**CORPORATE CONSUMERS GRIEVANCES REDRESSAL FORUM**

**PUNJAB STATE POWER COPROPRATION LIMITED**

**220 KV S/Stn. Opp. Verka Milk Plant, Ferozepur Road, Ludhiana**

**Tel: 0161-2971912, email: secy.cgrfldh@gmail.com**

**CASE NO.: CF-116/2023**

**Date of Registration : 06.09.2023**

**Date of Closing : 19.09.2023**

**Date of Final Order : 22.09.2023**

**In the Matter of:**

**M/s Garrison Engineers**

**S/Division Dasuya, Hoshiarpur,**

**A/c No.: 3007509114.**

**Through:**

Sh. Himanshu Makkar  **...Petitioner**

**Versus**

**Punjab State Power Corporation Ltd**

**Through:**

Sr. Xen/Op. Division,

PSPCL, Dasuya. **...Respondent**

1. **BRIEF HISTORY:**

Petition against case No.: CF-116/2023 has been filed directly in the Forum by Sh. Himanshu Makkar directly in the Forum, in the matter related to A/c no. 3007509114 ofBS category having sanctioned load/CD of 1294.50KW/708.00KVA, in the name of M/s Garrison Engineers under DS Divn. PSPCL, Dasuya. PSPCL vide CC Nos. 38 & 39/2020, issued instructions/clarification that levy of ED cannot be exempted on the power consumed by residents residing in residential colonies owned by the Govt. of India (Army, Railways, BSF etc.) and from BS connections of Central Govt. institutions comprising of mixed load which are subject to minimum of 25% domestic load. As ED was not being charged to this account, so as per these instructions, the Account of the petitioner was overhauled by Internal Audit vide Half Margin no. 221 dated 23.03.2021 and amount of Rs. 1881463/- was charged for the period from 09/2018 to 11/2020 as per clarification given vide Commercial Circular no. 38/2020 and 39/2020 was pointed out. Accordingly, AEE/DS, PSPCL, Dasuya issued notice vide memo no. 528 dated 22.04.2021 to deposit amount of Rs. 1881463/-. Later, this amount was charged in his energy bill issued on dated 22.07.2021. Petitioner did not deposit this amount. Audit Party again overhauled the account of the petitioner vide Half Margin no. 72 dated 22.12.2021 and charged amount of Rs. 4164066/- for the period from 03/2009 to 08/2018 as per clarification given vide Commercial Circular no. 38/2020 and 39/2020. Petitioner was asked to deposit this amount by AEE/DS, PSPCL, Dasuya through notice No. 04 dated 05.01.2022. Petitioner did not agree to both these amounts and filed his case in the Forum.

Forum heard the case in its pre hearing dated 06.09.2023, 12.09.2023, and finally on proceeding 19.09.2023, when the case was closed for passing speaking orders.

1. ***PROCEEDINGS:***

***Proceedings dated: 06.09.2023***

*The petition has been placed before the Forum for admission. After considering the averments made in the petition, the petition is admitted. Notice be issued to ASE/Sr. Xen/Op. Dasuya (Respondent) along with copy of petition.*

*Respondent shall submit five copies of the following record/documents before the Forum*

1. *Respondent shall confirm that there is no case pending before any Court/Forum or any other authority between PSPCL and Petitioner.*
2. *Respondent shall confirm the status of up to date payments and shall ensure that no bill other than the amount in dispute, is pending.*
3. *Respondent shall confirm that the complainant/applicant/petitioner is competent/authorised person to file/defend the case on behalf of the consumer of the above a/c no.*
4. *Respondent shall also ensure the following action:-*
5. *He will check & verify amount of Rs. 1881463/- charged as ED & IDF charges for period 09/2018 to 11/2020 and amount of Rs. 4164066/- charged as ED & IDF charges for period 03/2009 to 08/2018 vide notice no. 04 dated 05.01.2022 on the basis of audit half margin no. 72 dated 22.12.2021 as per CC 38/2020 and CC 39/2020.*
6. *He will submit legible copies of audit half margin and relevant commercial circulars.*
7. *Intimate Regulation number of Supply Code, 2014 or any other relevant Rules/Regulations according to which the amount has been charged.*
8. *Ensure that all the documents have been checked/verified & signed by ASE/Sr. XEN and he will be responsible for the authenticity of the documents/information submitted to the Forum.*

*The case be put up on 12.09.2023.*

***Proceedings dated: 12.09.2023***

*Respondent submitted five copies of reply along-with other documents and same has been taken on record. One copy handed over to the petitioner.*

*Respondent is directed to produce original consumer case before Forum and submit five attested copies of the same. Document(s) specifically depicting domestic load be submitted. Details of change in load/CD if any, since date of connection especially if any change in domestic/commercial load was made, also be submitted.*

*The case is adjourned to 19.09.2023 for filing rejoinder/oral discussion.*

***Proceedings dated: 19.09.2023***

*Respondent submitted documents as directed in previous hearing and same is taken on record.*

*Petitioner/PR stated that the petition/rejoinder and other documents already submitted may also be considered as part of oral discussion.*

*Respondent stated that the reply to the petition/reply to the rejoinder and other documents already submitted may be considered as oral discussion.*

*Both the parties have nothing more to say and submit.*

*The case is closed for passing speaking orders.*

1. **FACTS OF THE CASE AND OBSERVATIONS OF THE FORUM: -**
2. The Petitioner bearing A/c no. 3007509114, is having BS connection with sanctioned load of 1294.50 KW/708.00 KVA, in the name of Military Engineer Services, under Dasuya Division, Hoshiarpur.
3. The Petitioner in his Petition prayed that: -
4. *With due respect, it is submitted that this office is prime bulk consumer of PSPCL vide connection No. H31-BS-01-00001 of 1560 KVA (Now reduced CMD 708 KVA) Unchi Bassi with electric billing amount near about One Crore Seventy lakh annually.*
5. *It submitted that PSPCL has issued the Electric Bill No 50015223064 dt 22 Jul 2021 and Memo No 528 dt 22 Apr 2021 with ED charge (Sundry charges) Rs 1881463/- for the period of Sep 2018 to Nov 2020 and this office had written a letter to AEE PSPCL Dasuya vide this office letter No 4006/EA/204/E4 dt 03 May 2021 regarding fwd the detail of said amount. But the circular as asked vide this office letter not provided by PSPCL Sub Divn Dasuya.*
6. *This office submitted humble submission on the matter vide letter No 4006/EA/25/E4 dt 11 Aug 2021 and DO letter No by Garrison Engineer (South) Pathankot vide DO No 4006/EA/30/E4 dt 13 Sep 2021 to remove this shown amount in the next bill. After that PSPCL had issued the Memo No 1228/29 dt 30 Sep 2021 & Memo No 04 dt 05 Jan 2022 for insist to deposit balance amount of ED & IDF charges. This office has again requested to AEE Operational PSPCL Dasuya to resolve the issue vide this office letter No 4006/EA/32/E4 dt 17 Feb 2022 but Electricity bill for the month of Feb 2022 was issued with additional amount of Rs 4164066.00 for the period of Mar 2009 to Aug 2018.*
7. *The details of disputed amount is as under-*

|  |  |  |  |
| --- | --- | --- | --- |
| *Sr. No.* | *Disputed Amount* | *Charges for* | *Period for which charged* |
| *1* | *Rs. 1881463.00* | *ED and IDF* | *Sep 2018 to Nov 2020* |
| *2* | *Rs. 4164066.00* | *ED and IDF* | *Mar 2009 to Aug 2018* |

*Total = Rs 6045529.00+ Amount of interest generated till date Rs. 1692248.00/-*

*Total disputed amount is Rs. 6045529.00/- (As per the Electricity bill for the month of Aug 2022).*

1. ***As per section 17 (1) (C) of limitation act 1963, in case of mistake, the limitation period begins to run from the date when the mistake is discovered from first time. As the mistake was discovered since Sep 2020, bill on account of ED w.e.f Mar 2009 were boom to be unjustified****.*
2. *This case was again taken up with Chairman Cum Managing Director PSPCL. Direct Commercial, Director Finance and Chief Auditor vide this office letter No 4008/EA/45/E4 dt 06 May 2022, but all are our request go in Vain and no any favorable action till to date on the matter has been received in this office.*
3. *There after monthly electricity bill being issued by PSPCL with the amount if previous adjustment bill i.e., unpaid amount of ED +IDF along with monthly interest generated. Latest bill of Sep 2022 is attached for your ready reference please.*
4. *It is also submitted that as per article 287 of Constitution of India* ***"No law of state shall impose or authorised the imposition of tax on consumption or sale of electricity (whether produced by Govt or other persons) which is consumed by Govt of India or sold to Govt of India for consumption by the Government"*** *and resident of Cantonment area are also Occupied Govt accommodation in the interest of state and no any ED & IDF charges are applicable to the occupants.*
5. *Being a central government organization under Ministry of Defence, this office has to produce every necessary justification/clarification/calculation alongwith supporting circulars/orders to our appropriate authorities before making payments to PSPCL or other organizations.*
6. *In view of the above, it is requested that necessary direction may please be passed to appropriate authorities to waive off above mentioned sundry charges.*
7. *It is also requested that necessary direction may please be passed to appropriate authorities, that no any unjustified amount should be endorsed by PSPCL in future billing cycle as this office is unable to pay above sundry charges amount without any clarification/justification*
8. *An early action on the matter is requested please.*
9. The Respondent in his reply to petition stated that: -
   * + 1. *Its certified that there is no court case pending in any court/forum between the petitioner and respondent.*
       2. *Petitioner paid all electricity bill upto month 08/2023 except disputed amount.*
       3. *Petitioner is competent person to file/defend the case.*
       4. *(a) Its verified and checked that the amount of Rs. 1841463/- and Rs. 4164066/- charged as ED and IDF as per PSCPCL commercial circular no. 38/2020 & 39/2020 and Half margin prepared by Audit party wide no. 221 dated 23.03.2021 & 72 dated 22.12.2021.*

*(b) Copies of Half margins and circulars attached. (Annexure-1).*

*(c) Amount of ED & IDF charged as per regulation 72 & 93 of ESIM & as per letter no. 7080/84 dated 16/11/2021 of Chief Auditor PSPCL Patiala & per legal section note. (Annexure-2)*

*5. All the documents have been checked/verified by the Sr. XEN Dasuya*

1. Forum have gone through the written submissions made by the Petitioner in the petition, written reply of the Respondent, oral discussions made by Petitioner along with material brought on record. The issue that requires adjudication in the present case is to decide the legitimacy of the amount of Rs. 1881463/- for the period from 09/2018 to 11/2020 vide notice no. 528 dated 22.04.2021 and Rs. 4164066/- for the period from 03/2009 to 08/2018 vide notice No. 04 dated 05.01.2022, charged on account of Electricity Duty/IDF.
2. Forum observed that, PSPCL vide CC Nos. 38 & 39/2020, issued instructions/clarification that levy of ED cannot be exempted on the power consumed by residents residing in residential colonies owned by the Govt. of India (Army, Railways, BSF etc.) and from BS connections of Central Govt. institutions comprising of mixed load which are subject to minimum of 25% domestic load. As ED was not being charged to this account, so as per these instructions, the Account of the petitioner was overhauled by Internal Audit vide Half Margin no. 221 dated 23.03.2021 and amount of Rs. 1881463/- was charged for the period from 09/2018 to 11/2020 as per clarification given vide Commercial Circular no. 38/2020 and 39/2020 was pointed out. Accordingly, AEE/DS, PSPCL, Dasuya issued notice vide memo no. 528 dated 22.04.2021 to deposit amount of Rs. 1881463/-. Later, this amount was charged in his energy bill issued on dated 22.07.2021. Petitioner did not deposit this amount. Audit Party again overhauled the account of the petitioner vide Half Margin no. 72 dated 22.12.2021 and charged amount of Rs. 4164066/- for the period from 03/2009 to 08/2018 as per clarification given vide Commercial Circular no. 38/2020 and 39/2020. Petitioner was asked to deposit this amount by AEE/DS, PSPCL, Dasuya through notice No. 04 dated 05.01.2022. Petitioner did not agree to both these amounts and filed his case in the Forum.

Petitioner in his petition contended that **"As per section 17 (1) (c) of limitation Act 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time. As the mistake was discovered since Sep 2020 bill on account of ED w.e.f. Mar 2009 were seem to be unjustified”.**

Petitioner also submitted that as per article 287 of Constitution of India "***No law of state shall impose or authorized the imposition of tax on consumption or sale of electricity (Whether produced by Govt or other Persons) which is consumed by Govt of India or sold to Govt of India for consumption by the Government***" and resident of cantonment area are also occupied Govt accommodation in the interest of state and no any ED & IDF charges are applicable to the occupants.

During proceedings petitioner was asked that the above article 287 of Constitution of India does not exempt the resident residing in the residential colonies to which petitioner admitted that they are now paying the ED & IDF regularly as charged in the bills but pleaded that the sundry charges of previous period may be waived off being time-barred.

Respondent in his reply submitted that the Legal section of the PSPCL vide its U.O. no. 1248 dated 27.10.2021 addressed to Chief Engineer Commercial, Patiala has clarified about the period of limitation, as under:

*“To conclude, Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply. For recovery of the additional demand. As per Section 17(1)(c) of the Limitation Act, 1963. In case of mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.”*

Forum observed that vide CC no. 38 & 39/2020 only clarification has been issued regarding ley of ED & IDF, which was discontinued or not being applied to such consumers due to one reason or other. This mistake was noticed and instructions were issued vide above circulars on dated 02.09.2020 & 30.09.2020.

Further the Legal Adviser PSPCL, Patiala vide memo no. 12/76 dated 24.01.2022 has mentioned the decision dated 5.10.2021 of Hon'ble Supreme Court of India, delivered in Civil Appeal No. 7235/209 titled as M/s Prem Cottex v/s Uttar Haryana Bijli Vitran Nigam Ltd., as under:

*Hon'ble Supreme Court in para 24 & 25 of this judgement observed as follows:*

*"24.' Subsection (2) uses the words "no sum due from any consumer under this Section". Therefore, the bar under Subsection (2) is relatable to the sum due under Section 56. This naturally takes us to Subsection (1) which deals specifically with* ***the negligence on the part of a person to pay any charge for electricity*** *or any sum other than a charge for electricity.* ***What is covered by section 56, under subsection (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.***

*25. ln other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistakes detected is not covered by Subsection (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer* ***under this Section****", appearing in Subsection (2)."*

From the above, Forum observed that as per CC no. 38/2020, the levy of ED cannot be exempted on the power consumed by the residents residing in the residential colonies owned by Govt of India (Army, Railway, BSF etc.), therefore the amount has been rightly charged. Further the same cannot be considered as time barred in the light of the decision of Hon'ble Supreme Court of India delivered in Civil Appeal No. 7235/209 titled as M/s Prem Cottex v/s Uttar Haryana Bijli Vitran Nigam Ltd. Therefore, Forum is of the opinion that amount charged to the petitioner on a/c of ED & IDF on the power consumed by residents residing in the residential colonies, is not time barred and is justified and recoverable.

Forum have gone through the written submissions made by the Petitioner in the petition, written reply of the Respondent, oral discussions made by Petitioner along with material brought on record. Keeping in view the above, Forum is of the opinion that the amount of Rs. 1881463/- charged for the period from 09/2018 to 11/2020 vide notice no. 528 dated 22.04.2021 and Rs. 4164066/- for the period from 03/2009 to 08/2018 vide notice No. 04 dated 05.01.2022, on account of Electricity Duty/IDF, are correct and recoverable.

Keeping in view the above, Forum came to unanimous conclusion that the amount of Rs. 1881463/- charged for the period from 09/2018 to 11/2020 vide notice no. 528 dated 22.04.2021 and Rs. 4164066/- for the period from 03/2009 to 08/2018 vide notice No. 04 dated 05.01.2022, subsequently added in the bills of the petitioner as sundry charges, are correct and recoverable.

1. **DECISION:**

Keeping in view the petition, reply, oral discussion, after hearing both the parties, perusal of the record produced by them & observations of Forum,

Forum decides that: -

1. **The amount of Rs. 1881463/- charged for the period from 09/2018 to 11/2020 vide notice no. 528 dated 22.04.2021 and Rs. 4164066/- for the period from 03/2009 to 08/2018 vide notice No. 04 dated 05.01.2022, subsequently added in the bills of the petitioner as sundry charges, are correct and recoverable.**
2. **As required under Regulation 2.33 of the Punjab State Electricity Regulatory Commission (Forum & Ombudsman) (2nd Amendment) Regulations, 2021 the compliance of this decision shall be made within 21 days from the date of receipt of this order.**
3. **If the Petitioner is not satisfied with the decision of Corporate 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, as required under Regulation 2.39 read with Regulation 2.37 of the Punjab State Electricity Regulatory Commission (Forum & Ombudsman**) (2nd Amendment) Regulations, 2021.

**(CA. Baneet Kumar Singla) (Er. Himat Singh Dhillon)**

**Member (Finance) Independent Member**

**(Er. Navdeep Singh Chahal) (Er. Kuldeep Singh)**

**Permanent Invitee Chairperson**

**O/o CE/Commercial, PSPCL**

**Place: Ludhiana**

**Date: 22.09.2023**