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

 **ELECTRICITY, PUNJAB,**

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

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

**Appeal No. 89/2017**

**Date of Registration : 04.12.2017**

**Date of Hearing : 19.04.2018**

**Date of Order : 25.04.2018**

**Before:**

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

**In the matter of:**

Suman Lata,

Plot No. C-158,

Industrial Area,Phase-7,

S.A.S. Nagar (Mohali).

...Petitioner

Versus

 Additional Superintending Engineer,

 DS Division (Special)

 PSPCL,

 S.A.S. Nagar (Mohali)

 ...Respondent

**Present For:**

Petitioner: Sh.R.S. Dhiman,

 Petitioner's Representative (PR)

Respondent : Er.H.S. Oberoi,

 Addl. Superintending Engineer.

 Before me for consideration is an Appeal No. 89/2017 preferred by the Petitioner against the order dated 01.11.2017 of the Consumer Grievances Redressal Forum (Forum) in Case No. CG-206 of 2017 deciding that:

 *“The charges on account of PLVs for the period of 27.07.2015 to 19.09.2015 are justified & 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 with Sanctioned Load of 496.330kW and Contract Demand (CD) of 495kVA.
2. The Petitioner received a bill for the month of 05/2016 amounting to Rs 4,28,000/- which included “Sundry Charges” of Rs 1,16,793/-.
3. The Petitioner was informed vide memo no 1248 dated 24.06.2016 and 1807 dated 30.05.2017 that the above Sundry Charges were due to Peak Load Violations (PLVs) for the period from 27.07.2015 to 19.09.2015.
4. The Petitioner did not agree with the above charges as it was statedly not aware of the said Peak Load Violations ((PLVs) and the filed a Petition in the Forum which., after hearing, passed order dated 01.11.2017 (Reference: Page 2 Para 1).

**(v)** Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court and prayed to set-aside the undue penalty of Rs 1, 16,793/-, in the light of the decision of this Court in an earlier Appeal No. 66 of 2015 filed by it.

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

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

1. **Submissions of the Petitioner:**

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

**(i)** The Petitioner was running an industrial unit at C-158 Phase-7, Industrial Area, S.A.S. Nagar (Mohali) in the name of Kunal Founders and Engineers (P) Ltd. engaged in manufacturing Tractor parts. The electric connection of this unit, bearing Account No. 3000244252, was in the name of Smt. Suman Lata and was sanctioned for Load of 496.330kW with Contract Demand (CD) 495kVA. All electricity bills were being paid regularly.

**(ii)** In August 2015, the Petitioner noticed a sum of Rs. 1,29,570/- added in the bill under the Column “Violation Penalties”. On further checking, the Petitioner observed that similar penalties were added in the earlier bills also from April 2015 to July 2015. The total amount of penalties thus raised against the Petitioner added to Rs 4,23,226/-. Surprised by the unexplained penalties, the Petitioner filed a Petition before the Forum which was registered as CG-111 of 2015. The Forum decided the case upholding the charges.

**(iii)** The Petitioner, then, filed Appeal No. 66 of 2015 before this Court, which set-aside the said decision of the Forum and held that since the change of Peak Load timings notified by Hon’ble PSERC were not got noted from the Petitioner by the Respondents, the Petitioner continued following old timings and thus, PLVs took place due to no fault of the Petitioner. The total amount of penalties charged was set-aside by this Court vide order dated 20.4.2016 in the said Appeal.

**(iv)** Thereafter, a sum of Rs 1,16,793/- was added in the Petitioner’s bill dated 05.01.2016 under the column “Sundry Charges”. No details of the charges was given. On protest, the Respondent continued accepting payment minus the disputed amount of Rs 116793/- calling it a ‘Court Case’.

1. The Petitioner made a written request on 09.06.2016 asking for details of the disputed charges. But failing to get any reply, a reminder dated 05.07.2016 was submitted which was diarized vide No. 2015 dated 08.07.2016. Still, no response was received. After numerous reminders, the Petitioner got to know the details of disputed charges from the Respondent vide AEE/Commercial Memo No. 1087 dated 30.05.2017. It transpired from this letter that the disputed amount had been charged on account of PLVs from 27.7.2015 to 19.9.2015. These PLVs took place during the period when the case of earlier similar PLVs was being heard by the Forum. Since, the earlier PLVs were set-aside by this Court in Appeal No. 66 of 2015, the present disputed amount (Rs 1,16,793/-) is also needed to be set-aside on the same grounds. As such, this undue demand was challenged by the Petitioner before the Forum for quashing the same, but the Forum upheld the charges ignoring the grounds on which, this Court had given relief in the case of earlier violations.
2. **There was no violation after the decision dated 27.11.2016 of the Forum**. The Petitioner was not satisfied with the decision of the Forum. As such, the present Appeal had been filed for justice.
3. **Submissions of the Respondent:**

 **The Respondent submitted the following for consideration of this Court:**

1. The consumer, Smt. Suman Lata, Plot No. C-158, Phase-7, Industrial Area, S.A.S. Nagar (Mohali) was having electricity connection of Large Supply Category with Sanctioned Load of 496.330kW and Contract Demand (CD) of 495kVA.
2. The consumer was charged with Peak Load Violation Charges of Rs.1,16,793/- for the period from 27.07.2015 to 19.09.2015, vide Addl. SE/MMTS Memo. No. 1532 dated 09.11.2015. A notice was issued to the consumer to deposit the Peak Load Violation Charges, vide AEE/Commercial, Sub Division, PSPCL, SAS Nagar (Mohali) Memo. No. 2846 dated 02.12.2015 and the amount was charged through Sundry in the Bill No. 50002259733 dated 05.01.2016.
3. The consumer had moved the case before the Forum against the disputed amount of Rs. 1,l6,793/-. As per their decision dated 01.11.2017, the amount of Rs. 1,16,793/- charged to the consumer, on account of Peak Load Violation Charges for the period from 27.07.2015 to 19.09.2015, was correct and recoverable from the consumer.
4. The Power Regulation (PR) Circular No. 01/2015 dated 31.03.2015 was uploaded on PSPCL website. The consumer was charged with Peak Load Violation charges of Rs. 1,16,793/- for the period 27.07.2015 to 19.09.2015 vide Addl. SE/MMTS Memo No. 1532 dated 09.11.2015. A Notice was issued to the consumer to deposit the Peak Load Violation Charges, vide AEE/Commercial Sub Division, PSPCL, S.A.S. Nagar (Mohali) vide Memo. No. 2846 dated 02.12.2015.
5. As per the DDL received from Addl. SE/MMTS Memo. No.1532 dated 09.11.2015, the consumer had made violations for the period from 27.07.2015 to 19.09.2015.

**4. Analysis:**

The issue requiring adjudication is the legitimacy of the amount charged on account of Peak Load Violations for the period from 27.07.2015 to 19.09.2015.

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

1. I find that the dispute arose when the Petitioner received a bill for the month of 05/2016 amounting to Rs. 4,28,000/- which included “Sundry Charges” of Rs. 1,16,793/- on account of Peak Load violations for the period from 27.07.2015 to 19.09.2015 noticed by the MMTS and intimated to DS Division on 09.11.2015. I find that the amount charged to the Petitioner was due to non-observance of revised schedule/timings prescribed by the PSPCL vide Power Regulation (PR) Circular No. 01/2015 dated 31.03.2015 (applicable w.e.f. 01.04.2015), due to change in policy for application of ToD Tariff.

The old and new timings were as under:

|  |  |  |
| --- | --- | --- |
| **Month** | **Old timings as per PR Circular No.** **09/2003** | **New timings as per PR Circular No. 01/2015** |
| July  | 19:30 hrs to 22.30 hrs | 18:30 hrs to 21.30 hrs |
| September | 18:30 hrs to 21.30 hrs | 18:00 hrs to 21.00 hrs |

As per provisions of PR No. 01/2015, **the changes made in the old schedule were to be got noted from all the concerned consumers well in time.** I find that the changes made were not got noted from the Petitioner by the Respondent. However, this circular was uploaded on website of the PSPCL.

 I observe that the PSPCL subsequently issued Commercial Circular (CC) No. 25/2015 dated 16.06.2015 conveying its decision that those consumers, who kept on observing previous Peak Load Hours Restrictions (PLHRs) timings in respective Zones after 31.03.2015, shall not be penalized till the issuance of 1st bill of such Large Supply Consumers. As such, CC No. 25/2015 allowed relaxation till the issuance of the first bill after the change in PLHR schedule/timings for want of sufficient publicity.

 The Respondent, in its defence, contended that the Petitioner’s plea that it was not aware of change of PLHR timings was not correct as it was charged for PLVs in the bills for the months of April to July 2015. The Respondent added that PLVs in the case of the Petitioner were also noticed in the past and again during the year 2017.

 I observe that the Petitioner, having a Large Supply Category consumer, ought to have behaved responsibly and should have kept itself posted with the changes in Peak Load Hour timings made by the PSPCL and hosted on its website. Besides, the Petitioner, having committed such violations prior to issuance of PR Circular No. 01/2015 dated 31.03.2015, could not feign ignorance that it was not aware about the said changes circulated by the PSPCL and hosted on its website.

 At the same time, the Distribution Licensee also defaulted in getting complied with its own instructions dated 31.03.2015 (PR No. 01/2015) requiring that:

 *“These Peak Load Hour Restrictions shall be applicable on Large Supply consumers only and the above changes may be got noted from all the concerned consumers well in time.”*

1. I find that the MMTS was also responsible for not reporting promptly the results of the DDL, wherefrom PLVs for the period from 27.07.2015 to 19.09.2015 were detected, vide its Memo No. 1532 dated 09.11.2015 to the DS Division which, in turn, issued notice, vide Memo. No. 2846 dated 02.12.2015 and charged the amount in the bill for the month of 01/2016 under the Head “Sundry Charges” instead of under the Head “Violation Penalties”.

 *I observe that the very purpose of issuance of instructions regarding change in PLHR timings gets defeated if the results of checking the observance of Peak Load Timings are not communicated to the concerned Division/Consumer well in time.*

1. I observe that the Petitioner cited the order dated 20.04.2016 of this Cour**t** in Appeal No. 66/2015 filed by the Petitioner. In the said case, this Court held that the Peak Load Violation charges levied in the bills dated 12.06.2015, 06.07.2015 and 06.08.2015 were not recoverable as the changes in PLHRs timings (as per PR No. 01/2015) were not got noted from the Petitioner. It was also held that the violations as per old schedule/timings were chargeable.

 From the above analysis, it is concluded that the changes in PLHRs Schedule as per PR Circular No. 01/2015 dated 31.03.2015 were neither intimated to nor got noted from the Petitioner in compliance to the provisions of its own Circular ibid. Hence, holding the Petitioner liable to pay for PLVs, stated to have been committed as per changed schedule, is not legally tenable. Accordingly, the amount shown in the bill dated 05.01.2016 on account of PLVs charges, is held not recoverable from the Petitioner.

**5. Decision:**

 **As a sequel of above discussions, the order dated 01.11.2017 of the Forum in Case No. 206 of 2017 is set-aside. The Respondent is directed to re-calculate the amount and refund/recover the amount found excess/short, if any, after adjustment. No interest should be paid on this account. It is also held that the Petitioner should be charged for the Peak Load Violations, if any, as per PLHRs Schedule existing prior to issue of PR Circular No. 01/2015 dated 31.03.2015, based on the checking of DDL print-outs taken by the MMTS for working out violations.**

**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 25, 2018 LokPal (Ombudsman)

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