**COURT OF THE LOKPAL (OMBUDSMAN),**

**ELECTRICITY, PUNJAB,**

 **PLOT NO. A-2, INDUSTRIAL AREA, PHASE-1,**

 **S.A.S. NAGAR (MOHALI)**

**Appeal No. 75/2017**

**Date of Registration : 03.11.2017**

**Date of Hearing : 27.03.2018**

**Date of Order : 05.04.2018**

**Before:**

**Er. Virinder Singh, LokPal (Ombudsman) Electricity**

**In the matter of:**

 Square Mineral Water Pvt. Ltd.,

 # 321, Phase-9, Industrial Area,

 S.A.S. Nagar (Mohali).

...Petitioner

Versus

 Additional Superintending Engineer,

 DS Division (Special),

 PSPCL, S.A.S. Nagar (Mohali).

 ...Respondent

**Present For:**

Petitioner: 1.Sh. R.S. Dhiman,

 Petitioner's Representative (PR)

2.Sh. Surjit Singh, Petitioner

3.Sh. Sampuran Singh, Petitioner.

Respondent : Er. H.S. Oberoi,

 Addl. Superintending Engineer.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 18.10.2017 in Case No. CG-195 of 2017 of the Consumers Grievances Redressal Forum (Forum) deciding that:

*“The clubbing charges of MS category connections amounting to Rs. 6,90,982/- ( i.e. Rs. 4,42,026/- for a/c No. 3000160448 and Rs. 2,48,956/- for A/c No. 3003182296) at Plot No. 321, Phase-9, Industrial Area, Mohali is justified.”*

**2. Facts of the Case:**

 **The relevant facts of the case are that:**

1. The Petitioner was having two Medium Supply Category connections in the name of Square Mineral Water bearing Account No. 3000160448 with Sanctioned Load of 98.140kW and Square Marketing (P) Ltd. bearing Account No. 3003182296 with Sanctioned Load of 98kW.
2. The connections were checked by the Addl. S.E/Enforcement, PSPCL, Patiala on 25.04.2017 vide ECR Nos. 08/234 and 09/234. The Enforcement observed, on checking, that both the Medium Supply Category connections were running in the same premises and these connections should have been clubbed.
3. Based on the said checking, a supplementary bill was issued on 02.05.2017 on account of clubbing charges of Rs. 6,90,982/- (Rs. 4,42,026/- for Account No. 3000160448 and Rs. 2,48,956/- for Account No. 3003182296) for MS category connections of 98kW and 98.140kW respectively.
4. The Petitioner did not agree with the amount charged and approached the Forum, which, after hearing, passed order dated 18.10.2017 (Reference: Page 2, Para 1).
5. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court with the prayer that undue demand of Rs. 6,90,982/- raised against the Petitioner may be set-aside in the interest of justice.

**3. Submissions made by the Petitioner and the Respondent:**

Before undertaking analysis of the case, it is necessary to go through the submissions made by the Petitioner in the Appeal and written reply of the Respondent as well as oral submissions made by the Representatives of the Petitioner and the Respondent alongwith the material brought on record by both the sides.

1. **Submissions of the Petitioner:**

The Petitioner made the following submissions for consideration of this Court:

1. The Petitioner was running an industrial unit at Plot No 321, Industrial Area, Focal Point, Phase-9, S.A.S. Nagar (Mohali) in the name of Square Mineral Water Pvt. Ltd. and was having an electricity connection since the year 1998 bearing Account No. 3000160448 with Sanctioned Load of 98.140kW. All the electricity bills were being paid by the Petitioner regularly.
2. A second connection, bearing Account No 3003182296 for Sanctioned Load of 98kW, was taken in this Plot on 30.03.2016 in the name of Square Marketing Pvt. Ltd. by carving out a separate premises 321-A. The portion of Plot No. 321-A was leased out to Square Marketing Pvt. Ltd. for a period of 99 years, and the Lease Deed was duly registered as per approval of Punjab Small Industries and Export Corporation (PSIEC) Ltd. The two premises were also partitioned as per requirements of Instruction No. 35.3 of ESIM. New connection in the name of Square Marketing Pvt. Ltd. was released by the Respondent after ensuring full compliance of provisions ibid of Instruction No. 35.3 of ESIM and Conditions of Supply (COS-28).
3. Despite Compliance of provisions of ESIM and COS-28, the officials of the Respondent-PSPCL continued harassing the Petitioner on minor issues. Disturbed by frequent interference, the two companies decided to get their connections clubbed and applied for the same on 01.06.2016. Demand Notice for clubbing was issued by the Respondent and all the formalities were completed by the Petitioner.
4. While the clubbing process was still not completed, a notice for Rs 6,90,982/- was issued to the two companies on the ground that the two connections were running in the same premises and directed to club the connections.
5. It was totally wrong to contend that the two connections named above were running in the same premises. The second connection in the name of Square Marketing Pvt. Ltd. was released by the department in **Plot No. 321-A** which was on 99 years lease with this company through a **Registered Lease Deed**. It was a separate premises in terms of Instruction No. 35.3 of ESIM. As such, no charges were leviable on the ground of running two connections in the same premises.
6. The two companies viz Square Mineral Water Pvt. Ltd. and Square Marketing Pvt. Ltd. were doing their business separately in separate premises. These Companies were separate entities as defined in Conditions of Supply (COS-28). The same were separately registered under the Companies Act-1956 and were separately assessed by the Income Tax Department. Copies of certificates of Registration and PAN Cards of the two companies were placed on record, to watch the compliance of the requirements of Instruction No. 35.3 of ESIM.
7. The connection of Square Marketing Pvt. Ltd. was released by the Respondent in Plot No. 321A in 2015 after completion of all formalities with regard to the provisions of ESIM. Till date, this connection was running in Plot No. 321A. Similarly, the connection of Square Mineral Water Pvt. Ltd. was running in Plot No 321. It was not understood as to how could the two companies be accused of running their connections in the same premises and penalized.
8. Aggrieved with the issuance of the Demand Notice for Rs. 6,90,982/- by the Respondent, the Petitioner approached the Forum which upheld the demand raised without application of mind to the core issue. The said two connections had to be treated as separate running in separate premises till the same were clubbed by installing one Energy Meter for both the connections and till then, no penalty or surcharge was leviable on either of the two consumers.
9. The undue demand of Rs 6,90,942/- raised against the Petitioner may be set- aside in the interest of justice.
10. S**ubmissions of the Respondent:**

The Respondent, in its defence, submitted the following for consideration of this Court:

1. Square Mineral Water Pvt. Ltd, Plot No. 321, Phase-9, Industrial Area, S.A.S. Nagar (Mohali) (Account No. 3000160448) with Sanctioned Load of 98.140kW was charged Rs. 4,42,026/- while Square marketing Pvt. Ltd (Account No.3003182296) with Sanctioned Load of 98kW, had been charged Rs. 2,48,956/-. Thus, the total amount of Rs. 6,90,982/- was charged on account of clubbing charges of both the Consumers as per the checking done by the Addl. S.E/Enforcement-II, PSPCL, Patiala and reported vide ECR No. 09/234 dated 25.04.2017 and 08/234 dated 25.04.2017.
2. As per Checking Report, both the Medium Supply Category connections were running in the same premises with different names, so, clubbing charges were applicable, as per Regulation 6.5 of Supply Code-2014.
3. The Petitioner did not agree with the amount charged and approached the Forum, which decided that the amount of Rs. 6,90,982/-, charged on account of clubbing charges was justified and recoverable.

**4. Analysis:**

The issue requiring adjudication is the legitimacy of the amount of Rs. 6,90,982/- charged on account of clubbing charges of two Medium Supply (MS) Category connections, as a result of checking by the Enforcement, during the currency of extended period of Demand Notice issued for completion of clubbing process.

*The points emerged are analysed and deliberated as under:*

1. I find that the dispute in the present case arose after the Petitioner, having MS Category Connection in the name of Square Mineral Water Pvt. Ltd. at Plot No. 321, Phase-9, Industrial Area, S.A.S. Nagar (Mohali) (bearing Account No. 3000160448) was charged clubbing charges of Rs. 4,42,026/- and also Rs. 2,48,956/- in respect of its another MS category connection in the name of Square Marketing Pvt. Ltd. at Plot No. 321-A, Phase-9, Industrial Area, S.A.S. Nagar (Mohali) (bearing Account No.3003182296). The said clubbing charges totaling Rs. 6,90,982/-, were raised on the basis of **Checking Report dated 25.04.2017** of the Addl. S.E/Enforcement, PSPCL, Patiala, who observed that two connections were running in the same premises and must have been clubbed. This was despite the fact that the two premises had been legally partitioned/leased by PSIEC (Govt. of Punjab Undertaking) as ‘Plot No. 321’ and ‘Plot No. 321A’, besides, the Petitioner had already applied for clubbing vide application dated 01.06.2016, and was issued a Demand Notice by the Respondent on 14.09.2016 for compliance of the prescribed terms and conditions within six months i.e. upto 13.03.2017 **which was subsequently** **extended by the Respondent for another six months upto 13.09.2017 on Petitioner’s request.**

*I find merit in the contention of the PR, during the course of oral submissions, that the Respondent had no justification in raising the disputed demand of Rs. 6,90,982/- ( on account of clubbing charges of two MS Category Connections running in Plot No. 321 and Plot No. 321-A, Phase-9, Industrial Area, S.A.S. Nagar (Mohali) based on the checking dated 25.04.2017 of the Addl. S.E/Enforcement, Patiala for the purpose of clubbing of the said connections, as validity of Demand Notice had already been extended upto 13.09.2017 by the Respondent.*

1. I also observe that the Demand Notice dated 14.09.2016 issued by the AEE/Commercial, PSPCL, S.A.S. Nagar (Mohali) required compliance within a period of six months from the date of issue i.e. upto 13.03.2017 and the same was extended for another six months i.e. upto 13.09.2017. In both the above cases, a sum of Rs. 2,500/- was charged as the fee.

*I am of the view that the validity of the Demand Notice dated 14.09.2016 should have been for three months and subsequent extensions should also have been given for three months on payment of prescribed fee of Rs. 2,500/- on each occasion, as per provisions contained in Regulations 6.8.7 (a) of Supply Code-2014. Thus, the Respondent erred in validating/extending the Demand Notice on six months basis, instead of on three months basis and thus charging the prescribed fee after six months instead of after three months.*

*From the above analysis, it proves beyond doubt that the Supplementary Bill issued by the Respondent vide Memo. No. 932 dated 02.05.2017 raising a demand of Rs. 6,90,982/- on account of clubbing charges i.e. Large Supply (LS) Category connection (due to running of two MS Category connections in the same premises) is not in order.*

**5. Decision:**

**As a sequel of above discussions, order dated 18.10.2017 of the Forum in Case No. CG-195 of 2017 is set-aside. It is held that the clubbing charges of MS Category connections amounting to Rs. 6,90,982/- (Rs. 4,42,626/- for Account No. 3000160448 and Rs.2,48,956/- for Account No. 3003182296) are not recoverable. It is also held that the balance amount, on account of difference of prescribed Extension Fee due to extension in validity of Demand Notice (as discussed in Para 4 (ii) above), should be recovered from the Petitioner, without interest.**

**6.** The Appeal is allowed.

7. In case, the Petitioner or the Respondent (Licensee) is not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate Bodies in accordance with Regulation 3.28 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations – 2016.

 (VIRINDER SINGH)

April, 05,2018 LokPal (Ombudsman)

S.A.S. Nagar (Mohali) Electricity, Punjab.