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

 **ELECTRICITY, PUNJAB,**

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

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

**Appeal No. 88/2017**

**Date of Registration : 01.12.2017**

**Date of Hearing : 19.04.2018**

**Date of Order : 25.04.2018**

**Before:**

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

**In the matter of:**

Lachman Dass,

Ganpati Rice Mill,

Jakhal Road,

Bareta-151 501,

Mansa.

...Petitioner

Versus

 Additional Superintending Engineer,

DS Division, PSPCL,

 BUDHLADA.

 ...Respondent

**Present For:**

Petitioner: 1. Sh. Sadhu Ram Jindal,

 Petitioner's Representative (PR)

 2. Shri Kulwant Rai Singla.

Respondent : Er. Rajinder Kumar Garg,

 Addl. Superintending Engineer.

 Before me for consideration is an Appeal No. 88/2017 preferred by the Petitioner against the order dated 27.10.2017 of the Consumer Grievances Redressal Forum (Forum) in Case No. CG-188 of 2017 deciding that:

*“The amount of short assessment calculated vide Half*

*Margin No.353 dated 30.05.2016 of Rs. 1,27,508/- and Half Margin No.354 dated 30.05.2016 of Rs. 41,781/- is correct and recoverable from the Petitioner.”*

**2. Facts of the Case:**

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

1. The Petitioner was having a Large Supply Category connection for Mixed Load industry operating under Breta Sub-Division with effect from 09.10.2003. The details of load were as under:

Category Connected Load Contract Demand

General 149.222kW 140.000kVA

Seasonal 253.256kW 262.478kVA

Total: 402.478kW 402.478kVA

 The Petitioner got increased the Load and Contract Demand (CD) vide Sundry Job Order (SJO) No. 161/45001 dated 24.09.2014 whereafter, the Petitioner was having General Load of 136.902kW and Seasonal Load of 599.068kW, making the total Load as 735.970kW. The Petitioner was also having Contract Demand (CD), General as 152kVA and Seasonal as 489kVA, making the total CD as 641kVA.

1. The Petitioner was served a notice vide Memo. No. 1073 dated 23.05.2017 by the AEE, DS Sub Division to deposit a sum of Rs. 1,69,289/- on account of:
2. Demand Surcharge of Rs. 1,27,508/- for exceeding CD, as per Half Margin No. 353 dated 30.05.2016 of Revenue Audit Party (RAP). This amount related to the season of 2015-16.
3. Monthly Minimum Charges (MMC) amounting to Rs. 41,781/- relating to the months of 06/2013, 07/2013 and 08/2013, charged by the Revenue Audit Party vide Half Margin No. 354 dated 30.05.2016.
4. Accordingly, the Petitioner was served a bill dated 07.07.2017 with Sundry Charges of Rs. 1,69,289/- (Rs.1,27,508 + Rs. 41,781).
5. The Petitioner did not agree with the above amount and filed a Petition in the Forum, which passed order dated 27.10.2017 (Reference: Page 2, Para 1).
6. Not satisfied with the decision of the Forum upholding the amount raised, the Petitioner preferred an Appeal in this Court and prayed as under:

*“The Respondents has no right to recover any amount from the Petitioner as charged wrong/illegally against the rules and regulations, hence, the same be withdrawn alongwith interest and compensation as deemed to be fit as the Petitioner has spent amount on litigation etc. 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 written submissions made by the Petitioner and the reply of the Respondent as well as oral submissions made by the Representatives of the Petitioner and the Respondent alongwith material brought on record by both the sides.

1. **Submissions made by the Petitioner:**

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

1. The Petitioner was having a Large Supply Category connection bearing Account No. LS/09 for a Load of 735.970kW and Contract Demand of 641kVA. The connection was in operation since 09.10.2003 for mixed Load Industry (Cotton/Rice/Oil Mill) comprising Load of Cotton and Rice in Seasonal Category and Oil Mill in General Category. There existed provision in the Regulations to run Seasonal Industry (Cotton) for nine months period from 1st September to 31st May next year. These facts were recorded on Page 8 of order dated 29.07.2015 passed by this Court in Appeal Case No. 19 of 2015 decided by this Court.
2. The Petitioner got approval of the Respondent to run Seasonal industry (Cotton) w.e.f. 15.09.2015 in view of ESIM Instruction No. 18.3 of Schedule of Tariff against written request dated 10.09.2015. Thus, the Respondent did not object to run Cotton Unit with effect from 15.09.2015. In the bill for the month of 09/2015 issued on 12.10.2015, the Respondent charged Rs. 1,27,508/- on account of Demand Surcharge, but later on withdrew as wrongly billed in the bill for the month of 11/2015 with surcharges etc. when the Petitioner represented to the Respondent for wrong charging of Demand Surcharge.
3. The Audit Party, with a view to show false progress of short assessment, charged Rs. 1,27,508/- vide their Half Margin No. 353 dated 30.05.2016 without referring to any rules/regulation of PSPCL. Similarly, a sum of Rs. 41,781/- was charged vide their Half Margin No. 354 dated 30.05.2016, on account of MMC at the seasonal rate against the decision dated 29.07.2015 of the Court of Hon’ble LokPal (Ombudsman).
4. The decision ibid (dated 29.07.2015) was properly implemented by the Respondent and no further writ Petition was filed before the Hon’ble High Court, Chandigarh challenging the said decision. The Audit Party raised the said observations against the rules and regulations of the PSPCL, when they had no jurisdiction to review the decision of the Court of the Hon’ble LokPal (Ombudsman), Electricity.
5. The Circular No. 40/2012 dated 15.11.2012 and clarification given by SE/Sales, Patiala, vide Memo No.842/846 dated 19.08.2016 for Rice and Oil Mill industry had no relevance with the present dispute/case as the Petitioner’s industry was having mixed load for Cotton/Rice and Oil Mills.
6. At present, Seasonal period for exclusive Rice Mills as per CC No. 40/2012 dated 05.11.2012 was from 1st October to 30th June next year, whereas the seasonal period for pure Cotton Mills was from 1st September to 31st May next year as per General Condition No. 18.3 of Schedule of Tariff and Section IV of ESIM, hence, the seasonal period for mixed load industry having Cotton/Rice/Oil Mill shall be from 1st September to 31st May next year.
7. As per Regulation 3.5.3 of Supply Code-2014, Distribution Licensee shall place the amendments notified in the official Gazette on its website and shall also arrange publicity in at least two newspapers having wide circulation in its area of supply. If the Respondent- PSPCL had complied with these instructions, copies of newspapers may please be placed before this Court.
8. If the SE/Sales-II, PSPCL, Patiala’s Memo No. 842/46 dated 19.08.2015 was clarification of CC No. 40/2012 dated 05.11.2012, it should be implemented w.e.f. 05.11.2012 and the amendment of rules required approval and notification by the Hon’ble PSERC which was never obtained by the Petitioner. Besides, the Respondents (SDO/SR. XEN) were not aware of the clarification as the same had not been endorsed to their offices. Also, the same was not got noted from the Petitioner otherwise the amount charged in the bill for 09/2015 would not have been withdrawn in the bill for 11/2015.
9. In case the said letter no. 842/46 dated 19.08.2015 was received in the office of the Respondents (SR. XEN/SDO), the same be produced before this Court with evidence such as Diaries/Receipt Registers. The said circular had never been got noted from the Petitioner so far. The Respondent was also not aware of the same, then, there was no basis to charge the amount in the bill for 09/2015 which was withdrawn in the bill for 11/2015. The facts were admitted, in their reply dated 11.09.2017, before the Forum and the amount of Rs. 41,781/-, was calculated beyond rules/jurisdictions.
10. Consumption Data/DDL recorded also showed that during 09/2015, only load of Cotton plus Oil Mill industry was run as no crop of raw Rice (JEERY) was available in the month of September and crop started arriving in the month of October/November, that was why, Cotton season started from 1st September every year.
11. The Respondent, did not raise any objection to the Petitioner’s request dated 10.09.2015 to start its Cotton Unit w.e.f. 15.09.2015, rather accepted it and issued the desired Job Order (47/9209 dated 11.09.2015).
12. Keeping in view the facts and figures as explained above, the Respondent had no right to recover any amount from the Petitioner, as charged wrongly/illegally against the rules and regulations, hence, the same be withdrawn and refunded with interest alongwith compensation as deemed fit, since the Petitioner had spent amount on litigation etc, in the interest of justice.
13. **Submissions of the Respondent:**
14. The Petitioner was sanctioned a Large Supply category connection on 09.10.2003 having General Load of 136.902kW and Seasonal Load 599.068 kW in the name of Lachman Das C/o Ganpati Rice Mill bearing Account No. B74-BT010009. The Consumer was having General Contract Demand of 152kVA and Seasonal Contract Demand of 489kVA making it 641kVA as its total Contract Demand.
15. The Petitioner’s request dated 10.09.2015 to start the seasonal industry of the above connection was accepted on 11.09.2015. Accordingly, the seasonal connection was started by the Petitioner on 15.09.2015. The Revenue Audit Party issued Half Margin No.353 dated 30.05.2016 as per which, Rs. 1,27,508/- relating to short assessment was charged. Another Half Margin No. 354 dated 30.05.2016 was issued wherein a sum of Rs. 41,781/- relating to MMC was shown recoverable. The Petitioner objected to the observations made in Half Margin No. 354 dated 30.05.2016 as being against the order dated 29.07.2015 of this Court in Appeal No. 19/2015 filed by the Petitioner.
16. The decision dated 29.07.2015 of this Court had been properly implemented. Actually, according to the said decision dated 29.07.2015, the amount refunded to the Petitioner was Rs. 1,03,303/- but, it was more than the amount charged i.e. Rs. 61,522/-. So, the excess amount refunded i.e. Rs. 41,781/- was chargeable and charged as per Half Margin No. 354 dated 30.05.2016, which was correct and in accordance with the decision dated 29.07.2015 of this Hon’ble Court.
17. The Circular No. 40/2012 dated 15.11.2012 and clarification given by SE/Sales, Patiala, vide their Memo No. 842/846 dated 19.08.2016., for Rice and Oil Mill Industry had no relevance with the Petitioner’s Industry. The instructions issued by SE/Sales, Patiala, vide their Memo No. 842/846 dated 19.08.2015 read as under:

 *“As the Seasonal period for Mixed Load Industry having Rice Sheller Load (Seasonal Load) and exclusive Seasonal Industry having Load of Rice Sheller only shall be from 1st October to 30th June of next year.”*

1. The seasonal period for the Petitioner’s Industry was from 1st October to 30th June of next year as per instructions contained in Circular No. 40/2012 dated 15.11.2012 and clarification given by SE/Sales, Patiala vide their memo No. 842/846 dated 19.08.2015.
2. All the Circulars, instructions issued by the PSPCL were directly uploaded on the official website i.e. [www.pspcl.in](http://www.pspcl.in).
3. The Instructions issued by SE/Sales, Patiala vide heir Memo No. 842/846 dated 19.08.2015 had been implemented after the date of issue.
4. The Petitioner’s submission that the industry having seasonal Mixed Load (Cotton and Rice) should be run from 1st September to 30th June next year was against the rules of the PSPCL and was not valid because as per the instructions, the operational period for the seasonal industry was of nine months only.
5. As per order dated 27.10.2017 of the Forum, the amount of Rs. 1,69,289/- (Rs. 1,27,508/- + Rs. 41,781/-) was recoverable from the Petitioner.

**4. Analysis:**

The issue requiring adjudication is the legitimacy of the amount of short assessment of Rs. 1,27,508/-and Rs. 41,781/-, charged out by the Revenue Audit Party (RAP) vide Half Margin No. 353 dated 30.05.2016 and 354 dated 30.05.2016 respectively.

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

1. I find that the industry of the Petitioner was of mixed type comprising Load of Cotton and Rice in Seasonal Category and for Oil in General Category. I observe that the said industry, by virtue of its production/work during the part of the year, could be run upto a maximum of nine months during the period from 1st September to 31st May next year in terms of provisions contained din Regulation 18.1 of the Schedule of Tariff issued in the year 2015-16 with the approval of the Hon’ble PSERC.
2. I observe that the Respondent defaulted in examining properly the observations raised by the Revenue Audit Party, Bhatinda vide Half Margin No. 353 and 354 both dated 30.05.2016 and submitting appropriate replies thereto for getting the same reviewed/settled. Had this been done, the litigation on this account could have been avoided.
3. I have noted that the Petitioner was charged Demand Surcharge in the billing month 09/2015 (31.08.2015 to 30.09.2015) as the Maximum Demand (MD) recorded was 322.01kVA. Hence, Demand Surcharge (322.01kVA – 152kVA = 170.01kVA x Rs. 750 = Rs. 1,27,508/-) was charged. But the same was refunded by the Respondent during 11/2015 by taking operational season as from 01.09.2015 to 31.05.2016. On the other hand, the Revenue Audit Party calculated the amount by taking the season period as from 1st October to 30th June next year, which was exclusively for Rice Sheller Industry. The Seasonal Demand was 489kVA while the Maximum Demand (MD) recorded was 322.01kVA. Hence, no Demand surcharge was required to be levied as per Regulation 18.1 of the Schedule of Tariff for the Year 2015-16 approved by the Hon’ble PSERC.
4. I have perused the reply of the Respondent who, in its defence, stated that Revenue Audit Party did not review the order dated 29.07.2015 of this Court, rather, the Audit observation was in compliance to the order ibid (dated 29.07.2015). The Respondent clarified that as per this Court’s order dated 29.07.2015, the amount refunded to the Petitioner was Rs. 1,03,303/- which, as per audit observation, was more than the amount charged i.e. Rs. 61,522/-. The Respondent added that the amount refunded in excess (Rs. 1,03,303 – Rs. 61,522 = Rs. 41,781) was chargeable and charged as per Half Margin No. 354 dated 30.05.2016 which was correct and in accordance with the decision dated 29.07.2015 of this Court.

I have gone through the order dated 29.07.2015 in Appeal No. 19/2015 wherein this Court decided as under:

 *“It will be more appropriate and justified, if the Petitioner is granted relief in the interest of natural justice. Accordingly, it is held that the billing of the consumer from 01.06.2013 to 17.06.2013 should be done on the basis of total sanctioned load of 402.478 KW and from 18.06.2013 to 31.08.2013 on the basis of 149.222 KW of load sanctioned for General Industry, on tariff / MMC, as applicable to general industry in accordance with condition No. 18.3 of “General Conditions of Tariff & Schedule of Tariff (Section - IV of ESIM).”*

 I have also perused the observations of the Revenue Audit Party, Bhatinda raised vide Half Margin No. 354 dated 30.05.2015 pointing out as under:

“ygseko B{z wjhBk 8/15 ftu foczv d/D ;w/A fwsh 17/6/13 sZe Seasonal MMC e?be{b/N eoe/ foczv gkT[Dk pDdk ;h .”

In view of the above, the contention of the Respondent that the observation of the Revenue Audit Party vide Half Margin No. 354 dated 30.05.2016 was in compliance to the order dated 29.07.2015 in Appeal No. 19/2015 is not valid as MMC for General Industry was to be charged as per order ibid of this Court.

  *From the above analysis, it is concluded that:*

1. The Petitioner had Mixed Load (Seasonal + General), as such, the industry was to run from 1st September to 31st May next year, instead of from 1st October to 30th June next year which was exclusively for Rice Sheller. Besides, Maximum Demand during 09/2015 was 322.01kVA which was well within the limit. Hence, Demand Surcharge recovered for the month of 09/2015, was not justified.
2. Order dated 29.07.2015 of this Court in Appeal No. 19/2015 is final and binding on both the sides in terms of provisions contained in proviso to Regulation 3.18 of PSERC (Forum and Ombudsman) Regulations-2016 and needs to be complied with in letter and spirit.
3. The decisions of the LokPal are final and binding, hence, the Audit Party has no jurisdiction to review the orders of this Court.

**5. Decision:**

 **As a sequel of above discussions, the order dated 27.10.2017 of the Forum in Case No. CG-188 of 2017 is set-aside. Accordingly, the Respondent is directed to refund/recover the amount found excess/short, if any, after adjustment as per rules of the PSPCL. No interest should be paid to the Petitioner on this account. Strict instructions should be issued to the Audit not to repeat its action of review of decisions of this Court in future.**

**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 the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations – 2016.

 (VIRINDER SINGH)

April 25, 2018 LokPal (Ombudsman)

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