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. 51 / 2017 Date of Order : 19.12.2017

Account No. 3002309353

Vikas Goyal,

Jai Shree Food Industry,

Prem Advocate Wali Gali,

Opposite ICICI Bank,

Mansa-151505.

*Through:*

Shri Amarjit Sharma, Petitioner’s Representative (PR)

….Petitioner

Versus

Punjab State Power Corporation Limited ...Respondent

*Through*

Er. Uttam Kumar Bansal,

Senior Executive Engineer,

DS Division,

PSPCL, Mansa.

Petition No. 51/ 2017 dated 23.08.2017 was filed against order dated 20.07.2017 in case no. CG-86 of 2017 of the Consumer Grievances Redressel Forum (Forum) which decided that:

 *“The charges on account of PLVs for the period 03.06.2015 to 10.08.2015 and for the period 11.08.2015 to 29.09.2015 are correct and recoverable. However, revised calculations be got done after deducting the correct allowed/exempted load and revised notice be served to the Petitioner after getting the revised calculations pre-audited from A.O./Field concerned.”*

1. Arguments, discussions and evidence on record were held on 19.12.2017.
2. Shri. Vikas Goyal, Petitioner, alongwith Shri Amarjit Sharma, Petitioner’s Representative (PR) attended the Court proceedings on behalf of the Petitioner. Er. Uttam Kumar Bansal, Senior Executive Engineer, alongwith Shri Lalit Kumar, Revenue Accountant, DS Division , PSPCL, Mansa, appeared on behalf of the Respondent - Punjab State Power Corporation Limited (PSPCL).

4. Presenting the case on behalf of the Petitioner, Shri Amarjit Sharma (PR) stated that the Petitioner was having a Large Supply category connection in the name of Shri Vikas Goyal, Jai Shree Food Industry with Sanctioned Load/Contract Demand as 148.686 kW/165kVA. PR stated that since the release of its connection from 20.09.2014, the Petitioner was observing the instructions regarding Peak Load timings and had never violated the restrictions and had also never paid any penalty on account of Peak Load Violations (PLVs).

PR stated that the Petitioner received memo no. 2169 dated 30.09.2015 from AEE/Sub-Urban Sub Division, PSPCL, Mansa, showing extract of Load Survey Data, as per data downloaded on 11.08.2015, wherein penalty on account of Peak Load Hour Restrictions (PLHRs) was charged amounting to Rs.1,00,732/- for the period from 03.06.2015 to 10.08.2015. Again a copy of violation of PLHRs from 11.08.2015 to 29.09.2015 and demand of penalty on this account for Rs.1,44,606/- was received vide AEE/Sub-Urban Sub Division, PSPCL, Mansa’s letter No. 2760 dated 15.12.2015.

PR stated that the PSPCL vide PR Circular No. 01/2015 dated 31.03.2015, revised the schedule of timings of PLHRs introduced earlier vide PR Circular No. 09/2003 dated 08.12.2003, wherein, it was particularly mentioned/stressed that the changes may be got noted from all the concerned consumers well in advance. But, inspite of these instructions, the Respondent failed to get these instructions noted from the Petitioner. PR also stated that the Respondent admitted before the Forum during oral discussions that change in timing was not got noted from the Petitioner.

PR further stated that as per Instruction No. 131 of Electricity Supply Instructions Manual (ESIM), it had already been made clear that even the change of timings or revised duration of Peak Load Hours schedule was required to be intimated to the Petitioner well in advance.

PR also stated that the Petitioner came to know about the change of timings of Peak Load Hours only after the receipt of memo no. 2169 dated 30.09.2015 from the office of the AEE/Sub-Urban Sub Division, PSPCL, Mansa. After these instructions came to the Petitioner’s notice, no PLV was committed after 30.09.2015.

PR reiterated that the violation of PLHRs was only due to change of timings as per PR Circular No. 01/2015, which was not got noted from the Petitioner as required under para 3 of the Circular ibid. It was a fact that even during the period, the demand for penalty had been raised, whereas the Petitioner observed the peak load hours schedule for complete three hours as was evident from the DDL showing observance of PLHRs from 1900 hours to 2200 hours. The observance of PLHRs thus showed that the violation, due to change of time, was only because of non-intimation of the new instructions by the Respondent .

PR further stated that the Respondent charged the amount of penalty of Rs.1,00,733/- through Sundry Charges Column of bill for10/2015 and Rs.1,44,606/- in bill for 12/2015. To avoid disconnection, the Petitioner paid the bills under protest.

PR stated that the Petitioner filed a complaint before the Forum against the recovery of illegal charges of PLVs penalty. The Forum heard the case on 21.06.2017 and on 19.07.2017 and recorded in its minutes the admission by the Respondent that the Petitioner had not made any PLVs upto 31.03.2015. It was also mentioned by the Forum in its proceedings, that vide PR circular No. 01/2015, the Peak Load Timings were changed and that the change in timings, was not got noted from the Petitioner. Although the Forum was convinced that the Petitioner was not intimated about the change in PLVs timings as contained in PR Circular No. 01/2015 dated 31.03.2015, yet under the cover of instruction of PR Circular No. 36/2013 dated 04.10.2013, the Petitioner’s just and legal plea was rejected and the case was decided against the Petitioner.

Aggrieved by the decision of the Forum, the Petitioner has filed an Appeal before this Court for justice and favorable consideration and prayed to allow the Appeal.

5. Defending the case on behalf of the Respondent – PSPCL, Er. Uttam Kumar Bansal, Senior Executive Engineer stated that the Petitioner was having a Large Supply category connection in the name of Vikas Goyal C/o Jai Shree Food Industry, Mansa bearing Account No. 3002309353 with Sanctioned Load 148.686kW and Contract Demand 165kVA.

The Respondent stated that the Petitioner had not violated PLHRs from 20.09.14 to 31.03.15. But the Petitioner had violated PLHRs during April 2015 and May 2015 even before Notices bearing No. 2169 dated 30.09.15 and 2760 dated 15.12.15 were issued. The PLVs Notice bearing no. 1646 dated 22.07.15 for violations during May 2015 was sent to the Petitioner while no penalty was charged for PLVs during April 2015 in terms of instructions contained in Commercial Circular No. 25/2015. The Petitioner had deposited the amount of Rs. 18,226/- on 21.09.15 in response to Notice No.1646 of dated 22.07.2015. PSPCL issued Commercial Circular (CC)No. 25/2015 due to non-advertisement of P.R. Circular No. 01/2015 in newspapers. Thus, the Respondent charged the Petitioner for the remaining amount due, leaving the penalty of first bill issued after 01.04.2015 pursuant to circulation of revised timings applicable from 01.04.2015. Accordingly, no penalty on account of PLVs had been charged in the bill for April 2015 issued to the Petitioner.

The Respondent stated that all the Circulars were uploaded on its website ([www.pspcl.in](http://www.pspcl.in)) by the PSPCL. PR Circular No. 36/ 2013 dated 04.10.2013 also made it clear that the information regarding PLHRs should be seen on regular basis by the Petitioner on website. As such, the Petitioner was required to see the circulars on the website only and to take care of changes in time schedule in order to avoid violation of PLHRs. The Petitioner should have taken care of the changes in time schedule to avoid PLVs penalty.

With a view to check the violation of PLVs, DDL for the period 03.06.2015 to 10.08.2015 was taken by MMTS on 11.08.2015 and the amount of Rs. 1,00,733/-was charged vide letter dated 30.09.2015 according to P.R. Circular No. 01/2015, which was correct and was deposited by the Petitioner with the bill. The data of Energy Meter for the period 11.08.2015 to 29.09.2015 was again downloaded by MMTS and penalty for PLVs amounting to Rs. 1,44,606/- was charged and intimated to the Petitioner vide memo dated 15.12.2015. This amount was also deposited by the Petitioner with the bill. The Respondent added that no letter had been received in its office from the Petitioner that penalty amount was being deposited by Petitioner under protest.

The Respondent further stated that the Petitioner challenged the amount charged before the Forum which upheld the demand raised and decided that the exemption of 13.05kW per day and 14.85 kW per day be given in calculation of PLVs from 03.06.2015 to 29.09.2015 and from 01.05.2015 to 02.6.2015 respectively. Accordingly, the exemption was allowed and a sum of Rs.9,692/- and Interest of Rs.1,722/- (Total Rs. 11,414/-), after pre-audit by the Account Officer/Field, was credited in the Account No. 3002309353 of the Petitioner vide document no. 10002961981 dated 22.09.2017. The Petitioner was informed about this refund vide letter no. 2677 dated 22.09.2017. The Respondent prayed to dismiss the Appeal as the same was devoid of merit.

**Decision**

6. The relevant facts of the case are that the Petitioner was having a Large Supply category connection with Sanctioned Load/Contract Demand as 148.686kW/165kVA bearing Account No. 3002309353 operating under Sub-Urban Sub Division, PSPCL, Mansa of DS Division, PSPCL, Mansa. As per instructions of the PSPCL, all the Large Supply Category Consumers were required to observe Peak Load Hour Restrictions (PLHRs) circulated and placed on its website from time to time. The timings of PLHRs were revised (as approved by the PSERC), by the PSPCL vide Power Regulation (PR) Circular No. 01/2015 dated 31.03.2015, applicable from 01.04.2015.The old and new timings of PLHRs were as under:-

|  |  |  |
| --- | --- | --- |
| Month | Timings of Peak Load Restrictions (Old ) as per PR No. 09 / 2003 dated 08.12.2003 | Timings of peak Load Restrictions (New) [w.e.f. 1.4.2015] |
| May | 19.00 hr to 22.00 hr | 18.30 hr to 21.30 hr |
| June | 19.30 hr to 22.30 hr | -do- |
| July | -do- | -do- |
| August | 19.00 hr to 22.00 hr | -do- |
| September | 18.30 hr to 21.30 hr | 18.00 hr to 21.00 hr |

 Subsequently, PSPCL issued Commercial Circular (CC) No. 25/2015 dated 16.06.2015 and provided some relief from levy of penalty to those consumers who kept on observing Peak Load Hours Timings previously, till the issuance of the first bill after revision of time schedule.

As per provisions contained in PR No. 01/2015, the change in timings was to be seen by the consumers from its website and was also required to be got noted from the consumers by the concerned offices of the Licensee. The Petitioner observed PLHRs during 20.09.2014 to 31.03.2015 i.e. prior to issuance of PR Circular No. 01/2015 dated 31.03.2015 but violated PLHRs thereafter during April 2015 and May 2015. No penalty on account of PLVs was charged for PLVs in April 2015 in terms of CC No. 25 of 2015. But a penalty, on account of PLVs for the period from 01.05.2015 to 02.06.2015, amounting to Rs. 18,226/- was levied and intimated to the Petitioner statedly by DS Sub-Urban Sub Division, PSPCL, Mansa vide Memo. No. 1646 dated 22.07.2015. However, the Petitioner denied to have received the said letter. The said amount was charged in the Billing Cycle 8/2015 vide Bill dated 09.09.2015 through ‘Sundry Charges’. The Petitioner deposited this amount on 21.09.2015. In the meantime, the data of Energy Meter installed at the premises of the Petitioner was downloaded on 11.08.2015 by the Addl. S.E/MMTS, PSPCL, Bathinda who, after scrutiny of its print-out, intimated, vide letter No. 548 dated 17.09.2015, penalty of Rs.1,00,733/- for violations of PLHRs for the period from 03.06.2015 to 10.08.2015. The letter ibid was endorsed to the Petitioner vide 2169 dated 30.09.2015 by the AEE/DS, Sub-Urban Sub Division, Mansa with the directions to the Petitioner to deposit the said amount within 7 days. Again, the Addl. S.E/MMTS, Bathinda downloaded the data of the Energy Meter and intimated penalty amounting to Rs. 1,44,606/-, on account of violations of PLHRs during the period from 01.08.2015 to 29.09.2015, to the AEE/DS Sub-Urban Sub Division, Mansa who informed the Petitioner about the same vide Memo. No. 2760 dated 15.12.2015 with the directions to deposit the same within 7 days. The Petitioner deposited the amount of penalty of Rs. 1,00,733/- and Rs. 1,44,606/- charged in the bills for 10/2015 and 12/2015 Billing Cycle respectively statedly to avoid surcharge/disconnection but challenged the demand raised in the Forum which decided on 20.07.2017 that:

*“The charges on account of PLVs for the period 03.06.2015 to 10.08.2015 and for the period 11.08.2015 to 29.09.2015 are correct and recoverable. However, revised calculations be got done after deducting the correct allowed/exempted load and revised notice served to the Petitioner after getting the revised calculations pre-audited from A.O./Field concerned.”*

In compliance to the above order of the Forum, the requisite exemption was allowed and a sum of Rs. 11,414/- (Original amount Rs. 9,692/- plus interest Rs. 1,722/-) was credited, after pre-audit, to the account of the Petitioner by the Respondent on 22.09.2017. Not satisfied with the decision of the Forum, the Petitioner has filed an Appeal in this Court.

I have gone through the submissions made by the Petitioner in the Petition and written reply of the Respondent as well as the oral arguments of the Representatives of the Petitioner and the Respondent alongwith material brought on record by both the parties.

 The issue requiring adjudication is the legitimacy of penalty levied on account of PLVs noticed after change in PLHRs time schedule circulated and uploaded on the website of the Licensee.

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

1. PR argued that no violation of PLHRs was committed by the Petitioner either prior to issuance of PR Circular No. 01/2015 dated 31.03.2015 circulating the revised evening timings of Peak Load Hours Restrictions or after 30.09.2015 when the Petitioner received Memo. No. 2169 dated 30.09.2015, from the AEE/DS Sub-Urban Sub Division, Mansa intimating it about PLVs noticed by Addl. S.E/MMTS after downloading data of the Energy Meter on 11.08.2015.

The Respondent admitted the contention of the PR that no PLVs were noticed during 20.09.2014 to 31.03.2015 and also after 30.09.2015. But the Respondent contested the contention of the PR that the Petitioner was not aware of issuance of PR Circular No. 01/2015 about shift in the timings of PLHRs applicable from 01.04.2015 till receipt of Memo dated 30.09.2015 from AEE/DS Sub-Urban Sub Division, Mansa. The Respondent added that the Addl. S.E./MMTS downloaded the Data of the Energy Meter for the period from 01.05.2015 to 02.06.2015 whereafter a notice bearing No. 1646 dated 22.07.2015 was sent to the Petitioner by registered post intimating it about the penalty of Rs. 18,226/- on account of PLVs during the said period. The amount was charged in the bill dated 09.09.2015 and was deposited by the Petitioner on 21.09.2015 without protest. The Respondent argued that the Petitioner was supposed to take care of avoidance of violation of PLHRs after knowing about downloading of Data of Energy Meter for the period from 01.05.2015 to 02.06.2015 by the Addl. S.E / MMTS and also after receipt of Memo. No. 1646 dated 22.07.2015.

*I observe that the Petitioner denied having received Memo. No. 1646 dated 22.07.2015 issued by AEE/DS Sub-Urban Sub Division, Mansa. The respondent, on being asked during the course of oral arguments to submit documentary evidence in support of dispatch of Memo dated 22.07.2015 by Registered Post, stated in writing that the registry could not be produced due to destruction of record during heavy rains on 30.06.2017. Thus, in the absence of any documentary evidence, the contention of the Respondent about having intimated PLVs vide Memo No. 1646 dated 22.07.2015 is not sustainable and the Petitioner can not be held accountable for having been informed of PLVs on 22.07.2015. I also observe that the argument put forth by the Petitioner during the course of oral arguments that it deposited the said amount of Rs. 18,226/- (charged in the bill dated 09.09.2015 under the head 'Sundry Charges') without ascertaining the reason/basis of the same, is not convincing prima facie, and also not expected from a Large Supply category consumer.*

1. PR next argued that change in timings of PLHRs (as approved by the PSERC) circulated by the PSPCL, vide PR Circular No. 01/2015 dated 31.03.2015 (applicable from 01.04.2015), was not got noted from the Petitioner as also required therein.

The Respondent admitted the above contention of the PR but contended that PSPCL, vide CC No. 25/2015 dated 15.06.2015, provided some relief from levy of penalty to the consumes who kept observing previous Peak Load Hour timings till the issuance of first bill due to non-advertisement/publicity of revised time schedule in media. Thus, no penalty was levied on the Petitioner for PLVs during 04/2015 in terms of Circular ibid. The Respondent also referred to PR Circular No. 36/2013 dated 04.10.2013 which clearly mentioned 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.”

 *I find merit in this contention of the Respondent that the Petitioner was a Large Supply Category consumer and was supposed to remain updated about the timings of PLHRs applicable from time to time to save itself from levy of penalty as has been charged in the present case.*

I also observe that the Petitioner, while applying for release of Large Supply Category Connection on 17.09.2014 signed an undertaking in Application and Agreement (A&A) Form that it shall restrict or regulate consumption of electricity under agreement during Peak Load Hours as may be directed by the Commission/State Government or any other appropriate authority. I observe that PSPCL, vide PR Circular No. 04/2012 dated 22.05.2012 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 required to discharge its commitments/obligations sincerely/genuinely and thus by comply with the undertaking ibid given in A&A Form while applying/agreeing for release of Large Supply Category Connection.*

1. PR also argued that penalty levied on account of non-observance of revised time schedule of PLHRs was also not justified in view of the provisions contained in Instruction No. 132.3 (i) (d) requiring the PSPCL to ensure that PLHRs/Weekly Off Days violations, if any, were intimated to the consumer promptly and in any case, before the due date of second DDL. PR added that the Respondent did not comply with its own instructions in the present dispute by not intimating the same to the Consumer accordingly.

 I would like to reproduce here Instruction No. 132.3 (i) (d) of ESIM as under:

*“It may be ensured by MMTS and Distribution Organization that peak load hours restrictions/weekly off day violations, if any, as per DDL are intimated to the consumers 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/concerned CE/DS and suitable action maybe initiated against the delinquent officers/officials to avoid disputes on this account.”*

 A perusal of above provisions reveals that the same were not complied with by the Respondent by not intimating the PLVs promptly and in any case, before the due date for second DDL.

*I have perused the available records and noticed that the first DDL for observing compliance of revised PLHRs applicable from 01.04.2015, after first DDL, was taken, relating to the period from 01.05.2015 to 02.06.2015, on 04.06.2015 while the second DDL, pertaining to the period from 03.06.2015 to 10.08.2015, was taken on 11.08.2015. But, the PLVs noticed by MMTS were not intimated to the Petitioner before taking the second DDL on 11.08.2015.*

I find that during the peak load hours, the system gets more stressed and Respondent - Distribution Licensee procures the power at a higher rate to meet the demand during peak load hours. Hence, the Petitioner is liable to pay for the higher energy charges for power consumed by it during peak load hours in lieu of the higher expenses incurred by the Respondent to procure power during peak load hours.

**As a sequel of above discussions, it is held that PLV charges for the period from 01.05.2015 to 02.06.2015 amounting to Rs. 18,226/- levied in the bill dated 09.09.2015 are correct and recoverable. Besides, the PLV charges for the period from 03.06.2015 to 10.08.2015 and from 11.08.2015 to 29.09.2015 are principally in order and recoverable, but, shall be charged at single rate since the Respondent defaulted in complying with its own Instruction 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.**

7. The Appeal is disposed off accordingly.

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 and Ombudsman) Regulations – 2016.

 ( VIRINDER SINGH)

 LokPal (Ombudsman)

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