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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 03/2018**

**Date of Registration : 08.01.2018**

**Date of Hearing : 20.06.2018**

**Date of Order : 27.06.2018**

**Before:**

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

**In the Matter of :**

 Shree Mangal Industries,

 F-294, Phase-VIII, Focal Point,

 Ludhiana

 ...Petitioner

 Versus

 Additional Superintending Engineer/DS,

 Focal Point Division (Special),

 PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Petitioner : Sh.Kanwarjit Singh, Advocate,

 Petitioner’s Counsel (PC).

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

Addl. Superintending Engineer.

 2. Sh.Gursatinder Singh,

 A.A.O.(Revenue).

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 13.11.2017 of the Forum in Case No. CG-217 of 2017 deciding that:

 *“ The Petitioner’s account be overhauled for difference of tariff under PIU & General category and difference of Security under PIU and General category is justified and charges are recoverable from the Petitioner”*

2. **Facts of the Case:**

 The relevant facts of the case are that:-

**(i)** The Petitioner was having a Large Supply Category connection with Sanctioned Load of 150kW and Contract Demand (CD) of 150 kVA bearing Account No. E32FP6901018 (old) 3002810247 (new).

**(ii)** The Petitioner applied for a new connection in the month of 07/2009 vide Application and Agreement Form (A&A) No. 1363556 wherein the Petitioner declared 75 kW as Induction Furnace, in the details of the Connected Load.

**(iii)** The Petitioner was served a notice, vide Memo bearing No. 784 dated 30.05.2017, to deposit a sum of Rs. 2,56,201/- for the difference of Tariff under Power Intensive Unit (PIU) and General Industry for the period from 01/2014 to 04/2017 and another of Rs. 24,000/- for the difference of ACD under Power Intensive Unit (PIU) and General Industries in compliance to Commercial Circular (CC) No. 27/2014 dated 29.05.2014, issued by the Respondent as per order dated 28.10.2013 of Hon’ble PSERC.

**(iv)** Aggrieved with the decision of the Forum, the Petitioner

preferred an Appeal in this Court with the prayer to allow the same and issue directions to the Respondent to withdraw the amount of penalty levied vide Memo No. 784 dated 30.05.2017 to the tune of Rs. 2,56,201/- being the difference in Tariff plus Rs. 24,000/-, being the difference in amount of Security alongwith 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 alongwith material brought on record by both the sides.

1. **Submissions of the Petitioner**:

The Petitioner submitted the following for consideration of this Court:

1. The Petitioner was having a Large Supply Category connection with the Sanctioned Load of 150 kW to do the work of the casting.
2. After the discussion with the officers of the PSPCL, the Petitioner’s firm applied for 75 kW load of Induction Furnace alongwith the load of other machinery, under ‘General’ Category, which, as per applicable instructions, was required to be allowed. PSPCL itself at the relevant time, sanctioned and allowed the load so applied, under ‘General’’ category ás per provisions applicable at that time i.e CC No. 28/2012.
3. Though, the Respondent, in its reply to this Appeal, mentioned that PSPCL issued CC No. 27/2014 treating Induction Billet Heater/Surface Hardening Machines load as Power Intensive Unit (PIU) and uploaded the same on its website,but the Respondent failed to intimate the same to the aggrieved consumers.
4. Hon’ble PSERC, in Petition No. 03 of 2012, filed by the PSPCL regarding treatment of Billet/Induction heating load as PIU, passed order dated 28.10.2013. An extract of the relevant para of the order pronounced on dated 28.10.2013 in Petition No. 03 of 2012 read as under:-

*21(v) “ The Commission accepts the comments of PSPCL given vide letter No. 6625 dated 5.9.13 and decides that all LS consumers, where the Induction billet Heaters/Surface Hardening Machines are installed shall be treated under PIU category. This order of the Commission will be applicable with effect from 01.01.2014. The Respondent PSPCL shall issue a public notice in the leading news papers having wide circulation in the State for wide publicity to the order of the Commission and its impact. The requisite formalities, if any, required for implementing the decision by PSPCL be completed before 1.1.2014.”*

1. As per the said order, the necessity/requirement, of intimation, regarding the change in applicable instructions, to the concerned consumers by issuing notices to them and giving a Public Notice for publication in the leading newspapers was emphasised, but the PSPCL, itself deliberately delayed the implementation of the order announced by the Hon’ble PSERC as evidenced from perusal of the last para of the order dated 09.06.2014 announced by the Hobn’ble PSERC in Petition No. 08 of 2014 which read as under:

“ *Keeping the above facts of the case in view, the Commission is of the considered opinion that delay caused in implementation of the order of the Commission dated 28.10.2013 was deliberate and could have been avoided by PSPCL. The Commission does not agree with the justification for delay given by PSPCL and holds that inordinate delay of more than six month amounts to contravening the directions of the Commission. The Commission accordingly decides that PSPCL shall pay Rs. 25,000/- (Rupees Twenty Five Thousand only) by way of penalty under Section 142 of the Electricity Act 2003*.”

 This clearly proved that the officers of PSPCL itself did not implement the order pronounced by the Hon’ble PSERC. PSPCL issued CC No. 27/2014 dated 29.05.2014 and the Petitioner came to know about it on 30.05.2017 when a notice from PSPCL was received by the Petitioner.

1. Similarly, keeping in mind the business point of view, the Petitioner, at that time, had got done the work and charged the customers at the rates keeping in view the expenditure required to be incurred (including the electricity expenses) for completion of the work of its customers and at this stage, the Petitioner was not in a position to recover the revised rates, charged by the PSPCL, from its customers.
2. The PSPCL, on its own, charged the General Category Large Supply Tariff to the Petitioner gladly and without any hindrance, till the service of notice bearing Memo No. 784 dated 30.05.2017. The amount so charged was paid in time and nothing was due against the Petitioner.
3. Natural Justice, in this case, required that in the event of change of any instructions, it was the duty of the PSPCL to bring that change in the knowledge of the concerned consumers. Since, intimation regarding the change in applicable Tariff and Security, to be deposited by the concerned consumer was not given at the relevant time to the consumer , as such, charging of such a huge amount at this stage was not legally correct.
4. The Respondent had overhauled the account of the Petitioner for the period under dispute, but had not charged the said amount in the consumption bills continuously, issued for the period from 01.01.2014 till the service of the notice dated 30.5.2017, when, as per CC No. 27/2014, such sum became first due on 01.01.2014. Hence, as per the Section 56 (2) of the Electricity Act-2003, the PSPCL was not legally entitled to recover the said amount from the Petitioner.
5. In view of the submissions made above, the decision of the Forum and the amount charged to the Petitioner, on account of difference of Tariff and Security under Power Intensive Unit (PIU) and General Category, be set aside.

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

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

**(i)** The connection of the Petitioner was running under Large Supply category in the name of Shree Mangal Industries, Ludhiana bearing Account No. E32FP6901018 (old) 3002810247 (new).

**(ii)** A scrutiny of the consumer’s case revealed that the consumer applied for Large Supply category connection with the sanctioned load of 150 kW and CD of 150 kVA in the month of 07/2009 and the same was released. While processing the application for release of connection, the Petitioner had declared 75kW Induction Furnace in the details of the connected Load.

**(iii)** As per Commercial Circular No. 27/2014 dated 29.05.2014, all Large Supply connections, where the induction Billet Heaters/Surface Hardening Machines were installed, shall be treated under Power Intensive Unit Category from 01.01.2014. As the Petitioner had installed/declared Induction Furnace of 75kW, so, the Petitioner came in the category of Power Intensive Load and Power Intensive Unit Tariff was applicable. Therefore, as per the instructions of CC No. 27/2014, the consumer was issued a Notice bearing No. 784 dated 30.05.2017 to deposit Rs.2,56,201/- for the difference of Power Intensive Unit (PIU) Tariff and General Tariff and also Rs.24,000/- for difference of Security of Power Intensive Unit (PIU) and General category. As per Instruction No. 3.2 of the Electricity Supply Instruction Manual (ESIM), Induction Furnace came under Power Intensive Unit category. So, the amounts were charged for difference of Tariff and Security under Power Intensive Unit (PIU) and General category.

**(iv)** The consumer did not agree with the demand raised vide notice bearing Memo No. 784 dated 30.05.2017 and instead of depositing the same, approached the Forum which, after hearing, decided the case on 13.11.2017 and held that the amount charged to the Petitioner was recoverable.

**(v)** It was incorrect that after the release of the connection, the Petitioner had been depositing regularly the consumption charges raised by the PSPCL and nothing was due as recoverable, being consumption charges, from the Petitioner.

**(vi)** As per order dated 28.10.2013 of the Hon’ble PSERC in Petition No.03 of 2012, all Large Supply connection consumers, where the induction billet Heaters/Surface Hardening Machines were installed, shall be treated under Power Intensive Unit category w.e.f. 01.01.2014. This Circular superseded Commercial Circular No. 28/2012 dated 06.09.2012 and the same was issued vide CC No. 27/2014 dated 29.05.2014 by the PSPCL and uploaded on its website for the information of the consumers.

**(vii)** As the Petitioner was charged Rs. 2,56,201/- for difference of tariff and Rs. 24,000/- for difference of Security vide Memo No. 784 dated 30.05.2017, hence, the period of limitation started from 30.05.2017 (Date of Notice issued to the Petitioner). Thus, the amount charged to the consumer was correct and recoverable.

**(viii)** The amount charged to the Petitioner was on the basis of CC No. 27/2014 dated 29.05.2014 of the PSPCL issued under the guidelines of the Hon’ble PSERC. The concerned circular was uploaded by SE/IT, PSPCL, Patiala on the PSPCL website [www.pspcl.in](http://www.pspcl.in) as per endorsement No. 514/548/DD/SR-62 dated 29.05.2014 of the circular. Therefore, the circular was in public domain and the said website was regularly visited by the Large Supply consumers of the PSPCL for updating any change in the rules and regulations of the PSPCL. Therefore, the amount charged was correct.

**(ix)**  No penalty was levied by the Respondent on the Petitioner in this case and the amounts charged were on account of difference of Tariff and Security under Power Intensive Unit (PIU) and General category.

**4. Analysis:**

The issue requiring adjudication is the legitimacy of the amount charged to the Petitioner, for the period from 01.01.2014 to 30.04.2017, on account of difference of Tariff and Security, applicable under General and PIU Category, due to declaration and treatment of 75 kW Induction Furnace Load under General, instead of under PIU Category, at the time of release of new connection.

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

1. PC contended that the Petitioner was having a Large Supply Category connection with Sanctioned Load of 150 kW and Contract Demand of 150 kVA. The Petitioner applied for a new connection, vide Application and Agreement Form No. 1363556 in 07/2009, wherein the Petitioner mentioned 75 kW Induction Furnace in the details of the connected Load. PC added that the Load of the Induction Furnace and other machinery, applied for by the Petitioner, was sanctioned by the Distribution Licensee itself under such category which, as per applicable provisions, was required to be allowed. Besides, the Tariff Rate was applied to the Petitioner, as required under the category, as per applicable provisions. Thus, the Petitioner, who had used 75 kW load of Induction Furnace, had not violated any instructions of the PSPCL.

The Respondent, in its defence, stated that the Petitioner had applied for new connection of Large Supply Category with the Sanctioned Load of 150 kW and Contract Demand of 150 kVA in 07/2009 and the same was released. A perusal of the application of the Petitioner revealed that it had declared 75 kW Induction Furnace in the details of the Connected Load. The Respondent added that as per Commercial Circular No. 27/2014 dated 29.05.2014, all the Large Supply Category connections, wherein the Induction Billet Heaters/Surface Hardening machines were installed, shall be treated under PIU Category with effect from 01.01.2014. Since the Petitioner had declared Induction Furnace of 75 kW, the Petitioner came under the category of Power Intensive Load and PIU Tariff was applicable in terms of provisions of CC No. 27/20154. Accordingly, a Notice was issued vide Memo No. 784 dated 30.05.2017 to the Petitioner to deposit Rs. 2,56,201/- for the difference of PIU and General Category Tariff and also Rs. 24,000/- on account of difference of Security under PIU and General Category. Since the Petitioner did not deposit the said amount, it could not claim that nothing was due against it on the plea that it had deposited the consumption charges regularly as per demand raised by the Distribution Licensee. The Respondent also stated that the Petitioner had itself admitted that it had been using Induction Furnace Load, as such, the Petitioner’s connection came under the category of PIU in terms of Instruction No. 3.2 of ESIM due to which, the amount charged to the Petitioner, on account of difference of Tariff and Security under General and PIU Category, was correct and recoverable.

1. PC contended that the Respondent had overhauled the account of the Petitioner for the disputed period by raising the charges for the difference in Taiff and Security under Power Intensive Unit (PIU) and General Category, without charging the said amount in the consumption bills continuously, issued for the period from 01.01.2014 till the service of the notice dated 30.05.2017, whereas as per CC No. 27/2014, such sum became first due on 01.01.2014. Hence, the PSPCL was not legally entitled to recover the said amount from the Petitioner in terms of provisions of Instruction 93.2 of the ESIM providing as under:

*“Under Electricity Act 56 (2), “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 the 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 next contended that Hon’ble PSERC had, in Petition No. 03 of 2012 filed by the PSPCL regarding treatment to be meted to Billet/Induction heating load, passed order dated 28.10.2013. An extract of the relevant Para of the order pronounced reads as under:

***21 (v)*** *“The Commission accepts the comments of PSPCL given vide letter No.6625 dated 5.9.13 and decides that all LS consumers where the Induction billet Heaters/Surface Hardening Machines are installed shall be treated under PIU category. This order of the Commission will be applicable with effect from 01.01.2014. The respondent PSPCL shall issue a public notice in the leading news papers having wide circulation in the State for wide publicity to the order of the Commission and its impact. The requisite formalities, if any, required for implementing the decision by PSPCL be completed before 1.1.2014.”*

As per the above said order, the necessity/requirement of sending intimation regarding the change in applicable instructions to the concerned consumers by issuing notices to them and giving a Public Notice for publication in the leading newspapers was emphasised, but the PSPCL, itself deliberately delayed the implementation of the order announced by the Hon’ble PSERC and as evidenced from perusal of the last Para of the order dated 09.06.2014 announced by the PSERC in Petition No. 08 of 2014. An extract of the Para of the order ibid is given hereunder:

“*Keeping the above facts of the case in view, the Commission is of the considered opinion that delay caused in implementation of the order of the Commission dated 28.10.2013 was deliberate and could have been avoided by PSPCL. The Commission does not agree with the justification for delay given by PSPCL and holds that inordinate delay of more than six month amounts to contravening the directions of the Commission. The Commission accordingly decides that PSPCL shall pay Rs. 25,000/- (Rupees Twenty Five Thousand only) by way of penalty under Section 142 of the Electricity Act 2003.”*

PC argued that this clearly proved that the officers of the PSPCL itself were not willing to implement of the order announced by the Hon’ble PSERC in spite of the issuance of CC No.27/2014 dated 29.05.2014 till the issuance of the notice dated 30.05.2017 and did not implement the said order till the issuance of the aforesaid order of the Commission. Thus, natural justice in this case, required that in the event of change of any instructions, it was the duty of the PSPCL to bring that change in the knowledge of the concerned consumers. Since, intimation regarding the change in applicable Tariff and Security to be deposited by the concerned consumer was not given at the relevant time to the consumer, as such, charging of such a huge amount at this stage was not legally correct.

*I observe that the Petitioner, at the time of release of electricity connection in 07/2009, declared 75 kW Induction Furnace Load in the details of the connected Load in the Application and Agreement Form. Evidently, the Petitioner erred in mentioning the category as “General” while signing the A&A Form and the Respondent too defaulted in treating the 75 kW Induction Furnace Load under “General” instead of under “PIU” Category. I also observe that the PC, during the course of oral submissions, could not bring evidence on record in support of its contention that the work of casting (for which new connection was taken by the Petitioner) came under the purview of “General” Industry. Though, there is merit in the contention of the PC that the Distribution Licensee PSPCL defaulted in ensuring compliance of its own instructions, circulated vide CC No. 27 dated 29.05.2014, the Petitioner ( a Large Supply Category consumer, having Sanction Load of 150 kW and Contract Demand of 150 kVA) can not feign ignorance about the knowledge/availability of the instructions issued and uploaded by the PSPCL on its website from time to time, particularly of CC No. 27/2014 dated 29.05.2014 uploaded on the website of PSPCL immediately after its issuance. I also find that the order dated 28.10.2013 of the Hon’ble PSERC in Petition No. 03 of 2012, filed by Ludhiana Hand Tools Association regarding treatment to be meted to Billet/Induction Heating Load by PSPCL, was also uploaded on the website of the PSERC and was thus available for being viewed by the Stakeholders including the Petitioner.*

I observe that the Petitioner, at the time of signing the Application and Agreement Form, undertook to abide by the rules/instructions governing the connection issued by the PSPCL from time to time and as such, had no locus standi to question the validity of the Demand Notice dated 30.05.2017 issued without levying any penalty, in the light of the instructions, so issued.

*I am also of the view that ignorance of Law is no excuse and merely laying the onus on the Distribution Licensee for not ensuring implementation of its own instructions is not in good taste as has been done by the Petitioner in the instant case. The consumers, on their part, ought to act vigilantly, sincerely and responsibly in discharge of their obligations.*

From the above analysis, it is concluded that evidence brought on record by the PC does not warrant justification for interference by this court to set-aside the decision dated 13.11.2017 of the Forum in Case No. CG-217 of 2017. Accordingly, the Petitioner is liable to be charged on account of difference of Tariff and Security applicable under PIU and General Category, in terms of provisions contained in CC No. 27/2014 dated 29.05.2014, for the period from 01.01.2014 to 30.04.2017. As the Respondent defaulted in not noticing the discrepancy in regard to the category (General or PIU) applicable to the Petitioner for charging the Tariff and Security immediately after issuance of CC No. 27/2014 dated 29.05.2014, no interest/surcharge be charged to the Petitioner.

**5. Decision:**

 **As a sequel of above of discussions, it is held that the Petitioner should be charged for the difference of both Tariff and Security applicable in respect of PIU and General Category from 01.01.2014 to 30.04.2017, in terms of provisions contained in CC No. 27/2014 dated 29.05.2014. It is also held that no interest/surcharge be levied on this account. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment, without Interest/Surcharge as per rules of the PSPCL.**

**6.** The Appeal is disposed off 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 27, 2018 LokPal (Ombudsman)

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