

**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
Electricity Act, 2003)**

APPEAL No. 75/2021

Date of Registration : 27.09.2021

Date of Hearing : 11.10.2021

Date of Order : 11.10.2021

Before:

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

In the Matter of:

M/s M. L. Overseas,
Mohkam Arriyan Road, Jalalabad.

Contract Account Number:3000855895 (LS)

...Appellant

Versus

Additional Superintending Engineer,
DS Division,
PSPCL, Jalalabad.

...Respondent

Present For:

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

Respondent : 1. Er. Ramesh Makkar,
AEE/ DS City S/D,
PSPCL, Jalalabad.

2. Sh. Sushil Kumar,
Revenue Accountant.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 04.06.2021 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-185 of 2021, deciding that:

“Forum observes that as point no. 1,2 of the petition have been settled by the respondent and agreed by the petitioner, so stands disposed off.

Regarding issue no. 3 &4 of petition, it is a time barred claim as per Reg. 2.27 of PSERC (Forum & Ombudsman) Reg.2016, so the point No.3 and 4 of the petition is rejected being time barred claim.

Regarding point no. 5 interest is not payable.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 27.09.2021 i.e. beyond the period of thirty days of receipt of copy of the decision dated 04.06.2021 of the CGRF, Patiala in Case No. CGP-185 of 2021. The Appellant claimed the Threshold rebate and interest on the already deposited amount so the condition of deposit of 40% of the disputed amount is not applicable in this case. The Appeal was registered on 27.09.2021 and a copy of the same was sent to the Addl. S.E./ DS Division, PSPCL,

Jalalabad for sending written reply/ parawise comments with a copy to the office of the CGRF, Patiala under an intimation to the Appellant vide letter nos. 1351-53/OEP/A-75/2021 dated 27.09.2021.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 11.10.2021 at 12.00 Noon and an intimation to this effect was sent to both the parties vide letter nos. 1429-30/OEP/A-75/2021 dated 06.10.2021. As scheduled, the hearing was held on 11.10.2021 in this Court. Arguments of both the parties were heard.

4. Condonation of Delay

At the start of hearing on 11.10.2021, the issue of condoning of delay in filing the Appeal in this Court was taken up. The Appellant pleaded that the case was closed and disposed off by the Forum on 04.06.2021 and the decision was conveyed vide Memo No. 1304 dated 10.06.2021. The copy of the decision was received on 16.06.2021. Due to bad health, back pain & mental stress, the doctor advised complete bed rest for a period of 3 months. The Appeal could not be filed within the limitation

period due to bad health. The Appellant prayed for condoning of the delay in filing the Appeal due to the reasons beyond his control. I find that the Respondent did not object to the condoning of the delay in filing the Appeal in this Court either in its written reply or during hearing in this Court.

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

“No representation to the Ombudsman shall lie unless:

(ii) The representation is made within 30 days from the date of receipt of the order of the Forum.

Provided that the Ombudsman may entertain a representation beyond 30 days on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of 30 days.”

The Court observed that order dated 04.06.2021 was sent to the Appellant by the office of CGRF, Patiala on 10.06.2021. The Appellant received the copy of the order of the CGRF on 16.06.2021. The Appellant submitted the appeal in this Court on 27.09.2021 i.e. after more than 30 days of receipt of the said

order. It was also observed that non condonation of delay in filing the Appeal would deprive the Appellant of the opportunity required to be afforded to defend the case on merits. Therefore, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court beyond the stipulated period was condoned and the Appellant was allowed to present the case.

5. Submissions made by the Appellant and the Respondent

Before undertaking analysis of the case, it is necessary to go through written submissions made by the Appellant and reply of the Respondent as well as oral submissions made by the Appellant's Representative 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 running a SORTEX PLANT named M.L. OVERSEAS, Jalalabad under the jurisdiction of AE/ DS City Sub-Division, Jalalabad and under Sr. Executive Engineer,

Jalalabad (W). It was running as a General Industry for sorting out good quality of Rice.

- (ii) Threshold rebate amounting to ₹ 1,53,487/- for the year 2014-15 had not been allowed to A/c No. 3000855895 as per guide lines of PSPCL laid down in CC No. 49/2014 .
- (iii) PSPCL had allowed rebate of ₹ 1 per unit for the consumption exceeding Threshold limit as per CC No. 49/2014 for the year 2014-15 which was extended to the year 2015-16 vide Tariff Order dated 05.05.2015. But the concerned office didn't allow the Appellant the benefit of threshold rebate for the year 2015-16, which amount to $\text{₹ } 153487 + \text{₹ } 255348 = \text{₹ } 408835/-$
- (iv) The amount of ₹ 408835/- had already been paid by the Appellant, hence this amount was also eligible for payment of interest as per Regulation 35.1.3 of the Supply Code-2014. Interest works out as ₹ 2,45,528/- .
- (v) Case No. CGP-185 of 2021 had been decided by the Forum in a biased manner. The case was decided again without giving any consideration to the merits of the case. Now the case had been decided giving reference of the Regulation No. 2.25 of PSERC (Forum & Ombudsman) Regulation, 2016 which is reproduced 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 2 months from the date of receipt of order of DSC.”

But the Forum had not taken due care on the merits of the case, and had decided only on the 2 points as detailed under-

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 of the Constitution of India, 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 applicant had discovered it on 17.12.2020 when Appellant got his audit of electricity accounts and found that he was not given the benefit of threshold rebate for the years 2014-15 & 2015-16, despite clear cut instructions issued by the Chief Engineer, Commercial, Patiala, vide Commercial Circular No. 49/2014. The Appellant served a notice on the same date i.e.

17.12.2020 for adjustment of threshold rebate for the years 2014-15 & 2015-16, which was duly received in the offices of AE, City Sub-division, Jalalabad and Sr. Xen, Jalalabad. **Hence two years period if made applicable becomes 17.12.2020 to 16.12.2022. 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 as a time barred claim.

- (vi) The case was related to non-adjustment of rebate on account of threshold for the years 2014-15 and 2015-16, which was to be adjusted in the account for Account No. 3000855895 and this 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 only.
- (vii) Further, the version of the Forum that Appellant being a Large Supply consumer was expected to remain vigilant was without any logic, merit and legal status. Because, 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. The Appellant was in no way responsible for the non-compliance of instructions of the Chief Engineer/ Commercial. The Appellant

being less educated cannot understand the complicated circulars of the defendants which are usually in English.

- (viii) It was further pleaded that Appellant was not given copy of the circulars 49/2014 etc. as the instructions regarding peak load/ change of tariff etc. were got noted from the Appellant, in the past. **The Respondents have battery of experts for checking/ audit of bills, in the Department right from the IT Cell, CBC Department which contains ASE, AE/ AAE, AAO and UDC and further at the Sub Division level AE/ AEE, RA and UDC.** These large number of experts 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 it should detect the defects which was not justified.
- (ix) It was further added that 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 Respondent Department and nowhere such instructions exist that a large supply consumer should have been so educated & capable to understand each and every instruction of the Respondent rather Respondent was responsible for it.

- (x) It was pertinent to add that the Case No. 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 which was allowed by the same Forum. The same case was also filed and decided by the Forum after more than 2 years of 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 petition was filed within 2 years of the cause of action which was due upto 16.12.2022 .
- (xii) The Appellant was also entitled for the payment of interest amounting to ₹ 2,45,528/- as claimed in the petition and as admissible under Regulation 35.1.3 of the Supply Code-2014.
- (xiii) It was not a case for recovery suit, rather it was correction of accounts, because the connection was running till date.
- (xiv) Moreover, attention was invited to the ESIM Regulation No. 93.5 which 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 views between the Audit and the field officers, the Committees as under shall decide such cases (whether the amount as worked out by Audit is 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.**

Sr. No. Authority to approve Amount involved

1. Committee consisting of Addl.SE/ Sr. Xen/ DS concerned as Chairman alongwith AO/ Field and concerned Xen/AEE/AE/DS. Up to ₹ 25,000/-.
2. Committee consisting of Dy. CE/ SE/ DS concerned as Chairman alongwith Dy. CAO/ Dy. CA and Addl.SE/ Sr. Xen/ Sales dealing with concerned Circle. Above ₹ 25,000/- and up to ₹ 1,00,000/-.
3. Committee consisting of EIC/CE/DS concerned alongwith CAO/CA of Finance and Dy. CE/Sales of Commercial Wing. Above ₹ 1,00,000/-. 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.”

Thus, analysis of the regulation shows that above committees deals with the refunds of old period cases and **nowhere any limitation of period was prescribed nor any matter regarding the period how old it may be, was mentioned.** When the defendant offices were served the notice dated 17.12.2020, 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 defendant offices did not act in a justified manner. No time period had been fixed by PSPCL in dealing with such cases.

It was further added that PSPCL is Govt. public welfare department and cannot dislodge the most genuine claim of the Appellant with mere excuses of ESIM Regulation 2.25/2.27. Keeping in view above arguments, the court was requested to accept the Appeal on facts and merits.

(b) Submission during hearing

During hearing on 11.10.2021, the Appellant's Representative reiterated the submissions made in the Appeal and prayed to allow the same.

(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 under General Industry in the name of M/s M.L.Overseas, Jalalabad bearing A/c No.3000855895 (Legacy Account No. LS-70) with Sanctioned Load 249.848 kW and CD 160 kVA. It was running since 16.02.2011 under City Sub-Division, Jalalabad & under DS Division, Jalalabad.
- (ii) The Appellant filed a dispute case no. CGP-185/2021 in the Forum, Patiala against the below detailed 3 no. issues out of them issue no. 1 and 2 had been resolved in the Forum and the issue no. 3 was being more than two year old became time barred under Regulation 2.25 & 2.27 of PSERC (Forum and Ombudsman) Regulation, 2016. It was further added that the Appellant had not given any request during the year 2014-15 & 2015-16 although a request on 17.12.2020 was presented in the office of AE, City Sub Division, Jalalabad before filing a case in Forum.
- 1) The bill for the month 01/2018 was corrected vide SCA No. 206/64/R-126.

2) The amount of ₹ 68,101/- which was charged in 03/2018 had also been refunded vide SCA No. 206/64/R-126 dated 11.06.2018.

3) The claim for threshold rebate for the year 2014-15 and 2015-16.

In this regard it was submitted that the claim being more than two year old became time barred under Regulation 2.25 & 2.27 of PSERC (Forum & Ombudsman) Regulation, 2016. It was further added that the Appellant had not given any request for threshold rebate during the years 2014-15 & 2015-16 although a request on 17.12.2020 was presented in the office of AE, City Sub Division, Jalalabad before filing a Case in the Forum.

(iii) The dispute Case No. CGP-185/2021 had been rightly decided by the Forum on 04.06.2021 and the same had been informed vide their probable Memo No. 1304 dated 10.06.2021 in which the following paragraph was recorded :-

“If the petitioner is not satisfied with the decision of CGRF, he is at liberty to file a representation before the Ombudsman appointed/ designated by the Punjab State Electricity Regulatory Commission within 30 days from the date of receipt of the order of the Forum.”

The Appellant failed to file its Appeal against the decision of Forum in the Court of the Lokpal (Ombudsman) within the stipulated period.

- (iv) The Respondent certified that the Appellant had already deposited all the disputed amount and current bill. There was no amount pending against the Appellant.
- (v) The Forum rightly decided the case being a time barred claim.

(b) Submission during hearing

During hearing on 11.10.2021, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed to dismiss the Appeal.

6. 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 analyzed 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 ₹ 1,53,487/- and for the year 2015-16 amounting to ₹ 2,55,348/-. 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. It was now 5-6 years old. The Appellant had never filed any request in the office of the Respondent during the years 2014-15 & 2015-16 for grant of threshold rebate although a request on 17.12.2020 was presented in the office of AE/ DS City Sub Division, Jalalabad before filing a case in the Forum 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 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 was a Large Supply Category Industrial Consumer and he was supposed to know all the regulations, tariff orders and instructions of the Licensee (PSPCL) relating to its connection. All the regulations and tariff orders were/ 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 17.12.2020. 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 threshold rebate for FYs 2014-15 & 2015-16 cannot be considered as per PSERC (Forum & Ombudsman) Regulations, 2016.

- (v) The Appeal Case is to be decided as per PSERC Regulations and Tariff orders. The decision of the Forum in Case No. CGP-343/2019 is not binding on this Court. Further, this Appeal case of the Appellant does not fall in the purview of the Refund Committees. Instruction No. 93.5 of ESIM is not applicable on this case.
- (vi) The issues raised in the Appeal are to be decided by this Court strictly as per Regulation No. 3.24 of PSERC (Forum & Ombudsman) Regulations, 2016 which is reproduced below:-

“The Ombudsman shall pass a speaking order giving reasons for all his findings and award. While making an order, the Ombudsman shall be guided by the provisions

of the Act, rules and regulations framed under the Act, guidelines, directions & orders of the Commission issued from time to time and such other factors which are necessary in the interest of justice. The Ombudsman shall also decide regarding interest payable by either party on excess or short deposits made by the complainant”.

- (vii) It is worthwhile to peruse the observations of the Forum as per Proceeding-cum-Order dated 04.06.2021, which reads as under:-

“Representative of PSPCL submitted authority letter vide memo no. 3999 dated 02.6.2021 duly signed by ASE/Op. Division, Jalalabad and the same has been taken on record.

PR submitted three copies of rejoinder before the Forum and the same have been taken on record. One copy thereof was sent to the Representative of PSPCL by the PR.

After hearing both the parties, forum decided to register the case.

Forum observed that petitioner has prayed/raised 5 points in his petition relating to following issues for relief:-

- 1. Refund for excess billed amount in the month of 01/2018.*

2. *Refund for wrongly billed amount in the month 3/2018.*
3. *To adjust rebate on account of threshold for period 2014-15.*
4. *To adjust rebate on account of threshold for period 2015-16.*
5. *To pay Interest on excess amount deposited and threshold rebate.*

Respondent has replied that the bill for the month 01/2018 has already been corrected vide SCA No. 206/64/R-126 and excess amount Rs.68101/- charged in the month of 03/2018 has been refunded vide SCA No. 206/64/R-126 and credited to consumer account on 11.6.2018, to which petitioner agreed.

Regarding threshold rebate for the year 2014-15 and 2015-16, respondent submitted that the petitioner has never given the request for such threshold rebate and now cannot be given as it is a time barred claim now under Reg. 2.25 of PSERC (Forum & Ombudsman) Reg.2016. Forum observes that as point no.1,2 of the petition have been settled by the respondent and agreed by the petitioner, so stands disposed off.

Regarding issue no.3 &4 of petition, it is a time barred claim as per Reg. 2.27 of PSERC (Forum & Ombudsman) Reg.2016, so the point No.3 and 4 of the petition is rejected being time barred claim.

Regarding point no. 5 interest is not payable.”

It is a fact that the grievance was submitted in the Forum after a delay of more than two years after the date on which the cause of action had arisen. The delay is now more than five years from the date of cause of action in this case.

- (viii) There is no truth in the averments of the Appellant. Any grievance relating to rebate on account of consumption of electricity above threshold limits during the years 2014-15 & 2015-16 is not considerable now for decision because the issue is more than two years old from the date of cause of action. The decision of the Forum is in line with Regulation Nos. 2.25 & 2.27 of PSERC (Forum & Ombudsman) Regulations, 2016.
- (ix) 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.
- (x) This Court is not inclined to interfere with the orders of the

Forum on the issues raised in the Appeal relating to threshold rebate for the FY 2014-15 & FY 2015-16.

7. Decision

As a sequel of above discussions, the order dated 04.06.2021 of the CGRF, Patiala in Case No. CGP-185 of 2021 relating to threshold rebate for the financial years 2014-15 & 2015-16 is hereby upheld.

8. The Appeal is disposed of accordingly.

9. 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.

10. 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 11, 2021.
S.A.S. Nagar (Mohali)

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