**COURT OF THE LOKPAL (OMBUDSMAN),**

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 40/2019**

**Date of Registration : 10.07.2019**

**Date of Hearing : 12.09.2019**

**Date of Order : 23.09.2019**

**Before:**

 **Er. Virinder Singh, Lokpal (Ombudsman), Electricity.**

**In the Matter of:**

 Dhillon Rice Mills,

 Jaimal Singh Wala Road,

Village Dhilwan (Tapa),

Barnala

. ...Petitioner

 Versus

 Addl. Superintending Engineer,

Sub-urban Division,

PSPCL, Barnala

 ...Respondent

**Present For:**

Petitioner : 1. Sh. R.S. Dhiman ,

 Petitioner’s Representative (PR).

 2. Sh. Pawan Kumar

 Petitioner’s Representative (PR).

 3. Sh. Tejinder Singh

 Petitioner’s Representative (PR).

Respondent : Er. Pawan Kumar Garg,

 Addl. Superintending Engineer,

Sub-urban Division,

PSPCL, Barnala

 Before me for consideration is an Appeal preferred by the Petitioner against the decision dated 10.06.2019 in Case No. CGP-124 of 2019 of the Consumers Grievances Redressal Forum (Forum), Patiala stating as under:

“ **.** *Petitioner be billed on the basis of MMC for the period*

*01.11.2018 to 05.12.2018 as per the provisions of CC No.40/2012 taking pro-rata consumption by treating seasonal period as 8 months.*

**.** *Petitioner be tentatively billed on the basis of consumption assessed as per LDHF formula from 05.12.2018 to 18.03.2019 to be subsequently adjusted on the basis of actual consumption recorded in the corresponding period of the succeeding year as per clause 21.5.2 of Supply Code-2014 keeping in view the provisions of CC No.40/2012 by treating seasonal period as 8 months.”*

**2. Facts of the Case:**

 The relevant facts of the case are that:

1. The Petitioner was having a Medium Supply Category (seasonal for Rice

Sheller) connection with sanctioned load of 98 kW and contract demand as 100 kVA for which, the Metering was being done by providing Static HT Energy Meter and 11 kV/110 V, CT/PT Unit.

1. The connection was released, vide Service Connection Order (SCO) No.099/1022 2 dated 25.10.2018, affected on 01.11.2015 at the initial Reading of:

kWh = 127.7

 kVAh = 151.2

1. As very less consumption was being recorded by the Energy Meter, the matter was referred to Addl. S.E/Enforcement, PSPCL, Sangrur by the AEE, DS Sub division, Tapa vide Memo No.2732 dated 14.03.2019.
2. The connection was checked by the Addl.S.E./Enforcement, PSPCL, Sangrur vide ECR No.40/3863 dated 18.03.2019 whereby, it was observed that:

 *“Secondary (S2) wire of all the CTs was connected to terminals meant for connection of PTs and vice-versa i.e. PTs were found connected to terminals meant for connecting Secondary ( S2) of the CTs. As such, Potential Wires of all the Three Phases and secondary wires of three CTs (S2) were found interchanged and wrongly connected. That was why, the Energy Meter recorded negligible consumption. The readings were kWh= 337, kVAh= 366.”*

1. The Enforcement, with the help of DS officials, set right the connections. Thereafter, the Metering Equipment was checked with LT ERS Energy Meter and accuracy was found within permissible limits.
2. The Respondent issued Notice, bearing No.2754 dated 19.03.2019, to the Petitioner to deposit Rs 6,39,434**/-**.
3. The Petitioner was not satisfied with the Notice and disputed on the grounds that it was new to the business and no shelling was done during this period. The Petitioner filed a Petition dated 29.04.2019 in the CGRF, Patiala, who, after hearing the case, passed order dated 10.06.2019 (Reference: Page 2, Para 1).
4. Not satisfied with the decision of the CGRF, the Petitioner filed an Appeal in this Court and prayedthat only Fixed Charges were recoverable from 01.11.2018 to 05.12.2018, since there was no energy consumption during this period, as accepted by the Forum. The Petitioner pleaded that it was wrong that Petitioner’s Plant was running regularly from 05.12.2018 onwards. Actually, milling operations remained stalled from 05.12.2018 to 31.12.2018. As such, denial of relief by the Forum for this period was not in consonance with Regulation 21.5.3 of Supply Code-2014 and prayed that the relief be granted in the interest of 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 Representative of the Petitioner and the Respondents 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 got a new MS Category electricity connection released on 01.11.2018 with sanctioned load of 98 kW and contract demand as 100 kVA for its Rice Sheller.
2. After release of the connection, Paddy was allotted by Markfed and the Petitioner started milling from 05.12.2018.
3. The bills raised by the Respondents were deposited by the Petitioner on 09.01.2019, 08.02.2019 and 13.03.2019. The total amount paid by the Petitioner against these bills added up to Rs 2,32,400/-.
4. Thereafter, vide Memo No 2754 dated 19.03.2019 issued by the AEE, Tappa Sub division, the Petitioner was asked to deposit an additional amount of Rs 6,39,434/- stating that the Petitioner’s Energy Meter was showing very nominal consumption due to wrong connections of the Energy Meter. On enquiry, the Petitioner was informed, vide Memo No 2791 dated 28.03.2019 that the amount had been charged in accordance with Regulation 21.5.2(d) of Supply Code -2014.
5. The Petitioner’s connection was checked by Sr.XEN, Enforcement Sangrur vide ECR No 40/3863 dated 18.03.2019 wherein, the Checking Officer reported that the Energy Meter was running very slow due to wrong connections. The Enforcement drew a line diagram of the existing connections on its Checking Report. The connections were set right by the DS Office in the presence of Enforcement and accuracy, on being checked with ERS Meter, was found within permissible limits.
6. Based on the Checking Report of the Enforcement, a huge demand of Rs 6,39,434/- was raised against the Petitioner by the Respondent. On the other hand, the whole lot of rice shelled by the Petitioner’s Shelter, during the very first few days was returned by Food Corporation of India (FCI) on the plea that it did not conform to prescribed norms of dampness. For improving the quality of its product, the Petitioner was asked by FCI to install a dryer. Accordingly, the Petitioner again suspended milling operations from 08.12.2018 to 31.12.2018 during which period, the Petitioner installed a dryer.
7. Milling operations were restarted on 01.01.2019 for regular working of the plant.
8. Faced with the undue demand raised against it, the Petitioner filed an Appeal before the CGRF, Patiala. who allowed some relief but did not give full justice ignoring some vital facts. The Petitioner, not being satisfied with this decision, was constrained to file the present Appeal.
9. On the basis of documentary evidence produced by the Petitioner, the Forum agreed with its plea that there was no milling at the Petitioner’s Rice Sheller from 01.11.2018 to 05.12.2018. But the decision of the Forum to charge Monthly Minimum Charges (MMC) for this period, as per CC No 40/2012, was not in order. CC No 40/2012 was not applicable in this case since the consumer was to be billed in accordance with the Tariff Order for the FY 2018-19, as per which, only Fixed Charges were recoverable from 01.11.2018 to 05.12.2018 since there was no energy consumption during this period as accepted by the Forum.
10. The Forum wrongly concluded that the Petitioner’s plant was running regularly from 05.12.2018 onwards in the impression that the Petitioner had installed three dryers in stages from 08.12.2018 to 31.12.2018. In fact, this was not correct as the Petitioner had installed only one dryer whose different parts were received by the Petitioner in three consignments, as per copies of tax invoices in respect of these consignments are attached for reference. This proved that only one dryer was installed. Milling operations at the Petitioner’s plant remained stalled from 08.12.2018 to 31.12.2018. As such, denial of relief by the Forum for this period was not in consonance with the provisions of Regulation 21.5.3 of Supply Code-2014.
11. In view of the aforesaid submissions, the Appeal may be allowed in the interest of justice.
12. **Submissions of the Respondent:**

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

1. A new Medium Supply Category connection for Rice Sheller with

sanctioned load of 98 kW and contract demand as100 kVA was released to the Petitioner on 01.11.2018 vide SCO No.0 99/1022 dated 25.10.2018.

1. During the monthly readings, the consumption of the said connection for

Rice sheller was found to be less in proportion to the connected load. The matter was brought to the notice of the Addl.S.E., Enforcement, Sangrur vide letter no 2732 dated 14.03.2019 whereafter, the connection was checked by the Enforcement, vide their Checking No. 40/3863 dated 18.03.2019 whereby it was observed that Petitioner’s Energy Meter was showing almost nil consumption due to wrong connections. Accordingly, directions were issued to the AEE, Tapa Sub division to overhaul the account of the Petitioner.

1. In compliance to the above directions, the account was overhauled by

applying LDHF formula as per Supply Code regulation 21.5.2(d) and total chargeable amount was worked out as Rs 6,39,434/- after subtracting the amount of Rs 2,32,400/- paid by Petitioner through regular bills on the basis of Seasonal Minimum Consumption Charges (SMCC) from the total calculated amount as per LDHF formula. The Petitioner raised its grievance before the CGRF, Patiala who decided the case on 10.06.2019. Accordingly, the chargeable amount was revised on the basis of the said decision and worked out to be Rs 2,92,348/- after deducting amount already deposited (Rs 2,32,400/-) by the Petitioner as regular bills and Rs 1,28,000/- through BA16 no 364/51023 dated 23.04.2019. Thereafter, a revised Notice for deposit of Rs 2,92,348/- was sent to the Petitioner vide letter no 3573 dated 05.07.2019.

1. In accordance with the Tariff Order for the FY 2018-19, Rice shellers

were covered under exclusive seasonal industry for which, Seasonal Minimum Consumption Charges (SMCC) for seasonal period and Fixed charges for period of six month were applicable. As per Tariff Order, once, the amount equivalent to SMCC was deposited by the Consumer in the form of consumption through monthly bills, only energy charges shall be levied on actual consumption recorded during the month. In this case, since total units calculated by LDHF formula for the period from 06.12.2018 to 18.03.2019 and actually consumed thereafter exceeded the SMCC, the consumer was not charged for any MMC or SMCC for the period from 01.11.2018 to 05.12.2018.

1. The Forum did not consider appropriate to give any relief to Petitioner for

the period from 08.12.2018 to 31.12.2018 because there was no authentic document to support the Petitioner’s claim that the Petitioner’s plant remained stalled from 08.12.2018 to 31.12.2018. Therefore, the plea for grant of any relief for that period was not acceptable.

1. The Appeal may be dismissed, and the Petitioner be directed to comply

with the order dated 10.06.2019, of the CGRF, Patiala.

4. **Analysis:**

The issue requiring adjudication is the legitimacy of overhauling the account of the Petitioner from 01.11.2018 ( date of release of connection) to 18.03.2019 ( date of checking by the Enforcement) due to wrong connection of CTs and PTs.

 *The points emerged in the case are deliberated and analysed as under:-*

1. Petitioner’s Representative contended that on the basis of documentary

evidence produced by the Petitioner, the Forum agreed with its plea that there was no milling at the Petitioner’s Rice Sheller from 01.11.2018 to 05.12.2018. But the decision of the Forum to charge MMC for this period, as per CC No 40/2012, was not in order. CC No 40/2012 was not applicable in this case since the consumer was to be billed in accordance with the Tariff Order for the FY 2018-19, as per which, only Fixed Charges were recoverable from 01.11.2018 to 05.12.2018 since there was no energy consumption during this period as observed by the Forum.

 PR added that the Forum wrongly concluded that the Petitioner’s plant was running regularly from 05.12.2018 onwards in the impression that the Petitioner had installed dryers from 08.12.2018 to 31.12.2018. PR stated that it was, infact, not correct as the Petitioner had installed only one dryer. The different parts of dryer were received by the Petitioner in three consignments, as per copies of tax invoices. This proved that only one dryer was installed. Milling operations at the Petitioner’s plant remained stalled from 08.12.2018 to 31.12.2018. As such, denial of relief by the Forum for this period was not in consonance with the provisions of Regulation 21.5.3 of Supply Code-2014, which reads as under:

“ *Any evidence provided by the consumer about conditions of working and/or occupancy of the concerned premises during the said period(s) which might have a bearing on computation of electricity consumption shall, however, be taken into consideration by the distribution licensee*”.

 I have perused the Tarff Order for the Financial Year (FY) 2018-19 notified by the Hon’ble PSERC as per which, Rice Shellers are covered under exclusive Seasonal Industry for which Seasonal Minimum Consumption Charges (SMCC) for seasonal period and Fixed Charges for a period of six months are applicable. As per the said Tariff Order, once the amount equivalent to SMCC is deposited by the consumer in the form of consumption through monthly bills, thereafter, only Energy Charges shall be levied on actual consumption recorded during the month. I find that as per decision of the Forum, the calculations were made by the Respondent and since total units calculated by application of LDHF formula, for the period from 06.12.2018 to 18.03.2019, actually consumed and thereafter exceeds the SMCC, therefore, the Petitioner was not charged for any SMCC for the period from 01.11.2018 to 05.12.2018. Based on the decision of the CGRF, the billed amount was worked out by the Respondent as Rs 6,74,742/- instead of Rs 8,70,662/- calculated by it earlier prior to the decision of the Forum.

1. The Petitioner’s connection was released on 01.11.2018 and negligible

monthly readings were noticed, but, the case was referred to Enforcement for checking on 14.03.2019 (after about 4 ½ months) by the Respondent. During this period, the bills on average basis were prepared by the Respondent. The Petitioner sought the relief under Regulation 21.5.3 of Supply Code-2014 as no milling was done from 08.12.2018 to 31.12.2018 and Plant remained stalled for installation of the dryer.

 The Petitioner contended that it had pleaded before the Forum that Paddy shelled by the Petitioner was returned by the Food Corporation of India (FCI) as the same was declared to be defective and not conforming to the prescribed norms of dampness. Thereafter, milling operation from 08.12.2018 to 31.12.2018 was suspended for want of dryer and the same was procured by the Petitioner but different parts of the dryer were received on 09.12.2018, 14.12.2018 and 25.12.2018 as per tax invoices.

 I find from material brought on record that the Paddy shelled by the Petitioner was returned by Gate Pass No. 17 and 18 dated 22.12.2018 and also by Gate Pass No.52, 53, 60, 61 dated 14.01.2019, 96 and 97 dated 22.02.2019 and 98, 99 dated 24.02.2019. Hence, CGRF observed that the shelling was being carried out by the Petitioner during the month of 12/2018 but the Paddy was returned by the Food Corporation of India (FCI). The dryer and its parts were installed in the month of 12/2018. In the CGRF, the Petitioner had pleaded that no milling operation from 08.12.2018 was done for want of dryer. But, the CGRF in its order stated that the Petitioner had carried out the shelling of the Paddy from 05.12.2018 onwards which was not based on ground realities.

I observe that parts of the dryer were procured on 09.12.2018, 14.12.2018 and 25.12.2018, as per evidence produced by the Petitioner, it gives a proof for the fact that Petitioner’s Plant remained stalled from 08.12.2018 to 25.12.2018. As such, the account of the Petitioner is required to be overhauled from 26.12.2018 to 18.03.2019 ( Date of checking by the Enforcement), as per provisions contained in Regulation 18.5(iii) of General Conditions of Tariff Order for FY 2018-19.

 **5. Conclusion:**

From the above analysis, it is concluded that the Petitioner is required to be charged for the disputed period, in terms of provisions contained in Regulation 18.5(iii) of General Schedule of Tariff for the FY 2018-19, as per details given below:

|  |  |
| --- | --- |
|  Period |  Particulars |
| 01.11.2018 to 04.12.2018 | Only Fixed Charges are recoverable as decided by the Forum. |
| 05.12.2018 to 08.12.2018 | On the basis of proportionate consumption as per LDHF formula along with Fixed Charges. |
| 09.12.2018 to 25.12.2018 | As the Petitioner has provided the evidence, in support of its contention of the plant remaining non-functional, required under Regulation 21.5.3 of Supply Code-2014, only Fixed Charges are recoverable and no consumption charges are required to be levied. |
| 26.12.2018 to 18.03.2019 | The Petitioner’s account is required to be overhauled in terms of provisions contained in Regulation 18.5(iii) of Tariff Order issued for FY 2018-19.  |

 **6. Decision:**

 **As a sequel of above discussions, the order dated 10.06.2019 of the CGRF, Patiala in Case No. CGP-124 of 2019 is set aside. It is held that the account of the Petitioner for the period from 01.11.2018 to 18.03.2019 shall be overhauled in terms of conclusion** **arrived at in para 5 above.** **Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short after adjustment, if any, without interest.**

 **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)

September 23, 2019 Lokpal (Ombudsman)

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