with another Commercial Circular No. 25/2019 dated 31.05.2019 regarding Revision of General Conditions of Tariff and Schedules of Tariff issued by Hon'ble PSERC for FY 2019-20, whereby again it was enunciated to the effect that the energy charges shall be increased by 25% in case of Private Hospitals and MRI/CT Scans Centres getting continuous supply through independent feeders under NRS/ BS Schedule. It was pertinent to mention that it was apparent that the Hon'ble PSERC while passing the tariff order was conscious of the fact that 25% increased energy charges shall not be levied upon all Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 and the benefit of the exemption of 25% increased energy charges rendered to All Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 shall continue even during the year 2019-20.
- (x) The Hon'ble PSERC while passing the Tariff Order for the year 2020-21, enunciated by the Respondent (PSPCL) by way of Commercial Circular No. 28/2020 dated 03.06.2020,

maintained status quo with regard to 25% energy charges levied on private hospitals and apparently while interpreting that 25% increased energy charges shall not be levied upon all Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961, and the benefit of the exemption of 25% increased energy charges rendered to all Govt. Hospitals and Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act, 1961 shall continue even during the year 2020-21.

- (xi) It was prayed to set aside of the order dated 29.07.2021 passed by the Forum in Case No. CGL-083/2021 as well as demand of ₹ 1,00,11,612/- wrongly raised by the Respondent through revised notice bearing Memo No. 91 dated 22.01.2021. It was further prayed not to charge 25% extra energy charges from the Appellant even for the further period being exempted in case of Government/ Charitable Hospitals.
- (xii) The Respondent while arguing its case, reiterated the submissions made by it in its written reply and argued that the Supply to the Appellant was being provided through 11 kV MES , Halwara Independent feeder as per sanction given by the Chief Engineer/ SO&C (Power Regulation & Control), PSEB 220 kV Sub Station, Ablowal, Patiala vide Office Memo

No. 44/ SO/PRC/LD/PC-221/Loose dated 04.01.2006 which clearly stated that the Appellant shall be charged with extra tariff by 25% & and it was released on 15.11.2006 vide SJO no. 10/25413.

(xiii) The Respondent issued a Notice to the Appellant of ₹ 7,25,379/- in 2008 for 25% extra tariff but the Appellant failed to deposit the same. The billing of the Appellant was shifted from manual to computerized system from March, 2009 to CBC Cell. The 25% extra tariff was not charged from the Appellant from March, 2009 to December, 2020. The Respondent had also argued that earlier the Appellant was issued a provisional Notice No. 46 dated 08.01.2021 for ₹ 1,31,09,499/- which was further revised to ₹ 1,00,11,612/- vide Notice No. 91 dated 22.01.2021 as per RBS No. 101/2021 dated 21.01.2021 issued by CBC. The Notice was again revised to include ₹ 7,25,379/- remaining unpaid by the Appellant upto December, 2008 & further ₹ 72,009/- from December, 2008 to March, 2009 amounting ₹ 1,08,09,000/- vide Notice No. 449 dated 20.04.2021.

(xiv) The Appellant had not agreed with the said Notice and filed a Petition in the Forum. The case was decided by the Forum in its hearing dated 29.07.2021 in which it was held that the



amount charged to the Appellant was correct & hence recoverable and the said order may be upheld.

- (xv) The Respondent argued that Instruction No. 72.5.3 of Electricity Supply Instruction Manual clearly stated that the Additional Surcharge of 25% was to be levied on Private Hospital and MRI/ City Scan Centers covered under schedules NRS and Bulk Supply getting supply through Independent Feeders. All Govt. Hospitals and Hospitals run by Charitable Institutions covered under Bulk Supply & Section 80-G of Income Tax Act, 1961 shall be exempted from same. The Respondent vehemently argued *that the connection of the Appellant was running under commercial category & hence 25% additional surcharge was leviable. The sanction to the Appellant to get supply from Independent Feeder was provided by the Chief Engineer/ SO&C (Power Regulation & Control), PSEB, 220 kV S/ Stn., Ablowal, Patiala's office Memo no. 44/ SO/PRC/LD/PC-221/ Loose dated 04.01.2006 which clearly states that the Appellant shall be charged with extra tariff by 25%. Therefore, the decision by Forum was as per prevailing instructions of PSPCL.*

- (xvi) Regulation 32.2 reproduced by the Appellant pertains only to the amount mentioned in Regulation No. 32.1 i.e. the amount billed to the Appellant which was reproduced as under:

*“Where a consumer fails to deposit the billed amount with the Distribution Licensee by the due date mentioned in the bill, the Distribution Licensee may, after giving not less than fifteen clear days Notice in writing to such consumer and without prejudice to his other rights to recover such amount by suit, disconnect supply to the Appellant.”*

- (xvii) A revised Notice was sent to the Appellant vide Memo No. 91 dated 22.01.2021 where the reference had been given of RBS No. 101/2021 provided by CBC, Ludhiana in which month wise detail of the amount charged to the Appellant was given. The Appellant never demanded the monthwise calculation sheet from the Respondent. The RBS was provided to the Appellant during the case proceedings in the Forum.
- (xviii) Petition no. 39/2010 of Dayanand Medical College & Hospital was different from that of the Appellant. The supply of the Appellant was fed through 11 kV Independent MES feeder from 2006 onwards as per the Chief Engineer/ SO&C (Power Regulation & Control), PSEB, 220 kV S/ Stn., Ablowal, Patiala's office Memo No. 44/ SO/PRC/LD/PC-221/Loose dated 04.01.2006 in which it was specifically provided to

charge 25% extra tariff for supply from Independent 11 kV feeder. The Appellant was provided special facility to get its supply from 11 kV independent MES feeder, Halwara subject to recovery of 25% extra tariff from the consumer. The Appellant never raised any objections at the time when it was given supply from Independent Feeder subject to charging of 25% extra tariff. It was also argued that the Appellant was having a NRS connection and the Tariff Orders issued from time to time clearly states that benefit of exemption from 25% extra tariff will be available to Govt. Hospitals & Hospitals run by Charitable Institutions covered under Section 80-G of Income Tax Act 1961 covered under Bulk Supply Category. Tariff Orders issued by the PSERC for the year 2020-21 clearly states that NRS & Bulk Supply Category to charge 25% extra tariff for Private Hospital & MRI Centers being fed through Independent feeders getting Continuous supply.

- (xix) The Respondent also stated that the connection was being used by the Appellant not only for Hospital purposes but also it was being used for Education Institution & for Hostel purpose also. Therefore, as per Tariff Orders & various instructions provided in the Appeal, it was stated that no exemption from extra 25% tariff was available to the Appellant as the connection was

being used for various purposes with Hospital being a part of it. The points raised by the Appellant in its Appeal had already been decided by the Forum and there was no new point or issue raised by the Appellant which required adjudication by this Court so it was prayed to dismiss the Appeal of the Appellant.

(xx) This Court had observed that the Appellant had challenged the demand of ₹ 1,00,11,612/- raised vide Memo No. 91 dated 22.01.2021 in Case No. CGL-083/2021 filed in the Forum. The Respondent later on enhanced the amount to ₹ 1,08,09,000/- vide notice no. 449 dated 20.04.2021 by including the previous pending dues. The Forum had passed order dated 29.07.2021 in respect of dispute of amount of ₹ 1,00,11,612/- which was raised before it. This Court shall adjudicate the demand raised vide Memo No. 91 dated 22.01.2021 only. The issues which were not raised in the petition before the Forum shall not be considered by this Court while deciding this Appeal.

(xxi) It is necessary to go through the sanction granted to the Appellant while releasing connection by the Respondent. CE/SO&C (Power Regulation and Control), PSEB, Patiala granted release of connection to the Appellant vide Memo No. 44 dated 04.01.2006 and the same is reproduced below:-

“It has been decided to allow supply on the pattern of essential services on 11 KV to Shaheed Kartar Singh

Sarabha Ayurvedic Medical College & Hospital, VPO Sarabha (Ludhiana) by erecting 11 kV Independent Feeder at the cost of consumer subject to the recovery of following charges as per provisions of PR Circular No. 03/2000 dated 09.06.2000;

- The consumer shall be charged 25% extra tariff.
- Minimum Consumption Charges in respect of this consumer shall be increased by 25%.
- The work of erecting 11 kV Independent Feeder may be taken in hand only after recovering the cost of feeder besides completing all other formalities.

(xxii) The load was released vide SJO No. 10/25413 dated 15.11.2006. The connection is running under NRS category from the date of release of connection. The Appellant had pleaded that the connection is for Charitable Hospital & he had proofs to establish his claim. The approval to feed this connection from Independent Feeder was given as per PR Circular No. 3/2000. The Commission (PSERC) had upheld the position as was prevailing after the issue of PR Circular No. 3/2000 even though it was not specifically so stated as per its order dated 01.12.2010 in Petition No. 39 of 2010. As per this Circular, the levy of 25% extra tariff is not to be imposed on Hospitals run by Charitable Institutions which have been duly registered and notified by Government.

(xxiii) The disputed period as per Memo No. 91 dated 21.01.2021 is from February, 2009 to December, 2020. 25% extra tariff was levied during this period. This Court directed the Respondent

on 21.10.2021 to review this demand and reduce it, if possible, strictly as per instructions/ regulations of PSPCL after going through the documents submitted by the Appellant relating to exemption under Section 80-G of Income Tax Act, 1961. The Respondent had reviewed the demand as per these directions and reduced it to ₹ 56,24,935/- vide Memo No. 1658 dated 26.10.2021. The demand relating to period February, 2009 to March, 2014 has been dropped on the basis of documents submitted by the Appellant on 21.10.2021. The remaining demand of ₹ 56,24,935/- relating to the period from April, 2014 to December, 2020 is now required to be adjudicated.

Both parties are satisfied with the decision of the Respondent to drop the demand for the period from February, 2009 to March, 2014. There is no need to adjudicate the demand for the period February, 2009 to March, 2014 which has been settled with the mutual consent of both parties.

(xxiv) This Court does not agree with the contention of the Appellant that the period from April, 2014 to December, 2020 is also exempted from levy of 25% extra tariff. The disputed period from April, 2014 to December, 2020 shall be settled as per PSERC Tariff Orders for the Financial Years 2014-15 to 2020-21. The following provisions are available in

all these tariff orders under the SCHEDULE OF TARIFF relating to NRS consumers:-

“The tariff rates shall be increased by 25 % for private hospitals & MRI/CT Scan Centres getting continuous supply through independent feeders under NRS schedule.”

It is evident that the connection of the Appellant is covered under NRS schedule and above provision of tariff orders shall be applicable to the Appellant. The period under dispute from April, 2014 to December, 2020 shall be dealt as per Tariff Orders applicable from time to time. 25% extra tariff is payable during this period as per tariff orders issued by PSERC.

(xxv) Further on going through A&A forms filed/ filled with PSPCL on different occasions for extension of load/ conversion of supply from LT to HT/ installation of rooftop solar, it was observed that all the A&A forms are filled under NRS category and accordingly both the parties are bound as per the terms and conditions of A&A forms.

(xxvi) The tariff orders which are approved and issued by the PSERC are available on websites of PSERC as well as PSPCL and are in public domain.

(xxvii) The prayer of the Appellant regarding not charging of 25% extra tariff even after December, 2020 is not acceptable

because the tariff leviable shall be strictly as per Tariff Orders of PSERC issued from time to time .

(xxviii) The Appellant had pleaded that the demand raised by the Respondent is time barred at this stage as per Section 56(2) of the Electricity Act, 2003 (Act) . Hon'ble Supreme Court of India in its judgment dated 05.10.2021 in Appeal Case No. 7235/ 2090 had clarified the position relating to this Section of the Act. The demand raised by the Respondent is fully recoverable keeping in view this judgment.

#### **6. Decision**

The order dated 29.07.2021 of the CGRF, Ludhiana in Case No. CGL-083 of 2021 is set aside.

25% extra tariff shall not be payable during the disputed period from February, 2009 to March, 2014 as agreed by both parties.

The Respondent had withdrawn the demand of levy of 25% extra tariff during this period. Further, 25% extra tariff shall be payable during the period of dispute from April, 2014 to December, 2020 as per Tariff Orders of PSERC relating to this period. Tariff after the period of dispute shall be leviable as per Tariff Orders of PSERC issued from time to time.

**7.** The Appeal is disposed of accordingly.



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

October 27, 2021  
S.A.S. Nagar (Mohali)

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