IN THE COURT OF THE LOKPAL (OMBUDSMAN),

 ELECTRICITY, PUNJAB,

66 KV GRID SUB-STATION, PLOT NO. A-2,

 INDUSTRIAL AREA, PHASE-1, S.A.S NAGAR (MOHALI)

Appeal No. 42 / 2017 Date of Order : 02.11.2017

Mada Cotton & Oil Mill,

Maur Mandi - 151509

 …….Petitioner

Account No. B51 / MR01 /000 04

*Through*

Shri S.R. Jindal, Petitioner’s Representative (PR)

Versus

Punjab State Power Corporation Limited

 …..Respondent

*Through*

Er. Kamaldeep Arora

Sr. Executive Engineer

DS Sub-urban Division

PSPCL, Maur.

Petition No. 42 of 2017 dated 01.08.2017 was filed against order dated 25.07.2017 in case No. CG-92 of 2017 of the Consumer Grievances Redressal Forum (Forum) which decided that:

* *The amount has been charged on account of MMC for seasonal period on prorata basis only upto the date on which seasonal load was disconnected as per Regulation 18.5 (iii) of General Conditions of Tariff of Tariff Order 2016-17 and is correct and chargeable.*
* *The balance amount recoverable / refundable, if any, be recovered / refunded from / to the consumer alongwith interest/surcharge as per instructions of PSPCL.*

2. Arguments, discussions & evidence on record were held on 02.11.2017.

1. Shri S.R. Jindal (PR), attended the Court proceedings on behalf of the Petitioner. Er. Kamaldeep Arora, Sr.XEN, DS Division, PSPCL, Maur alongwith Shri Rahul Singla, Revenue Accountant appeared on behalf of the Respondent Punjab State Power Corporation Limited (PSPCL).
2. Presenting the case on behalf of the Petitioner, Shri S.R. Jindal (PR) stated that the Petitioner was having Mixed Load seasonal connection for Oil & Cotton Mills since 02.03.1999 for a load of 198kW which was reduced to 127.160kW with Contract Demand (CD) of 115kVA for Oil Mill only (General Industry) w.e.f. 30.12.2016 due to closure of cotton unit.

PR stated that the bill for the month of January, 2017 was issued on 08.02.2017 for Rs. 1,25,270/- including Sundry Charges of Rs. 99,720/- on account of Monthly Minimum Charges (MMC) for the seasonal period i.e. from 01.09.2016 to 30.12.2016 on prorata basis in violation of instructions contained in Commercial Circular (CC) No. 4/2008 dated 09.01.2008. No details of Sundry Charges/Calculation/Rules were provided alongwith the bill as required under instructions.

PR also stated that on enquiry, the AE, DS City Sub Division, PSPCL, Maur told the Petitioner that the MMC had been charged on prorata basis for the seasonal period from 01.09.2016 to 30.12.2016. A request was made to the AE to withdraw the Sundry Charges which were illegally added without any rules, but to no avail. To avoid surcharge / disconnection, the Petitioner deposited the bill in full under protest.

PR further stated that the load of Cotton Factory (seasonal industry) was got disconnected due to no work and business was adversely effected. The Petitioner could not start the Cotton Unit during the year 2016-17, hence, finally got disconnected Cotton Load w.e.f. 30.12.2016 to avoid any billing of MMC etc, but local office charged the MMC on prorata basis without any rules / instructions inspite of its repeated requests.

PR further stated that the Respondent was requested vide letter dated 15.02.2017 and simultaneously, vide letter dated 20.02.2017, to withdraw the wrong / illegal charges added in the bill issued on 08.02.2017 as the Petitioner had not got started its Cotton Factory which was lying disconnected since 2015-16.

PR also stated that the Respondent was requested to refer and rely upon the decision of Ombudsman, Electricity, Punjab, in Appeal Case No. 21 of 2015 (Thind Foods, Ferozepur), Appeal Case No. 29 of 2015 (R.S. Cotton, Gidderbaha) and Appeal Case No. 13 of 2016 (Narula Foods, Gurharsahai) as per which the amount of MMC charged for the seasonal period, was withdrawn because the industry did not work during the seasonal period as per Regulation 18.3 (b) of ESIM Appendix to Section-IV and the Petitioner’s Factory was treated as General Industry for the disputed period for billing purpose.

PR next stated that the consumption / DDL recorded by MMTS, Bathinda did not support that the factory was running during the disputed period i.e. from 01.09.2016 to 30.12.2016, the consumption recorded was very nominal. Only, light and general load was running during the said period.

PR stated that the Respondent misinterpreted the provisions contained in Regulation 18.3 (b) of ESIM and had no regulations / instructions / rules / circulars which allowed it to charge any amount on account of MMC on prorata basis. Seasonal rate could be recovered from the consumer, where the Seasonal Load had been got connected during the entire seasonal period.

PR further stated that the calculation sheet supplied by the Respondent alongwith reply to the Forum appended to the Petition showed that on prorata basis, the amount of MMC had been charged for two months period.

PR also stated that a Petition was filed before the Forum challenging the charges raised by the Respondent but the same was dismissed after hearing the case on 25.07.2017 with the orders that the amount charged was correct and recoverable. The Petitioner was not satisfied with the decision of the Forum. PR prayed that the same may be set-aside in the interest of justice and the amount deposited be refunded alongwith the interest as per the provisions of rules.

5. Defending the case on behalf of Respondent (PSPCL), Er. Kamaldeep Arora, Sr. Executive Engineer, DS Sub-urban Division, PSPCL, Maur stated that the Petitioner was having a Large Supply (LS) category Mixed Load connection (Seasonal & General Load) with sanctioned load of 198kW (163.52kW General + 34.48kW Seasonal) and CD of 134 kVA (104 kVA General + 30 kVA Seasonal) operating under City Sub Division, PSPCL, Maur. The Petitioner requested to disconnect its Seasonal Load & reduction of General Load from 163.520kW to 127.160kW on dated 06.12.2016. Hence, the Seasonal Load was disconnected & General Load was reduced on dated 30.12.2016.

The Respondent also stated that the Petitioner was issued bill of January, 2017 (for the period 30.12.2016 to 31.01.2017) for Rs. 1,25,270/- wherein a sum of Rs. 99,720/- was charged on account of MMC for the seasonal period i.e. 01.09.2016 to 30.12.2016 on prorata basis. When the Petitioner approached the Office of Assistant Engineer, DS City Sub Division, PSPCL, Maur regarding sundry charges of Rs. 99,720/- in the bill, it was informed that this amount had been charged on account of MMC for the seasonal period on prorata basis and the details were supplied to the Petitioner.

 The Respondent further stated that the Petitioner deposited the whole amount of bill including sundry charges under protest vide CCR No. 51 dated 20.02.2017, alogwith request dated 20.02.2017. The Petitioner had also submitted a written representation on dated 15.02.2017 to withdraw the sundry charges. The request of the Petitioner was forwarded to Addl. SE, Computer Billing Cell, PSPCL, Bathinda for consideration by Assistant Engineer, DS City Sub Division, Maur vide Memo. No. 255 dated 15.02.2017. In response thereto, Addl. SE, Computer Billing Cell, PSPCL, Bathinda, vide Memo No. 129 dated 22.02.2017, intimated that amount had been charged as per regulations of PSPCL.

The Respondent next stated that the amount of MMC had been charged on prorata basis from the start of the seasonal period i.e. 01.09.2016 to 30.12.2016 (date from which the Seasonal Load was disconnected on the request dated 06.12.2016 of the Petitioner) as per Regulation 18.5 (iii) of General Conditions of Tariff for the year 2016-17 issued by PSERC which reads as under:

"*For mixed load Industries, comprising load of seasonal Industries and general industry, billing shall be done / MMC levied on full sanctioned load / demand for the period seasonal industry runs. MMC on full sanctioned load / demand as applicable to seasonal industries shall be applicable during the seasonal period as specified in condition 18.1 above, subject to minimum of 4½ months. For the remaining period when seasonal load is disconnected, MMC on the basis of general industrial load/demand actually being utilized by the consumer (above 100 kVA in case of LS consumers) shall be leviable. Industries found running seasonal load after having got disconnected the same and intimation having been given to distribution licensee or during off season period, shall be liable to pay MMC as applicable to seasonal industries units for full period of 12 months. If the load/demand actually being utilized during off seasonal period is found to have exceeded the load/demand fixed for off seasonal period, the load / demand surcharge, as applicable, shall be leviable. For LS / MS consumers, if the actual demand recorded during off seasonal period exceeds the pro-rata demand fixed for off seasonal period, only demand surcharge shall be leviable.*"

 The Respondent next stated that the amount had thus been charged on account of MMC for seasonal period on prorata basis only upto the date on which Seasonal Load was disconnected. Besides the decisions of the then Ombudsman, Electricity, Punjab, referred to in the Petition were not applicable in this case due to dissimilarity of the cases. The Respondent reiterated that it was clear that amount had been charged as per Regulation 18.5 (iii) of General Conditions of Tariff for the year 2016-17 issued by PSERC and requested that the Appeal may be dismissed.

**Decision:**

6. The relevant facts of the case are that the Petitioner had a Large Supply category connection for Cotton & Oil Mills since 02.03.1999 having Mixed Load (Seasonal & General Load) with sanctioned load of 198kW (163.520kW General + 34.480kW Seasonal) and Contract Demand (CD) of 134kVA (104kVA General + 30kVA Seasonal) under DS City Sub Division, Maur. The Petitioner requested on 06.12.2016 for disconnection of Seasonal Load and reduction of General Load from 163.520kW to 127.160kW. Accordingly, the Seasonal Load was disconnected and General Load was reduced to 127.160kW on 30.12.2016. Thereafter, the Petitioner was issued bill for January, 2017 for the period from 30.12.2016 to 31.01.2017 for Rs. 1,25,270/- wherein a sum of Rs. 99,720/- was charged on account of Monthly Minimum Charges (MMC) for the seasonal period i.e. 01.09.2016 to 30.12.2016 on prorata basis. When the Petitioner inquired about it on visiting the office of the AE, DS City Sub Division, Maur, it was informed suitably and necessary details were supplied. The Petitioner then deposited the whole amount of the bill including Sundry Charges under protest alongwith request dated 15.02.2017 for withdrawal of charges raised which was forwarded by AE, DS Sub Division, Maur vide memo. no. 255 dated 15.02.2017, for consideration to the Addl. SE, Computer Cell, PSPCL, Bathinda who, in turn responded vide memo. no. 129 dated 22.02.2017 that the amount had been charged as per regulations of the PSPCL. The Petitioner was not satisfied and approached the Forum which, vide its order dated 25.07.2017, decided that the amount had been charged on account of MMC for the seasonal period on prorata basis only upto the date on which Seasonal Load was disconnected as per Regulation 18.5 (iii) of General Conditions of Tariff Order 2016 - 17 and was correct and chargeable. Aggrieved, the Petitioner has preferred an Appeal in this Court praying for justice and refund of amount deposited with interest as per provisions of rules. The Petitioner has also placed reliance on decisions of this Court in Appeal case No. 21 of 2015, 29 of 2015 and 13 of 2016 whereby, the amount of MMC charged for the Seasonal period was withdrawn as the industry did not work during Seasonal period.

I have gone through the written submissions made in the Petition and written reply of the Respondent as well as oral arguments of the PR and Representative of the Respondent alongwith the material brought on record by both the sides. The issue involved in the present dispute is the legitimacy of the amount charged on account of MMC for seasonal period on prorata basis only upto the date on which Seasonal Load was disconnected. My findings on the points emerged and deliberated, are as under:

1. *I noted that the dispute arose with the issuance of electricity bill of January, 2017 issued on 08.02.2017 for the period from 30.12.2016 to 31.01.2017 for Rs. 1,25,270/- which included Rs.. 99,720/- charged on account of MMC for seasonal period (01.09.2016 to 30.12.2016) on prorata basis. I also noted that the aforesaid amount was charged after the Petitioner made a request dated 06.12.2016 for disconnection of Seasonal Load and reduction of General Load from 163.520kW to 127.160kW and compliance was effected on 30.12.2016 by the Respondent.*

*I noted the contention of PR that load of Cotton Factory (Seasonal Industry) was got disconnected with effect from 30.12.2016 to avoid billing for MMC etc. as Cotton Unit Factory could not be started during 2016-17. PR argued that the Petitioner was charged MMC on prorata basis without any rules / instructions.*

I find that the amount ofMMChad been charged by the Respondent on prorata basis from the start of the seasonal period i.e. 01.09.2016 to 30.12. 2016 (Date from which the Seasonal Load was disconnected on the request dated 06.12.2016 of the consumer). I find that the Petitioner’s case is covered under the provisions contained in Regulation 18.5 (iii) of General Conditions of Tariff issued during 2016-17 by PSERC which provide that:

"*For Mixed Load Industries, comprising load of Seasonal Industries and General Industry, billing shall be done / MMC levied on full sanctioned load / demand for the period seasonal industry runs. MMC on full sanctioned load / demand as applicable to seasonal industries shall be applicable during the seasonal period as specified in condition 18.1 above, subject to minimum of 4½ months. For the remaining period when seasonal load is disconnected, MMC on the basis of General Industrial Load / demand actually being utilized by the consumer (above 100 kVA in case of LS consumers) shall be leviable. Industries found running seasonal load after having got disconnected the same and intimation having been given to distribution licensee or during off season period, shall be liable to pay MMC as applicable to seasonal industries units for full period of 12 months. If the load/demand actually being utilized during off seasonal period is found to have exceeded the load / demand fixed for off seasonal period, the load / demand surcharge, as applicable, shall be leviable. For LS/MS consumers, if the actual demand recorded during off seasonal period exceeds the prorata demand fixed for off seasonal period, only demand surcharge shall be leviable.*"

 I also observe that since the Petitioner’s case was covered under Regulation 18.5 (iii) of General Conditions of Tariff for the year 2016-17, the Petitioner was required to serve advance notice before start / closure of the Seasonal Load in terms of provisions contained in Regulation 18.5 (v) of General Conditions of Tariff. But, no evidence, showing that any such advance notice was served during the preceding year (2015-16), was made available / brought on record.

 In view of the above, the action of the Respondent in charging MMC on prorata basis during the seasonal period is not in conformity with the Tariff Order 2016-2017. I am of the view that the Petitioner is liable to be charged MMC for a minimum period of 4 ½ months at seasonal rates as per instructions ibid.

1. *I observed that PR, in the present Petition and also during the course of oral arguments, placed reliance on the decision of this Court in cases of similar nature in Appeal No. 21 of 2015 (Thind Foods, Ferozepur) Appeal No. 29 of 2015 (R.S. Cotton, Gidderbaha) and Appeal No. 13 of 2016 (Narula Foods, Guruharsahai) as per which the amount of MMC charged for seasonal period was withdrawn as the industry did not work during the seasonal period. The Respondent contested the contention of PR stating that due to dissimilarity of the aforesaid cases vis-à-vis the present case, the decisions referred to above by PR were not applicable / relevant in the present context.*

As a sequel of above discussions, I have no hesitation to set-aside the decision dated 25.07.2017 of the Forum. It is held that the Petitioner is liable to be charged MMC for a minimum period of 4½ months for seasonal period at seasonal rates during the FY 2016-2017, in terms of provisions contained in Regulation 18.5 (iii) of General Conditions of Tariff for the year 2016-17, approved by PSERC. Accordingly, the Respondent is directed to recalculate the demand as per the above directions and recover the same with interest in terms of provisions contained in Regulation 35.1.3 of Supply Code-2014 amended vide PSERC notification no. PSERC / SECY / REGU / 114 dated 22.06.2016.

7. The Appeal is dismissed.

8. 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 & Ombudsman) Regulations – 2016.

 (VIRINDER SINGH)

 LokPal (Ombudsman)

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