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

**ELECTRICITY, PUNJAB,**

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

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

**Appeal No. 94/2017**

**Date of Registration : 19.12.2017**

**Date of Hearing : 18.05.2018**

**Date of Order : 24.05.2018**

**Before:**

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

**In the matter of**

Brij Mohan Syal,

Opposite Metro Tyres,

Industrial Area-C,

Jugiana, Ludhiana.

...Petitioner

Versus

Additional Superintending Engineer

DS, Estate Division (Special),

 PSPCL, Ludhiana.

 ...Respondent

**Present For :**

Petitioner **:** Shri Kanwarjit Singh, Advocate,

 Petitioner’s Counsel (PC).

Respondent **:** . Er. Daljit Singh,

 Addl. Superintending Engineer.

 Before me for consideration is an Appeal preferred against the order dated 13.11.2017 of the Consumers Grievances Redressal Forum (Forum) in Case No. CG-215 of 2017 deciding that:

“*The Petitioner’s account be overhauled for difference of tariff under PIU & general Category and difference of Security under PIU & general Category is justified and charges are recoverable.”*

**2. Facts of the Case:**

The relevant facts of the case are that:

**(i)** The Petitioner, having Medium Supply Category connection with Sanctioned Load of 88.620kW and Contract Demand (CD) of 99kVA, applied online on 23.05.2014 for extension of Load to 319.620kW and CD to 330kVA and for converting Medium Supply Category connection into Large Supply Category connection.

**(ii)** The Petitioner got registered its Application and Agreement Form No. 50566 on 03.06.2014 and deposited a sum of Rs. 53,810/- as Advance Consumption Deposit (ACD) on the same date, as ACD. With this, gross ACD of the Petitioner lying with the Respondent was Rs. 3,89,400/-.

**(iii)** In the said Application and Agreement Form for extension in Load and CD, the Petitioner declared 150kW Induction Hardening Machine and Tempering Furnace of 25kW, in the details of the Connected Load. The type of Industry was shown as “General”.

**(iv)**  On receipt of Demand Notice dated 16.06.2014, the Petitioner deposited Rs. 5,53,000/- as Service Connection Charges (SCC) on 23.12.2014.

**(v)** The extension in Load and CD, as applied, was released vide SCO dated 09.02.2015. effected on 12.03.2015.

**(vi)** Subsequently, the Petitioner applied for reduction in load in CD from 330kVA to 150kVA without any reduction in Connected Load i.e. 319.620kW vide Application and Agreement Form dated 29.03.2016. The reduction was effected on 27.05.2016.

**(vii)** As Load of one Induction Hardening Machine of 150kW fell under PIU Category, as per CC No. 27/2014, the Revenue Audit Party (RAP) charged a sum of Rs. 9,82,714/- as the difference of Tariff (MMC) of PIU and General Category and difference of ACD vide its Memo No. 467 dated 02.02.2017 for the period from 23.07.2015 to 11.09.2016.

**(viii)** The Respondent raised this amount in Bill dated 17.05.2017 under Head **“**Sundry Charges and Current Arrears.”

**(ix)** Aggrieved with the raising of this amount, the Petitioner filed a Petition in the Forum, which, after hearing, passed the order dated 13.11.2017. (Reference: Page 2, Para 1).

1. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this court and prayed to issue directions to the Respondent to withdraw the amount charged to the tune of Rs. 7,05,605/- shown under sundry Charges and Rs. 2,77,109/- charged as arrears vide bill issued on 17.05.2017.

**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 in the Petition and reply of the Respondent as well as oral submissions of the Representatives 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:

1. The Petitioner was initially having a Medium Supply Category connection with Sanctioned Load of 88.620kW and Contract Demand (CD) as 99kVA.
2. The Petitioner applied on-line o n 23.05.2014for the extension in load and CD to 319.620kW and CD to 330kVA respectively and for conversion of MS Category connection into Large Supply Category connection.
3. The Petitioner got registered its A&A Form No. 50566 on 03.06.2014 and deposited the Security on the same date as per the demand raised by the PSPCL as per the instructions applicable then.
4. The extension in Load and CD was released vide SCO dated 09.02.2015 effected on 12.03.2015.
5. The Revenue Audit party charged a sum of Rs. 9,82,714/- ( pertaining to the period from 23.07.2015 to 11.09.2016) vide Memo dated 02.02.2017, on account of difference of Tariff (MMC) and difference of ACD. Accordingly, the said amount was raised in the bill dated 17.05.2017, under the Head “Sundry Charges and Current Arrears”, by the Respondent.
6. The Revenue Audit Party ignored the hard fact that the PSPCL neither intimated change in its instructions to the concerned consumer nor the PSPCL implemented the changed instructions on its own. In fact, the responsibility to implement the instructions issued by the PSERC rested with the officers of the PSPCL itself and the concerned consumer was not supposed to do any interference in the working of the PSPCL. As such, penalizing the innocent consumer at this stage could not be said to be justified at any level, since the consumer was bound to pay the huge amount out of its own pocket which could not be recovered from its customers at this stage, in any manner.
7. It was not merely a case of difference of tariff, rather, it pertained to the change of category of connection. When the consumer applied online on dated 23.05.2014, at that time, CC No. 28/2012 issued by the PSPCL was relevant. Accordingly, the consumer followed the instructions contained therein while the CC No. 27/2014 as per which, the PSPCL penalized the consumer at this later stage was not there since the date of issue of CC No. 27/2014 was 29.05.2014. In case, there was any change in the instructions issued vide CC No. 28/2012 before the issuance of Demand Notice as well as from the release of extension in Load, then, the PSPCL was duty bound to intimate the change to the concerned consumers by giving notice to each and every consumer concerned or to give publicity through the news-papers but, in the case of the Petitioner, PSPCL did not care to do so. More so, in the instant case the PSPCL was supposed to implement the instructions issued by the higher authorities but the PSPCL itself did not do so till the date of demand was made from the Appellant/Petitioner.
8. When the Petitioner applied for the Load of Induction Hardening Machine on 23.05.2014, no provisions/instructions existed that the concerned consumer, who opted to install Induction Hardening machine, were required to be treated under PIU category. Rather, at that time, the consumer who were having the installation of surface hardening machines, were being charged under General Category and the instructions/provisions applicable then provided charging of the least minimum charges as were applicable to the General Category of LS consumers at that time. More so, after that, when the PSPCL released the extension in Load to the Petitioner, then, PSPCL on its own released the extension in Load to the Petitioner under General LS (Miscellaneous) (others) category in spite of the fact that the instructions under which, the PSPCL penalized the Petitioner, subsequently, also existed at the time of release of connection to the Petitioner.
9. At this belated stage, it was not possible for the Petitioner (like any businessman) to recover the additionally charged amount to it from its customers
10. The plea taken by the Respondent, during the proceedings held before the Forum regarding noting of the instructions from the website by the consumer itself was neither legally valid nor based upon the instructions issued by the PSPCL itself. Rather, the plea so taken was inconsistent with the applicable provisions of the Law, and the principle of natural justice. Besides, when the changes in instructions were circulated in the year 2014 and the same were in the knowledge of the officers of the PSPCL, then, there was no reason to allow to continue the concerned consumers of Billet Heater of PSPCL to be charged under General Category of consumers till 2017.

In view of the submissions made above, the amount of Rs. 7,05,605/- raised by the PSPCL (Respondent) through column of Sundry Charges and also of Rs. 2,77,109/- charged through the column of Arrear Current financial year (totallying Rs. 9,82,714/- vide current consumption bill issued on 17.05.2017 may be quashed being illegal, arbitrary and against the applicable rules and regulations.

1. **Submissions of the Respondent:**

The Respondent in its defence, submitted the following for consideration of this Court:

1. The connection in the name of the Petitioner was initially a Medium Supply Category connection with Sanctioned Load of 88.620kW and CD as 99kVA.
2. The Petitioner applied online on 23.05.2014 for extension in load from 88.620kW to 319.620 kW and CD from 99kVA to 330kVA by changing its category from Medium Supply to Large Supply which was registered vide A&A No. 50566 dated 03.06.2014.

The instructions of charging PIU Tariff of Induction Hardening Machine Load was issued vide CC No. 27/2014 dated 29.05.2014 in compliance to PSERC order dated 28.10.2013 in Petition No. 3 of 2012 that all LS consumers, where the induction Billet Heaters/Surface Hardening Machines are installed shall be treated under PIU category w.e.f. 01.01.2014.

1. The following machinery was included in the details of the connected load in the said A&A Form:
2. One (1) No. Induction Hardening Machine = 150kW
3. One (1) No. Tempering Furnace = 25kW
4. The Petitioner deposited the requisite ACD for Rs. 53,810/- vide BA-16 No. 82/47228 dated 03.06.2014 making a total ACD as Rs. 3,89,400/- .
5. Demand Notice bearing No. 2010 dated 16.06.2014, was issued, in compliance to which, the consumer deposited Rs. 553000 as SCC vide Token No. 128528 dated 24.12.2014.
6. The extension in load, as applied, was released vide SCO No. S-15-234579/08066 dated 09.02.2015 effected on 12.03.2015.
7. After this, the Petitioner applied for reduction in CD from 330kVA to 150kVA without any reduction in connected load 319.620kW, vide A&A No. 100001783219 dated 29.03.2016. This reduction was released vide SCO No. 54/13910 dated 20.04.2016 effected on 27.05.2016.
8. The following machinery was included in the detail of the connected load as per A&A Form :-
9. One (1) No. induction Hardening Machine = 150kW
10. One (1) No. Tempering Furnace = 25kW
11. As the Petitioner had 150kW Load under PIU Category, as per CC No. 27/2014 dated 29.05.2014, the Revenue Audit Party charged Rs. 9,82,714/- as the difference of Tariff (MMC) and ACD of PIU Category and General Category vide Memo No. 467 dated 02.02.2017 for the period from 23.07.2015 to 11.09.2016.
12. On the basis of Audit Advice, AEE (Commercial), Estate Division, PSPCL, Ludhiana, charged a sum of Rs. 9,82,714/- vide Sundry Job Order (SJO) No. 03/03/2/R-161 in the bill for the month of 05/2017 issued on 17.05.2017 through SAP System.
13. The Petitioner did not agree with the amount charged and filed a Petition in the Forum which decided the case on 13.11.2017 in favour of the PSPCL. The Petitioner was not satisfied with the above decision of the Forum and preferred an Appeal in this Court praying for withdrawal of the demand raised with interest.
14. The Petitioner incorrectly stated that the Induction Hardening Machine was of capacity less than 150kW. As per A&A Form and Test Report, it was of 150kW.
15. The Petitioner applied for extension in load on 03.06.2014, in which 150kW load was shown in General Category instead of PIU category which was wrongly accepted by the AEE/Commercial office whereas the CC No. 24/2014 was issued on 29.05.2014 when this Load was to be treated under PIU Category.
16. As the Load of One no. Induction Hardening Machine of 150kW fell under PIU category, as per CC No. 27/2014, the amount was correctly charged by the Revenue Audit Party vide Memo No. 467 dated 02.02.2017 after detecting the discrepancy/under assessment noticed by it while conducting the audit of the consumer’s account as per Instructions No. 93.1 of ESIM. The amount was also correctly charged as per CC No. 27/2014. The Petitioner had reduced its CD without reduction in Connected Load. Accordingly, the bill for the month of 05/2017 onwards was correctly prepared as per PIU Category in SAP System and paid by the consumer by admitting the same as correct and no excess amount had been charged in these bills**.**
17. There is no violation of ESIM No. 93.2 and section 56 (2) of the Electricity Act-2003, as contended by the Petitioner. As per instructions issued vide CC No. 05/2012 dated 14.02.2012, the limitation period started from the detection of the mistake .The mistake in the present case was detected by the Audit on 02.02.2017 and the amount was charged in the bill for the month of 05/2017 which fell within limitation period. As such, the Petitioner was liable to pay the amount charged to it.

The instructions to charge the PIU Tariff of Induction Hardening Machine load were issued vide CC no. 27/2014 dated 29.05.2014 in compliance to PSERC order dated 28.10.2013 in Petition No. 3 of 2012 that all LS consumers, who had installed the induction Billet Heaters/ Surface Hardening Machines, shall be treated under PIU Category w.e.f 01.01.2014.

1. CC no. 27/2014 dated 29.05.2014 was uploaded on the website of the PSPCL for wide publicity to the consumers and the Public Notice dated 16.05.20017, was issued for information/reiteration of instructions earlier issued vide CC No. 27/2014.
2. The Petitioner was liable to pay any underassessment charges detected by Audit as per tariff instructions and commercial circulars issued by the Distribution Licensee.
3. Any mistake, on the part of officials of PSPCL involving underassessment, did not invalidate the legal responsibility of the consumer in respect to its payment to the Distribution Licensee (PSPCL). In the instant case, the mistake was detected by the Internal Audit as per instructions of the PSPCL.
4. The forum rightly decided the case by passing a reasoned and speaking order.

In view of the above reply, the present Appeal may be dismissed in the interest of justice.

**4. Analysis:**

The issue requiring adjudication is the legitimacy of the overhauling of the account of the Petitioner, for the period from 23.07.2015 to 11.09.2016, for the difference of Tariff and Security under PIU and General Category, due to extension in Load and CD, as per applicable regulations.

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

1. PC contended that it had initially Medium Supply Category connection with Connected Load of 88.620kW and Contract Demand as 99kVA. The Petitioner applied online on 23.05.2014 for extension in Load form 88.620kW to 319.620kW and CD from 99kVA to 330kVA and for conversion of Medium Supply into Large Supply Category connection. However, the Petitioner got its Application and Agreement Form No. 50566 registered on 03.06.2014 by depositing a sum of Rs. 53,910/- as the requisite ACD. In the said A&A Form, the Petitioner had declared 150kW Induction Hardening Machine and 25kW Tempering Furnace in the details of the connected load. The extension in the Load and CD was released on 09.02.2015 effected on 12.03.2015. Subsequently, the Petitioner applied for reduction in CD from 330kVA to 150kVA without reduction in Load vide A&A Form dated 29.03.2016. This reduction was effected on 27.05.2016. The Revenue Audit Party, during the course of Audit of the account of the Petitioner, detected discrepancy in the preparation of bills which were prepared under General Category instead of under PIU Category after release of extension in Load and CD. Accordingly, the Petitioner was charged the difference in Tariff (MMC) and ACD, for the period from 23.07.2015 to 11.09.2016, vide Memo No. 467 dated 02.02.2017 in view of provisions contained in CC No. 27/2014 dated 29.05.2014. PC argued that CC No. 27/2014 was issued on 29.05.2014 while the Petitioner applied for extension online on 23.05.2014, as such, the said instructions were not applicable in its case at the time of application. Besides, the circular ibid was not brought to the notice of the concerned consumers individually and also was not given wide publicity immediately after its issue.

The Respondent contested that the contention of the Petitioner for quashing the demand raised by referring to the Commercial Circular (CC) No. 27/2014 which was issued on 29.05.2014 before registration of A&A Form and deposit of requisite Security (ACD) on 03.06.2014 was incorrect.

 The Respondent, also submitted that considering the admission by the Petitioner about having installed the Billet Heater on 12.03.2015 and also the fact that CC No. 27/2014 was also applicable w.e.f. 01.01.2014, the PIU tariff levied to the Petitioner w.e.f. 01.01.2014 was correct and as per the rules and regulations of the PSPCL.

 I observe that in compliance to order dated 21.03.2012 of the Hon’ble PSERC, PR Circular No. 03/2012 dated 09.04.2012 was issued by the PSPCL stating that:

 *“In accordance with Honourable PSERC orders dated 21.03.2012 it may be noted that for the purpose of Power Regulatory measures, the industrial consumers, who are using/having billet heater in their industry, shall be subjected to PR measures, as are applicable to general industries, fed from Category II, till the disposal of Petition No. 03/2012. This comes into force with immediate effect”.*

 I also find that the PSPCL subsequently issued CC no. 27/2014 dated 29.05.2014 providing that:

 *“In view of Hon’ble PSERC order dated 28.10.2013 in petition no. 3 of 2012, all LS consumers where the Induction Billet Heaters/Surface Hardening Machines are installed shall be treated under PIU category with effect from 1.1.2014. This circular supersedes CC no.28/2012 dated 06.09.2012.”*

 *Thus, there is merit in the contention of the Respondent that since the extension in load having Billet Heater Load of the Petitioner was released on 12.03.2015 and as per CC no. 27/2014 dated 29.05.2014, the Petitioner is liable to be charged on the said account from the date of release of extension in load i.e. 12.03.2015 till the date, the Petitioner was charged accordingly in the regular bill.*

**(ii)** PC next contended that the Respondent had neither given any notice to the Petitioner nor gave a Public Notice in the newspapers to bring the change in instruction to the knowledge of the General Public from the date of issuance of CC No. 27/2014 on 29.05.2014 till 16.05.2017 when a Notice to this effect appeared in the newspapers. This was clearly a violation of principle of natural justice. Besides, in case, the consumer was given to understand that on the sanctioned load of 319.620kW (which it got sanctioned by anticipating the future business plan also), such a heavy MMC of PIU will be applied, then, it might have considered to apply for lesser load of Billet Heater and might not have deposited the Service Connection Charges (SCC) of such a huge amount.

 I find that the PSPCL had not implemented, for more than six months, the order dated 28.10.2013 of the Hon’ble PSERC which, in turn, held the PSPCL responsible for the inordinate delay in implementation and imposed a penalty of Rs. 25,000/- on the PSPCL, vide order dated 09.06.2014, under Section 142 of the Electricity Act-2003.

 *I agree with the PC that the Respondent did not take any action in the matter from the date of issuance of CC no. 27/2014 dated 29.05.2014 till the date of issuance of bill dated 17.05.2017 pursuant to the observations of the Revenue Audit Party vide Memo dated 02.02.2017 and is, thus, responsible for the delay of about three years in raising the demand.*

 *At the same time, I agree with the contention of the Respondent that the Petitioner is a Large Supply consumer having Sanctioned Load of 319.620kW and Contract Demand of 150kVA, could not feign ignorance about the knowledge/availability of instructions issued and uploaded by the PSPCL from time to time, particularly of CC No. 27/2014 dated 29.05.2014 uploaded on the website of PSPCL immediately after its issuance. Hon’ble PSERC’s decision dated 28.10.2013, in Petition No. 3 of 2012 filed by Ludhiana Hand Tools Association, regarding treatment to be meted to Billet/Induction Heating load by PSPCL, was also up-loaded on the website of PSERC.*

 *I am also of the view that ignorance of Law is no excuse and merely laying the onus on the PSPCL, for not getting its instructions implemented expeditiously, is not in good taste as has been done by the Petitioner in the present case. The consumers, on their part, ought to act responsibly/ sincerely and also discharge their respective obligations in true spirit.*

**(iii)** PC also objected to the raising of demand at a belated stage by referring to Instruction no. 93.2 of Electricity Supply Instruction Manual 2010 providing that:

*“Under Section 56 (2) of the Act no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. PSPCL shall not cut off supply in all such cases, if the amount is debited after two years from the date when it became first due.”*

*I observe that the above contention of the PC is not tenable in view of instructions contained in CC No. 05/2012 issued by the PSPCL pursuant to the order of Hon’ble Punjab and Haryana High Court in LPA No. 605 of 2009 decided on 09.09.2011.*

1. PC also argued that the Petitioner had applied for extension in Load and CD on 23.05.2014 i.e. prior to issuance of CC No. 27/2014 dated 29.05.2014, as such, the action of the Respondent in raising the disputed demand was illegal and not binding on the Petitioner.

 *I observe that though the Petitioner applied online for extension in Load and CD on 23.05.2014 (when CC No. 27/2014 dated 29.05.2014 had not been issued), it actually got its A&A Form registered on 03.06.2014 after depositing the requisite ACD. Thus, the contention of the PC that it had applied for extension prior to issuance of CC No. 27/2014 is not tenable. I also observe that the Petitioner, at the time of signing Application and Agreement (A&A) Form for sanction of extension in Load/Contract Demand undertook to abide by the rules and regulations governing the connection and was, thus, bound by the instructions applicable at the relevant point of time. Accordingly, the contention of the PC questioning the validity of the demand raised is not in order.*

**5. Decision:**

 **As a sequel of above discussions, it is held that the difference in Tariff and ACD, on account of release of extension in Load/Contract Demand due to change in category of connection from General Industry to Power Intensive Unit (PIU), is recoverable from the Petitioner with effect from 12.03.2015 (date of release of extension of Load/Contract Demand) till the date when the same has been charged in the regular bill in terms of provisions contained in CC No. 27/2014 dated 29.05.2014. Since the Respondent has also defaulted in ensuring implementation of its own instructions, the additional amount shall be paid by the Petitioner in ten equal instalments and no interest/surcharge shall be charged. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, and charge them in ten equal instalments without any interest/surcharge.**

6. The Appeal is disposed off accordingly.

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 24, 2018 LokPal (Ombudsman)

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