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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 07/2019**

**Date of Registration : 25.01.2019**

**Date of Hearing : 11.04.2019**

**Date of Order : 25.04.2019**

**Before:**

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

**In the Matter of :**

 Sardar Associates Pvt. Ltd,

Village Ramgarh,

Chandigarh Road, Ludhiana.

 ...Petitioner

 Versus

 Senior Executive Engineer,

DS, Estate Division (Special),

PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Petitioner : Sh. Sukhminder Singh,

 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 26.10.2018 in Case No. CG-311 of 2018 of the Consumers Grievances Redressal Forum (Forum) deciding as under:

*“****(a)*** *Petitioner is liable to pay the excess credit given in his account alongwith surcharge and interest thereon for the period 30.09.2016 to 06/2018 as stipulated under PSPCL Tariff Order (s) FY 2016-17, 2017-18 and 2018-19 as per Clause 21 of General Conditions of Tariff.*

***(b)*** *Dy.CE/Operation Circle, City West, PSPCL, Ludhiana, is directed to take disciplinary action against the delinquent official for wrong credit to Petitioner by misusing his official position and conniving with Petitioner in a fraudulent manner incurring financial loss to the Company.”*

**2. Condonation of Delay:**

At the outset, the issue of condonation of delay in filing the Appeal in this Court was taken up.

 As per material available on record, the decision dated 26.10.2018 of the CGRF was sent to the Petitioner by the Secretary, CGRF, Patiala vide Registered Memo. No. 4372-4373 dated 30.10.2018 which was received by the Petitioner on 08.01.2019 as stated by it. However, no evidence about the said date of receipt was brought on record of this Court. PR argued that the Petitioner had received Notice dated 08.01.2019 from the Respondent asking it to deposit the sum due as decided by the Forum. Accordingly, the Petitioner preferred the Appeal in this Court on 25.01.2019 within one month of receipt of Notice ibid from the Respondent.

The Respondent contested the plea of the PR and stated that the Appeal was required to be **filed within one month from the date of receipt of decision of the Forum** and not from the date of receipt of Demand Notice with Supplementary Bill from the Respondent.

I have gone through Regulation 3.18 (ii) of the PSERC (Forum and Ombudsman) Regulation-2016 which reads as under:

 “***No representation to the Ombudsman shall lie unless the representation is made within one month of the date of receipt of order of the Forum.***

*Provided that the Ombudsman may entertain a representation beyond one month on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of one month”.*

*I observe that though the Petitioner has given reasons for not filing the Appeal within the stipulated period, but the same are not much convincing. The Petitioner ought to have kept a watch on the decision of the Forum by visiting its website regularly or by remaining in touch with the office of the Respondent for knowing the outcome of the case.*

*I also observe that non condonation of delay would deprive the Petitioner of the opportunity, required to be afforded, to seek remedy and would also not meet the ends of ultimate justice. Thus, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court is condoned and the Petitioner is afforded an opportunity to present the case.*

**3. Facts of the Case:**

 The relevant facts of the case are as under:

**(i)** The Petitioner was having Large Supply (LS) Category connection with sanctioned load of 2449.980 kW and contract demand (CD) as 2495 kVA.

1. The Audit Party charged Rs. 10,42,092/- to the account of the Petitioner, vide Memo No. 5383/85-CA-RA-503 dated 25.07.2018, on account of wrong Check lot entered in SAP Billing System chronology and resultant excess credit given to the Petitioner by the Revenue Accountant (RA).
2. The Respondent served a supplementary bill vide Notice bearing No. 529 dated 27.07.2018, to the Petitioner asking it to deposit Rs. 10,42,092/-.
3. Aggrieved, with the aforesaid notice dated 27.07.2018, the Petitioner filed the Petition dated 07.08.2018 in the Forum, who, passed the order dated 26.10.2018 (Reference: Page-2, Para-1).
4. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court and prayed to set aside the demand of Rs. 10,42,092/- raised by the Respondent – PSPCL, in the interest of justice.

**4**.  **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 2449.980 kW and contract demand (CD) 2495 kVA.
2. The reading of the Energy Meter was taken every month and the bills were raised by the Respondent – PSPCL from time to time, on the basis of energy consumption recorded by the Energy Meter.
3. AEE/DS PSPCL, Sahnewal, vide supplementary bill dated 27.07.2018 (with due date as 31.07.2018), asked the Petitioner to deposit an amount of Rs. 10,42,092/- by mentioning in the bill that the account was checked by Special Audit Party, PSPCL, Patiala and the amount of surcharge was reversed which was otherwise recoverable, therefore, the amount of Rs. 10,42,092/- was charged to the Petitioner’s account.
4. The Petitioner was charged the amount without reference to any rule/regulation of Supply Code-2014 or Electricity Act, 2003 and the Respondent – PSPCL did not supply any evidence/details to the Petitioner and complete calculation sheet of the amount charged. The Petitioner should have been informed under which rule/regulation, it was being penalized. The Chief Engineer/Commercial, vide Commercial Circular (CC No. 53/2013 and CC No. 59/2014), had issued instructions on the basis of order dated 26.09.2013 passed by the Hon’ble Punjab and Haryana High Court, in CWP No. 10644 of 2010 that while initiating proceedings against any consumer, the competent authority of the PSPCL must quote the relevant regulations of the Supply Code or any other regulations framed under Electricity Act, 2003. These instructions had been again reiterated vide CC No.30/2015 dated 05.08.2015, for strict compliance as Hon’ble PSERC had taken serious view of non-compliance of these instructions.
5. The Petitioner approached the Forum, who did not provide any relief to the Petitioner.
6. The Forum had wrongly referred to the Clause-21 of the General Conditions of Tariff while arriving at the conclusion, by ignoring various relevant clauses of Regulation 30, 31 and 32 of the Supply Code-2014 and decided the case against the Petitioner.
7. The officer of the Respondent – PSPCL was taking readings every month and bills raised on measured consumption basis had been paid well in time. There was delay in the payment of three/four bills, but the payment was deposited within seven days after the due date as given in the bill.
8. The charging of huge amount of Rs. 10,42,092/- as Late Payment Surcharge and Interest (relating to late payment against bills issued on 20.09.2016, 07.10.2016, 19.11.2016, 18.09.2017 and 18.03.2018) through supplementary bill was highly unjustified and illegal.
9. The amount of Rs. 10,42,092/- had been charged on the basis of observation of Audit Party of PSPCL that amount of surcharge had been reversed in some cases or surcharge had not been levied at all. The late payment surcharge was automatically levied in the billing system of PSPCL for which, the Petitioner was not aware about the reversal of surcharge as the same had not been mentioned in the energy bills.
10. Keeping in view the above submission, it is prayed that the Appeal may please be accepted and the demand of Rs. 10,42,092/- raised by the Respondent – PSPCL, may please be set aside in the interest of justice.
11. **Submissions of the Respondent:**

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

1. The Petitioner was having a LS category connection with sanctioned load as 2449.980 kW and Contract Demand (CD) 2495KVA
2. The office of the Chief Auditor, PSPCL, Patiala charged Rs.10,42,092/- to the account of the Petitioner, vide Memo. No. 5583/85-CA-RA-503 dated 25.07.2018, on account of wrong reversed of surcharges made in SAP Billing System as the Petitioner had not paid, within due date, its energy bills issued on 20.09.2016, 07.10.2016, 19.11.2016, 18.09.2017 and 18.03.2018.
3. The Respondent made monthwise detailed report of the bills issued for these months and the payment date with the details of receipt /UTR No./mode of payment, payment entered in chronology list made through Check Lot or RTGS with dates and the wrong reverses made by the Revenue Accountant (RA) and chargeable amount as surcharge and interest as under:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Bill issue date** | **Due date** | **Bill Amount****(INR)** | **Payment Date****(INR)** | **Surcharge Reversed in SAP System** | **Date of surcharge levied in SAP System** | **Date of Wrong reverse made by RA** | **Remarks** |
| **20.09.2016** | **30.09.2016** | **8328800** | **30.09.2016** | **141966** | **03.12.2016** | **19.12.2016** | **Cheque deposit by consumer on dated 30.09.2016 but dishonoured**  |
| **07.10.2016** | **18.10.2016** | **9585696** | **28.10.2016** | **241532** | **11.11.2016** | **19.12.2016** | **Cheque deposit by consumer on dated 28.10.2016 but dishonoured** |
| **19.11.2016** | **29.11.2016** | **911923** | **29.11.2016 and 30.11.2016** | **141303** | **29.11.2016** | **19.12.2016** |  |
| **18.03.2018** | **28.03.2018** | **6004774** | **04.04.2018****06.04.2018****09.04.2018 and** **11.04.2018** | **138054** | **04.04.2018** | **30.04.2018** |  |

1. After verification of the details given in the Audit Report, with reference to the statement prepared by the DS Division, it came to be known that the Audit had correctly charged the amount of surcharge and interest reversed by the Revenue Accountant (RA). The bills for the months of August 2016, September 2016, October 2016, August 2017 and February 2018 had been paid by the Petitioner after due date and the SAP Billing System had correctly charged late payment surcharge and interest as per PSPCL instructions, but the same were wrongly reversed by the Revenue Accountant in SAP Billing System.
2. Aggrieved, the Petitioner filed a Petition in the Forum on 07.08.2018, who decided on 26.10.2018 that the amount charged was correct and recoverable.
3. Keeping in view the above submissions, the Appeal may be dismissed.

**5. Analysis:**

 The issue requiring adjudication is the legitimacy of the demand raised due to excess/wrong credits given in the Petitioner’s account along with surcharge and interest for the period from 30.09.2016 to 30.06.2018 as per Supplementary Bill, issued by the Respondent, vide Notice bearing No. 529 dated 27.07.2018, as per applicable regulations.

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

1. The dispute arose after the office of the Chief Auditor, PSPCL, Patiala conveyed to the Chief Engineer/Central Zone, PSPCL, Ludhiana vide Memo. No. 5582-85 dated 25.07.2018 that wrong posting and wrong reversal by Check lots involving the amount of Rs. 360.75 lac was detected as per test check of accounts of the consumers and requested for taking appropriate action in the matter. In compliance to the observations of the Audit, the account of the Petitioner was reviewed in detail by the Respondent and it was found that the Audit had correctly charged the Petitioner due to wrong posting of Check lots and resultant excess credits on 19.12.2016 and 30.04.2018 despite the fact that the Petitioner had either not deposited the whole billed amount by the due date or the cheques deposited by it were dishonoured by the bank.

Petitioner’s Representative submitted that the Forum had wrongly referred to the Clause-21 of the General Conditions of Tariff while arriving at the conclusion, by ignoring various relevant clauses of Regulation 30, 31 and 32 of the Supply Code-2014 and decided the case against the Petitioner. The officer of the Respondent - PSPCL was taking readings every month and bills, raised as per measured consumption, had been paid well in time. PR stated that there was delay in the payment of three/four bills, but the payment was deposited within seven days after the due date as given in the bill. The amount of Rs. 10,42,092/- had been charged on the basis of observation of Audit Wing of PSPCL that amount of surcharge had been reversed in some cases or surcharge had not been levied at all. The late payment surcharge was automatically levied in the billing system of PSPCL for which, the Petitioner was not aware about the reversal of surcharge as the same had not been mentioned in the energy bills. However, at the end of hearing, PR prayed to allow the recovery of the recoverable amount in twelve interest free instalments.

The Respondent reiterated mainly the submissions made in the written reply and added that after verification of the Audit Report with reference to the statement prepared by its office, it was found that the Audit had correctly charged the surcharge and interest on the amounts due and reversed by the Revenue Accountant (RA). The bills for the months of August 2016, September 2016, October 2016, August 2017 and February 2018 had been paid by the Petitioner after due date and the SAP Billing System had correctly charged late payment surcharge and interest as per PSPCL instructions, but the same were wrongly reversed by the Revenue Accountant in SAP Billing System.

 The Respondent contended that the demand in the present dispute had been raised as per report of Special Audit which detected short realisation/assessment of electricity dues from the Petitioner. Besides, the disputed supplementary bill had been issued, vide Memo No. 529 dated 27.07.2018, as supplementary demand due to any short assessment/realisation in the past, as per Tariff Orders and other regulations, was to be raised through supplementary bill as per instructions contained in Instruction No. 93.1 of ESIM. This amount was further debited in energy bill for 09/2018 as

 depicted in Chronology List dated 20.08.2018 for Rs. 10,42,092/-

I find that the Petitioner was having a Large Supply (LS) Category connection since 12.02.1980 and energy bills were being issued every month to such category of consumers. With the availability of energy bills online at PSPCL website [www.pspcl.in](http://www.pspcl.in), every consumer could generate its energy bills therefrom and compare the details of meter reading, energy consumption, billed amount etc vis-a-vis the details as per its own records pertaining to energy consumption, billed amount and paid amount of the previous period. If a consumer has the right to pinpoint the fact of the bill issued in excess of the actual amount, it is also its duty to bring the fact of less billing/less amount charged to the notice of the Respondent for making necessary corrections. But the Petitioner did not point out the erroneous /excess credits given to its account.

 I have perused the Bank Statement placed on record and noticed that due to late payment made by the Petitioner for the bill dated 20.09.2016, 07.10.2016, 19.11.2016 and 18.09.2017, the SAP Billing System charged late payment surcharge and interest, as per provisions contained in Regulation 21 of General Conditions of Tariff for the Tariff Orders of Financial Year 2016-17, 2017-18 and 2018-19, mentioned as under:

***“Clause 21 Late Payment Surcharge:***

*In the event of the monthly energy bill or other charges relating to electricity not being paid in full within the time specified in the bill, the consumers shall be levied late payment surcharge as under:*

|  |  |
| --- | --- |
| *21.1* | *For all categories of consumers having HT/EHT specified supply voltage, if the full amount of the bill is not paid within due date, late payment surcharge shall be levied @ 2% on the unpaid amount of the bill upto 7 days after the due date. After 7 days, the surcharge shall be levied @ 5% on the unpaid amount of bill upto 15 days from the due date.* |
| *21.2* | *In case of consumers having LT specified supply voltage, if the full amount of the bill is not paid within due date, the late payment surcharge shall be levied @ 2% on the unpaid amount of the bill upto 15 days from the due date.* |
| *21.3* | *In case of AP consumers, late payment surcharge shall not be levied upto 7 days after the due date. After 7 days surcharge shall be levied as in the case of LT consumers.* |
| *21.4* | *Interest @ 1.5% per month on gross unpaid amount including surcharge payable as per Clause 21.1, 21.2 & 21.3 above shall be levied after expiry of 15 days from the due date of the bill till the deposit of outstanding amount. Part of the month shall be treated as full month for this purpose.”* |

I find that the Petitioner had been making payments of certain bills after expiry of the due date, however, Revenue Accountant by usage of Check lots had been crediting the amount of surcharge due from the Petitioner to its account. As such, the surcharge which would have been due from the Petitioner during the normal course and would have been charged in the next energy bill automatically could not become chargeable to the Petitioner. The Petitioner being a Large Supply (LS) Category consumer, should be aware about the credit given to it. Hence, the amount due to late payment surcharge and interest is chargeable to it.

I observe that the Revenue Accountant acted beyond its jurisdiction by incorrectly suing the Check lot facility thereby giving wrong/excess credit to the account of the Petitioner under its own signatures and without approval of the competent authority i.e. AEE/Commercial, DS Estate Division (Special), PSPCL, Ludhiana, who is the authority competent in the matter.

 I also observe that the Revenue Accountant concerned has been charge sheeted vide Charge Sheet dated 25.10.2018.

 There is, however, no denying the fact that both the Petitioner and Respondent did not act responsibly, sincerely and prudently in ensuring to keep a watch on the timely payment of energy bills and subsequent wrong credits given to the account of the Petitioner. If the consumer has a right to raise its grievance against any instance of excess billing by the distribution licensee, it has a moral duty to bring the fact of less billing (due to wrong credit/refund) to the notice of the distribution licensee for taking corrective action with due promptitude. Had this been done, unnecessary litigation could have been avoided.

**6. Conclusion:**

From the above analysis, the legitimacy of demand raised on account of wrong credits/refunds given to the Petitioner’s account along with surcharge and interest for the period from 30.09.2016 to 30.06.2018, by incorrect usage of Check lots, through Supplementary Bill issued vide Notice bearing No. 529 dated 27.07.2018 proves beyond doubt.

**7. Decision:**

 **As a sequel of above discussions, the order dated 26.10.2018 of the Forum in Case No. CG-311 of 2018 is upheld. It is also held that recovery of the amount due, after adjustment of 40% of the disputed amount already deposited, will be effected in six interest free monthly instalments through future energy bills along with current energy bills.**

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

**9.** Chief Engineer/Commercial, PSPCL, Patiala shall issue instructions to all Engineers-in-Chief and Chief Engineers/DS Zones to direct the Additional Superintending Engineers/ Senior Executive Engineers/DS within their respective jurisdiction to ensure that any correction/amendment in the energy bills issued to the consumers is made with the approval of the Designated Officer/Competent Authority. It shall also be ensured that entries of payments of bills, after correction, made through manual receipts are invariably made in the SAP Billing System.

**10.** 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)

April 25, 2019 Lok Pal (Ombudsman)

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