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

**ELECTRICITY, PUNJAB,**

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

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

**Appeal No. 91/2017**

**Date of Registration : 12.12.2017**

**Date of Hearing : 26.04.2018**

**Date of Order : 03.05.2018**

**Before:**

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

**In the matter of**

Arora Iron & Steel Rolling Mills Pvt. Ltd,

Dhandari Khurd, Near Phase-VII, Focal Point,

Ludhiana.

...Petitioner

Versus

Additional Superintending Engineer/DS,

 Focal Point Division (Special),

 PSPCL, Ludhiana.

 ...Respondent

**Present For :**

Petitioner **:** Shri Sukhminder Singh,

 Petitioner’s Representative (PR),

Respondent **:** 1. Er. Kanwal Preet Singh Sidhu, Addl. Superintending Engineer.

 2. Shri Gursatinder Singh,

 AAO (Revenue).

 Before me for consideration is an Appeal preferred against the order dated 06.11.2017 of the Consumers Grievances Redressal Forum (Forum) in Case No. T-323 of 2017 deciding that:

*“The dispute pertains to June, 2015 and case was filed before the Forum on 27.09.2017 i.e. more than 2 years after the occurrence of the event. Petitioner could not submit any document to prove that he has approached the Licensee or any other Forum for redressal of the dispute within two years. Petitioner could not give any substantive reasons for condoning the delay which is required as per Clause 2.25 of the PSERC (Forum and Ombudsman) Regulations-2016.*

*In view of above, Forum decided unanimously that Petition can not be admitted and is hereby dismissed.”*

**2. Admitting/Hearing the Case after Condonation of Delay:**

At the outset, it needs to be considered and decided are whether:

1. The delay in filing a Petition in the Forum more than two years after occurrence of the cause of action, may be condoned and
2. In case, the delay ibid is condoned, the Appeal be heard in this Court or remitted to the Forum for consideration and decision on merits.

The Petitioner submitted in its Appeal that it had pleaded before the Forum, during hearing of the Case No. T-323 of 2017 on 06.11.2017 that:

1. Load and Contract Demand of its Large Supply Category connection (PIU) was extended to 31,922kW and 30,995kVA respectively and the supply was shifted to 66kV on 29.05.2015.
2. The demand in this case was raised on 08.07.2016 vide notice bearing Memo. No. 2325 issued by the AEE/Commercial, Focal Point, as difference of Service Connection Charges (SCC), after release of connection on 29.05.2015.
3. The Petitioner pleaded the case on merits, irrespective of the fact that there was considerable delay in raising of demand from the date of release of connection.
4. The Petitioner verified all the records relating to bills/demand raised by the Respondent and payment made thereagainst during previous 2-3 years.
5. It came to the notice of the Petitioner that an amount of Rs. 11,71,236/- was wrongly charged as Sundry Charges in the energy bill issued for the period from 14.07.2015 to 14.08.2015 for Rs. 2,38,24,190/-, which was paid on 31.08.2015.
6. The Petitioner was then told that the amount was pointed out by the Revenue Audit Party (RAP) after checking the bill for the period 15.05.2015 to 17.06.2015. The Petitioner had submitted representation dated 31.08.2015 against the excess amount charged in the bill issued in 08/2015 and also verbally requested the concerned office to provide the details of the amount charged by the Revenue Audit Party.
7. The Petitioner also reminded the concerned officials of Focal Point Division to submit the details as already requested. In turn, the Petitioner was assured that the same shall be provided after obtaining details from the Audit Department. But these were never provided by the Respondent to the Petitioner. The Petitioner remained too busy in its work of new furnace unit, as such, could not pursue the matter. Similarly, the Petitioner also verified the bill for the period from 15.05.2015 to 17.06.2015 and noticed that MMC, as levied in the bill prepared by the CBC, was also charged in excess by Rs. 2,81,284/-.
8. The Petitioner filed a Petition before the Forum, for refund of Rs. 13,99,047/- (Rs. 11,17,763/- excess charged as Sundry Charges + MMC Rs. 2,81,284/-). The case was filed before the Forum on 27.09.2017, whereas payment against the bill including Sundry Charges of Rs. 11,71,236/- was made on 31.08.2015, thus, there was delay of about two years and considering the genuineness of refund case, the Forum could condone the delay but the Forum decided not to condone the delay and dismissed the case in the first hearing without giving ample opportunity to explain the case further and submit evidence available with it on 06.11.2017.
9. The Petitioner was then left with no option but to file the Appeal before this Court to condone the delay and admit the case for adjudication.

 I find that the Respondent, in its reply to the Appeal, stated that the Appeal was time barred and hence, not entertained by the Forum.

I have gone through the submissions made by the Petitioner and also the order dated 06.11.2017 of the Forum not to admit the Appeal of the consumer as being time-barred and also not in accordance with the provisions of Regulation 2.25 of the PSERC (Forum and Ombudsman) Regulation-2016. There is no denying the fact that a time limit of two years has been prescribed for filing a complaint by any consumer in the Forum.

  *I have heard both the sides, gone through the evidence on record and have found merit in the contention of the Petitioner with regard to delay in approaching the Forum within the stipulated time period. I am also of the view that denial of the opportunity to the consumer to present and defend its case on merits would not meet the ends of ultimate justice. Therefore, taking into consideration the totality of facts and circumstances, the delay in filing the Appeal by the Petitioner is condoned and the Appeal of the Petitioner is allowed to be admitted and heard in this Court itself in the interest of justice.*

**3. Facts of the Case:**

The relevant facts of the case are that:

**(i)** The Petitioner was having a Large Supply Category connection (PIU & Rolling Mills) with Sanctioned Load of 31,922kW and Contract Demand (CD) of 30,995kVA since 29.05.2015.

**(ii)** Prior to 29.05.2015,the Petitioner was having General Industrial Load for Rolling Mill with Sanctioned Load of 2,422kW and CD as 2,495kVA. The said Load/CD was got extended vide Application and Agreement dated 25.02.2012 for Arc Furnace (PIU).

1. The Load/CD was extended and supply voltage was raised to 66kV vide Service Connection Order (SCO) dated 25.05.2015, effected on 29.05.2015.
2. The Energy Bill of the Petitioner for the period from 15.05.2015 to 17.06.2015 (33 days) was issued for Rs. 92,51,300/- which included Monthly Minimum Charges (MMC) of Rs. 92,31,253/-. The bill was subsequently revised after providing Sundry Allowance of Rs. 2,40,066/- on account of difference of MMC of the same period.
3. The Energy bill for the period from 14.07.2015 to 14.08.2015 was issued for Rs. 2,38,24,190/- wherein a sum of Rs. 11,71,236/- was charged as Sundry Charges.
4. The said amount of Sundry Charges of Rs. 11,71,236/- was charged by Revenue Audit Party vide Half Margin No. 30 dated 12.08.2015 and included an amount of Rs. 11,17,703/- as difference of MMC and Rs. 53,473/- as excess High Tension rebate given for the period during which supply was at 11kV before 29.05.2015.
5. The Petitioner did not agree with the above amount charged by the Revenue Audit Party (RAP) and filed a Petition in the Forum who did not entertain the same due to it being time-barred and as such, dismissed it.
6. Not satisfied with the decision of the Forum, the Petitioner filed an Appeal in this Court and prayed to look into all the merits of the case, admit the Appeal and order the due refund alongwith applicable interest, on the principle of natural justice and fairness.

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

Before undertaking analysis of the case, it is necessary to go through written submissions made in the Appeal and 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.

**(a) Submissions of the Petitioner:**

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

1. The Petitioner was having Large Supply Category connection with Sanctioned Load as 31922kW and Contract Demand of 30995kVA. The consumer applied for its extension in its existing load of 2422kW and Contract Demand of 2495kVA, by 29500kW and 28500kVA respectively vide Application and Agreement Form No. 442179/58997 dated 25.02.2012. The consumer paid all the charges as demanded by the PSPCL from time to time and load was extended/supply was shifted to 66kV on 29.05.2015 vide Service Connection Order (SCO) dated 25.05.2015.
2. The energy bill of the consumer for the period from 15.05.2015 to 17.06.2015 (33 days) was issued on pro rata MMC basis for Rs. 90,11,230/- (which included ED, Octroi and sundry allowances of Rs.10,39,782/-) and the same was duly paid on 29.06.2015. However, in the energy bill issued for the period 14.07.2015 to 14.08.2015, an amount of Rs. 11,71,236/- was charged as sundry charges (without providing any details) while the total billed amount was Rs. 2,38,24,190/- (including Rs. 11,71,236/-) which was paid on 31.08.2015. During checking of record of bills raised by the PSPCL and the payment made thereagainst, it came to the notice of the Petitioner that an amount of Rs.11,71,236/- was wrongly charged as sundry charges in the energy bill issued for the period from 14.07.2015 to 14.08.2015 for Rs. 2,38,24,190/-. The Petitioner was told that the amount was pointed out by the Revenue Audit Party vide Half Margin No. 30 dated 12.08.2015, which, included an amount of Rs. 11,17,763/- as difference of MMC and Rs. 53,473/-as excess HT rebate given for the period during which, supply was at 11kV before 29.05.2015. Further, the amount of Rs. 92,31,253/- (levied as pro rata MMC) was also on the higher side. Thus, an amount of Rs.13,99,047/- was required to be refunded by the Respondent – PSPCL.
3. The Petitioner filed a Petition for adjudication of refund case of Rs. 13,99,047/-, but, the case was dismissed by the Forum on the ground that the dispute pertained to June-2015 and the case was filed before the Forum on 27.09.2017 i.e. more than two years after the occurrence of the event.

**(iv)** While preparing the bill on MMC basis, the Condition No. SI 3.5 of Schedule of Tariff for the year 2015-16 was required to be considered. The above condition stipulated that:

***SI. 3.5*** *“For Arc/PIU industries, where the load is of mixed nature, i.e. in addition to Arc/Power Intensive loads, General Industrial loads are also running, monthly minimum charges shall be determined by computing the contract demand on pro rata basis in proportion to such loads duly sanctioned by the load sanctioning authority. In such cases, Power Intensive loads shall comprise of loads as mentioned in para SI 3.2, including auxiliary loads, loads of pollution control machinery, gas plants & corresponding lighting loads, and general industrial loads in such cases shall comprise loads of rolling mills and its allied loads, related workshop, general engineering machinery and corresponding lighting load, for the purpose of levy of monthly minimum charges”.*

However, while preparing energy bill for the period from 15.05.2015 to 17.06.2015 (33 days) on pro rata MMC basis, the above condition appeared to have not been considered.

**(v)** The MMC leviable for the period from 15.05.2015 to 17.06.2015, was calculated as under:

**A**. Total Sanctioned Load = 31922KW/30995kVA.

**B**. Arc Furnace Load(PIU) = 29500 KW/28500kVA.

 **C.** Rolling Mill Load = 2422 KW/2495kKVA

(General)

**D.** Period of Bill = 33 days.

**E.** Applicable MMC:

2495kVA x Rs. 188=Rs. 4,69,060 + 28,500 x Rs. 491 x 20

 33

= Rs.4,69,060+Rs.84,80,909/- = Rs.89,49,969/-.

**F.** MMC excess levied in the bill issued for the period 15.05.2015 to 17.06.2015 are Rs.2,81,284 (Rs. 92,31,253 - Rs. 89,49,969/-).

**(vi)** The Petitioner deposited an amount of Rs. 11,71,236/-charged as sundry charges in the bill issued in 08/2015. Out of this, an amount of Rs.11,17,763/- was charged as difference of MMC pointed out by audit, which were wrongly charged as explained above. Thus, an amount of Rs. 13,99,047/- (Rs. 11,17,763 + Rs. 2,81,284) were required to be refunded to the Petitioner alongwith applicable interest.

**(vii)** The refund on account of higher consumption rebate as per CC No.49/2014 was also due to the consumer and the claim shall be filed/worked out after receiving the details of sundry allowances of Rs. 10,39,782/- allowed as per bill issued in 06/2015 (disputed bill).

1. From the above position, there may hardly be any doubt that excess amount of Rs.13,99,047/-, got deposited from the Petitioner, was refundable and may be refunded alongwith applicable interest, on the principle of natural justice and fairness.

**(b) Submission of the Respondent:**

 The Respondent submitted the following in its defence:

1. The connection of the Petitioner was running under Large Scale category in the name of Arora Iron & Steel Rolling Mills Pvt. Ltd, Ludhiana, bearing Account No. E32-FP55-00672. Presently the Sanctioned Load and Contract Demand (CD) of the connection was 31,922kW and 30,995kVA respectively. The consumer applied for extension in its existing Load of 2422kW and CD of 2,495kVA, by 29,500kW and 28,500kVA respectively vide Application and Agreement Form No. 442179/58997 dated 25.02.2012. The load of the consumer was extended and supply voltage was raised to 66kV on 29.05.2015 vide Service Connection Order dated 25.05.2015.
2. The energy bill to the consumer for the period from 15.05.2015 to 17.06.2015 (33 days) was issued for Rs. 92,51,300/- and included MMC charges of Rs. 92,31,253/- but, afterwards, the revised bill amounting to Rs. 90,11,230/- was issued to the Petitioner after providing sundry allowance of Rs. 2,40,066/- on account of difference of MMC of the same period. Thereafter, in the energy bill issued for the period from 14.07.2015 to 14.08.2015, an amount of Rs. 11,71,236/- was charged as sundry charges and total amount of bill was Rs. 2,38,24,190/- (including Rs. 11,71,236/-). The amount of sundry charges of Rs. 11,71,236/- was charged vide Half Margin No. 30 dated 12.08.2015 which included an amount of Rs. 11,17,763/- as difference of MMC and Rs. 53,473/- as excess HT rebate given for the period, during which supply was at 11kV before 29.05.2015. The Revenue Audit Party (RAP), while issuing Half Margin, did not consider the MMC rebate (i.e. Rs. 2,40,066/-) given in revised bill issued in the month of 06/2015. So, the amount of Rs. 2,40,066/- was also recoverable from the Petitioner.
3. The consumer did not agree with the above charges and filed a Petition in the Forum (Case No. T-323 of 2017). As Dispute pertained to June 2015 and the Petition was filed before the Forum on 27.09.2017 i.e. more than two years from the occurrence of event. As more than two years time period had elapsed, therefore, this case was time barred. In view of this, Forum decided unanimously that Petition could not be admitted and dismissed the same vide order dated 06.11.2017.
4. The Petitioner was not satisfied with the decision of the Forum and filed an Appeal in this Court.
5. The amount of MMC for the period from 15.05.2015 to 17.06.2015 was charged on the basis of Half Margin No. 30 dated 12.08.2015 issued by Revenue Audit Party (RAP), Focal Point, Ludhiana, which did not consider the MMC rebate (i.e. Rs. 2,40,066/-) given in revised bill issued in the month of 06/2015. So, the amount of Rs. 2,40,066/- was also recoverable from the Petitioner.
6. The sundry allowance of Rs. 10,39,782/- given to the Petitioner in the bill issued in 06/2015 includes rebate as per CC No. 49/2014 amounting Rs. 7,99,718/- and amount of Rs. 2,40,066/- was on account of difference of MMC.
7. The amount charged to the Petitioner was as per rules and regulations of the PSPCL, as such, the Appeal be dismissed.

 **5. Analysis:**

 The issue requiring adjudication is the legitimacy of the refund claimed on account of MMC/Consumption charges got deposited from the Petitioner.

 T*he points emerged are deliberated and analysed as under:*

1. The dispute in the present case arose after the extension in Load from 2,422kW to 31,922kW and the supply voltage was raised to 66kV on 29.05.2015 and subsequent issue of the Energy Bill for the period from 15.05.2015 to 17.06.2015 (33 days) amounting to Rs. 92,51,300/-. The said bill included the MMC charges of Rs. 92,31,253/- but, afterwards, the revised bill for Rs. 90,11,230/- was issued after providing sundry allowance of Rs. 2,40,066/- on account of the difference of Monthly Minimum Charges (MMC) of the same period.

 I find that in the Energy Bill issued thereafter, for the period from 14.07.2015 to 14.08.2015 amounting to Rs. 2,38,24,190/-, an amount of Rs. 11,71,236/- was charged as Sundry Charges as per observations of Revenue Audit Party (RAP) vide Half Margin No. 30 dated 16.08.2015 and included an amount of Rs. 11,17,763/- as difference of MMC and Rs. 53,473/- as excess HT rebate given for the period during which, the supply was at 11kV before 29.05.2015. I have noted the contention of the Respondent that the Revenue Audit Party (RAP), while issuing the said Half Margin, did not consider the MMC rebate (i.e. Rs. 2,40,066/-) given in the revised bill issued for the month of 06/2015.

1. The Petitioner stated that it had submitted a representation dated 31.08.2015 against excess amount charged in the bill issued in 08/2015, but the reply thereto from the Respondent (if given), was not placed on record.
2. I find that Regulation SI 3.5 of Schedule of Tariff for the year 2015-16, read as under:

*“For Arc/PIU industries, where the load is of mixed nature, i.e. in addition to Arc/Power Intensive loads, General Industrial loads are also running, monthly minimum charges shall be determined by computing the contract demand on pro rata basis in proportion to such loads duly sanctioned by the load sanctioning authority. In such cases, Power Intensive loads shall comprise of loads as mentioned in para SI 3.2, including auxiliary loads of pollution control machinery, gas plants & corresponding lighting loads, and general industrial loads in such cases shall comprise loads of rolling mills and its allied loads, related workshop, general engineering machinery and corresponding lighting load, for the purpose of levy of monthly minimum charges.”*

1. I observe that separate arrear bill was initially required to be issued and was not required to be clubbed with current electricity bill in terms of provisions contained in Regulation 30.1.2 of the Supply Code-2014, but the Respondent added the amount under the Head “Sundry Charges” as per observations made in Half Margin No. 30 dated 12.08.2015 issued by the Revenue Audit Party (RAP).
2. I have gone through the provisions contained in Reg. 30.4 of Supply Code-2014, which read as under:

*“When supply to a new consumer is commenced in the middle of a billing cycle, all the fixed charges, including minimum charges shall be levied on pro rata basis for the number of days for which supply is given during the billing cycle.”*

1. I observe that the load for PIU was given (on 29.05.2015) in between the billing period (15.05.2015 to 17.06.2015) i.e. for 33 days was made but Revenue Audit Party (RAP) calculated the MMC charges by taking billing period as 30 days, which is not in accordance with the provisions contained in Regulation 30.4 of Supply Code-2014.

 From the above analysis, it is concluded that the Petitioner should be charged separately for Rolling Mill, for the periods from 15.05.2015 to 28.05.2015 and 29.05.2015 to 17.06.2015 and for PIU for the period from 29.05.2015 to 17.06.2015 as per calculations given hereunder. These calculations are, of course, subject to pre-audit and be got approved from this Court, if altered.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Sr. No** | **Descrip-****tion** | **Period** | **No.** **of days** | **Load** **in kVA** | **MMC rate/****kVA** **in INR** | **MMC Charges****in INR** |
|  | RollingMill | 15.05.2015 to 28.05.2015 | 13 | 2,495 | 188 | 2,495x188x1333=1,84,781.00 |
|  | RollingMill | 29.05.2015 to 17.06.2015 | 20 | 2,495 | 188 | 2,495x188x2033=2,48,279.00 |
|  | PIU | 29.05.2015 to 17.06.2015 | 20 | 28,500 | 491 | 28,500x491x2033 =84,80,909.00 |
| **Total MMC for the above Period**  | **89,49,969.00** |

It is to be ensured that the consumption charges for above period are calculated separately and consumption charges or MMC whichever is higher, is charged.

In view of the above, the demand raised by the Respondent (on the basis of Audit Observations) for Rs. 11,17,763/-, is not justified.

**6. Decision:**

 **As a sequel of above discussions, the Appeal is disposed off accordingly. The Respondent is directed to re-calculate the demand (as concluded in Para 5 above) and refund/recover the amount found excess/short, if any, after adjustment as per rules of the PSPCL, after pre-audit. However, no interest should be paid to the Petitioner on this account.**

**7.** In case, the Petitioner or the Respondent (Licensee) is not satisfied with the above decision, it is 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)

May 03, 2018 LokPal (Ombudsman)

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