

**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. 90/2021**

**Date of Registration : 17.11.2021**

**Date of Hearing : 03.12.2021**

**Date of Order : 03.12.2021**

**Before:**

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

**In the Matter of:**

M/s. N. K. Sharma Enterprises Pvt. Ltd.,  
Charanji Enclave (Lohgarh),  
Ambala-Chandigarh Highway,  
Zirakpur.

**Contract Account Number: Z76GC7400541(DS)**

...Appellant

Versus

Additional Superintending Engineer,  
DS Division,  
PSPCL, Zirakpur.

...Respondent

**Present For:**

Appellant: 1. Sh. K.D.Parti,  
Appellant's Representative.  
2. Sh. P.C.Aggarwal,  
Appellant's Representative.

Respondent : Er. Nishant Bansal,  
AEE/ Commercial,  
DS Division, Zirakpur.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 22.10.2021 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-368 of 2021, deciding that:

- *“The issue of allowing refund of ACD of Rs. 13,26,250/- deposited by the Petitioner in year 2013 is time barred for the purpose of any decision by the Forum and is not considerable for decision now being time barred in view of clause no. 2.25 and 2.27 of PSERC (Forum & Ombudsman) Regulation, 2016. Petitioner may approach the appropriate authority.”*

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

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 17.11.2021 i.e. within thirty days of receipt of copy of decision dated 22.10.2021 by the Appellant. The Appeal related to refund/ interest and as such, the Appellant was not required to deposit 40% of the disputed amount before filing the Appeal in this Court. Therefore, the Appeal was registered and copy of the same was sent to the Addl. Superintending Engineer/ DS Division, PSPCL, Zirakpur for sending written reply/ parawise comments

with a copy to the office of the CGRF, Patiala under intimation to the Appellant vide letter nos. 1622-24/OEP/A-90/2021 dated 17.11.2021.

### **3. Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 03.12.2021 at 11.30 AM and an intimation to this effect was sent to both the parties vide letter nos. 1669-70/OEP/A-90/2021 dated 29.11.2021. As scheduled, the hearing was held on 03.12.2021 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 a Domestic Supply Category Connection (Single Point) bearing Account No. Z76-GC74-00541 with sanctioned load of 3536 kW and 3928 kVA as Contract Demand running under Commercial Sub-Division, PSPCL, Zirakpur in the name of M/s. N. K. Sharma Enterprises Pvt. Ltd-Appellant.
- (ii) The Appellant had applied for electric connection having load of 3536 kW load and 3928 kVA as Contract Demand (CD). The Appellant had deposited various amounts as ACD, MCB, EMD and Meter Security as given below:

Sr. No.	Amount (₹)	BA16 No.
1	1,61,700/-	496/6648 dated 23.09.2013
2	1,65,000/-	16/21000/260140 dated 07.10.2013 as EMD
3	11,64,550/-	116/6668 dated 06.10.2013
Total	<b>14,91,250/-</b>	

- (iii) The Demand notice was issued vide memo number 1172 dated 10.02.2014. The Respondent had demanded ₹ 47,07,484/- as service connection charges.
- (iv) The Respondent proposed AB cable in the estimate. As per previous experience, these cables were of very poor quality and were damaging frequently and giving unsatisfactory supply to the consumers. Accordingly, the Appellant requested the PSPCL to propose 11kV XLP Cables instead of AB Cables.

- (v) The request of the Appellant was accepted and accordingly, office of Chief Engineer/ Commercial, PSPCL, Patiala issued memo number 56/57 dated 18.01.2016 in which Deputy Chief Engineer/ DS Circle, Mohali was directed to propose XLP cables instead of AB cables. In the meantime, the system was changed and the Appellant was directed to apply the connection under Single Window System.
- (vi) The Appellant again deposited Security (Consumption) and Security (Meter)/ ACD whereas the previously deposited ACD (in 2013) was still retained by the Respondent. This time, the Appellant deposited various charges under Single Window System and received demand notice vide memo number 3279 dated 27.01.2016 in the light of Chief Engineer/ Commercial memo number 56/57 dated 18.01.2016 with proposed XLP cables instead of AB cables.
- (vii) The Security (Consumption) and Security (Meter)/ ACD deposited by the Appellant from 23.09.2013 to 06.10.2013 had not been shown in the bills and accordingly the Appellant could not get the refund of ACD deposited by it in 2013 nor the ACD had been credited to its accounts.
- (viii) It was mentioned in the reply of the Respondent that the Appellant had not complied with demand notice dated

10.02.2014. The version of the Respondent that Appellant had not complied with the demand notice was wrong, as the demand raised by the Respondent was for AB cables and the Appellant requested to give the connection with XLP cables to avoid breakdowns/ power interruptions. As a matter of fact, subsequent demand notice dated 27.01.2016 was issued by the Respondent, which was duly complied with and Security (Consumption) and Security (Meter)/ ACD, in accordance with the subsequent demand notice was deposited again by the Appellant. The Respondent while issuing the subsequent demand notice, should have either refunded the amount deposited in 2013 or should have adjusted in the subsequent demand notice. The Respondent, however, neither adjusted the ACD deposited in 2013 nor refunded it.

- (ix) The Appellant had approached the Forum at Patiala and the Appellant received the decision of the Forum vide memo number 2460 dated 22.10.2021. As per decision, the Forum had concluded that the case was time barred. There was no fault on the part of Appellant as the connection of the Appellant was delayed by the Respondent due to bad material proposed by the Respondent. The Forum had wrongly dismissed the Petition on limitation without acknowledging the fact that the Security

(Consumption) and Security (Meter)/ ACD deposited by the Appellant was never refunded to the Appellant and was still admittedly in possession of the Respondent and therefore, as long as the Respondent did not refund the said ACD, the Appellant's cause of action will continue and the period of limitation cannot start if the cause of action was continuing.

- (x) Furthermore, the Forum heard the matter completely and never directed the Appellant to file an application for condonation of delay, however, after hearing the complete case on merits and discussing the merits of the case brought forth by the Appellant and the Respondent, dismissed the Petition on the ground of expiry of limitation period, which was an incorrect finding and even legally unsustainable since the matter was finally heard and the question of limitation can only be invoked at the initial stage of the trial and not at the final stage.
- (xi) It was pertinent to mention that the Respondent had admittedly retained the amount deposited by the Appellant as Security (Consumption) and Security (Meter)/ ACD in 2013. It was a settled law in terms of the Electricity Act as well as the Supply Code that the Distribution Licensee shall pay interest on the amount received as Security. The relevant Regulation of the Supply Code was reproduced as under: -

***“INTEREST ON SECURITY (CONSUMPTION) AND SECURITY (METER)***

*17.1 [The distribution licensee shall pay interest on Security (consumption) and Security (meter) at the Bank Rate (as on 1st April of the year for which interest is payable) as notified by RBI.]*

*17.2 The interest on Security (consumption) and Security (meter) shall be credited to the account of a consumer annually on first day of April each year and shall be adjusted/ paid in first bill raised after first April every year against the outstanding dues and/or any amount becoming due to the distribution licensee thereafter”.*

Even otherwise, the Respondent would be liable to pay interest on the excess amount retained by them as admitted by the Respondent in their reply filed before the Forum.

- (xii) The office of CE/Commercial had also issued categorical instructions, directing the Respondent-Department to ensure that the security deposited by the consumers was to be regularly updated and the department shall ensure that the requisite interest made out on the said security in terms of Regulation 17 of the Supply Code was duly credited to the consumers within the stipulated time period. The CE/ Commercial had also directed the Respondent department to file a monthly report vide the said circular qua the compliance of the instructions issued in the said circular.



- (xiii) It was further stated that even on the basis of equity, if the Respondent had admitted that the ACD deposited in 2013 by the Appellant was still in their possession, it should be returned to the Appellant since it does not belong to the Respondent and they do not acquire any right over the Appellant's money by promptly stating that the interest was being paid on entire ACD while the record shows that much more amount was deposited by the Appellant than what was being depicted in the bills and refunding of the said amount (initially deposited ACD) was anyway the duty of the Respondent, without the Appellant having to ask for it.
- (xiv) As such, Security (Consumption) and Security (Meter) deposited by the Appellant in 2013 should be refunded alongwith interest and the order dated 22.10.2021 passed by the Forum be set aside.
- (xv) The Respondent be further directed to produce the relevant record and the relevant reports prepared by them in compliance of the Circular/ instructions.

**(b) Submission during hearing**

During hearing on 03.12.2021, the Appellant's Counsel reiterated the submissions made in the Appeal and prayed to allow the relief claimed in the Appeal.

**(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 Single Point DS Connection bearing Account No. Z76-GC74-00541 with sanctioned load of 3536 kW and CD as 3928 kVA. The Appellant applied for connection on 06.12.2013 with application no. 65843 and deposited ₹ 1,61,700/- as SCC vide BA-16 No. 496/6648 dated 23.09.2013. The Appellant also deposited ₹ 1,65,000/- as EMD.
- (ii) Thereafter, the Appellant deposited ₹ 11,64,550/- vide BA-16 No. 116/6668 dated 06.12.2013 which included ₹ 11,34,540/- as ACD, ₹ 2,950/- as Meter Security and ₹ 27,060/- for MCB.
- (iii) The Respondent issued Demand Notice No. 1172 dated 10.02.2014 for deposit of estimated amount of ₹ 47,07,484/- but the Appellant did not deposit this amount. As the Appellant did not comply with the Demand Notice, the connection was not released.
- (iv) The Appellant again applied for connection vide application no. 74395 dated 15.04.2015 (RID No. 13352) and initial security of ₹ 4,24,060/- (₹ 1,29,624/- vide transaction No.

129222 dated 27.01.2015 and ₹ 2,94,436/- vide transaction No. 130957 dated 08.04.2015) was deposited. Fresh Demand Notice No. 3279 dated 27.01.2016 of ₹ 43,66,949/- was issued to the Appellant. This amount included ₹ 33,92,219/- as Service Connection Charges, ₹ 9,72,180/- as ACD, ₹ 50/- as Demand Notice Extension Fee and ₹ 2,500/- as processing fee. The Appellant paid this amount of ₹ 43,66,949/- vide transaction No. 135170 dated 30.01.2016, so the connection was released on 28.06.2016.

- (v) The Appellant approached the Forum seeking the refund of excess deposited ACD of ₹ 13,26,250/-. The Forum heard the case as CGP-368/2021 and gave its judgment on 12.10.2021 in which the Forum decided that “the refund of ACD of ₹ 13,26,250/- deposited by the Appellant in the year 2013 is time barred for the purpose of any decision by the Forum and is not considerable for decision now being time barred in view of clause no. 2.25 and 2.27 of PSERC (Forum and Ombudsman) Regulations, 2016”.

**(b) Submission during hearing**

During hearing on 03.12.2021, the Respondent reiterated the submissions made in the written reply and contested the submissions of the Appellant’s Counsel. He had requested for

dismissal of the Appeal of the Appellant. The Respondent admitted that Application No. 65843 dated 06.12.2013 and demand notice No. 1172 dated 10.02.2014 have not been cancelled till now. A&A form is not available in the records of PSPCL. The validity of demand notice was three months from the date of issue and the same was not got extended by the Appellant. The case for refund or securities deposited with reference to application dated 06.12.2013 was not initiated by the Respondent as per regulations.

#### **5. Analysis and Findings**

The issue requiring adjudication is the legitimacy of the claim of the Appellant for the refund of security amount of ₹ 13,26,250/- and the interest thereon.

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

- (i) The Appellant pleaded that the Appellant was having a Domestic Supply Category Connection (Single Point) bearing Account No. Z76-GC74-00541 with sanctioned load of 3536 kW and 3928 kVA as Contract Demand running under Commercial Sub Division, PSPCL, Zirakpur in the name of M/s. N.K. Sharma Enterprises Pvt. Ltd. The

Appellant had applied for electric connection with load of 3536 kW load and 3928 kVA as Contract Demand (CD). The Appellant had deposited various amounts as ACD, MCB, EMD and Meter Security as given below:

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Total	<b>14,91,250/-</b>	

The Demand notice was issued vide memo number 1172 dated 10.02.2014. The Respondent demanded ₹ 47,07,484/- as service connection charges. The Respondent proposed AB cable in the estimate. As per previous experience, these cables were of very poor quality and were damaging frequently and giving unsatisfactory supply to the consumers. Accordingly, the Appellant requested the PSPCL to propose 11kV XLP cables instead of AB Cables. The request of the Appellant was accepted and accordingly, office of Chief Engineer (Commercial), PSPCL, Patiala issued memo number 56/57 dated 18.01.2016 in which Deputy Chief Engineer/ DS Circle, Mohali was directed to propose XLP cables instead of AB cables. In the meantime, the system was changed and the Appellant was directed to apply the connection under Single

Window System. The Appellant again deposited Security (Consumption) and Security (Meter)/ ACD whereas the previously deposited ACD (in 2013) was still retained by the Respondent. This time the Appellant deposited various charges under Single Window System and received demand notice vide memo number 3279 dated 27.01.2016 in the light of Chief Engineer/ Commercial memo number 56/57 dated 18.01.2016 with proposed XLP cables instead of AB cables. The Security (Consumption) and Security (Meter)/ ACD deposited by the Appellant from 23.09.2013 to 06.10.2013 had not been shown in the bills and accordingly, the Appellant could not get the ACD deposited by it in 2013 nor the ACD had been credited to its accounts. It was mentioned in the reply of the Respondent that the Appellant had not complied with demand notice dated 10.02.2014. The version of the Respondent that Appellant had not complied with the demand notice was wrong, as the demand raised by the Respondent was for AB cables and the Appellant requested to give the connection with XLP cables to avoid breakdowns/ power interruptions. As a matter of fact, a subsequent demand notice dated 27.01.2016 was issued by the Respondent, which was duly complied with and Security (Consumption) and Security (Meter)/ ACD, in accordance with

the subsequent demand notice was deposited again by the Appellant. The Respondent while issuing the subsequent demand notice, should have either refunded the amount deposited in 2013 or should have adjusted in the subsequent demand notice. The Respondent, however, neither adjusted the ACD deposited in 2013 nor refunded it. The Appellant had approached the Forum at Patiala and the Appellant received the decision of the Forum vide memo number 2460 dated 22.10.2021. As per decision, the Forum had concluded that the case was time barred. There was no fault on the part of Appellant as the connection of the Appellant was delayed by the Respondent due to bad material being proposed by the Respondent. The Forum had wrongly dismissed the Petition on limitation without acknowledging the fact that the Security (Consumption) and Security (Meter)/ ACD deposited by the Appellant was never refunded to the Appellant and was still admittedly in possession of the Respondent and therefore, as long as the Respondent did not refund the said ACD, the Appellant's cause of action will continue and the period of limitation cannot start if the cause of action was continuing. Furthermore, the Forum heard the matter completely and never directed the Appellant to file an application for condonation of

delay. However, after hearing the complete case on merits and discussing the merits of the case brought forth by the Appellant and the Respondent, dismissed the Petition on the ground of expiry of limitation period, which was an incorrect finding and even legally unsustainable since the matter was finally heard and the question of limitation can only be invoked at the initial stage of the trial and not at the final stage. It was pertinent to mention that the Respondent had admittedly retained the amount deposited by the Appellant as Security (Consumption) and Security (Meter)/ ACD in 2013. It was a settled law in terms of the Electricity Act as well as the Supply Code that the Distribution Licensee shall pay interest on the amount received as Security. The relevant Regulation of the Supply Code was reproduced as under: -

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*any amount becoming due to the distribution licensee thereafter”.*

Even otherwise, the Respondent would be liable to pay interest on the excess amount retained by them as admitted by the Respondent in their reply filed before the Forum. The office of CE/ Commercial had also issued categorical instructions, directing the Respondent-Department to ensure that the security deposited by the consumers was to be regularly updated and the department shall ensure that the requisite interest made out on the said Security in terms of Regulation 17 of the Supply Code was duly credited to the consumers within the stipulated time period. The CE/ Commercial had also directed the Respondent department to file a monthly report vide the said circular qua the compliance of the instructions issued in the said circular. It was further stated that even on the basis of equity, if the Respondent had admitted that the ACD deposited in 2013 by the Appellant was still in their possession, it should be returned to the Appellant since it does not belong to the Respondent and they do not acquire any right over the Appellant's money by promptly stating that the interest was being paid on entire ACD while the record shows that much more amount was deposited by the Appellant than what was

being depicted in the bills and refunding the said amount (initially deposited ACD) was anyway the duty of the Respondent, without the Appellant having to ask for it. As such, Security (Consumption) and Security (Meter) deposited by the Appellant in 2013 should be refunded along with interest and the order dated 22.10.2021 passed by the Forum be set aside. The Respondent be further directed to produce the relevant record and the relevant reports prepared by them in compliance of the Circulars/ instructions.

- (ii) The Respondent controverted pleas raised by the Appellant and argued that the Appellant had applied for connection on 06.12.2013 with application no. 65843 and deposited ₹ 1,61,700/- as SCC vide BA-16 No. 496/6648 dated 23.09.2013. The Appellant also deposited ₹ 1,65,000/- as EMD. Thereafter, the Appellant deposited ₹ 11,64,550/- vide BA-16 No. 116/6668 dated 06.12.2013 which included ₹ 11,34,540/- as ACD, ₹ 2,950/- as Meter Security and ₹ 27,060/- for MCB. The Respondent issued Demand Notice No. 1172 dated 10.02.2014 for deposit of estimated amount of ₹ 47,07,484/- but the Appellant did not deposit this amount. As the Appellant did not comply with the Demand Notice, the connection was not released. The Appellant had

again applied for connection vide application no. 74395 dated 15.04.2015 (RID No. 13352) and initial security of ₹ 4,24,060/- (₹ 1,29,624/- vide transaction No. 129222 dated 27.01.2015 and ₹ 2,94,436/- vide transaction No. 130957 dated 08.04.2015) was deposited. Fresh Demand Notice no. 3279 dated 27.01.2016 of ₹ 43,66,949/- was issued to the Appellant. This amount included ₹ 33,92,219/- as Service Connection Charges, ₹ 9,72,180/- as ACD, ₹ 50/- as Demand Notice Extension Fee and ₹ 2,500/- as processing fees. The Appellant paid this amount of ₹ 43,66,949/- vide transaction No. 135170 dated 30.01.2016, so the connection was released on 28.06.2016. The Appellant approached the Forum seeking the refund of excess deposited ACD of ₹ 13,26,250/-. The Forum heard the case as CGP-368/2021 and gave its judgment on 12.10.2021 in which the Forum decided that “the refund of ACD of ₹ 13,26,250/- deposited by the Appellant in the year 2013 is time barred for the purpose of any decision by the Forum and is not considerable for decision now being time barred in view of clause no. 2.25 and 2.27 of PSERC (Forum and Ombudsman) Regulations, 2016”.

(iii) The Forum observed that the Appellant was a DS (Single point connection) consumer receiving regular energy bills from the respondent corporation from time to time and in all the bills, the details of various amounts charged/ rebates given/ Amounts of ACD etc. were invariably depicted. The Appellant did not point out or represent to the Respondent the issue of refund of ACD amounts up to the year 2021. Thus, the Appellant did not take appropriate remedy at appropriate time and had failed to exercise its obligation to approach the Respondent in time for attending this issue. The onus for not taking appropriate remedies rests on the Appellant, a DS (Single point connection) consumer. It failed to point out to the respondent to take timely action for giving it refund of ACD amounts. Regulation 2.27 of PSERC (Forum & Ombudsman) Regulations, 2016 provides that the Forum may reject the grievance at any stage through a speaking order in cases where the grievance has been submitted two years after the date on which the cause of action has arisen or after two months from the date of receipt of the orders of DSC. In view of above and after considering all written and verbal submissions by the Appellant & the Respondent and scrutiny of record produced, Forum decided

that issue of allowing refund of ACD of ₹ 13,26,250/- deposited by Appellant in year 2013 was time barred for the purpose of any decision by the Forum and was not considerable for decision now being time barred in view of clause no. 2.25 and 2.27 of PSERC (Forum & Ombudsman) Regulations, 2016.

- (iv) After going through the decision of the CGRF, Patiala and submissions of the Appellant and the Respondent, the Court is of the view that the CGRF had erred in deciding the case as time barred. The Appellant although failed to comply with the Demand notice no. 1172 dated 10.02.2014, but the Respondent also did nothing in this regard. The Appellant was supposed to comply with the Demand notice no. 1172 dated 10.02.2014 within the period of 3 months as time given in the said Demand notice, but the Appellant neither complied with nor filed application with the Respondent for the extension of the same. On non-compliance/ non-extension of Demand notice, the Respondent was required to cancel the application no. 65843 dated 06.12.2013 of the Appellant on or after 10.05.2014 and process the case for refund of Securities as per regulations. The Respondent had not cancelled the Application No. 65843 dated 06.12.2013

till now even though the Appellant had failed to comply with demand notice within the stipulated period issued with reference to the application dated 06.12.2013. It would be unfair to treat the refund of security amount as time barred under these circumstances. The Distribution Licensee is required to pay interest on Security Amounts as per Section 47 of The Electricity Act, 2003. The Distribution Licensee had failed to pay interest on the Securities to the Appellant as per the Act and regulations of the PSERC. Refund of security is required to be given on the request of the person who gave such security. The refund of securities should be allowed as per regulation 18.1, 20.1 & 20.3 of Supply Code-2007.

- (v) Further, the delay of more than seven years in releasing the payment as per regulations is on the part of the Licensee (PSPCL). As such, I am inclined to allow the interest on delayed payment as per Regulation 17.1 of Supply Code, 2007 & Supply Code, 2014 as applicable from time to time. The interest shall be payable with effect from 10.06.2014 till the date of payment.

## **6. Decision**

As a sequel of above discussions, this Court decides as under:-

- a) The order dated 22.10.2021 of the CGRF, Patiala in Case No. 368 of 2021 is hereby quashed;
  - b) The Respondent shall refund the security amount deposited with reference to application No. 65843 dated 06.12.2013 as per Regulation No. 18.1, 20.1 & 20.3 of Supply Code, 2007. Interest shall be payable on the amount worked out as per above regulations with effect from 10.06.2014 (30 days after Deemed Cancellation of application on 10.05.2014) till the date of payment as per Regulation No. 17.1 of Supply Code, 2007 & Supply Code , 2014 as applicable 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.

December 03, 2021  
S.A.S. Nagar (Mohali)

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