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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 53/2019**

**Date of Registration : 18.09.2019**

**Date of Hearing : 14.11.2019**

**Date of Order : 21.11.2019**

**Before:**

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

**In the Matter of**

K.C.Industries,

 Mohkam Arrian Road,

Jalalabad

 ...Petitioner

 Versus

 Additional Superintending Engineer,

DS Division,

PSPCL Jalalabad.

 ...Respondent

**Present For:**

Petitioner : Sh. Ashok Kumar Dhawan,

 Petitioner’s Representative (PR).

Respondent : 1. Er.Manjit Singh,

 Addl.Superintending Engineer,

 DS Division, PSPCL, Jalalabad

 2. Er.Ramesh Makkar,

 A.E. City Sub-division,

 PSPCL, Jalalabad (W).

 3. Sh. Gian Chand, LDC,

 City Sub division,

 PSPCL,Jalalabad

 Before me for consideration is an Appeal preferred by the Petitioner against the decision dated 19.08.2019 in Case No. CGP-168 of 2019 of the Consumer Grievances Redressal Forum (Forum), Patiala stating as under:

*“ The account of the Petitioner be overhauled for the season 2015-16 and 2016-17 by treating the Petitioner as Mixed Load Industry consumer and be billed for the start of the season as per the date of request to the end of the season on 30th June”.*

**2. Facts of the Case:**

 The relevant facts of the case are that:

1. The Petitioner was having a Mixed Load Industry with sanctioned

load of 988.731 kW and contract demand (CD) of 989 kVA with the following break up:

* 1. Seasonal load: 499.451 kW and CD 500 kVA (Rice Sheller) .
	2. General load: 489.280 kW and CD as 489 kVA.
1. During the year 2015-16, the Petitioner intimated the Respondent

on 20.10.2015 about start of the season w.e.f. 28.10.2015 but did not intimate about close of the season.

1. Similarly, during the year 2016-17, the Petitioner intimated the

Respondent on 12.11.2016 about the start of season w.e.f. 15.11.2016 but did not intimate about close of the season.

1. Since, the Petitioner had intimated the Respondent about the start of

the season during 2015-16 and 2016-17 but did not intimate about the close of the season, the account of the Petitioner was overhauled by the Audit Party for the period from 10/2015 to 06/2017, by treating the Petitioner’s industry as Mixed Load Industry vide Half Margin No.26 dated 12.10.2017.

1. Based on the observations of the Audit Party, a Notice was issued to

the Petitioner by the Respondent, vide Memo No.461 dated 29.03.2018 , asking it to deposit a sum of Rs.6,59,085/- , which was not deposited by the Petitioner.

1. The said amount was subsequently charged in the bill of 05/2018

and was paid by the Petitioner on 18.06.2018.

1. The Petitioner did not agree with the amount so charged and filed a

Petition dated 28.06.2019 in the CGRF, Patiala who, after hearing, passed order dated 19.08.2019 (Reference Page-2, Para-1).

1. Not satisfied with the decision of the Forum, the Petitioner preferred

an Appeal in this Court and prayed that keeping in view the facts and data submitted, observations raised by the Audit Party vide Half Margin No.26 dated 12.10.2017, be set aside. Besides, partial relief given by the CGRF was also wrong.

**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. **Submission of the Petitioner:**

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

1. The Petitioner was having a Large Supply category connection

with sanctioned load of 988.731 kW and contract demand of 989 kVA . The connection was sanctioned for a Mixed Load Industry and was released on 03.03.2011 with the following break up:

Description Seasonal Non-seasonal Total

1. Load 499.451 kW 489.280 kW 988.731 kW
2. Contract 500 kVA 489.000 kW 989.000 kW

 Demand

1. The billing was done as a Mixed Load connection from 03/2011 to

 09/2015, as per Agreement executed with the Respondent..

1. In the month of 10/2015, the Respondent refused to start seasonal

load in violation of Agreement despite written request dated 20.10.2015, submitted to the AE/City Sub-division, Jalalabad, to start seasonal load w.e.f. 28.10.2015. The Respondent was best known the reasons for non-start of the seasonal load.

1. Neither any Job Order was issued by the Respondent nor the

readings were taken, therefore, seasonal load was not started.

1. Subsequently, in the month of January 2016, total load was

converted into General Category and the Respondent started billing on the basis of total load, which continued upto 23.06.2019.

1. The energy bills were served as a General Industry for more than

 3 ½ years on the basis of total load instead of Mixed Load.

1. The request of the Petitioner to disconnect the seasonal load was not

entertained by the Respondent on the plea that now under SAP Billing System, it was a General Category connection and would be billed accordingly, therefore, there was no necessity to submit such an application.

1. Subsequently, the Respondent raised the energy bill as a General

Industry, which were paid by the Petitioner under protest. Further it was stated that under new SAP System, there did not exist any provision for Mixed Load billing.

1. The Audit Party issued Half Margin No.26 dated 12.10.2017

whereby, charging Rs.6,59,085/- for the period from 10/2015 to 06/2017 on the basis of Mixed Load Industry, while ignoring certain facts as well as rules/regulation of the Respondent in this regard.

1. An amount of Rs.6,59,085/- was charged in the energy bill for the

 month of 05/2018, which was payable by 18.06.2018.

1. The Respondent did not issue a separate arrear bill in violation of

Instruction No.93.1 of ESIM. The Respondent did not provide detail of calculations of the amount charged or calculation sheet thereof.

1. The Petitioner submitted a representation dated 18.06.2018 for

demanding detail of arrear to challenge the energy bill, due to which the Petitioner could not challenge the energy bill and was forced to pay the total energy bill including arrear amount of Rs.6,59,085/-, which was paid under protest vide receipt No.30329 dated 18.06.2018.

1. Not satisfied with the working attitude of the Respondent, the

Petitioner filed a Petition in the CGRF, Patiala who, after hearing, decided the case merely on the ground that although request for the starting seasonal load was given by the Petitioner, but did not give request for closing of seasonal load.

1. The Forum ignored the plea of the Petitioner that when seasonal load

was not started as per request given by the Petitioner, then, how the application for closing the season could be given.

1. The seasonal load was utilised only for 3 to 6 months, the details of

which are as under:

|  |  |  |  |
| --- | --- | --- | --- |
| Period | Start of Season | Close of Season | Duration |
| 2010-11 | 05.11.2010 | 21.03.2011 | 4 Month 16 days |
| 2011-12 | 29.09.2011 | 31.03.2012 | 6 Month 2 days |
| 2012-13 | 01.09.2012 | 31.03.2013 | 7 Months |
| 2013-14 | 01.10.2013 | 07.03.2014 | 5 months 6 Days |
| 2014-15 | 29.09.2014 | 27.02.2015 | 4Months 28 Days |

1. The Forum further wrongly observed that the Petitioner enjoyed the

benefit of seasonal period for full 9 months during the year 2015-16, because as per analysis of data given by the Forum was as below:

Month MDI

10/2015 451

11/2015 510

12/2015 516

01/2016 436

02/2016 517

03/2016 423

04/2016 287

05/2016 287

06/2016 201

From the above data, it was evident that seasonal load was not used from the month of 04/2016 onwards and non-seasonal demand 489 kVA for non-seasonal load was available. So, it was unfair to presume that season with contract demand at 516 kVA and at 201 kVA was in full swing.

1. Similarly for the year 2016-17, it was not proper to assume season in

 full swing for 9 months, the details were as under:

Month MDI

11/2016 441

12/2016 458

01/2017 484

02/2017 231

03/2017 210

04/2017 225

05/2017 240

06/2017 484

Thus, it was clear that from the month 02/2017, seasonal load was off and seasonal period was only for 3 months.

1. In view of the submissions made above, Appeal may be allowed.
2. **Submission of the Respondent**:

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

1. The Petitioner was having a Large Supply category connection

for Mixed Load Industry, bearing Account No.3000855849, old Account Number LS-6, with sanctioned load of 988.731 kW and contract demand (CD) as 989 kVA.

1. After introduction of SAP System in the Financial Year 2015-16, the

 connection of the Petitioner was changed into General Category.

1. The Petitioner submitted the application on 15.11.2016 about the

start of the season, but did not give any request for closure of season for the year 2015-16 and 2016-17. The Petitioner admitted that its factory was started on 28.10.2015 and 15.11.2016.

1. The Audit party observed that the account of the Petitioner was

overhauled on the basis of Mixed Load Industry for the period from 10/2015 to 06/2017. Therefore, a sum of Rs.6,59,085/- was charged on account of Mixed Industry by the Audit through Half Margin No.26 dated 12.10.2017.

1. The amount was deposited by the Petitioner in the month of 06/2018

and nothing was outstanding against the Petitioner.

1. The Forum rightly decided the case, vide order dated 19.08.2019,

considering the start of season from 28.10.2015 instead of 01.10.2015 as charged by the Audit.

1. The Audit wrongly considered date of start of season w.e.f.

01.10.2015 and 01.10.2016 instead of from the date of application w.e.f. 28.10.2015 and 15.11.2016, as a result of which, the Respondent had already given revised calculation sheet for Rs.4,49,922/- instead of Rs.6,59,085/- as charged by the Audit and the Forum allowed the benefit accordingly.

1. It was correct that connection of the Petitioner was changed from

 Seasonal to Mixed Load category w.e.f. 03.03.2011.

1. The billing was now done on the Mixed Load Category but the

 Petitioner did not object to the energy bill issued during this period.

1. The Petitioner submitted an application (option) on 27.08.2019 to

run its Industry as General Industry instead of Mixed Load Industry for the year 2019-20 and the same was regularised w.e.f. 01.10.2019.

1. In view of the submissions made, the Appeal may be dismissed.

**5. Analysis**

 The issue requiring adjudication is the legitimacy of overhauling the account of the Petitioner for the season 2015-16 and 2016-17 by treating the Petitioner’s Industry as Mixed Load Industry consumer and billing it for the start of season as per the date of request to the end of the season on 30th June.

 *The points emerging in the present dispute are deliberated and analysed as under:*

1. The connection of the Petitioner was released as a Mixed Load Industry for last more than 30 years. Since the agreement was signed between the Petitioner and the Respondent for Mixed Load Industry connection, the nature of the same was not be changed by the Petitioner on its own without signing of a fresh agreement. The plea of the Petitioner that its billing from 02/2016 was being done as a General Load Industry consumer is not sustainable. The Petitioner never objected to the same, rather, gave another request about the start of the season on 12.11.2016 during the seasonal period of 2016-17. Besides, the change in category reflected as General Category consumer from 02/2016 was simply a clerical mistake at the time of migration of data to SAP Billing System. Accordingly, the Petitioner can not claim the benefit, in the absence of a new Agreement, for treating the Petitioner as a General Category consumer.

 I find that the billing of Mixed Seasonal Industry was being done as per tariff approved by Hon’ble PSERC for respective year and incorporated in ESIM, under General Schedule of Tariff as Instruction 18.3(b), 18.5 and 18.6. The tenure of seasonal period was from 1st October to 30th June of next year subject to minimum of 4½ months.

 I also find that the Petitioner’s is a Mixed Load Industry consumer with sanctioned load of 988.731 kW/989.000 kVA with seasonal load being 499.45 kW/CD 500 kVA and General load being 489.280 kW/CD 489 kVA. The Petitioner had intimated about the start of the season on 20.10.2015 to be affected from 28.10.2015 during the year 2015-16 and the Petitioner had also intimated about the start of the season on 12.11.2016 to be affected from 15.11.2016 during the year 2016-17 but had not intimated about the close of the season during both these years as the season was in full swing during all these nine months and availed the benefits of the season for all the nine months.

(ii) A perusal of the consumption data for the period from

01.04.2015 to 31.03.2018 along with Half Margin issued by Internal Audit reveals that Maximum Demand of the Petitioner, when only non-seasonal load was in operation, was in the range of 250 kVA whereas it was in the range of more than 400 kVA when both non-seasonal and seasonal load were in operation. During the year 2015-16, the Petitioner had intimated about the start of the season on 20.10.2015 to be affected from 28.10.2015 and MDI in the range of 451 kVA, 510, 516, 436, 517, 423, 287 and 201 kVA in the month of 10/2015, 11/2015, 12/2015, 01/2016, 02/2016, 03/2016, 04/2016, 05/2016 and 06/2016 respectively had been recorded by the Petitioner during the seasonal period indicating that the season was not closed by the Petitioner and Petitioner availed the benefit of the season for all the nine months. Similarly, during the year 2016-17, the Petitioner had intimated about the start of the season on 12.11.2016 to be affected from 15.11.2016 and MDI in the range of 441 kVA, 458, 484, 231, 210, 225,, 240 and 484 kVA have been recorded by the Petitioner during the seasonal period indicating that the season was not closed by the Petitioner who availed the benefit of the season for all the nine months. The MDI of 484 kVA have been recorded during 01.06.2017 to 30.06.2017 indicating that rice sheller of the Petitioner being seasonal load was in operation at that time and season had closed only on 30.06.2017.

 In view of the above, I agree with the observation of the Forum that the account of

the Petitioner is required to be overhauled for the season 2015-16 and 2016-17 by treating the Petitioner as Mixed Load Industry consumer and billed accordingly for the start of the season as per the date of Petitioner’s request to the end of the season on 30th June.

**5. Conclusion:**

From the above analysis, it is concluded that overhauling of the Petitioner’s account for the season 2015-16 and 2016-17, by treating the Petitioner as Mixed Load Industry consumer and billing it accordingly for the start of the season as per the date of its request to the end of the season on 30th June, is correct and justified as decided by the Forum.

**6.** **Decision:**

**As a sequel of above discussions, the order dated 19.08.2019 of the CGRF, Patiala in Case No. CGP-168 of 2019 is upheld.**

**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)

 November 21, 2019 Lokpal (Ombudsman)

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