COURT OF THE LOK PAL (OMBUDSMAN),

ELECTRICITY, PUNJAB

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

S.A.S.NAGAR (MOHALI)

**APPEAL NO. 02/2018**

**Date of Registration : 03.01.2018**

**Date of Hearing : 14.06.2018**

**Date of Order : 20.06.2018**

**Before:**

 **Er. Virinder Singh, Lok Pal (Ombudsman) Electricity**

**In the Matter of :**

 Rakesh Nayyar,

 Woolways India Limited,

 217, Industrial Area,

 Ludhiana

 ...Petitioner

 Versus

 Additional Superintending Engineer/DS

 CMC (Special) Division, PSPCL,

 Ludhiana.

 ...Respondent

**Present For:**

Petitioner : Sh.Sukhminder Singh,

 Petitioner’s Representative (PR)

Respondent : Er. Sukhbir Singh,

Addl. Superintending Engineer

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 28.11.2017 of the Forum in Case No. CG-229 of 2017 deciding:

 *“To uphold the decision of ZDSC in terms of the account of the Petitioner be overhauled by charging PLEC till 30.12.2014 and thereafter TOD Tariff should be applied for the period during which TOD Tariff was applicable.”*

2. **Facts of the Case:**

 The relevant facts of the case are that:-

1. The Petitioner was having a Large Supply Category connection with a Sanctioned Load of 223.694kW and Contract Demand (CD) of 210kVA bearing Account No.3002808695.

**(ii)** Peak Load Exemption of 189kW was granted to the Petitioner by the Chief Engineer, Power Purchase & Regulation (PP&R) PSPCL, Patiala, vide Memo No. 10794 dated 17.08.2011, for the period from 17.08.2011 to 09.06.2012

**(iii)** The Petitioner was charged Peak Load Exemption Charges (PLEC) from 07/2012 to 09/2015, in regular monthly bills, totalling to Rs. 15,20,000/-.

**(iv)** The Petitioner did not agree with the amount charged

and filed a complaint in the Zonal Dispute Settlement Committee (ZDSC) on 21.07.2016, which, after hearing, decided on 05.05.2017 that :

 *“PLEC be charged to the consumer upto 30.12.2014 and thereafter Time of Day (TOD) Tariff be applied for the period during which ToD Tariff was applicable. Accordingly, the account of the consumer be overhauled by charging PLEC till 30.12.2014 and thereafter, TOD Tariff should be applied for the period during which it was applicable.”*

**(v)** As per the above decision of the ZDSC, the refund of PLEC from 04/2015 to 09/2015 was calculated as Rs. 3,01,366/-

**(vi)** Not satisfied with the decision of the ZDSC, the Petitioner filed a Petition on 19.09.2017 in the Forum which, after hearing the case, passed order dated 28.11.2017 ( Reference: Page 2, Para- 1).

**(vii)** Aggrieved with the decision of the Forum, the Petitioner preferred an Appeal in this Court with the prayer to allow the Appeal, set aside the decision of the Forum and order the refund along with applicable interest.

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

Before undertaking analysis of the case, it is necessary to go through written submissions made by the Petitioner and reply of the Respondent as well as oral submissions made by the Representatives of the Petitioner and the Respondent along with 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 having a Large Supply Category connection with Sanctioned Load of 223.694kW, operating under Sub Division Unit-1 of CMC (Special), DS Division, Ludhiana.
2. On its request, the Petitioner was granted Peak Load Exemption of 189kW by the office of the CE/PP&R, Patiala vide Memo No. 10794 dated 17.8.2011.
3. The Peak Load Exemption of 189kW, granted by the office of the CE/PP&R, Patiala, was for very specific period from 17.08.2011 to 09.06.2012. It had been clearly mentioned in the Memo No. 10794 dated 17.08.2011 that it had been decided to grant Peak Load Exemption of 189kW from 17.08.2011 to 09.06.2012 to the Petitioner against the payment of Peak Load Exemption Charges.
4. The Peak Load Exemption Charges were being levied and paid accordingly by the consumer and levy of the charges was not stopped even after the expiry of the last date of Peak Load Exemption i.e. 09.06.2012. As and when, the Petitioner came to know that Peak Load Exemption Charges were being levied (although the use of Peak Load Exemption was stopped from 09.06.2012 as per requirement of letter issued by the office of the CE/PP&R, Patiala), the Petitioner requested the concerned office to stop the levy of Peak Load Exemption Charges along with the request to reverse/refund the charges paid in excess. However, the needful was not done as requested.
5. The Petitioner approached the CE/Central Zone for review of refund case in the ZDSC which decided the matter on 05.05.2017 and provided marginal relief to the Petitioner without considering/discussing genuine pleadings of the Petitioner and without going through the merits of the case. On the basis of the decision of the ZDSC, a refund of only Rs. 3,01,366/- was given against the due refund of Rs.15.20 Lac approx.
6. The Petitioner was not satisfied with the decision of the ZDSC, therefore, it filed a Petition for review in the Forum which did not consider the genuine pleadings of the Petitioner and decided to uphold the decision of the ZDSC.
7. The Petitioner did not agree with the decision of the Forum, therefore, filed the present Appeal in this Court for justice.
8. Peak Load Exemption of 189kW, granted by the office of the CE/PP&R, Patiala, was for very specific period from 17.08.2011 to 09.06.2012. Accordingly, the consumer stopped the use of Peak Load Exemption after 09.06.2012.
9. MMTS was aware that Peak Load Exemption was not available to the Petitioner after 09.06.2012, as such, it imposed Peak Load Violation Charges of Rs.7,914/- for minor violations during the period from 09.06.2012 to 30.09.2015.
10. PR Circular No. 5/2012 dated 31.05.2012 was meant for those consumers who were availing Peak Load Exemption beyond 09.06.2012, but the Petitioner did not avail the same beyond 09.06.2012. The PSPCL just provided the facility to those consumers who wanted to avail Peak Load Exemption beyond 09.06.2012 and not for the purpose of burdening the consumers (who had not availed the facility of Peak Load Exemption after 09.06.2012) with liability of Peak Load Exemption Charges. Further, the Petitioner was not aware of this Circular which was also not got noted from the Petitioner. Even, MMTS directed to charge the peak load violation Charges for Peak Load Exemptions after 09.06.2012. Besides, this Circular was not uploaded on the website of the PSPCL, even till date.
11. PR Circular No. 11/2012, relied upon by the Forum, was issued 5 months after the date of expiry of Peak Load Exemptions granted to the consumer.
12. As and when the matter of levy of undue Peak Load Exemption Charges (even after 6/2012), came to the notice of the Petitioner, a reference was made, vide letter dated 17.11.2014, to the SDO (AEE)/CMC stating that use of Peak Load Exemption had been stopped after 09.06.2012 with the request to reverse the Peak Load Exemption Charges paid earlier from 7/2012 onwards. However, no reply was given to the Petitioner by the Sub Divisional Office in this regard.

**(xiii)** It was very much clear that the levy of Peak Load Exemption Charges through energy bills issued from 7/2012 onwards was not warranted as Peak Load Exemption was allowed (on the request of the Petitioner) by the office of the CE/PP&R, Patiala for very specific period from 17.08.2011 to 09.06.2012 and the levy of Peak Load Exemption Charges in the regular bills was required to be stopped from billing month of 7/2012 onwards without any notice/request from the Petitioner. The Petitioner, on its part, stopped the use of Peak Load Exemption after 6/2012 and did not run the load more than 10% of the sanctioned CD, as admissible. The amount of Peak Load Exemption Charges, as levied through energy bills issued from 7/2012 to 9/2015, worked out to Rs. 15.20 Lac approx. The Appeal may, therefore, be allowed, the decision of the Forum be set-aside and the refund alongwith applicable interest be allowed in the interest of justice.

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

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

**(i)** The Petitioner was having a Large Supply Category connection, bearing Account No.3002808695, with Sanctioned Load of 223.694kW and CD of 210kVA and Peak Load Exemption of 189kW from 17.08.2011 to 09.06.2012 was granted by the CE/Power Purchase and Regulation, PSPCL, Patiala vide Memo No.10794 dated 17.08.2011 which was extended automatically vide PR Circular No. 05/2012.

**(ii)** The Peak Load Exemption Charges were charged to the consumer from the date of sanction i.e. 17.08.2011 to 09/2015 in routine bills, The consumer did not agree with the amount charged (from 7/2012 to 09/2015) for Rs.15,20,000/- and filed its case in the ZDSC.

**(iii)** ZDSC decided that Peak Load Exemption Charges be charged to the consumer upto 30.12.2014 and thereafter, ToD tariff be applied for the period during which, ToD tariff was applicable. The said decision was implemented. But, the consumer was not satisfied with this decision and approached the Forum.

**(iv)** The Forum upheld the decision of the ZDSC vide order dated 28.11.2017 to which the consumer did not agree. Hence, it filed the present appeal in this Court.

**(v)** It was incorrect on the part of the Petitioner to submit that it could not check that after 6/2012, Peak Load Exemption Charges were levied on it. As a matter of fact, these charges were levied in each and every bill issued after 06/2012 till 09/2015 as per instructions of the PSPCL.

**(vi)** The letter dated 17.11.2014, enclosed with the Petition by the Petitioner, had got no significance as it had been shown as addressed to the SDO (AEE), Industrial Area-A, Ludhiana, who had no authorisation to allow or stop Peak Load Exemption, granted by the CE/PP&R.

**(vii)** Moreover, at any point of time, if the consumer had any objection, it was supposed to reduce/enhance/surrender its Peak Load granted by applying to the office of the Dy. Chief Engineer/PR or Fax: 0175-2300534, 2200872 or e-mail ID: se-pr-ppr@ pspcl.in, clearly mentioned in PR Circular No.11/2012 dated 12.11.2012.

**(viii)** While granting this Peak Load Exemption, vide Memo No. 10794 dated 17.08.2011, by the office of the CE/Power Purchase and Regulation, it was mentioned that this was granted as per consumer’s request dated 01.08.2011. Submission of any letter in the office of the SDO (AEE), Industrial Area-A, Ludhiana was of no significance as the consumer was well aware of the office to be approached for stopping cancellation of Peak Load Exemption Charges.

**(ix)** The genesis of this dispute was an assumption by the consumer that it was granted 189 kW Peak Load Exemption from 17.08.2011 to 09.06.2012. In this case, a reference was invited to the PR Circular No. 04/2012 stating that:

*“PSPCL is pleased to extend the Peak Load Exemptions automatically to all existing industrial (including seasonal) consumers who are availing Peak Load Exemptions beyond 09.06.2012 to 09.06.2013.*

**(x)** *Further, PR Circular No.10/2012 dated 05.10.2012 provided that:*

*“In partial modification to PR Circular No. 5/2012 dated 31.5.2012, the date mentioned in para-1 i.e. 09.06.2012 to 09.06.2013 stands amended as from 31.05.2012 to 09.06.2013”.*

**(xi)** As per PR Circular No. 11/2012 dated 12.11.2012, PSPCL extended the Peak Load Exemptions automatically to all existing Industrial (including seasonal) consumers on permanent basis. The Peak Load Exemptions as on 31.05.2012/09.06.2012, being availed by the consumers, were granted extension on regular basis.

 Because of this reason, Peak Load Exemption charges were levied from 07/2012 onwards upto 09/2015.

**(xii)** It was correct that MMTS had pointed out, vide Memo. No. 228 dated 27.04.2017, that PLV had been done on 08.07.2015, 24.07.2015 and 04.08.2015.

**(xiii)** There was no denying the fact that the consumer could claim the refund of previous period. These types of refund cases were allowed by the competent authority as per ESIM and prevalent instructions.

**(xiv)** The matter was discussed with the Centralised Billing Cell, Ludhiana which, vide Memo No.1344 dated 26.04.2017, intimated that *“ftPk oufus ygseko B{z i' gb?e dh oew gkJh rJh j?, T[j ghHnko ;oe{bo Bzpo 11$2021 fwsh 12H11H2012 nB{;ko gkJh rJh j? ns/ ;jh j? .* ”

**(xv)** Instructions regarding extension of Peak Load Exemption were issued vide CC No. 04/2012 dated 22.05.2012 i.e. before the expiry of Peak Load Exemption period of consumer i.e. 09.06.2012 and further in continuation vide CC No.10/12 dated 05.10.2012 and 11/12 dated 12.11.2012 were issued. Peak Load Exemption Charges were levied by the PSPCL as per instructions issued as per PR Circular No. 4/2012, 5/2012, 10/2012 and 11/2012.

**4. Analysis:**

The issue requiring adjudication is the legitimacy of the overhauling of the account of the Petitioner by levying Peak Load Exemption Charges (PLEC) till 30.12.2014 and applying ToD Tariff thereafter for the period, during which, it remained applicable.

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

1. PR contended that the Peak Load Exemption (PLE) of 189kW was granted by the Chief Engineer/PP&R, PSPCL vide Memo. No. 17894 dated 17.08.2011 for very specific period from 17.08.2011 to 09.06.2012. Accordingly, the Petitioner stopped the use of Peak Load Exemption after 09.06.2012. PR added that charges were being levied in the electricity bills paid accordingly by the Petitioner and were not stopped even after the expiry of the last date of Peak Load Exemption i.e. 09.06.2012. As and when the Petitioner came to know that Peak Load Exemption Charges were being levied, despite stoppage of the use of the Peak Load Exemption, after 09.06.2012 as per requirement of the Chief Engineer/PP&R’s Memo dated 17.08.2011, it requested the concerned office to stop the levy of the Peak Load Exemption Charges and refund the charges paid in excess but its request was not acceded to.

The Respondent, in its defence, stated that it was incorrect on the part of the Petitioner to contend that it could not check from the bills received about the levy of Peak Load Exemption Charges by arguing that Peak Load Exemption Charges were levied in each and every bill from 7/2012 to 9/2015. In regard to letter dated 17.11.2014 enclosed with the Petition, the Respondent submitted that the said letter, shown as addressed to the SDO (AEE), Industrial Area-A, Ludhiana was of no significance as the SDO (AEE) was not competent / authorised to allow or stop the use of the Peak Load Exemption. Moreover, if the Petitioner had any objection at any point of time, it was supposed to reduce/enhance/surrender by applying to the office of the Dy. Chief Engineer/PR or Fax to 0175-2300534, 2200872 or e-mail ID: se-pr-ppr@pspcl.inas was clearly mentioned in PR Circular No. 11/2012 dated 12.11.2012 which reads, inter-alia, as under:

*“PSPCL is pleased to extend the Peak Load Exemptions automatically to all existing Industrial (including seasonal) consumers on permanent basis. The Peak Load Exemptions as on 31.05.2012 / 09.06.2012 being availed by the consumers are hereby granted on regular basis.*

*Only such consumers are required to put in their application, who have to seek enhancement / reduction / surrender of any quantum of peak load. The applications for the same shall be submitted to this office through post, Fax (0175-2300534, 2200872) or the e-mail ID: se-pr-ppr@psppcl.in”.*

1. PR next contended that the MMTS was aware that Peak Load Exemption was not available to the Petitioner after 09.06.2012. Still, violation charges of Rs. 7,914/- were charged for minor violations for the period from 09.06.2012 to 30.09.2015. PR added that Power Regulation Circular No. 05/2012 dated 31.05.2012 was meant for those who were availing Peak Load Exemptions (Peak Load Exemption) beyond 09.06.2012 and not for the purpose of burdening the consumers (who had not availed the facility of Peak Load Exemption after 09.06.2012) with liability of Peak Load Exemption Charges. PR also stated that the Petitioner was not aware of the circular ibid which was not got noted from it and was also not available on the website of the PSPCL till date.

The Respondent also stated that the genesis of the dispute was an assumption by the Petitioner that it was granted 189kW Peak Load Exemption from 17.08.2011 to 09.06.2012. In this regard, the Respondent referred to PR Circular No. 04/2012 dated 20.05.2012, which reads as under:

*“PSPCL is pleased to extend the Peak Load Exemptions to General Industrial consumers beyond 09.06.2012 to 09.06.2013. The interested consumers seeking Peak Load Exemptions of 100kW, apply to concerned SE/DS and the consumers seeking Peak Load Exemption above 100kW, apply to this office through post, Fax (0175-2300534, 0175-2200872), E-Mail ( se-pr-ppr@pspcl.in).”*

The Respondent also referred to PR Circular No. 10/2012 dated 05.10.2012 which provided that:

*“In partial modification to PR Circular No. 5/2012 dated 31.5.2012, issued vide this office Memo. No. 4035/4175/PR/LD-38 dated 31.5.2012, the date as mentioned in Para-1 i.e. 9.6.2012 to 9.6.2013, stands amended to 31.5.2012 to 9.6.2013.”*

Subsequently, PSPCL, vide PR Circular No. 11/2012 dated 12.11.2012, issued instructions stating that:

*“This is in continuation to this office PR Circular no. 05/2012 & 10/2012 issued vide memo no. 4035/4175/PR/LD-38 dated 31.5.2012 and 7791/7918/PR/LD-38 dated* *5.10.2012 PSPCL is pleased to extend the Peak Load Exemptions automatically to all existing industrial (including seasonal consumers) on permanent basis. The Peak Load Exemptions as on 31.5.2012 / 9.6.2012 being availed by the consumers are hereby granted on regular basis.*

*Only such consumers are required to put in their application, who have to seek enhancement / reduction / surrender of any quantum of peak load. the applications for the same shall be submitted to this office through post, fax ( 0175-2300534, 2200872) or the e-mail ID:* *se-pr-ppr@pspcl.in**.”*

The Respondent also stated that due to the above reasons, Peak Load Exemption Charges were levied from 07/2012 to 09/2015, in view of PLVs pointed out by the MMTS vide Memo. No. 228 dated 27.04.2017. The Respondent added that the matter was discussed with the C.B.C, PSPCL, Ludhiana which intimated, vide Memo. No. 2644 dated 26.04.2017, that the amount charged to the Petitioner was in accordance with the provisions of PR Circular No. 04/2012 dated 22.05.2012 (issued prior to expiry of the period of Peak Load Exemption i.e. 09.06.2012) and PR No. 11/2012 dated 12.11.2012.

*I observe that although PR Circular No. 05/2012 dated 31.05.2012 is not available on the website of the PSPCL but PR Circular issued subsequently vide PR Circular No. 10/2012 dated 05.10.2012 (giving a reference to PR Circular No. 05/2012 dated 31.05.2012) is available on the website and must have been seen by the Petitioner who must be a vigilant as it is Large Supply Consumer using Peak Load Exemptions from time to time.*

 *I also observe that in response to the request dated 08.12.2014 of the Petitioner opting for ToD Scheme, it was informed by the AEE/Commercial, CMC Division (Special), PSPCL, Ludhiana that ToD Tariff was applicable to its account with effect from 30.12.2014. Accordingly, Peak Load Exemption Charges will not be applicable to it from 30.12.2014 onwards.*

*I am of the view that since, the PR Circulars No. 04/2012 and 10/2012 were available on the website of the PSPCL, the Peak Load Exemption already granted was automatically extended and the Petitioner was required to submit fresh application for increase/decrease or surrender of the Peak Load Exemption, already granted. The idea behind issuance of these circulars was to simplify the procedure for grant of Peak Load Exemption. As the Petitioner did not apply for reduction / withdrawal / surrender of Peak Load Exemption after 09.06.2012 (but opted for ToD w.e.f. 30.12.2014), hence, Peak Load Exemption Charges are applicable to its account upto 30.12.2014, whereafter, ToD Tariff is applicable.*

From the above analysis, it is concluded that PR Circular No. 05/2012 dated 31.05.2012 was not uploaded on the website of the PSPCL and hence, escaped the knowledge of the Petitioner. However, as stated by it, PR Circular No. 10/2012 dated 05.10.2012, which was issued in partial modification of PR Circular No. 05/2012 dated 31.05.2012, was duly uploaded on the website of the PSPCL. So, the Petitioner can not feign ignorance of the aforesaid circulars issued by the PSPCL. ***Accordingly, the Petitioner is liable to pay Peak Load Exemption Charges from 05.10.2012 (date of issuance of PR Circular No. 10/2012) upto 30.12.2014 (the date on which ToD Tariff was opted by the Petitioner). However, the Petitioner is not liable to pay PLV charges amounting to Rs. 7,914/- charged by the Addl. S.E/MMTS, Ludhiana vide Memo. No. 228 dated 27.04.2017.***

**5. Decision:**

 **As a sequel of above discussions, the order dated 28.11.2017 of the Forum, in Case No. CG-229 of 2017, is set-aside. Accordingly, the Respondent is directed to recalculate the demand, as per conclusion arrived at in Para 4 above, and refund/recover the amount found excess/short, after adjustment, if any, without interest/surcharge.**

**6.**  The Appeal is disposed of accordingly.

7. In case, the Petitioner or the Respondent 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 the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2016.

 (VIRINDER SINGH)

June 20, 2018 LokPal (Ombudsman)

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