

**COURT OF THE LOK PAL (OMBUDSMAN),
ELECTRICITY, PUNJAB,
PLOT NO. A-2, INDUSTRIAL AREA, PHASE-1,
S.A.S. NAGAR (MOHALI).
(Established under Sub Section 6 of Section 42
of the Electricity Act, 2003)**

APPEAL No. 73/2021

Date of Registration : 20.09.2021

Date of Hearing : 13.10.2021

Date of Order : 13.10.2021

Before:

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

In the Matter of:

M/s. AP Refinery Pvt. Ltd.,
Village:-Taper Hamia,
Nakodar Road, Jagraon,
Distt. Ludhiana.

Contract Account Number: U24SJ0200066 (LS)

...Appellant

Versus

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

...Respondent

Present For:

Appellant: Sh. Jivtesh Singh Nagi,
Appellant's Counsel.

Respondent : Er. Gurpreet Singh,
Addl. Superintending Engineer,
DS Division, PSPCL, Jagraon.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 18.08.2021 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-104 of 2021, deciding that:

“The amount of Rs. 5,01,500/- charged to the petitioner vide notice no. 348 dated 19.02.2021 is recoverable.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 20.09.2021 i.e. within stipulated period of thirty days of receipt of the decision dated 18.08.2021 of the CGRF, Ludhiana in Case No. CGL-104 of 2021. The Appellant had deposited a sum of ₹ 1,00,300/- vide receipt no. 156258811 dated 05.03.2021 being 20% of the disputed amount before filing Petition in the Forum and another sum of ₹ 1,00,300/- vide receipt no. 165674007 dated 20.09.2021 at the time of filing of the instant Appeal and as such, the Appellant had deposited mandatory 40% of the disputed amount of ₹ 5,01,500/- before filing the Appeal in this Court. Therefore, the Appeal was registered and copy of the same was sent to the ASE/ DS Division, PSPCL, Jagraon, Distt. 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. 1320-22/OEP/A-73/2021 dated 21.09.2021.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 13.10.2021 at 12.30 PM and an intimation to this effect was sent to both the parties vide letter nos. 1433-34/OEP/A-73/2021 dated 06.10.2021. As scheduled, the hearing was held on 13.10.2021 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 Counsel and the Respondent alongwith material brought on record by both the parties.

(A) Submissions of the Appellant

(a) Submissions made in the Appeal

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

- (i) The Appellant was having Large Supply Category connection bearing Account No. U24SJ0200066 with sanctioned load of 2300kW and CD as 2300 kVA.
- (ii) The Appellant had applied online for approval to operate TG set under CPP mode, having a capacity of 3.40 MW/ 4.25 MVA on 28.05.2020. The Appellant had also applied for sharing of power generated through this CPP with their sister concern M/s. Midas Natural Pvt. Ltd. on 12.05.2020.
- (iii) The requisite fee of ₹ 2,12,500/- @ ₹ 50 per MVA was deposited online on 19.08.2020 and additional amount of ₹ 38,250/- as GST @ 18% was also deposited on 21.10.2020 vide receipt no. 281/52459 as one time charges for permission to run the said TG set as CPP.
- (iv) The various approvals/ clearances for the same were obtained from the Respondent/ other Govt. Organizations as under:-
 - (a) NOC from Punjab Pollution Control Board (PPCB) u/s 25 Water (Prevention and Control of Pollution) Act, 1974 and u/s 21 of Air (Prevention and Control of Pollution) Act, 1981, issued on 14.04.2020.
 - (b) Clearance from Chief Electrical Engineer as required under the provisions of Central Electricity Authority (Measures relating to Safety and Electric Supply)

Regulations, 2010 vide memo no. 000256 dated 27.05.2020.

- (c) Approval of single line diagram by the office of CE/ Sub-Station Design, PSPCL, Patiala, being a part of the Respondent-Corporation.
- (d) Inspection, testing and approval of various protection systems by Senior Xen/ Protection vide Memo No. 478 dated. 18.09.2020, also being a part of the Respondent-Corporation.
- (e) Testing of Energy Meter from ME Lab., PSPCL Jalandhar vide test Report no. MEJL/PSPCL/T-1328/2020 dated 30.09.2020, also being a part of the Respondent-Corporation.
- (f) The final inspection by Addl. SE/ Enforcement-cum-Meter Testing Squad vide Report No. 11/3256 dated 06.10.2020.
- (g) Final technical feasibility approval by the office of Dy. CE/ IPC vide memo no. 1649/ IPC-723 dated 29.10.2020.
- (v) From the above, it was clear that all fees and statutory requirements, technical approvals including approvals from PPCB and CEI had been obtained by 29.10.2020.

- (vi) It was surprising to note that the Respondent took an unreasonable time of 103 days to accord the said approval. However, the said approval was incomplete as the complete approval for transferring power from CPP to sister concern in the adjoining premises has not been granted till date for the reasons best known to the Respondent. Such an inordinate delay on the part of the Respondents after all the necessary formalities having been completed by the Appellant reflected poorly on the working of the Respondent and was totally unjustified, unreasonable and reflected the monopolistic approach of the Respondent.
- (vii) That prior to applying for the above said approval, the Appellant had applied for the operation of the same TG set as Co-Generation Power Project under NRSE Policy-2012, for which an implementation agreement was signed between the Appellant and the Nodal Agency being PEDDA on 24.07.2019.
- (viii) As per New and Renewable Sources of Energy (NRSE) Policy-2012, a Power Purchase Agreement (PPA) was to be signed between the Appellant and the Respondent within 30 days of the signing of the above said IA.
- (ix) The request was made to the Respondent on 18.11.2019 for signing of the PPA but no response was received from them and

due to the ignorance of the Respondent, the above said IA was cancelled by PEDDA vide memo no. 3850 dated 23.07.2020.

- (x) From the above, it was clear that the working of the Respondent was totally monopolistic and the Respondent was least bothered about the difficulties being faced by the Consumers and takes months and months to act upon the request of the Consumers even though all the formalities had been completed well in time.
- (xi) As per the NRSE Policy, 2012 issued by Govt. of Punjab, all necessary and applicable clearances to be granted by State Govt.(viz. Change of Land Use, Pollution Control, Water, use of NRSE resources, factories/ labour clearances etc.) required for a project would be considered in a time bound manner (within a period of 60 days from the date of submission of complete application alongwith requisite fee as per the requirement of clearance issuing Bodies/ Departments). Therefore, the Respondent, by failing to comply with the said notification and issuing a Demand Notice to the Appellant have abused the process of law and attempted to evade the mandate of the law laid down by the State vide aforesaid notification
- (xii) In view of the above notification, the necessary approval should had been granted within 60 days from the day the application had been made and the requisite fee had been deposited on 21.10.2020

and also all the necessary approvals from all the Government Departments had been obtained on 29.10.2020 i.e. latest by 28.12.2020. As such, the checking conducted on 31.12.2020 and the demand notice dated 19.02.2021 issued subsequently were in violation of the said notification.

- (xiii) Due to the inordinate delay in the formal approval from the Respondent, although all the technical and other approvals had been given by various Departments, the Appellant was left with no other option but to run its plant as huge investment was made on the installation of the plant and in this period of COVID-19 Pandemic, the Appellant suffered huge losses in the shape of interest on the capital and non-operation of the said TG Plant. It was pertinent to mention that the CPP was being run in isolation and therefore there was no violation made by the Appellant. Furthermore, the Respondents had failed to comply with the mandatory Regulations of the aforesaid policy and failed to accord the requisite sanction within prescribed time period of 60 days.
- (xiv) In addition to the loss to the Appellant, it was also a national loss as the plant was to be operated on bio-degradable waste/ biomass (Husk). Furthermore, the CPP was checked by ASE/ Enforcement

on 31.12.2020 and was alleged to be running the said TG plant in isolation.

- (xv) A penalty of ₹ 5,01,500/- was imposed on the Appellant vide Memo No. 348 dated. 19.02.2021 citing Regulation 125.1(c) of ESIM stating that in case a CPP/ NRSE Plant was found to be running in parallel with PSPCL System without permission, it would be liable to pay double the permission fee alongwith compensation to the PSPCL for damage, if any, caused to the PSPCL system.
- (xvi) The Appellant was running the CPP in isolation and not in parallel with the PSPCL system and as such, the above clause is not applicable. Furthermore, one time permission fee of ₹ 2,12,500/- + ₹ 38,250/- = ₹ 2,50,750/- had already been deposited by the Appellant as stated above.
- (xvii) Even if, the above clause 125.1(c) was to be applied, double the permission fee was to be charged and charging of ₹ 5,01,500/- again showed non application of mind by the Respondent as one time permission fee of ₹ 2,50,750/- stood already deposited and at the most another amount of ₹ 2,50,750/- could have been charged to the Appellant since the remaining amount had already been deposited.

(xviii) It was, therefore, inter-alia prayed that order dated 18.08.2021 passed by the Forum be set aside. Further, Demand Notice bearing Memo no. 348 dated 19.02.2021 wherein demand of ₹ 5,01,500/- was arbitrarily raised be set aside/ quashed being illegal, arbitrary and against the principles of natural justice. The approvals, if any, be granted immediately.

(b) Submission during hearing

During hearing on 13.10.2021, the Appellant's Counsel reiterated the submissions made in the Appeal and prayed to allow the same. He admitted during the hearing that there was violation in this case. He pleaded that penalty should be reduced in this case.

(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. U24SJ0200066 with sanctioned load of 2300 kW and CD as 2300 kVA. The Respondent in its reply had admitted receipt of online application for approval to

operate TG set under CPP mode and grant of various approvals by other Departments.

- (ii) The Final Approval for operation of CPP was granted by Chief Engineer/ Commercial, PSPCL, Patiala on 09.02.2021. The approval by the concerned office was given at the earliest.
- (iii) The Forum in its decision dated 18.08.2021 had ruled that if due to any administrative/ unavoidable reasons, delay occurred on part of PSPCL to accord permission, it didn't grant right to the Appellant to run its CPP.
- (iv) The checking by Sr. Xen/ Enforcement-cum MMTS-4, Ludhiana and subsequently issue of Demand Notice dated 19.02.2021 were as per prevailing instructions of PSPCL.
- (v) Demand Notice dated 19.02.2021 had been issued for violation of running CPP without approval as per ESIM instructions 125.1 (c).
- (vi) As per Enforcement checking dated 31.12.2020, load of its Sister Concern namely Midas Naturals Pvt. Ltd. was found running on Turbine installed in AP Refinery Pvt. Ltd.
- (vii) CPP was found running without the approval of PSPCL.
- (viii) The amount of ₹ 5,01,500/- was correctly charged as per 125.1 (c), thus order dated 18.08.2021 passed by the Forum was correct and justified.

(ix) It was certified that 20% amount of ₹ 1,00,300 was deposited by the Appellant on 05.03.2021 vide receipt no. 156258811 and another 20% amount of ₹ 1,00,300/- was deposited by the Appellant on 20.09.2021 vide receipt no. 165674007. Thus, 40% of disputed amount was deposited by the Appellant before filing the Appeal.

(a) Submission during hearing

During hearing on 13.10.2021, the Respondent reiterated the submissions made in the Appeal and prayed for dismissal of the Appeal. He stressed that amount charged in this case is fully recoverable.

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of Notice No. 348 dated 19.02.2021 whereby an amount of ₹ 5,01,500/- was charged to the Appellant by the Respondent in line with ESIM Instruction No. 125.1 (c) for running CPP without prior approval of the competent authority.

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

(i) The Appellant's Counsel had argued that the Appellant was having Large Supply Category connection bearing Account No.

U24SJ0200066 with sanctioned load of 2300 kW and CD as 2300 kVA. The Appellant had applied online for approval to operate TG set under CPP mode, having a capacity of 3.40 MW/ 4.25 MVA on 28.05.2020. The Appellant had also applied for sharing of power generated through this CPP with its sister concern M/s. Midas Natural Pvt. Ltd. on 12.05.2020. The requisite fee of ₹ 2,12,500/- @ ₹ 50/- per MVA was deposited on line on 19.08.2020 and additional amount of ₹ 38,250/- as GST @ 18% was also deposited on 21.10.2020 vide receipt no. 281/52459 as one time charged for permission to run the said TG set as CPP.

- (ii) The various approvals/ clearances viz; NOC from Punjab Pollution Control Board (PPCB) u/s 25 Water (Prevention and Control of Pollution) Act, 1974 and u/s 21 of Air (Prevention and Control of Pollution) Act, 1981, issued on 14.04.2020; clearance from Chief Electrical Engineer as required under the provisions of Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 vide memo no. 000256 dated 27.05.2020; approval of single line diagram by the office of CE/ Sub-Station Design, PSPCL, Patiala; inspection, testing and approval of various Protection Systems by Sr. Xen/ Protection vide memo no. 478 dated. 18.09.2020;

testing of Energy Meter from ME Lab., PSPCL Jalandhar vide test Report no. MEJL/PSPCL/T-1328/2020 dated 30.09.2020; final inspection by Addl. SE/ Enforcement-cum-Meter Testing Squad vide Report no. 11/3256 dated 06.10.2020 and final technical feasibility approval by Dy. CE/ IPC vide memo no. 1649/ IPC-723 dated 29.10.2020 were obtained.

- (iii) Thus, it was clear that all fees and statutory requirements, technical approvals including approvals from PPCB and CEI were obtained by 29.10.2020. It was surprising to note that the Respondent took an unreasonable time of 103 days to accord the said approval. However, the said approval was incomplete as the complete approval for transferring power from CPP to sister concern in the adjoining premises had not been granted till date for the reasons best known to the Respondent. Such an inordinate delay on the part of the Respondents after all the necessary formalities having been completed by the Appellant reflected poorly on the working of the Respondent and was totally unjustified, unreasonable and reflected the monopolistic approach of the Respondent.
- (iv) Prior to applying for the above said approval, the Appellant had applied for the operation of the same TG set as Co-Generation Power Project under NRSE Policy 2012, for which an

implementation agreement was signed between the Appellant and the Nodal Agency being PEDDA on 24.07.2019. Further, as per New and Renewable Sources of Energy (NRSE) Policy-2012, a Power Purchase Agreement (PPA) was to be signed between the Appellant and the Respondent within 30 days of the signing of the above said IA. Accordingly, a request was made to the Respondent on 18.11.2019 for signing of the PPA but no response was received from them and due to the ignorance of the Respondent, the above said IA was cancelled by PEDDA vide Memo No. 3850 dated 23.07.2020.

- (v) It was thus clear that the working of Respondent was totally monopolistic and the Respondent least bothered about the difficulties faced by the Consumers and takes months and months to act upon the request of the Consumers even though all the formalities had been completed well in time. As per NRSE Policy- 2012 issued by Govt. of Punjab; all necessary and applicable clearances to be granted by the State Govt. (viz. Change of Land Use, Pollution Control, Water, use of NRSE resources, factories/ labour clearances etc.) required for a project would be considered in a time bound manner (within a period of 60 days from the date of submission of complete application alongwith requisite fee as per the requirement of

clearance. Therefore, the Respondent failed to comply with the said notification and by issuing a Demand Notice to the Appellant had abused the process of law and attempted to evade the mandate of the law laid down by the State vide aforesaid notification. The Appellant's Counsel further argued that all necessary approvals from all Government Departments were obtained on 29.10.2020 and as such, the approval by the Respondent should have been granted by 28.12.2020. As such, the checking conducted on 31.12.2020 and the demand notice dated 19.02.2021 issued subsequently were in violation of the said notification.

- (vi) Further, if above clause 125.1(c) was to be applied, double the permission fee was to be charged and charging of ₹ 5,01,500/- again showed non application of mind by the Respondent as one time permission fee of ₹ 2,50,750/- stood already deposited and at the most another amount of ₹ 2,50,750/- could have been charged to the Appellant since the remaining amount had already been deposited. Thus, the Appellant's Counsel prayed for acceptance of its Appeal and setting aside of the impugned order.
- (vii) The Respondent pleaded that final Approval for operation of CPP was granted by the Chief Engineer/ Commercial, PSPCL,

Patiala vide its memo No. 168 dated 09.02.2021 which was in synchronization with the Respondent where no sale of power was involved. Further, it was with a clear clause and proviso that the Approval for transferring CPP power to sister concern of the Appellant was under consideration, as such the approval of subject cited matter may not be considered as approval to transmit CPP power to its sister concern M/s. Midas Naturals Pvt. Ltd.

- (viii) Since no approval was granted by the Respondent to the Appellant to transmit power to its concern so the checking of Sr. Xen/ Enforcement cum MMTS-4, Ludhiana and subsequently issue of Demand Notice dated 19.02.2021 were as per prevailing instructions of PSPCL. The said Demand Notice was issued for violation of running CPP without approval as per ESIM Instruction No. 125.1 (c). The checking agency had found that Factory Load of M/s. Midas Naturals Pvt. Ltd. was running on Turbine installed in M/s. AP Refinery. Thus, the Appellant had committed default and was liable to pay the amount imposed on it.
- (ix) As CPP was found running without the approval of the Respondent so a sum of ₹ 5,01,500/- was correctly charged as

per 125.1 (c), thus order dated 18.08.2021 passed by the Forum was correct and justified.

- (x) From the above, it is concluded that the amount charged vide notice No. 348 dated 19.02.2021 to the Appellant was justified and recoverable from it. The Appellant had violated the provisions of Instruction No. 125.1(c) of the ESIM and as such, the Appellant was rightly charged by the Respondent. The relevant clause 125.1(c) of the ESIM is reproduced below:-

“125 OTHER GENERAL CONDITIONS:

125.1 c. In a case a CPP/NRSE plant is found to be running in parallel with the PSPCL’s system without permission, it will be liable to pay double the permission fee alongwith compensation to the PSPCL for damage, if any, caused to the PSPCL’s system.”

- (xi) In this case, the Appellant had already deposited a sum of ₹ 2,50,750/- as requisite fee for grant of approval for TG set. This was admitted by the Respondent in its reply to the Appeal. The necessary approval has already been granted to the Appellant vide Memo No. 168 dated 09.02.2021 of the Chief Engineer/ Commercial.
- (xii) The connection of M/s. Midas Natural Pvt. Ltd. (Account No. U24SJ0200114) was checked by the Addl. SE/ Enforcement cum EA & MMTS-4, PSPCL, Ludhiana vide ECR No. 50/3271

dated 31.12.2020. As per this checking report, Factory Load of M/s. Midas Natural Pvt. Ltd. was running on turbine installed in the premises of M/s. AP refinery. A copy of this checking report was received by the consumer's representative. The load of M/s. Midas Naturals Pvt. Ltd. was running from the turbine installed in premises of M/s. AP refinery without any permission of the Licensee (PSPCL). A notice bearing Memo No. 348 dated 19.02.2021 was issued to the Appellant by the Respondent in respect of this violation. The Appellant was asked to pay ₹ 5,01,500/- as per Instruction No. 125.1 (c) of ESIM. As per this instruction, in case a CPP/ NRSE Plant is found to be running in parallel with the PSPCL's system without permission, it will be liable to pay double the permission fee alongwith compensation to the PSPCL for damage, if any, caused to the PSPCL's system.

The office of Chief Engineer/ Commercial of PSPCL had also clarified vide Memo No. 419 dated 10.08.2021 that Instruction No. 125.1 (c) of ESIM is applicable in respect of this violation.

- (xiii) The Respondent had claimed double the permission fee along with GST @ 18% vide Memo No. 348 dated 19.02.2021 which is as per instructions of PSPCL and thus fully recoverable. The Respondent had not claimed any compensation for damages.

The Appellant had not raised any new points in the Appeal which were not considered by the Forum at the time of passing the final order. This Court is inclined to agree with the decision of the Forum dated 18.08.2021 in Case No. 104 of 2021.

6. Decision

As a sequel of above discussions, the order dated 18.08.2021 of the CGRF, Ludhiana in Case No. CGL-104 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.

October 13, 2021
S.A.S. Nagar (Mohali)

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