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

**ELECTRICITY, PUNJAB,**

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

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

**Appeal No. 98/2017**

**Date of Registration : 26.12.2017**

**Date of Hearing : 31.05.2018**

**Date of Order : 07.06.2018**

**Before:**

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

**In the matter of**

Essen Auto Forge (P) Ltd,

Plot No. 11, Adjoining B-54,

Phase-VII, Focal Point,

Ludhiana.

...Petitioner

Versus

Additional Superintending Engineer

DS Focal Point Division (Special),

 PSPCL, Ludhiana.

 ...Respondent

**Present For :**

Petitioner **:** Shri R.S. Dhiman,

Petitioner’s Representative (PR).

Respondent **:** .

1. Er.K.P.S. Sidhu,

 Addl. Superintending Engineer.

1. Shri Gurstinder Singh, AAO (Revenue).

 Before me for consideration is an Appeal preferred against the order dated 27.11.2017 of the Consumers Grievances Redressal Forum (Forum) in Case No. CG-231of 2017 deciding that:

*“The amount charged by the respondent regarding difference of tariff under PIU & General category amounting to Rs. 24,87,613/- and difference of Security under PIU & General category amounting to Rs.1,76,000/- is correct and recoverable from the Petitioner.”*

**2. Facts of the Case:**

 The relevant facts of the Case are that:

1. The Petitioner, having initially Sanctioned Load of 700kW and Contract Demand (CD) of 755kVA, applied for the extension in Load to 2250kW and CD to 1600kVA, vide Application & Agreement (A&A) Form dated 03.10.2013.
2. At the time of applying for extension in Load, two Billet Heaters of 300kW and 250kW were declared in the details of the connected Load by the Petitioner and at that time, the Load of Billet Heaters was treated under **“General Category”.**
3. Chief Engineer, Commercial, PSPCL, issued Commercial Circular (CC) No. 27/2014 dated 29.05.2014 providing that connections wherein Induction Billet Heaters/Surface Hardening Machines were installed, shall be treated under Power Intensive Unit (PIU) Category w.e.f. 01.01.2014.
4. In view of the above CC, the Petitioner was issued a Notice bearing No. 776 dated 30.05.2017 for Rs. 24,87,613/- on account of for difference of PIU Tariff and General Tariff and Rs. 1,76,000/- for difference of Advance Consumption Deposit (ACD) of PIU and General Load.
5. The Petitioner did not agree with the demand raised and filed a Petition in the Forum which, passed order dated 27.11.2017 (Reference: Page 2, Pare 1).
6. Not satisfied with the said decision of the Forum, the Petitioner preferred an Appeal in this Court of LokPal and prayed that the undue charges raised against the Petition, on account of difference of Tariff and PIU and General industry may be set-aside in the interest of justice.

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

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

1. **Submissions of the Petitioner:**

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

**(i)** The Petitioner was running a Forging unit at Plot no. 11 adjoining B-54, Phase-VII, Focal Point, PSPCL, Ludhiana under the name and style of Essen Auto Forge Pvt. Ltd. and having an electricity connection of Large Supply Category, bearing Account no. 3002809567 with Sanctioned Load of 2250kW and Contract Demand (CD) of 1600kVA at 11kV. The supply voltage was 11kV.

**(ii)** A demand of Rs 24,87,613/- was raised against the Petitioner by the AEE, Commercial, Focal Point Division, Ludhiana vide memo no. 776 dated 30.05.2017 allegedly on account of difference of Tariff of PIU and General industry. The charges were levied w.e.f 01.01.2014. In addition, the Petitioner was asked to deposit Rs 1,76,000/- on account of difference of Advance Consumption Deposit (ACD) under PIU and General Industry.

**(iii)** Not only this, the Respondent also started charging difference of Tariff in future bills also of the Petitioner and were pressing the Petitioner to get, modified fresh A&A Form, enabling it to stop further charging of PIU Tariff. But since the Petitioner had no Billet Heater, in its factory, the question of charging PIU tariff or revision of A&A Forum did not arise.

1. Aggrieved by the undue demand raised by Respondent, the Petitioner challenged the same before the Forum, which upheld the charges without due application of mind to the core issue. As such the Petitioner was constrained to file the present Appeal in this Court for justice.
2. A sum of Rs 24,87,613/- had been raised against the Petitioner on account of difference of Tariff of PIU and General industry on the ground that the Petitioner had installed Billet Heaters of 550kW at its premises. The Petitioner was also charged the difference of ACD amounting to Rs. 1,76,000/- on the same ground. The aforesaid demands raised were wrong and unjustified as the Petitioner never installed any Billet Heater. In fact, no Billet Heater was even purchased or installed.
3. The Petitioner was having a Forging Unit for manufacturing of Auto

 Parts. Originally, the Petitioner’s Sanctioned Load was 700kW and the heating work of billets was being done with Oil Fired Furnaces. On 03.10.2013, it applied for an extension of 1550kW making a total load as 2250kW and CD as 1600kVA. Two Billet Heaters of 300kW and 250kW were mentioned in the list of machinery to be installed as the Petitioner planned to switch over the heating work from Oil Furnace to Electric Billet Heaters. But later, the idea of installing Billet Heaters was dropped and it was decided to continue the heating work with oil fired furnaces. However, the same list of extension in Load was attached with the Test Report at the time of release of additional load to avail full extended load. At this time also, the fact of non installation of Billet Heaters did not come to any body’s notice because the Test Report was not verified by any officer (because the Tariff rates were on the basis of demand basis i.e. on kVA). Thus, the issue of Billet Heaters remained in papers only without any Heater having been actually installed at site at any stage. Mere mention of Billet Heaters or even getting the same sanctioned did not mean that these Billet Heaters were indeed installed.

1. A look at the Maximum Demand recorded by the Energy Meter at the Petitioner’s premises after extension of load showed that it did not exceed 500kVA except some marginal increase (less than 550kVA) in 09/2016 and 10/2016. This proved that no Billet Heaters were installed/used at the Petitioner’s premises.
2. The Petitioner’s connection had been checked by various agencies of Respondent on various occasions but no officer/official had ever found any Billet Heater installed at its premises. The Petitioner should not be penalized merely on the basis of papers submitted by it. Sanction of the License for holding weapon to any one did not mean that the weapon was actually purchased and possessed by that person. In the present case there was no evidence of any Billet Heater having been installed by the Petitioner. Copies of three Inspection Reports were placed on record of this Court.
3. As per CC No. 27/2014, Billet Heaters were to be treated as Power Intensive Units (PIU) w.e.f. from 01.01.2014. The consumers having Billet Heaters declared as such the same at that time itself. The Petitioner too would have declared accordingly at that time if it had installed any such equipment. The Respondent knew that mostly Forging Units used Billet Heaters. It was, therefore, the Distribution Licensee to check if the Petitioner had also installed Billet Heaters since it was a forging unit. The Petitioner’s file also should have been scrutinized and notice should be issued in 01/2014 instead of in 2017. Had the Respondent done so, it would have been established in 01/2014 itself that the Petitioner had no such Heaters at site.
4. Keeping in view the facts brought out above, it was prayed that the undue charges raised against the Petitioner on account of difference of Tariff of PIU and General Industry may be set aside in the interest of justice.
5. **Submissions of the Respondent:**

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

1. The connection of the Petitioner is running under Large Supply category connection with the Sanctioned Load 2250kW and Contract Demand of 1600kVA.
2. A scrutiny of the consumer’s case revealed that the consumer applied for extension of load from 700kW to 2250kW and CD from 7565kVA to 1600kVA on 03.10.2013 and the same was released.
3. During the extension of Load from 700kW to 2250kW, the Petitioner had declared Two No. Billet Heater of 300kW and 250kW in the Load as per details submitted along with A&A Form.
4. As per Commercial Circular (CC) No. 27/2014dated 29.05.2014, all Large Supply consumers, in whose premises, the induction Billet Heaters/Surface Hardening Machines were installed shall be treated under PIU Category w.e.f. 01.01.2014. This Circular superseded the Commercial Circular (CC) No. 28/2012 dated 06.09.2012. As the Petitioner had installed/declared two no. Billet Heaters having total load of 550kW, so the Petitioner was covered under the category of Power Intensive Load and PIU Tariff and ACD. So, in terms of the instructions contained in CC No. 27/2014, the consumer was issued a notice bearing no. 776 dated 30.05.2017 to deposit a sum of Rs. 24,87,613/- for the difference of PIU tariff and General tariff and also Rs. 1,76,000/- for difference of ACD of PIU tariff and General tariff.
5. The consumer did not agree with the above charges claimed and instead of depositing amount, approached the Forum which, upheld the amount charged to the Petitioner by the Respondent.

**(vi)** So, in compliance to the order ibid of the Forum a notice bearing No. 3113 dated 14.12.2017 was issued to the Petitioner for depositing a sum of Rs. 21,23,426/- after adding the interest and deducting the amount already deposited by the Petitioner. But the Petitioner did not deposit the said amount and preferred an Appeal before this Court.

1. The Petitioner admitted in its reply that it applied for extension of load from 700kW to 2250kW, on 03.10.2013 and same was released. During the extension of load from 700kW to 2250kW, the Petitioner had declared two Billet Heaters of 300kW and 250kW in the load as per detail submitted along with A&A Forms and Test Report. Besides, **the Test Report was submitted after installation of the machinery/equipments.** So, the submission of details mentioning the Billet Heaters in the Load details with Test Report was itself proof of installation of Billet Heaters.
2. As per CC No. 27/2014 dated 29.05.2014, all Large Supply consumers in whose premises the induction Billet Heater/Surface Hardening Machines were installed shall be treated under PIU category w.e.f. 01.01.2014. This circular superseded CC no. 28/2012 dated 06.09.2012. The list of extended load showing details of Billet Heaters attached with the Test Report, proved that Billet Heaters had been installed.
3. The Petitioner admitted, in its Appeal, that it had mentioned Billet Heaters in the Load detail submitted with Application and Agreement Form/Test Report, so, as per instructions of CC No. 27/2014, the Respondent charged the amount as per the Notice bearing no. 776 dated 30.05.2017. Load details submitted along with A&A Forms duly signed and stamped by the consumer were itself proof of installation of the Billet Heaters.

**(x)** So, in view of above it was prayed that the Appeal of the Petitioner be dismissed.

4. **Analysis:**

The issue requiring adjudication is the legitimacy of the amount charged to the Petitioner on account of difference of Tariff and Advance consumption Deposit (ACD), under General and PIU Category due to extension in Load and CD as per applicable rules/regulations.

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

1. PR contended that the Petitioner, having initially a Large Supply Category connection with Sanctioned Load of 700kW and Contract Demand of 755kVA, applied for extension in Load and Contract Demand making total Load and CD as 2250kW and 1600kVA respectively vide A&A Form dated 03.10.2013. The extension as applied by the Petitioner was released in 11/2013. At the time of applying for extension in Load and CD, the Petitioner had declared two Billet Heaters of 300kW and 250kW in the details of the connected Load. At that time, the Load of the Petitioner was treated under “**General Category”.** PR added that the idea of installation of Billet Heaters was dropped and the Oil Fired Furnaces were installed. This was also proved by the fact that the Maximum Demand never exceeded 500kVA except some marginal increase in 09/2016 and 10/2016. No officer of the Respondent ever found any Billet Heater running at the premises of the consumer at any stage. PR submitted that mere mention of Billet Heaters in the details of Connected Load for sanction did not mean that these Heaters were indeed installed. Moreover, the Test Report was not verified by any officer. There was, thus, no evidence of two Billet Heaters having been installed at the Petitioner’s premises at any stage. As such, the demand raised for the difference of Tariff and ACD under PIU and General Industry, based on CC No. 27/2014 dated 29.05.2014, may beset-aside in the interest of justice.

 The Respondent, in its defence, submitted that the Petitioner had admitted, in its reply, that it had applied for extension in Load and CD vide A&A Form dated 03.10.2013 (mentioning in the details of the Connected Load about two Billet Heaters of 300kW and 250kW) and Test Report which, in turn, was submitted after installation of the Billet Heaters. The Respondent added that submissions of details of Billet Heaters in the connected Load with Test Report was itself proof of installation of Billet Heaters. Thus, considering that the Petitioner had declared/installed two Billet Heaters with total Load of 500kW (300kW+250kW), the Petitioner was covered under the category of Power Intensive Unit (PIU). Hence, PIU Tariff and ACD were applicable w.e.f. 01.01.2014 as per CC No. 27/2014 dated 29.05.2014.

 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 in the contention of the Respondent that since extension in Load, having Billet Heater Load, was released to the Petitioner during 11/2013 under General Load Category but, as per CC No. 27/2014 dated 29.05.2014, the Petitioner is liable to be charged the Tariff of PIU Category from 01.01.2014 because Billet Heaters were covered under PIU as per CC No. 27/2014.*

1. PR contended that the petitioner was having a Forging Unit for manufacturing Auto Parts. Originally, the Petitioner’s Sanctioned Load was 700kW and the heating work of Billets was being done with Oil Fired Furnaces. PR added that though the Petitioner mentioned about two Billet Heaters, of 300kW and 250kW in the list of machinery to be installed as the Petitioner planned to switch over the heating work from Oil Furnace to Electric Billet Heaters. But later on, the idea of installing Billet Heaters was dropped by the Petitioner who decided to continue the heating work with Oil Fired Furnaces.

 *I observe that the above contention of the Petitioner is not tenable as after release of extension in Load ( with the mention of two Billet Heaters in the details of connected Load), the Petitioner neither informed the Respondent (till 06/2017) about the non-installation of Billet Heaters nor submitted revised A&A Form/Revised details of the Connected Load.*

1. PR argued that the connection of the Petitioner had been checked by various agencies of the Respondent in the year 2017 but, no agency noticed the installation of Billet Heaters at its premises/site and the Petitioner should not be penalized merely on the basis of the papers submitted by it. PR added that had the Respondent checked the Petitioner’s file and also the installation of Billet Heaters in the Year 2014 itself (after release of extension in Load), the Respondent would have come to know in 01/2014 itself that no Billet Heater was lying installed at the site.

 The Respondent, in its defence, stated that the Petitioner’s connection was checked, on its request, vide LCR No. 04/902 dated 23.06.2017 and it was found that no Billet Heater was found installed thereat. The connection was also checked by the Addl. S.E, Enforcement, PSPCL, Batala vide ECR no. 96/2031 dated 16.08.2017 and it was observed that six Oil Furnace were installed and rest of the Load was of General Category. Subsequently, the connection of the Petitioner was also checked by the Addl. S.,E, Enforcement, PSPCL, Ludhiana vide ECR no. 29/472 dated 09.11.2017, as per orders of the Forum and only five Oil furnaces were found and rest of the Load was General.

 *I observe that the Petitioner, being a Large Supply Category consumer, ought to be aware of the implication of giving details of the Load of the Billet Heaters in the Connected Load while applying for release of extension in Load/CD and submission of the Test Report. If the Petitioner intended to change its mind not to install the Billet Heater, it should have informed the Respondent accordingly in writing about the same and also submitted revised A&A Form by excluding the Billet Heater Load. Taking such a crucial decision, without the knowledge of the Distribution Licensee did not absolve the Petitioner of its responsibility to safeguard its interest and also does not entitle it to put the onus on the Respondent. At the same time, the Respondent also defaulted in exercising the requisite vigilance and prudence to take necessary precautions to keep a watch on the installation or otherwise of the Billet Heaters by conducting periodical/statutory checking of such a Large Supply Category connection. Had the Respondent been vigilant, the litigation could have been avoided.*

From the above analysis, it is concluded that no tangible evidence has been brought on record by the Petitioner to disprove the legality of the demand raised against the Petitioner by the Respondent. As such, the Petitioner is required to be charged for the difference in Tariff and ACD (Security), with the release of extension in Load and CD, due to change of category of connection from General to PIU Category.

**5. Decision:**

 **As a sequel of above discussions, the order dated 27.11.2017 of the Forum in Case No. CG-231 of 2017 is upheld. It is held that the difference in Tariff and ACD, on account of release of extension in Load and Contract Demand and change in category of connection from General to Power Intensive Unit (PIU) is recoverable from the Petitioner with effect from 01.01.2014 till date, the same has been charged in the regular bills in terms of provisions contained in CC No. 27/2014 dated 29.05.2014. It is further held that the recovery should be effected in 24 equal installments through monthly bills without interest/surcharge as the Respondent defaulted in checking of such Large Supply consumer. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment as per rules of the PSPCL.**

**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)

June 07, 2018 LokPal (Ombudsman)

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