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. 48 / 2017 Date of Order : 30.11.2017

Rauke Agro Multipurpose Cold Storage,

V&PO Ranke-Kalan

Distt. Moga.

Account No. F52-BK01-00023 …….Petitioner

*Through*

Shri Sukhminder Singh, Petitioner’s Representative (PR)

Versus

Punjab State Power Corporation Limited

…..Respondent

*Through*

Er. Kuldip Singh Dhanju,

Addl. S.E,

DS Sub-Urban Division,

PSPCL, Moga.

Petition No. 48 of 2017 dated 14.08.2017 was filed against order dated 25.07.2017 in case No. CG-104 of 2017 of the Consumer Grievances Redressal Forum (Forum) which decided that:

* *The charges on account of PLVs for the period 04.03.2016 to 31.03.2016 and for the period 01.04.2016 to 05.06.216 are correct and recoverable.*
* *Action against the delinquent officers/officials who failed to intimate the PLVs to the Petitioner in time needs to be initiated by CE/Enforcement and CE/DS, West Zone, PSPCL, Bathinda as per Regulation No. 132.3 (i) (d) of Electricity Supply Instructions Manual (ESIM).*

2. Arguments, discussions and evidence on record were held on 30.11.2017.

1. Shri Sukhminder Singh (PR), attended the Court proceedings on behalf of the Petitioner. Er. Kuldip Singh Dhanju, Addl. S.E, DS Sub-Urban Division, PSPCL, Moga, appeared on behalf of the Respondent - Punjab State Power Corporation Limited (PSPCL).
2. Presenting the case on behalf of the Petitioner, Shri Sukhminder Singh (PR) stated that the Petitioner was having a Large Supply category connection with Sanctioned Load as 189.951kW and Contract Demand 211kVA, under DS Sub Division, PSPCL, Badhni-Kalan of Suburban Division, PSPCL, Moga. The connection was taken in 3/2016 for Cold Storage and the supply from the connection was being used for this purpose only.

PR stated that the bills raised by the department were being duly paid, however, AEE, DS Sub Division, Badhni-Kalan issued notice bearing memo no. 1639 dated 20.10.2016 asking the Petitioner to deposit an amount of Rs. 1,15,916/- for Peak Load Violations (PLVs) during the period 04.03.2016 to 31.03.2016. After receiving the notice, the Petitioner made a representation to the AEE, DS Sub Division, Badhni-Kalan vide letter dated 01.11.2016 that Peak Load Hour Restrictions (PLHRs) were not applicable to Cold Storage, as such, the notice issued for PLV charges may be filed/withdrawn. But, no reply was given by the office of the AEE, DS Sub Division, Badhni-Kalan leaving, the Petitioner with no option but to deposit the amount to avoid disconnection of supply. Thereafter, AEE, DS, Badhni-Kalan sent copy of memo No.12 dated 18.01.2017 (issued by ASE/MMTS to AEE, DS Sub Division, Badhni-Kalan and another notice vide memo no. 189 dated 08.02.2017 asking to deposit an amount of Rs. 7,56,854/- for the Peak Load Violations during the period from 01.04.2016 to 05.06.2016. The Petitioner again made a representation to the AEE, DS Sub Division, Badhni-Kalan vide letter dated 22.02.2017 that PLHRs were not applicable to its firm as no information/notice regarding peak load restrictions was given to them by PSPCL officers/officials. However, no reply was given by the office of the AEE, DS Sub Division, Badhni-Kalan. Therefore, the Petitioner was left with no option but to file a case in the Forum for adjudication, as the demand so raised was unjustified and illegal in view of instructions issued by the department and also as contained in ESIM. The Petitioner deposited 20% of the disputed amount vide receipt no. 416 dated 21.11.2016 for Rs. 1,15,916/- and receipt no.136/653 dated 07.04.2017, for Rs. 58,638/- .

PR stated that the Forum did not consider the genuine pleadings of the Petitioner and decided that charges on account of PLVs for the period 04.03.2016 to 31.03.2016 (Rs.1,15,916/-) and for 01.04.2016 to 05.06.2016 (Rs. 7,56,854/-) were correct and recoverable. Besides, the Forum did not issue any separate judgment which was issued in every case, and only copy of final proceeding dated 25.7.2017, vide which the case of the Petitioner (CG-104 of 2017) had been decided, was delivered to the PR on 25.7.2017 itself. The Petitioner was not satisfied with the decision of the Forum, therefore, filed the present Appeal in this Court.

PR further stated that the connection was taken in 3/2016 for Cold Storage and being new Consumer, the Petitioner was not aware that PLHRs were applicable on Cold Storage and the concerned office of PSPCL also did not provide any information/notice regarding such restrictions applicable to its Unit. The Petitioner came to know about the PLHRs after receiving notice bearing memo no. 1639 dated 20.10.2016 to deposit an amount of Rs. 1,15,916/- for Peak Load Violations. It was the duty of the concerned office of PSPCL to get noted PLHRs, as applicable to any new Consumer. However, huge penalty had been charged for Peak Load Violations without any prior information to the Petitioner and the same was liable to be quashed.

PR stated that as per information made available by the office of AEE, DS Sub Division, Badhni-Kalan, the **first DDL of the Energy Meter was taken on dated 11.04.2016**. After taking its print-out and examining the same, the Addl. S.E, MMTS observed Peak Load Violations (PLVs) relating to the period from 04.03.2016 to 31.03.2016. **The notice of penalty of Rs. 1,15,916/- was issued on 20.10.2016 i.e more than six months after the DDL taken by the ASE/MMTS**. Similarly, **second DDL of the Energy Meter was done on dated 06.06.2016.**  On taking its print-out and examining the same, the Addl. S.E, MMTS observed PLVs during the period 01.04.2016 to 05.06.2016, **but notice of penalty of Rs. 7,56,854/- was issued on dated 08.02.2017 i.e. more than eight months after the DDL.**

PR stated that the instructions regarding PLHRs were not got noted from the Consumer even once after the release of connection in 3/2016. Had the Petitioner been issued notice promptly after the first DDL done on 11.4.2016, then, there was no question of PLVSs during the period 01.04.2016 to 05.06.2016, as no bonafide Consumer could afford such a huge penalty for running its Unit during PLHRs. It all happened due to not providing information regarding PLHRs as applicable to Cold Storage unit and due to not issuing timely notice against violations as per first DDL. Thus, the huge amount charged to the Consumer for PLVs for such a long period was not only against the rules of PSPCL but also illegal and unnecessary harassment to the Petitioner.

PR also stated that as per ESIM 132.3 (i) (d), *“MMTS and Distribution Organization shall ensure that Peak Load Hours Restrictions/ Weekly Off Day violations, if any, as per DDL are intimated to the consumer promptly, but in any case before the due date for second DDL. However, in case of any delay, the responsibility may be fixed by the Chief Engineer, Enforcement and Chief Engineer, DS concerned and suitable action may be initiated against the delinquent officers/officials to avoid dispute on this ground”.* Thus, in view of the said instruction, the Petitioner was ready to accept the charges for PLVs as per first DDL just to settle the dispute with PSPCL but for 2nd DDL, the PLV charges either may be waived off or may be recovered from the concerned delinquent officers/officials for violation of instructions.

PR stated that the Petitioner was very genuine Consumer of PSPCL and paying the energy bills well in time and believed in compliance of instructions/rules of all the departments including PSPCL. Had the concerned office got noted PLHRs from the Consumer or the Consumer had been aware of applicability of PLHRs on their firm/unit and/or if concerned office of PSPCL had informed the Consumer promptly about the violations as per first DDL, then, the Petitioner would have observed regulatory measures as applicable to its industry and no question of dispute would have been there.

PR further stated that the Respondent, in its reply to the Petition (submitted before the Forum), mentioned that there was no need to get noted PLHRs (even from new Consumers) as it had been mentioned in the A&A Form signed by the Applicant that Consumer shall obey the policies/rules/tariff of PSPCL. It had been further mentioned by the Respondent that PLVs charges were part of Tariff, as such, amount charged for violation of instructions was correct. PR stated that it was brought to the notice of the Forum that PLVs charges were not part of Tariff as mentioned by the Respondent and it was the duty of the concerned office of PSPCL to get noted PLHRs, as applicable to any new Consumer. But the Respondent failed to provide any such evidence, instead, tried to justify the PLV charges on the pretext that it was part of Tariff, and PLHRs were not required to be got noted even from new Consumers. Further, the Respondent also admitted the abnormal delay in the intimation of PLVs charges as per first and second DDL. However, the Forum just recommended action against the delinquents but did not provide any relief to the Petitioner despite the fact that penalty against PLVs for the period 01.04.2016 to 05.06.2016 as per second DDL dated 06.06.2016 was levied at double the normal rate i.e. Rs.100/- per kW whereas normal rate was Rs. 50/- per kW.

PR also stated that the Forum, in its final proceedings dated 25.07.2017, observed as under:

“*Forum noted the contention of the respondent that the connection of the Petitioner was released on 02.03.2016. (Power Regulations (PR) Circular No.01/2015 dated 31.03.2015 was also applicable to this connection. Copy of the circular was available on website of the corporation and the Petitioner also applied the connection On-Line. In the A&A form, it has been made very clear that peak load timings shall be applicable on this connection and Petitioner shall follow the peak load timings. The office has got the A&A form signed from the Petitioner after providing all the information regarding peak load timings and instructions of the corporation in this regard. So this was not got noted separately from the Petitioner”.*

PR also stated that the Forum decided the case against the Petitioner on the basis of above observations (based on submissions of the Respondent) but failed to consider that :

1. *Even the instructions as per Power Regulations (PR) Circular No. 01/2015 dated 31.03.2015, were required to be got noted from the Consumers.*
2. *The Petitioner was not given any instructions and no circular was got noted from it to visit website of PSPCL for compliance of instructions issued by PSPCL (including instructions issued even before the release of new connection)*
3. *A large number of circulars were issued by PSPCL every year and any new Consumer was not supposed to check all the instructions issued before the release of new connection.*

*iv) Almost every Sub Division of PSPCL got noted from the new Consumers the schedule of PLHRs applicable during the whole year.*

1. *In A&A Form (submitted before the Forum by the Respondent) it was printed that “the consumer shall agree to restrict or regulate consumption of electricity under this agreement during peak hours as may be directed by the Commission/State Govt. or any other appropriate authority”. But these lines in the A&A form were not sufficient to arrive at the conclusion that any new Cold Storage Consumer was aware of peak load instructions but it deliberately violated these instructions (as in the case of Petitioner).*
2. *The Forum also failed to consider the fact that had the Petitioner been issued notice promptly after the first DDL done on 11.04.2016, then there was no question of peak load violations during the period 10.04.2016 to 05.06.2016, as per second DDL dated 06.06.2016, as no bonafide consumer could afford such a huge penalty for running its unit during PLHRs. Further, in case of any requirement of load during PLHRs, Peak Load Exemption was easily available.*
3. *The Forum also mentioned in the observations (based on submissions of the Respondent) that the office of the AEE, DS Sub Division, Badhni-Kalan had got the A&A Form signed from the Petitioner after providing all the information regarding peak load timings and instructions of the Corporation in this regard. However, the Respondent had not provided any information regarding peak load timings. The Forum also, without asking for any evidence from the Respondent, decided the case against the Petitioner.*

PR contended that it was very much clear that the Petitioner had not violated regulatory measures of PSPCL deliberately .The concerned office failed to get noted the PLHRs schedule from the Petitioner and also did not intimate the PLVs in time (as per first DDL) as per requirement prescribed in ESIM, which resulted into PLVs as per second DDL also. PR prayed that the decision of the Forum may be set-aside and the demand raised (at least against second DDL, for Rs.7,56,854/-) may be quashed in the interest of natural justice.

5. Defending the case on behalf of the Respondent PSPCL, Er. Kuldip Singh Dhanju, Addl. Superintending Engineer, DS Sub-Urban Division, PSPCL, Moga stated that Appeal was not maintainable and had been filed by the Petitioner with malafide intention only to block the Public Money, for which the Petitioner was liable to pay the same along with interest as per Rules and Regulations of PSPCL.

The Respondent stated that the Petitioner was having a Large Supply Category connection with Sanctioned Load as 189.951kW and Contract Demand 211kVA under Badhni-Kalan Sub Division of Suburban Division, PSPCL, Moga and the said connection was taken by the Petitioner in March, 2016 for Cold Storage. The connection was checked by Addl. S.E, MMTS, PSPCL, Moga vide Checking Report No. 25/332 dated 11.04. 2016 and the Data was downloaded. The A.S.E, MMTS, Moga, issued memo no. 148 dated 04.10.2016 pointing out Peak Load Violations (PLVs) from 04.03.2016 to 31.03.2016. Accordingly, a notice no. 1639 dated 20.10.2016 was issued to the Petitioner to deposit the PLV charges for Rs. 1,15,916/. After receiving the said notice, the Petitioner came to the office of the AEE, DS Sub Division, Badhni-Kalan where it was suitably explained and was fully convinced, where after, the Petitioner deposited the amount of Rs. 1,15,916/- against violation of PLHRs for the period from 04.03.2016 to 31.03.2016 voluntarily and without any protest. In the meantime, the Addl. S.E, MMTS, Moga took DDL of the Energy Meter, as per Checking Report no. 30/336 dated 06.06.2016. Based on the above checking, the Petitioner was issued demand notice for Rs. 7,56,854/- vide memo no. 12 dated 18.01.2017 followed by memo no.189 dated 18.02.2017 on account of PLVs from 01.04.2016 to 05.06.2016. The Petitioner did not agree with the amount charged and filed case before the Forum.

The Respondent also stated that the Petitioner was well aware of all the Rules and Regulations of PLVs. Still, it filed false and frivolous case challenging the decision of the Forum which was legal one and according to the Rules and Regulations of the Corporation. The Appeal had been preferred by the Petitioner only to delay the payment due which was totally false.

The Respondent contended that the Petitioner applied for the said connection online and submitted A&A Form for the said purpose in the concerned office. All the Rules & Regulations were available on the website of PSPCL and the Petitioner was in the knowledge of the same.

The Respondent stated that first and the second DDL was done and due notices were issued to the Petitioner. There were clear Peak Load Violations during the above said period and Petitioner had the knowledge of the same and the amount charged to it was in order. The Respondent stated that no harassment was caused to the Petitioner by the officials of PSPCL in this regard.

The Respondent reiterated that the Petitioner applied for the said connection online after going through A&A Form which contained clear instructions regarding the said Peak Load Hour Restrictions (PLHRs) and the Petitioner could not level false allegations against the Respondent. Rather, the Petitioner, claiming to be a genuine Consumer of PSPCL, should pay the whole amount as per demand raised.

The Respondent further stated that since the Petitioner itself admitted that it was duty bound to obey the Rules and Regulations, there was no reason to file such type of false and baseless Appeal.

The Respondent also stated that the order passed by the Competent Authority in favour of Respondent was legal and correct one and was not liable to be set aside. The Petitioner used to come to the office of the AEE, DS Sub Division, Badhni-Kalan for depositing the bills and even at that time, it discussed with the officers/officials regarding Rules and Regulations of PSPCL concerning PLVs. So, there was no necessity to give the Petitioner specific information regarding the same as stated in the Petition. The Respondent prayed that the appeal may be dismissed.

**DECISION**

1. The relevant facts of the case are that the Petitioner was having a Large Supply category connection for Cold Storage since 3/2016 with Sanctioned Load/Contract Demand as 189.951kW/211kVA under Badhni-Kalan Sub Division of Sub-urban Division, PSPCL, Moga. The connection was checked by the Addl. S.E, MMTS, PSPCL, Moga vide ECR No. 25/332 dated 11.04.2016 and DDL was taken. Based on the above checking and examination of print out of DDL, Peak Load Violations (PLVs) for the period from 04.03.2016 to 31.03.2016, were noticed and a Demand Notice bearing No. 1639 dated 20.10.2016, asking the Petitioner to deposit a sum of Rs. 1,15,916/- on account of PLV charges for the period from 04.03.2016 to 31.03.2016, was issued by the AEE, DS Sub Division, Badhni-Kalan. In the meantime, DDL of the Energy Meter was again taken by the Addl. S.E, MMTS, Moga vide ECR No. 30/336 dated 06.06.2016. After examining the DDL, PLVs during the period from 01.04.2016 to 05.06.2016 were noticed and the Petitioner was directed to deposit a sum of Rs. 7,56,854/- by AEE, DS Sub Division, Badhni-Kalan vide Memo. No. 189 dated 08.02.2017 on account of PLV charges. Aggrieved from this notice, the Petitioner represented, vide letter dated 22.02.2017, to the AEE, DS Sub Division, Badhni-Kalan that Peak Load Hour Restrictions (PLHRs) were not applicable to the Petitioner as no information regarding PLHRs was given to it by the PSPCL. But the Petitioner did not statedly receive any response in this regard from the Respondent.

Aggrieved, the Petitioner filed a Petition before the Forum which decided on 25.07.2017 that the charges for PLVs for the period from 04.03.2016 to 31.03.2016 and for the period from 01.04.2016 to 05.06.2016 were correct and recoverable. Not satisfied with the decision of the Forum, the Petitioner filed an Appeal before this Court mainly on the plea that neither any intimation about PLHRs was given nor PLVs noticed, were promptly reported to it. The Respondent, in its defence, pleaded that the Petitioner, who applied for the connection online, was aware of rules/instructions regarding PLHRs as the same was put on the website of the PSPCL and was suitably explained of whole position when its Representative visited the office of the AEE, DS Sub Division, Badhni-Kalan on receipt of Demand Notice for PLV charges.

I have gone through the written submissions made by the Petitioner and written reply of the Respondent as well as oral arguments of the Representatives of the Petitioner and Respondent along with material brought on record by both the sides.

The issue requiring adjudication is the legitimacy of the amount charged to the Petitioner on account of Peak Load Violations in two spells i.e. 04.03.2016 to 31.03.2016 and 01.04.2016 to 05.06.2016 reported to it vide notices dated 20.10.2016 and 08.02.2017 respectively.

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

1. PR argued that the connection was released for Cold Storage on 02.03.2016 to the Petitioner who, being a new Consumer, was not aware that PLHRs were applicable on the Cold Storage and concerned office of PSPCL did not provide any information/notice regarding PLHRs as applicable to any new Consumer.

The Respondent, in its defence, stated that the Petitioner applied for the connection online and in the Application & Agreement (A&A) Form, it had been clearly mentioned that Peak Load Timings will be applicable on this connection and the Petitioner shall also follow Peak Load Timings. The Respondent argued that the office of the AEE, DS Sub Division, Badhni-Kalan had got signed A&A Form from the Petitioner after providing all instructions regarding Peak Load Timings and instructions of the Corporation, so, Power Regulation (PR) Circular No. 01/2015 dated 31.03.2015 (available on the website of the PSPCL prior to release of Petitioner’s connection) was not got noted separately from the Petitioner.

1. I noted the contention of the PR that a large number of circulars were issued by PSPCL every year and any new Consumer was not supposed to check all the instructions issued even before the release of new connection.

In this connection, I would like to reproduce Clause No. 14 (a) of A&A Form (for High Tension and Extra High Tension Supply) duly signed by the Partner of the Petitioner’s firm :

*“The Consumer shall agree to restrict or regulate consumption of electricity under this agreement during Peak Hours as may be directed by the Commission/State Govt. or any other appropriate authority.”*

*I observe that PSPCL issued PR Circular No. 04/2012 dated 22.05.2012 wherein it had been prescribed under “General Instructions” that the Consumers are requested to download the information regarding Peak Load Restrictions/Weekly off Days from the PSPCL website. They are requested to visit the website of PSPCL on regular basis, in future.*

***In view of the above, the Petitioner was supposed to discharge its commitments/obligations sincerely/genuinely by complying with the undertakings ibid given in A&A Form while applying/agreeing for release of new connection for Cold Storage.***

1. PR next contended that first DDL of the Energy Meter was taken by Addl. S.E, MMTS, Moga on 11.04.2016, on the basis of which, PLVs during the period from 04.03.2016 to 31.03.2016 were noticed. However, notice of penalty amounting to Rs. 1,15,916/- was issued by the AEE, DS Sub Division, Badhni-Kalan on 20.10.2016 i.e. more than six months of taking DDL of Energy Meter for the first time. PR added that the second DDL of the Energy Meter was taken on 06.06.2016 by Addl. S.E, MMTS, Moga, on the basis of which, PLVs during the period from 01.04.2016 to 05.06.2016 were observed. However, notice of penalty amounting to Rs. 7,56,854/- was issued on 08.02.2017 i.e. after more than eight months of taking second DDL. PR argued that had the said notice of penalty, after the first DDL dated 11.04.2016, been issued promptly and got noted, there would have been no question of PLVs during 01.04.2016 to 05.06.2016.

PR also referred to Instructions No. 132.3 (i) (d) of ESIM which laid down that:

*“MMTS and Distribution Organization shall ensure that peak Load Hours Restrictions/WOD violations, if any, as per DDL are intimated to the consumer promptly but in any case before the due date of 2nd DDL. However, in case of any delay, the responsibility may be fixed by CE/Enforcement and CE/DS concerned and suitable action may be intimated against the delinquent officers/officials to avoid dispute on this ground*”.

It thus proves beyond doubt that the Respondent did not comply with the instructions prescribed in Instruction No. 132.3 (i) (d) of ESIM. Had the Demand Notice after taking the first DDL on 11.04.2016 been issued in time, subsequent Peak Load Violations could be avoided.

*I find that the Forum, in its order dated 25.07.2017, took cognizance of the matter and decided that,”action against delinquent officers/ officials who failed to intimate the PLVs in time needs to be initiated by C.E, Enforcement and C.E/DS, West Zone, PSPCL, Bathinda, as per Regulation 132.3 (i) (d) of Electricity Supply Instructions Manual”.*

1. The Petitioner, in the present Petition, submitted that the Petitioner did not violate the regulatory measures deliberately and prayed that the demand raised at least against 2nd DDL for Rs. 7,56,854/- may be quashed in the interest of justice.

*I am of the view that the Petitioner, by applying online for release of connection for Cold Storage and signing A&A Form, consented to and also became aware of regulatory measures of the PSPCL and is thus, liable to be charged for Peak Load Violations noticed at the time of down-loading the data of Energy Meter on 11.04.2016 and 06.06.2016.*

*I also observe that though the results/outcome of the first DDL (dated 11.04.2016) were intimated to the Petitioner vide notice dated 20.10.2016 (after taking the second DDL on 06.06.2016), no PLVs were noticed as per records available after the second DDL was taken on 06.06.2016. Thus, if the Petitioner did not violate PLHRs after the second DDL (taken on 06.06.2016) without knowing the results of first DDL, it should have done likewise by not violating PLHRs after taking the first DDL. There, is, however, no denying the fact that onus for not reporting the results of DDL promptly, particularly of not intimating the results of first DDL before taking second DDL, rests with the Respondent.*

As a sequel of above discussions, it is held that the PLV charges for the period from 04.03.2016 to 31.03.2016 amounting to Rs. 1,15,916/- are in order and recoverable. However, the PLV charges for the period from 01.04.2016 to 05.06.2016 should be charged at a single rate i.e. Rs. 50/- per kW instead of Rs. 100/- per kW since the Respondent failed to comply with its own instructions no. 132.3 (i) (d) of ESIM. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment without any interest.

1. The Appeal is disposed off accordingly.
2. 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.