**COURT OF THE LOK PAL (OMBUDSMAN),**

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 29/2018**

**Date of Registration : 18.05.2018**

**Date of Hearing : 20.09 .2018**

**Date of Order : 26.09.2018**

**Before:**

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

**In the Matter of:**

Smt. Suresh Rani,

W/o Sh. Ved Parkash,

Geeta Oil Mill,

Barnala.

...Petitioner

Versus

Additional Superintending Engineer,

DS Sub Urban Division,

PSPCL, Barnala. . ...Respondent

**Present For:**

Petitioner : 1. Shri Atul Mittal,

Petitioner.

2. Sh. S.R. Jindal,

Petitioner’s Representative (PR).

Respondent : Er. Pawan Kumar Garg,

Addl. Superintending Engineer.

Before me for consideration is an Appeal preferred by the Petitioner against the order dated 02.04.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No. CG-37 of 2018, deciding that:

*“Petitioner is eligible for availing Time of Day (ToD) Tariff from 11/2015 to 10/2017 as per provisions of relevant tariff order(s) ‘without prejudice’ to the outcome of decision of Hon’ble Punjab & Haryana High Court, Chandigarh in the Appeal case vide CWP No. 28728/2017.”*

**2. Facts of the Case:**

The relevant facts of the Case are that:

1. The Petitioner, having a Small Power (SP) Category connection, got the same converted into Medium Supply Category Connection with extension in load to 97.740kW on 20.02.2014 by getting installed a Device Language Message Specification (DLMS) complied Energy Meter.
2. The Petitioner applied for Time of Day (ToD) Tariff on 03.11.2015 in term of provisions of the Commercial Circular (CC) No.46/2014 dated 04.09.2014 and CC No. 16/2015 dated 07.05.2015.
3. The Respondent, vide letter no. 1451 dated 10.09.2017, informed the Petitioner that the rebate of ToD was not admissible to the Petitioner in terms of provisions contained in CC No. 16/2015, as the Petitioner did not apply for the same before 15.09.2015.
4. Not satisfied with the reply of the Respondent, the Petitioner filed a Petition on 07.02.2018 in the Forum who, after hearing, passed order dated 02.04.2018 (Reference: Page 2, Para 1).
5. Aggrieved with the decision of the Forum, the Petitioner preferred an Appeal in this Court and prayed to allow the Appeal in the interest of natural justice.

**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.

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

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

1. The Petitioner, having a Small Power (SP) Category connection, got the same converted into a Medium Supply (MS) Category connection with extension in load to 97.740 kW with effect from 20.02.2014 and installed a Device Language message Specification (DLMS) complied Energy Meter.
2. The Petitioner applied for ToD Tariff rebate on 03.11.2015 in view of the provisions contained in Commercial Circular (CC) No. 46/2014 dated 04.09.2014 and Commercial Circular (CC) No. 16/2015 dated 07.05.2015. In response, the Petitioner was informed vide letter dated 10.09.2017 that the said rebate was not admissible as the Petitioner had not applied for the same before 15.09.2015.
3. The Petitioner complained on dated 30.11.2017 to the Chairman-cum-Managing Director, PSPCL under intimation to Chief   
   Engineer/DS, Deputy Chief Engineer/DS and Sr. XEN/DS, PSPCL, Barnala, against not allowing the rebate of ToD Tariff. In response thereto, the Petitioner received a letter bearing no. 2335 dated 14.12.2017, from the Respondent’s office informing it that reply to the letters dated 01.08.2017 and 10.09.2017, of the Petitioner was sent by the Respondent vide letter no. 2335 dated 14.12.2017 which was received back undelivered. However, the Respondent failed to produce evidence in support of its aforesaid contention before the Forum. Moreover, letter no. 1451 dated 10.09.2017 of the Respondent mentioned that Petitioner was not eligible for rebate in view of instructions contained in CC No. 16/2015 because it had not applied for the same before 15.09.2015. The version of the Respondent was not in accordance with the spirit of the provisions of CC No. 16/2015.
4. During the course of oral submissions in the Forum on 07.03.2018, the Respondent failed to give convincing reply to the submissions of the Petitioner. After hearing both the parties, the Forum passed order dated 02.04.2018 to allow ToD Tariff rebate from 11/2015 to 10/2017 as per provisions of relevant Tariff Orders without prejudice to the outcome of the decision of the Hon’ble Punjab and Haryana High Court, Chandigarh in a CWP No. 28728 of 2017 filed by the Petitioner, praying for setting aside the order of this Court in Appeal No. 40 of 2017 regarding recovery of the difference of the amount on account of application of incorrect Multiplication Factor.
5. As per the order of the Forum, the ToD Tariff rebate was allowable from 11/2015 to 10/2017, as detailed below, as per provisions of the rules/circulars on the subject:
6. 11/2015 to 03/2016 CC No. 16/2015 dated 07.05.2015
7. 10/2016 to 05/2017 CC No. 28/2016 and 09/2017

(C) 10/2017 to 03/2018 CC No. 48/2017 dated 10.11.2017

1. On the basis of data supplied by the Respondent, consumption recorded by DLMS Energy Meter from 10 PM to 06 AM was as under :
2. 11/2015 to 03/2016 Data not available with the

Respondent

1. 10/2016 to 05/2017:

Month ToD Units( in kVAh)

10/2016 174

11/2016 898

12/2016 574

01/2017 800

02/2017 202

03/2017 276

04/2017 140

05/2017 100

(C) 10/2017 to 03/2018:

10/2017 -

11/2017 160

12/2017 7005

01/2018 10046

02/2018 -

03/2018 590

1. The basis for calculation of ToD Tariff rebate for the period 11/2015 to 03/2016 was not as per rules and also not fair as it was never discussed before the Forum at Patiala. The Respondent, in its reply, stated that from 11/2015 to 03/2016, rebate was admissible, but ToD readings were not available, hence, the Petitioner claimed ToD rebate on 50% consumption for the said period as it had run the Mill in two shifts (day and night). Neither, the Respondent contested the Petitioner’s version nor the Forum in its decision, gave any direction to calculate consumption for the said period for giving ToD rebate. The consumption for the said period was as under :

Month ToD Units (in kVAh)

11/2015 1534

12/2015 28202

01/2016 27230

02/2016 23956

03/2016 15678

1. On the other hand, the Respondent stated that rebate from January-2017 had already been given in the bills but the same was adjusted (not shown separately) in calculation of 3% voltage rebate. The statement of the Respondent was itself contradictory and controversial to the discussion held, during hearing dated 07.03.2018 before the Forum who, on the basis of the statement /discussions, ordered for allowing rebate for the period from 11/2015 to 10/2017. The Respondent had misled the Forum by giving wrong statement that rebate was not admissible in view of the Commercial Circular (CC) ibid by interpreting the same incorrectly. The Respondent did not point out the fact that from January 2017, ToD Rebate Data was fed in the Computer for billing. The Respondent concealed the real facts in its reply to the Petition and discussion before the Forum.
2. Keeping in view the above submissions, the Petitioner may be allowed ToD Tariff rebate as per the order of the Forum, on the basis of 50% of consumption, for the period from 11/2015 to 03/2016 and for the remaining period, on actual consumption basis along with interest for the delayed payments.

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

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

1. The load of the Petitioner was extended to 97.740 kW and its Small Power (SP) Category connection was converted into Medium Supply (MS) Category connection with effect from 20.02.2014.
2. The claim of the Petitioner regarding ToD rebate was almost settled for the period from 11/2015 to 10/2017 except only for the period from 11/2015 to 03/2016, for which, no supporting ToD consumption data was available as also admitted by the Petitioner in the Appeal.
3. For the period from 11/2015 to 03/2016, the ToD rebate had been assessed on the analogy of the Regulation 21.5.2 (d) of the Supply Code-2014 by taking the consumption recorded in the corresponding period of succeeding years i.e. from 11/2016 to 03/2017, as per following details:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Month/  Year | Total  Consu-  mption in kVAh | ToD Cons.  in kVAh | ToD Rebate | Month/  Year | ToD Cons in kVAh | Total  Cons. in kVAh | ToD Rebate |
| 10/2016 | 492  MF 2 | 174  MF 2 | Rs. 174 |  |  |  |  |
| 11/2016 | 9262  MF 2 | Rs. 998  MF 2 | Rs. 998 | 11/2015 | 767  MF 1 | 74  MF 1 | Rs. 83 |
| 12/2016 | 14240  MF 2 | 574  MF 2 | Rs. 574 | 12/2015 | 14101  MF 1 | 568  MF 1 | Rs. 568 |
| 01/2017 | 19698  MF 2 | 800  MF2 | Rs. 400 | 01/2016 | 13615  MF 1 | 553  MF 1 | Rs. 553 |
| 02/2017 | 16274  MF 2 | 202  MF 2 | Already given | 02/2016 | 11978  MF 1 | 149  MF 1 | Rs. 149 |
| 03/2017 | 9514  MF 2 | 276  MF 2 | -do- | 03/2016 | 7839  MF 1 | 227  MF 1 | Rs. 227 |
| 04/2017 | 326  MF 2 | 140  MF 2 | Rs. 140 | Total |  |  | Rs. 1580 |
| 05/2017 | 292  MF 2 | 100  MF 2 | Rs. 100 |  |  |  |  |
| 10/2017 | 862  MF 2 | 322  MF 2 | Rs. 402 |  |  |  |  |
| 11/2017 | 10704  MF 2 | 160  MF 2 | Already given |  |  |  |  |
| 12/2017 | 22712  MF 2 | 7004  MF 2 | -do- |  |  |  |  |
| 01/2018 | 23910  MF 2 | 5023  MF 2 | -do- |  |  |  |  |
| 02/2018 | 8370  MF 2 | 1720  MF 2 | Rs. 2150 |  |  |  |  |
| 03/2018 | 6946  MF 2 | 294  MF 2 | Already given |  |  |  |  |
| **Total** |  |  | **Rs. 4938** |  |  |  |  |

Total ToD Rebate Amount (Rs. 4938 + 1580) = Rs. 6518

Already given Rs. 2234

Net Payable Amount Rs. 4284

In the month of January 2017, ToD rebate became Rs. 800 against which, rebate of Rs. 400/- was already given in the bill.

**(iv)** The decision of the Forum was quite judicious and self speaking and was complied with for the period from 11/2015 to 10/2017 except for 11/2015 to 03/2016 for which, no supporting consumption data was available as also admitted by the Petitioner in the Appeal. Therefore, for the period from 11/2015 to 03/2016, the ToD rebate was allowed/assessed in terms of Regulation 21.5.2 (d) of Electricity Supply Code-2014. As per rules, relief had been granted vide SCA No.107/22/75 dated 24.04.2018 by Sr. XEN, CBC, PSPCL, Patiala.

**(v)** The claim of the Petitioner regarding 50% of the units for ToD was baseless and was not based on any rule, hence, fallacious.

**(vi)** The issue of recovery of dues on account of application of Multiplication Factor (MF) raised by the Petitioner in CWP ibid was pending adjudication in the Hon’ble Punjab and Haryana High Court, Chandigarh, as such, the ToD rebate given was without prejudice to the decision of the Hon’ble Punjab & Haryana High Court, Chandigarh. Obviously, the claim of the Petitioner was baseless and frivolous and based on merely conjecture and surmises.

**(vii)** The Appeal may be dismissed.

**5. Analysis:**

The issue requiring adjudication is the legitimacy of the claim of the Petitioner for allowing Time of Day (ToD) Tariff rebate, on the basis of 50% consumption for the period from 11/2015 to 03/2016 and interest on delayed payment on Time of Day (ToD) for the period from 11/2015 to 10/2017 as per applicable regulations.

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

1. PR contended that the Petitioner was having a Medium supply Category connection for the Oil Mill with sanctioned load of 97.740 kW w.e.f. 20.02.2014 when a Device Language Message Specification (DLMS) complied Energy Meter was installed. The Petitioner complained on dated 30.11.2017 to the Chairman–cum-Managing Director, PSPCL under intimation to Chief Engineer / DS, Deputy Chief Engineer / DS and Sr. XEN / DS, PSPCL, Barnala, for not allowing the rebate of ToD Tariff as per Tariff Orders issued by Hon’ble PSERC. In response thereto, the Petitioner received a letter bearing no. 2335 dated 14.12.2017, from the Respondent’s office informing it that reply to the letters dated 01.08.2017 and 10.09.2017, of the Petitioner was sent by it which was received back undelivered. However, the Respondent failed to produce evidence in support of its aforesaid contention before the Forum. Moreover, letter no. 1451 dated 10.09.2017 of the Respondent mentioned that Petitioner was not eligible for rebate in view of instructions contained in CC No. 16/2015 because it had not applied for the same before 15.09.2015. The version of the Respondent was not in accordance with the spirit of the provisions of CC No. 16/2015 dated 07.05.2015. During the course of oral submissions in the Forum on 07.03.2018, the Respondent failed to give convincing reply to the submissions of the Petitioner. After hearing both the parties, the Forum passed order dated 02.04.2018 to allow ToD Tariff rebate from 11/2015 to 10/2017 as per provisions of relevant Tariff Orders without prejudice to the outcome of the decision of the Hon’ble Punjab and Haryana High Court, Chandigarh in CWP No. 28728 of 2017 filed by the Petitioner, praying for setting aside the order of this Court in Appeal No. 40/2017 regarding recovery of the difference of the amount due to application of incorrect Multiplication Factor during the period from 20.02.2014 to 10.04.2017.

The Respondent contested the averments of the Petitioner and stated that the claim of the Petitioner regarding ToD Tariff for the period from 11/2015 to 11/2017 was almost settled except only for the period from 11/2015 to 03/2016, for which, no supporting ToD consumption data was available as also admitted by the Petitioner in the present Appeal. As such, for the period from 11/2015 to 03/2016, the ToD Tariff rebate had been assessed, in terms of provisions contained in Regulation 21.5.2 (d) of the Supply Code-2014 by taking consumption recorded in the corresponding period of succeeding year i.e. from 11/2016 to 03/2017.

I have perused the records and observed that the Medium Supply Category connection of the Petitioner was checked on 15.02.2017 by the AEE/DS, Sub-urban Sub Division, Barnala who observed that Multiplication Factor (MF) had been applied incorrectly as 1 instead of 2. Accordingly, the Petitioner was served a notice dated 17.02.2017 to deposit a sum of Rs.7,06,899/- on account of the difference of the amount due as a result of wrong application of MF in earlier energy bills. Aggrieved, the Petitioner filed a Petition (CG-56/2017) in the Forum who decided on dated 03.07.2017 that the amount charged to the Petitioner was justified considering correct MF 2 (instead of MF 1). The Petitioner did not agree with the said decision and preferred an Appeal in this Court which vide its order dated 27.10.2017, held that the Petitioner was liable to be charged by applying the MF correctly as per provisions of Regulation 21.5.1 of the Supply Code-2014. Aggrieved, the Petitioner filed a CWP No. 28728 of 2017 in the Hon’ble Punjab and Haryana High Court on 16.12.2017 challenging the application of correct MF 2 and recovery of charges on account of short assessment due to application of incorrect MF for the period from 20.02.2014 to 15.02.2017. Hon’ble High Court heard the matter on 16.12.2017 and passed order staying the recovery, of difference of Multiplication Factor charged beyond a period of six months pending final decision in this case.

*I observe that the period for which ToD Tariff rebate has been claimed in the present Appeal by the Petitioner (i.e. for 11/2015 to 03/2016) also falls within the aforesaid period i.e. from 20.2.2014 to 15.02.2017, involved in CWP ibid, pending adjudication.*

I find that the Petitioner had admitted that Consumption Data for the ToD timings from 10 PM to 6 AM during the period from 11/2015 to 03/2016 is not available due to which, the Respondent has calculated the ToD Tariff rebate for this period by taking the consumption of corresponding period of succeeding year i.e. 11/2016 to 03/2017 as per provisions of Regulation 21.5.2 (d) of the Supply Code-2014, but the Petitioner has claimed ToD Tariff rebate on 50% consumption for the said period on the plea that it had run the factory during two shifts day and night, which is not correct as no rules/regulation permits the same.

1. PR next contended that the Respondent stated that rebate from January-2017 had already been given in the bills but the same was adjusted (not shown separately) in calculation of 3% voltage rebate. The statement of the Respondent was itself contradictory and controversial to the discussion held, during hearing dated 07.03.2018 before the Forum who, on the basis of the statement /discussions, ordered for allowing rebate for the period from 11/2015 to 10/2017. The Respondent had misled the Forum by giving wrong statement that rebate was not admissible in view of the Commercial Circular (CC) ibid by interpreting the same incorrectly. The Respondent did not point out the fact that from January 2017, ToD Tariff Rebate Data was fed in the Computer for billing. The Respondent concealed the real facts in its reply to the Petition and discussion before the Forum. PR prayed that apart from allowing ToD Tariff rebate on the basis of 50% of consumption for the period from 11/2015 to 03/2016 (for which, the Forum did not give any direction to calculate the rebate), interest may also be allowed on the delayed payment of ToD Tariff rebate for the period from 11/2015 to 10/2017.

The Respondent submitted that in the month of January 2017, ToD Tariff rebate became Rs. 800 against which, refund of Rs. 400 was already given in the bill. The Respondent added that the claim of the Petitioner regarding 50% of the units for giving ToD Tariff rebate was baseless and was not supported by any rule/regulation, hence, not sustainable. Besides, the Petitioner was also not entitled to any interest on the rebate as claimed by it.

*I observe that the Petitioner was allowed the benefit of the ToD Tariff rebate except for the period from 11/2015 to 03/2016, during which, the ToD Consumption Data for the timing from 10 PM to 6 AM is not available and the Respondent has calculated the ToD Tariff rebate for this period by taking the consumption of the corresponding period of succeeding year i.e. from 11/2016 to 03/2017 as per provisions of Regulation 21.5.2 (d) of the Supply Code-2014, but the Petitioner has claimed ToD Tariff rebate on the basis of 50% consumption for the said period on the plea that it had run the factory during two shifts day and night, which is not supported by any rule/regulation and thus, not sustainable. I also find that the Forum has not given any direction to calculate the ToD Tariff rebate for the period from 11/2015 to 03/2016.*

From the above analysis, it is concluded that the existing rules/regulations do not provide any method for ToD rebate in cases wherein ToD consumption is not available. Hence, it is just and fair to allow the ToD rebate in such cases ***on average consumption during the corresponding period for succeeding two years to meet the ends of natural justice.*** Therefore, the Petitioner shall be given Time of Day (ToD) Tariff rebate for the period from 11/2015 to 03/2016 (for which consumption data is not available) on the basis of average consumption of the corresponding period of succeeding two year (i.e. 11/2016 to 03/2017 and 11/2017 to 03/2018). This will, however, be without prejudice to the outcome of the decision of the Hon’ble Punjab and Haryana High Court in CWP No. 28728 of 2017 filed by the Petitioner in the matter regarding difference of amount due to application of incorrect Multiplication Factor.

**5. Decision:**

**As a sequel of above discussions, it is held that ToD Tariff rebate for the period from 11/2015 to 03/2016 shall be paid to the Petitioner without interest as per conclusion arrived at in Para-4 above. At the same time, 40% of the disputed amount deposited by the Petitioner for filing the present Appeal shall also be refunded to it without interest.**

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

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

(VIRINDER SINGH)

September 26, 2018 LokPal (Ombudsman)

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