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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 01/2019**

**Date of Registration : 15.01.2019**

**Date of Hearing : 19.03.2019**

**Date of Order : 29.03.2019**

**Before:**

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

**In the Matter of :**

 Asian Bikes Pvt. Ltd,

Opposite Ravi Dharam Kanda,

Eastman Implex Chowk, Sua Road,

Dhandari Kalan, Ludhiana.

 ...Petitioner

 Versus

 Senior Executive Engineer,

DS Estate Division (Special),

PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Petitioner : 1. Shri Charanjit Singh,

 Petitioner’s Representative (PR).

 2. Shri Vipan Miutta,

 Petitioner’s Representative (PR).

Respondent : 1. Er. Amandeep Singh,

 Senior Executive Engineer,

 DS, Estate Division (Special),

 PSPCL, Ludhiana.

 2. Shri Krishan Singh,

 Assistant Accounts Officer.

Before me for consideration is an Appeal preferred by the Petitioner against the order dated 14.12.2018 in Case No. CGL-027 of 2018 of the Consumers Grievances Redressal Forum (Forum) deciding as under:

*“Amount of Rs. 5,15,061/- is payable by the consumer along with interest and surcharge as contained in PSPCL Tariff Order 2016-17 after pre-audit.”*

**2. Facts of the Case:**

 The relevant facts of the case are that:

**(i)** The Petitioner was having a Large Supply (LS) Category connection with sanctioned load of 990 kW and contract demand (CD) of 995 kVA with effect from 11.06.2016**.**

1. The Petitioner was issued supplementary notice vide Memo No.9297

dated 06.08.2018 for Rs.8,78,278/- which was revised as Rs. 6,74,575/- (Principal Rs. 5,15,061/- plus Interest Rs. 1,58,514/-) after reviewing the account of the Petitioner.

1. The Petitioner was issued energy bill for the month of 06/2016 dated 28.07.2016 for the period 31.05.2016 to 30.06.2016 for Rs.7,54,830/- (including the Demand Surcharge of Rs.21,090/- and Rs. 92,240/- as Violation Penalties). In fact, the Petitioner got CD of its connections extended from 420 kVA to 995 kVA with effect from 11.06.2016 and Demand recorded as per above bill was only 372 kVA. The Petitioner never violated PLHRs during the period from 31.05.2016 to 30.06.2016. Therefore, the Petitioner was allowed to deposit the bill amounting to Rs.6,48,030/- (against Rs. 7,54,380/-) which was deposited by it.
2. Next bill was issued in the month of 08/2016 dated 03.09.2016, for the period from 30.06.2016 to 31.08.2016, an amount of Rs.17,255/- was charged as Violation Penalties in addition to Rs.1,45,930/- as Arrear of Current Financial Year. The Petitioner paid previous bill in full and did not violate PLHRs during the period. Therefore, the bill was rectified as Rs.12,37,014/- which was paid by the Petitioner.
3. Next bill for the month of 09/2016 dated 04.10.2016, an amount of (-) Rs. 5,15,314/- was shown under column Arrear of Current Financial Year and total amount of bill was Rs.5,19,020/-**,** instead of Rs.10,34,680/-. The said wrong bill issued was corrected for Rs.10,34,688/- and the Petitioner deposited the above bill.
4. The subsequent bill for 10/2016 dated 02.11.2016 was issued for Rs.2,69,670/- and was paid. In this bill, (-) Rs.5,15,061/- as arrear of Current Financial Year were deducted from the actual payment of Rs.7,84,731/-. All the subsequent bills were also paid by the Petitioner.
5. The actual energy consumption charges outstanding upto 10/2016 worked out to Rs. 5,15,061/- and after adding Rs. 1,59,514/- as interest and surcharge from 16.11.2016 to 06.08.2018, a sum of Rs. 6,74,575/- (Rs. 5,15,061 + 1,59,514) was recoverable.
6. The Petitioner did not agree to the demand raised and filed Petition dated 09.11.2018 in the Forum, who, after hearing, passed the order dated 14.12.2018 (Reference: Page 2, Para 1).
7. Aggrieved with the decision of the Forum, the Petitioner preferred an Appeal in this Court and prayed to allow the payment of energy consumption charges for Rs. 5,15,061/- without any interest and refund /adjust the excess amount charged in the interest of justice.
8. **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 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 was having a Large Supply (LS) Category connection with sanctioned load as 990 kW and contract demand (CD) 995 kVA.
2. The contract demand of the consumer was extended from 420 kVA to 995 kVA w.e.f. 11.06.2016 and Maximum Demand as per bill was only 372 kVA. There was no reason of exceeding sanctioned contract demand.
3. The reading of the Energy Meter was taken every month and the energy bills raised by the Respondent – PSPCL were paid on the basis of recorded consumption.
4. The Respondent issued a supplementary bill dated 06.08.2018 amounting to Rs. 8,78,278/- after overhauling its account.
5. Though the amount raised as per the said supplementary bill was unreasonable, the Petitioner deposited the amount under protest to avoid disconnection.
6. The Petitioner filed a Petition on 09.11.2018 for review in the Forum, who decided the case against the Petitioner without deliberations on the arguments put forth in the Petition and relevant Clauses of Regulation 30, 31 and 32 of the Supply Code-2014.
7. The responsible officer of the Respondent – PSPCL was recording readings every month and the bills were issued on the basis of recorded consumption, had been paid by the Petitioner. However, the bills of excess amount charged were got amended and deposited thereafter.
8. As per billing system prevailing in PSPCL, if any bill remained unpaid, then, outstanding amount was also shown in the regular bill and the same continued to be shown in every subsequent bill until the outstanding amount was completely paid.
9. The energy bill for the period from 31.05.2016 to 30.6.2016 was issued for Rs. 7,54,830/- which included an amount of Rs. 21,090/- as demand surcharge and Rs.79,892/- as violations penalties.
10. The Petitioner asked for details of charging demand surcharge and violations penalties from the office of the Respondent – PSPCL which, after verification, rectified the bill as Rs.6,48,030/- which was deposited by the Petitioner.
11. The bill issued by the Respondent in the month of 08/2016 for the period from 30.06.2016 to 31.08.2016, an amount of Rs. 17,255/- was charged as violations penalties besides Rs. 1,45,930/- as Arrears Current Financial Year. The amended previous bill was fully paid and the Petitioner did not violate PLHRs during the period 30.06.2016 to 31.08.2016. Hence, the bill was rectified as Rs. 12,37,014/- which was deposited by the Petitioner. There was no unpaid amount after the payment of bill issued in 08/2016.
12. The bill amounting to Rs. 5,19,020/- was issued in the month of 09/2016 was shown as “Arrears Current Financial Year”, which was rectified as Rs. 10,34,680/- and the same was deposited by the Petitioner. The next bill issued in the month of 10/2016 for Rs. 2,69,670/- was deposited by the Petitioner.
13. All the bills issued/amended relating to the period from 04/2016 to 10/2016 and subsequent bills were duly paid and no amount remained as outstanding. The difference in bill (less billing) was due to erroneous bills issued from 04/2016 to 10/2016.
14. As per calculation sheet provided with the supplementary bill dated 06.08.2018 for Rs. 8,78,278/- (disputed amount) less amount deposited was to the extent of Rs. 1,13,312/- and Rs. 1,30,567/- had been wrongly shown in the bill issued in 06/2016 and 08/2016. The difference was due to excess billing and the amount of amended/rectified bills was deposited within the due date. There was also difference in that the bill issued in the month of 10/2016 for Rs. 2,69,670/- which was paid and there was no outstanding amount relating to the previous period which was clear from the bill issued from 04/2016 onwards.
15. The difference of actual consumption charges for 10/2016 worked out to be Rs.5,15,061/- but the same was considered as Rs.6,45,636/- by mistake as admitted by the Respondent – PSPCL and the actual consumption charges were revised to Rs.5,15,061/- and the interest from 11/2016 to 08/2018 on the balance amount (Rs.6,45,636/-) was calculated as Rs. 2,32,642/- making the recoverable amount as Rs. 8,78,278/-.
16. The surcharge and the interest could be charged if the correct bill was prepared/delivered to the Petitioner and the same remained unpaid after due date but as per record of the Petitioner, none of the bill issued and delivered to the Petitioner was pending for payment and there was no outstanding payment against the Petitioner relating to the previous period which was evident from the bills issued from 04/2016 onwards. Thus, the amount of Rs.2,32,642/- was liable to be withdrawn.
17. The decision of the Forum was wrong, non-speaking and biased. The Forum did not deliberate the provisions contained in Regulation of Regulation 30, 31 and 32 of the Supply Code-2014. The Forum arrived at the biased conclusion and just mentioned in its order that the Revenue Accountant of the Sub Division, due to some mistake or deliberately, gave credit of Rs. Rs,6,78,500/- to the Petitioner against deposit of ACD by which, the Petitioner actually benefitted financially. So, according to the Respondent, the Petitioner was liable to pay energy charges for the month of 11/2016 along with interest and surcharges as per rules and regulations of the PSPCL.
18. In the past, numerous cases of wrong bills issued to the consumers by the PSPCL for years together, which was detected afterwards, but after detection of mistake, surcharge/interest was never charged/allowed to the consumers even though PSPCL (for excess billing) or concerned consumer (due to less billing) got temporary financial benefit for certain period. As per rules of the PSPCL, the surcharge/interest was applicable after expiry of due date. In the present case the Forum had wrongly decided that the Petitioner was liable to pay energy charges for the month of 11/2016 along with surcharge and interest from 11/2016 as per rules of the PSPCL.
19. Charging of Rs.2,32,642/- revised to Rs.1,85,951/- as interest from 11/2016 to 08/2018 was totally unjustified and illegal.
20. Aggrieved with the decision of the Forum, an Appeal was preferred in this Court with the request to revise the supplementary bill as payable for Rs. 5,15,061/- instead of Rs. 8,78,278/- and order refund/adjustment of excess amount deposited in the interest of justice.
21. **Submissions of the Respondent:**

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

1. The Petitioner was having a Large Supply (LS) Category connection initially with sanctioned load as 990 kW and contract demand 420 kVA. The Contract Demand (CD) was got extended on 11.06.2016 from 420 kVA to 995 kVA.
2. On detection of the wrong refund, a supplementary bill was issued in 06.08.2018 to the Petitioner for Rs.8,78,278/- (Principal Rs.6,45,636 + interest and surcharge Rs.2,32,642/-) for the period from November 2016 to August 2018) as per Regulation 21.1 Subsequently, the revised amount worked out to Rs.7,01,012/- comprising of Rs. 5,15,061/- (Principal) and Rs. 1,85,951/- (interest) for the period from 16.11.2016 to 06.08.2018).
3. The bill issued on 03.09.2016 was of Rs. 14,00,200/- in which Rs.1,45,930/- was previous balance which was not corrected through sundry for the wrong demand surcharge (Rs. 21,090/-) and peak load violation charges (Rs. 92,240/-) including late payment surcharge of Rs. 32,182/- charged in the month of 06/2016. The Petitioner deposited Rs. 12,37,014/- as bill was corrected by the Revenue Accountant. In this bill, Rs. 21,090/- and Rs. 92,240/- had been wrongly charged by SAP system and were not recoverable and the correction had been made in the revised calculation sheet.
4. In the bill issued on 03.09.2016, Rs. 17,255/- had been charged as Peak Load violation Charges which were not recoverable and the correction had been made in the revised calculation sheet. In the next bill issued on 04.10.2016 the current energy bill was for Rs. 10,34,688/- and in this bill, (-) Rs. 5,15,314/- was shown under column Arrear due to wrong Check lot, which was corrected to Rs. 10,34,680/- manually. The Petitioner deposited Rs.10,34,680/- on correction of the bill from Rs. 5,19,620/- to Rs. 10,34,680/- from the Revenue Accountant (RA), as the minus entry of Rs.5,15,314/- was wrong.
5. The Petitioner got extended its load from 990 kW/420 kVA to 990kW/995 kVA and deposited Rs. 6,78,500/- as Advance Consumption Deposit (ACD) vide A&A No. 2000327981 dated 02.09.2015.
6. In SAP System, on dated 26.09.2016, in chronology list, cash Security deposit of Rs. 6,78,500/- was charged but was not to be charged as it was already deposited by the Petitioner, therefore, this amount was to be reversed/cleared by the Revenue Accountant (RA) through a Check lot.
7. Two Check lots for Rs.6,78,500/- each had been posted by the Revenue Accountant (RA) in SAP Chronology as on dated 15.10.2015 (actually posted on 14.09.2016) whereas only one check Lot was to be entered in the SAP System to adjust the outstanding balance of ACD in the System as the amount was charged by the SAP System and the adjustment of the amount could only be corrected by giving refund through a Check lot, but the Revenue Accountant (RA) posted two Nos. Check lots on 14.09.2016 posted in back date of 15.10.2015 in chronology list.
8. In the bill amounting to Rs.7,84,731/- issued to the Petitioner on 02.11.2016, there was minus balance of Rs.5,15,061/- and due to this, the net amount of the bill was Rs.2,69,670/- which was deposited by it. But, the actual energy consumption charges of 1,13,171 kVAh units were Rs.7,84,731/- Thus, the wrong minus balance was due to wrong posting of double check lot for Rs. 6,78,500/-. The Petitioner had to get the bill corrected as there was wrong minus balance of Rs. 5,15,061/-.
9. The Respondent had revised the calculations as under:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Bill issue date** | **Grace** **Date** | **Total amount****of bill****(in Rs.)**  | **Amount** **paid** **By the consumer****(in Rs.)** | **Balance** **less deposited****(in Rs.)** | **Remarks** |
| 28.07.2016 | 08.08.2016 | 7,61,358/- | 6,48,030/- | 1,13,328/- | Payment less deposited was not recoverable. It had been charged in bill as peak load violation charges Rs. 92,240/- and demand surcharge Rs. 21,090/- (As per revised bill issued on SAP System) but to the consumer bill was issued for Rs.7,54,830/- in which peak load was Rs. 92,240/-) |
| 03.09.2016 | 13.09.2016 | 1,24,269 | 12,37,014 | 17,255 | Payment less deposited. But in this bill Rs. 17,255/- had been wrongly charged as peak load violation charges. Hence, amount less paid was not recoverable. |
| 04.10.2016 | 14.10.2016 | 10,34,688 | 10,34,688 | 00008 |  - |
| 02.11.2016 | 15.11.2016 | 7,84,731 | 2,69,670 | 5,15,061 | Amount recoverable |

1. In the previous bill issued on 04.10.2016 there was also minus previous balance of Rs. 5,15,314/- and it was got corrected by the Petitioner from the Revenue Accountant and the Petitioner paid Rs.10,34,680/- by correcting the SAP bill amount of Rs.5,15,620/-. Therefore, the consumer was well aware of the minus balance of Rs.5,15,061/- in the bill issued on 02.11.2016 and it did not get the same corrected from the Revenue Accountant (RA) from Rs. 2,69,670/- to Rs.7,84,731/-. Hence, it deposited less amount of Rs.5,15,061/- and was liable to pay interest thereon.
2. The concerned Revenue Accountant who posted wrong excess refund, had been charge-sheeted vide Charge sheet issued vide Memo. No. 9712 dated 01.11.2018.
3. PSPCL was a Utility providing essential services like electric supply to its consumers spending huge amount on production, transmission and distribution etc., the cost of electricity supply to its consumers including the Petitioner depended upon borrowing by paying interest and if the revenue due from sale of electricity was not paid by the Petitioner in time, then, it put more economic burden on the PSPCL for sustaining the loss due to delay/late receipt of revenue from the consumers including the Petitioner.
4. The Petitioner had taken the economic benefit for about three years by not paying its dues for energy consumed by it in time and the PSPCL had sustained a great loss. The Petitioner was correctly liable to pay the interest to PSPCL with outstanding energy consumption bill amount which remained unpaid till now.
5. In view of the above submissions, the Appeal deserved to be dismissed.
6. **Analysis:**

The issue requiring adjudication is the legitimacy of the demand raised by the Respondent for Rs. 8,78,728/- revised as Rs. 7,01,012/- and again as Rs. 6,74,575/- (comprising principal amount of Rs. 5,15,061/- and Rs. 1,59,514/- as interest thereon) for the period from 16.11.2016 to 06.08.2018 due to wrong credit of Rs. 6,78,500/- (ACD amount) given to the Petitioner by usage of check lot by the Revenue Accountant.

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

1. The present dispute relates to non payment of a sum of Rs.5,15,061/- relating to bill dated 02.11.2016 (for the period from 30.09.2016 to 31.10.2016) with due date 15.11.2016 and levy of interest thereon, from 16.11.2015 to 06.08.2018, amounting to Rs.1,59,514/-. In its rejoinder to the written reply, of the Respondent, the Petitioner’s Representative (PR) stated during hearing that the Respondent had admitted (in its reply) numerous billing mistakes involving less/excess charging of the amounts to the consumer. The employee of the Petitioner got corrected the mistake as and when the same was noticed. The Petitioner’s Representative (PR) added that preparation and delivery of correct bills, posting of payment, showing unpaid amount after deposit of every bill and levy of late payment surcharge/interest (if any) and disconnection of electricity supply in the case of partial/non-payment was the responsibility of the concerned office of the PSPCL as prescribed in relevant Regulation 30, 31 and 32 of the Supply Code-2014. The PSPCL was paying heavily to their employees which ultimately affected the tariff payable by the consumers. It was not fair that every time, the employee of consumer was supposed to detect the mistake in billing and got it corrected and its failure in detecting mistake in the present case (although as per PSPCL rules, employees of the PSPCL and not of consumer were supposed to ensure issuance of correct bills) had led to huge penalty to the Petitioner in the shape of interest and surcharge whereas, the late payment surcharge/interest could be charged only if a consumer did not pay the bill or an arrear bill by the due date. But the Petitioner always deposited all the bills/rectified bills within prescribed period. Thus there was no justification of charging of interest due to issue of wrong bill (for any month) by the PSPCL. Petitioner’s Representative (PR) contended that the Forum had wrongly arrived at the conclusion just on the ground that the Petitioner was the actual beneficial financially due to wrong credit of Rs.6,78,500/- given by the Revenue Accountant (RA), therefore, the Petitioner was liable to pay energy charges on the unpaid billed amount for the month of 11/2016 along with interest and surcharge as per rules and regulations of the PSPCL. The assumption/observation of the Forum was not supported by any regulation of the Supply Code-2014, ESIM or any provision of the Electricity Act-2003. If the criteria of use of funds by the consumers or the PSPCL (due to less or excess bill) was taken as the base for charging interest for previous period then it may set wrong precedent and for excess billing, the consumers may also demand interest retrospectively (for the entire period of excess billing) from the PSPCL but this was not provided in the rules/regulations. Petitioner’s Representative (PR) submitted that charging interest from 11/2016 to 08/2018 was totally unjustified and illegal and prayed to order the revision of payable supplementary bill as Rs.5,15,061/- (instead of Rs.8,78,278/-) and order refund/adjustment of excess amount to provide justice to the bonafide consumer of the PSPCL.

 The Respondent, in its defence, mainly reiterated the submissions made in its reply and asserted that the Petitioner was well aware of the minus balance of Rs.5,15,061/- in the bill dated 02.11.2016 and it did not get the same corrected from the Revenue Accountant (RA) as was done by the Petitioner on previous occasions of excess billing. The Respondent added that the Petitioner, by depositing less amount of Rs.5,15,061/- with the PSPCL, had utilised the amount for its own use and earned interest thereon. The plea of the Petitioner’s Representative that raising of demand for interest in such like case may set up a bad precedent was not tenable as in the present context as the Petitioner was erroneously given refund of ACD amount of Rs. 6,78,500/- through a Check lot and the Petitioner was well aware of minus entry made in the bill.

*I find that the Petitioner had got extended its Contract Demand (CD) from 420 kVA to 995 kVA and deposited Rs.6,78,500/- as Advance Consumption Deposit (ACD). In SAP system, on dated 26.09.2016 in chronology list, cash security deposit was charged for Rs.6,78,500/- which was not to be charged as it was already deposited by the Petitioner. This amount of Rs.6,78,500/- was credited to the Petitioner’s account by the Revenue Accountant (RA) through two Check lots for Rs.6,78,500/- each had been posted by the Revenue Accountant in SAP chronology on 15.10.2016, despite the fact that only one Check lot was to be entered in SAP system. Accordingly, the unpaid amount of Rs.5,15,061/- shown in the bill dated 02.11.2016 along with surcharge and interest thereon for the period from 16.11.2016 to 06.08.2018 is justified and recoverable from the Petitioner, as also decided by the Forum in its order dated 18.12.2018.*

1. The Petitioner, being a Large Supply Category consumer did not act prudently and responsibly by not making payment of unpaid amount of Rs.5,15,061/- of energy bill dated 02.11.2016. At the same time, the Respondent defaulted in performing its duty efficiently and intelligently by not ensuring compliance of its own rules and instructions for timely realization of its legitimate dues from the consumer.

 *I observe that the Revenue Accountant overstepped its jurisdiction by reversing the entries of the disputed bill on its own without any justification and without approval of the competent authority viz. AEE/Commercial who has the authority to sign the bill originally issued and thus, any amendment thereto.*

1. **Conclusion:**

From the above analysis, the legitimacy of payment of unpaid amount of Rs.5,15,061/- relating to the energy bill dated 02.11.2016 along with surcharge and interest thereon from 16.11.2016 to 06.08.2018, proves beyond doubt.

6. **Decision:**

**As a sequel of above discussions, the order dated 14.12.2018 of the CGRF in case No. CGL-027 of 2018 is partially modified. It is held that the unpaid amount of Rs. 5,15,061/- on account of actual energy consumption charges as per bill dated 02.11.2016 plus surcharge and interest thereon from 16.11.2016 to 06.08.2018 is payable in terms of provisions contained in the Tariff Order for the Financial Year 2016-17, 2017-18 and 2018-19. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment.**

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

**8.** 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)

March 29, 2019 Lok Pal (Ombudsman)

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