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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 05/2018**

**Date of Registration : 11.01.2018**

**Date of Hearing : 16.07.2018**

**Date of Order : 24.07.2018**

**Before:**

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

**In the Matter of :**

 Komal Straw Board and Mill Board Industries,

 Dera Baba Nanak Road,

 V.P.O. Hayat Nagar,

 Distt.Gurdaspur.

 ...Petitioners

 Versus

 Senior Executive Engineer,

 DS Division,

PSPCL, Gurdaspur.

 ...Respondent

**Present For:**

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

 Petitioner’s Representative (PR)

 2. Sh. Sarover Kumar,

 Petitioner’s Representative (PR)

Respondent : 1. Er. Arvinderjit Singh Boparai,

Senior Exeutive Engineer.

 2. Sh.Gagan Kumar

 Assistant Legal Adviser.

Before me for consideration is an Appeal preferred by the Petitioner against the order dated 01.12.2017, in Case No. CG-269 of 2017, of the Consumers Grievances Redressal Forum (Forum) deciding that:

 *“The peak load hours violation charges levied vide Memo. No. 931 dated 22.08.2016 amounting to Rs. 1,58,307/- for a period (s) 01.04.2016 to 11.04.2016, 15.04.106 to 22.04.2016, 25.04.2016 to 29.04.2016, 01.05.2016 / 03.05.2016 to 05.05.2016 are justified & recoverable from the Petitioner”.*

2. **Facts of the Case:**

 The relevant facts of the case are that:-

1. The Petitioner was having a Large Supply Category

connection with sanctioned load of 1180.280kW and Contract Demand of 1400kVA

1. The Respondent issued notice to the Petitioner, vide Memo

No. 951 dated 22.08.2016, to deposit a sum of Rs. 1,58,307/- due to Peak Load Violations (PLVs) recorded for the period from 01.04.2016 to 11.04.2016, 15.04.106 to 22.04.2016, 25.04.2016 to 29.04.2016, 01.05.2016 and 03.05.2016 to 05.05.2016. The notice was issued in compliance of directions issued by the MMTS, Batala vide letter No. 371 dated 16.05.2016 after taking DDL on 10.05.2016.

1. The Petitioner did not agree with the demand raised and

filed a complaint, under Section 12 of the Consumer Protection Act 1986, before the District Consumer Disputes Redressal Forum, Gurdaspur, wherein the case was defended on behalf of the Respondent-PSPCL and written statement was filed by the Respondent. After hearing both sides, the District Consumer Disputes Redressal Forum, Gurdapsur, decided, vide order dated 26.12.2016, to set aside the demand for Rs.1,58,307/- .

1. On 20.03.2017, the Respondent-PSPCL preferred an

Appeal, against the order of District Consumer Disputes Redressal Forum, Gurdaspur, before State Consumer Disputes Redressal Forum, Punjab, Chandigarh and the same was allowed on the ground that the Petitioner’s Mill did not fall in the ambit of definition of consumer as per Section 2 (1) (d) of the Consumer Protection Act 1986. However, in order dated 07.09.2017, the Hon’ble State Commission was pleased to allow the Petitioner’s Mill to avail the opportunity of invoking the jurisdiction of the appropriate authority for redressal of its grievances. Accordingly, the Petitioner filed an Appeal in the CGRF, Patiala, which passed order dated 01.12.2017 (Reference: Page-2, Para-1).

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

filed an Appeal in this Court and prayed to set aside the order of the Forum and allow the Appeal.

 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 in the Appeal and reply of the Respondent as well as the 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 an Large Supply Category connection with sanctioned load of 1180.280 kW and Contract Demand of 1400 kVA under General category.
2. The Respondent issued the notice to the Petitioner vide

Memo No.951 dated 22.08.2015 to deposit Peak Load Violation (PLV) charges of Rs.1,58,307/- for the period from 01.04.2016 to 05.05.2016 after noticing Peak Load Violations as per DDL taken on 10.05.2016 by the MMTS, Batala. The above Peak Load Violations were intimated to the Petitioner, after a period of 3 ½ months i.e. on 22.08.2016.

1. The Respondent had, earlier vide Memo No.417 dated

08.02.2002, informed the Petitioner about the time of evening Peak Load Hour Restrictions ( PLHRs), but no notice/memo was ever issued by the Respondent to the Petitioner till the issuance of the letter dated 22.08.2016 regarding the change of timings of Peak Load Hour Restrictions (PLHRs).

1. The penalty of Rs.1,58,307/- was levied based on the

Power Regulation(PR) Circular No.01/2015 dated 31.03.2015, effective from 01.04.2015 vide which the timings of Peak Load Hours Restrictions (PLHRs) for the month of April/May were changed to 18:30 hours to 21:30 hours from 19:00 hours to 22:00 hours. In the PR Circular No.01/2015 dated 31.03.2015, it was clearly mentioned that the change of timings should be got noted from the consumers concerned.

1. The Forum incorrectly observed that the Petitioner

was fully aware of the new timings introduced w.e.f. 01.04.2015, despite the fact that the Petitioner had honestly observed Peak Load Hour Restrictions (PLHRs) from 19:00 hours to 22:00 hours, thus there was no violation. All the violations occurred between 18:30 hours to 19:00 hours and no violation occurred from 19:00 hours to 22:00 hours. Had the new timings been intimated/got noted from the Petitioner, it must have observed the same. Thus, there was no reason to deliberate action by the Petitioner to violate the new timing schedule.

1. The violations ibid were neither due to its business

compulsion nor deliberate, but were due to not having information about change of schedule of Peak Load Hour Restrictions (PLHRs) w.e.f. 01.04.2015.

1. As per clause No.3.5.3 of Conditions of Supply, the change

of Peak Load Hour Restrictions Schedule was to be notified in the Official Gazette/website of the PSPCL and publicity given in two leading Newspapers, but no specific information of change of timing w.e.f. 01.04.2015 was given to the Petitioner as required in CC No.01/2015issued by the PSPCL.

1. The cause of action arose on 01.04.2015 when the time

schedule of Peak Load Hour Restrictions (PLHRs) was changed after 12 years. During the period from 04/2015 to 03/2016, the Petitioner operated its Industry during night hours only and these facts could be verified from the DDLs recorded periodically by the MMTS, Batala.

1. Based on DDL taken on 18.07.2016 and 23.09.2016, the

Respondent further charged Peak Load Violation charges.

1. The Respondent filed CWP No.20636 of 2017 in the Hon’ble Punjab and Haryana High Court challenging the decision of this Court in Appeal No.56 of 2016 which was dismissed, being devoid of any merits, on 12.09.2017.
2. The decision of the Forum on the Petition filed by the Petitioner was not acceptable to the Petitioner, as per the facts stated above. Hence, the present Appeal was filed against the decision of the Forum and may be allowed.
3. **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 Category

 Connection with sanctioned load of 1180.280kW and Contract Demand of 1400 kVA.

**(ii)** A notice was issued to the Petitioner, vide Memo No.951

dated 22.08.2016, to deposit Peak Load Violation (PLV) charges of Rs.1,58,307/- for the period from 01.04.2016 to 05.05.2016 on the basis of DDL taken on 10.05.2016 by the MMTS, Batala. There was no inordinate delay in raising the demand and the Respondent was within its right to recover the amount for Peak Load Violations and breach of Peak Load Hours Restrictions (PLHRs) imposed on the Petitioner.

 **(iii)** The approach of the Petitioner was not genuine and was rather malafide. The Petitioner was fully aware of the change in Peak Load Hour Restrictions (PLHRs) imposed as per Power Regulation (PR) Circular No.01/2015 dated 31.03.2015. Even earlier instructions contained in circulars issued from 08.02.2002 onwards were not complied with by the consumer and it was also charged and penalized for making violations and breach of Peak Load Hour Restrictions (PLHRs) and weekly off day restrictions imposed vide different memos /letters issued by the Respondent from time to time. The Petitioner was fully aware of Peak Load Hour Restrictions (PLHRs) timings and was earlier availing relaxation of using 400 kW during Peak Load Hours for which, the Petitioner had requested and withdrawn the same vide Endorsement No.5975-80 dated 26.08.2014 as per Chief Engineer/Power Purchase & Regulation, PSPCL, Patiala.

**(iv)** The Petitioner was also aware of the timings and issuance of Power Regulation (PR) No.01/2015 dated 31.03.2015 and also the timings of observance of Peak Load Hour Restrictions (PLHRs), still, it made violations as per DDL Data taken on 10.06.2016. The demand raised was bonafide, legal and valid and was binding on the Petitioner who was liable to pay the same.

**(v)** The Petitioner could not claim any benefit regarding having received any intimation of change of PLHR timings vide order dated 31.03.2015. The Petitioner could not also claim any relief by referring to CC No.12/2001 dated 29.06.2001 which was not effective as in between, many Power Regulation circulars about changes in timings were issued. The decision of the Forum was correct and valid and did not warrant any interference.

**(vi)** The Petitioner deliberately made violations of Peak Load Hour Restrictions (PLHRs) coming into effect from 01.04.2015 as it was clear from the fact that the Petitioner made violation after one year i.e. 01.04.2016 as evidenced vide DDL taken by MMTS, Batala, therefore, the Petitioner was liable to pay the demand raised for violation as detailed in the notice and could not claim that it was not aware of the timings of PLHRs.

1. When there was no violations of Peak Load Hour Restrictions

(PLHR) by the Petitioner, no charges/penalties were levied as was evident from its own submissions and when the Petitioner committed violations, only then, it was asked to deposit the charges for violations committed. The demand raised by the Respondent was genuine and valid as per provisions, regulations and instructions of the PSPCL.

1. The Petitioner itself admitted that it had not visited/ consulted

the website of the PSPCL, though as per PR Circular No.04/2012 dated 22.05.2012, the consumers were required to download the information regarding Peak Load Restrictions/weekly off days from PSPCL website. They are also required to visit the website of the PSPCL on regular basis, in future. On the basis of the information on PSPCL website, the Petitioner had taken the refund for wrongly charged amount of Peak Load Exemption Charges (PLEC) during weekly off days. Hence, the Petitioner was fully aware of the PR Circular No.01/2015 dated 31.03.2015.

**(ix)** Keeping in view the submissions made, the Appeal may

 be dismissed.

4. **Analysis:**

The issue requiring adjudication is the legitimacy of the charges amounting to Rs.1,58,307/- on account of violations of Peak Load Hour Restrictions for the period from 01.04.2016 to 05.05.2016.

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

 The present dispute involves the levy of charges amounting to Rs.1,58,307/- vide Memo No.951 dated 22.08.2016, on account of violation of Peak Load Hour Restrictions, for the period from 01.04.2016 to 11.04.2016, 15.04.2016 to 22.04.2016, 25.04.2016 to 29.04.2016, 01.05.2016 and 03.05.2016 to 05.05.2016. The said demand was raised by the Respondent after a period of 3½ months of taking of DDL by the MMTS, Batala on 10.05.2016 and intimating the details of the Peak Load Violations(PLVs) vide its letter No.371 dated 16.05.2016. Petitioner’s Representative (PR) contended that the Respondent had earlier, vide Memo No.417 dated 08.02.2002, informed the Petitioner about the time of evening Peak Load Hour Restrictions ( PLHRs), but no notice/memo was ever issued by the Respondent to the Petitioner till the passing of the order dated 22.08.2016 regarding the change of timings of Peak Load Hour Restrictions (PLHRs). The penalty of Rs.1,58,307/- was levied based on the PR Circular No.01/2015 dated 31.03.2015 vide which the timing of Peak Load Hours Restrictions (PLHRs) for the month of April/May were changed to 18:30 hours to 21:30 hours in lieu of the restrictions already imposed and in force from 19:00 hours to 22:00 hours during the said months. In the Power Regulation (PR) Circular No.01/2015 dated 31.03.2015, **it was clearly mentioned that the change of timings should be got noted from the consumers concerned**. The Forum incorrectly observed that the Petitioner was fully aware of the new timings introduced w.e.f. 01.04.2015, *despite the fact that the Petitioner had honestly observed Peak Load Hour Restrictions (PLHRs) from 19:00 hours to 22:00 hours*, thus there was no violation. All the violation occurred from 18:30 hours to 19:00 hours and no violation occurred from 19:00 hours to 22:00 hours. Had the new timings been intimated/got noted from the Petitioner by the Respondent, the Petitioner must have observed the same. Thus, there was no deliberate action by the Petitioner to violate the new timing schedule of Peak Load Hour Restrictions (PLHRs).

 The Respondent, in its defence, stated that there was no inordinate delay in raising the demand, on account of violation of Peak Load Hour Restrictions (PLHRs) pointed out by the MMTS, Batala and the Respondent was within its right to recover the amount involved for Peak Load Violations (PLVs) and breach of Peak Load Hour Restrictions (PLHRs) imposed on the Petitioner. The approach of the Petitioner was not genuine and was rather malafide. The Petitioner was fully aware of the change in Peak Load Hour Restrictions (PLHRs) imposed as per CC No.01/2015 dated 31.03.2015. Even earlier instructions contained in circulars issued from 08.02.2002 onwards were not complied with by the consumer and it was also charged and penalized for making violation and breach of Peak Load Hour Restrictions (PLHRs) and weekly off day restrictions imposed vide different memos /letters issued by the Respondent from time to time. The Petitioner was fully aware of Peak Load Hour Restrictions (PLHRs) timings and was earlier availing relaxation of using 400 kW during Peak Load Hours which was withdrawn by the Petitioner on its request vide Endorsement No.5975/80 dated 26.08.2014 of the Chief Engineer/PP&R, PSPCL, Patiala. The Petitioner was also aware of the issuance of Power Regulation (PR) Circular No.01/2015 dated 31.03.2015 and also the timings of observance of Peak Load Hour Restrictions (PLHRs), still, it made violations as per DDL Data taken on 10.06.2016. The demand raised was bonafide, legal, valid and was binding on the Petitioner who was liable to pay the same. The Petitioner could not claim any benefit regarding not having received any intimation of change of PLHR timings vide Power Regulation (PR) Circular No.01/2015 dated 31.03.2015. The Petitioner could not also claim any relief by referring to Power Retgulation (PR) Circular No.12/2001 dated 29.06.2001 which was not effective as in between, many circulars about changes in timings were issued and last Power Regulation (PR) Circular was issued vide Power Regulation (PR) No.09/2003 dated 08.12.2003. The decision of the Forum was correct and valid and did not warrant any interference. The Petitioner deliberately made violation of Peak Load Hour Restrictions (PLHRs) coming into effect from 01.04.2015 as it was clear from the fact that the Petitioner made violation after one year i.e. after 01.04.2016 as evidenced vide DDL taken by MMTS, Batala, therefore, the Petitioner was liable to pay for the demand raised for violation as detailed in the notice and could not claim that it was not aware of the timings of PLHRs.When there was no violation of Peak Load Hour Restrictions (PLHRs) by the Petitioner, no charges/penalties were levied as was evident from its own submissions and when the Petitioner committed violations, only then, it was asked to deposit the charges for violations committed. The demand raised by the Respondent was genuine and valid as per provisions, regulations and instructions of the PSPCL.

The Petitioner itself admitted that it had not visited/ consulted the website of the PSPCL

 I find that the Petitioner is a Large Supply Category consumer from the very beginning and was informed by the Respondent, vide Memo No.417 dated 08.02.2002, about the timing of evening Peak Load Hour Restrictions (PLHRs). Thereafter too, the Petitioner was statedly given information about observance of Peak Load Hour Restrictions (PLHRs) and weekly off days.

I find that PSPCL issued Power Regulation (PR) Circular No. 04/2012 dated 22.05.2012 vide which General industrial consumers had been requested that they should visit the website of PSPCL on regular basis in future for Peak Load Hours Restrictions/Weekly off Days. On the basis of this Circular, the Petitioner had obtained refund of different weekly off day/PLHRs as per its written request dated 19.08.2013 and 21.08.2014. I further observe that Petitioner, having a Large Supply Category connection, ought to have behaved responsibly and should have kept itself posted with the changes in Peak Load Hour timings made by the PSPCL and posted on website. At the same time, the Distribution Licensee also defaulted in getting complied with its own instructions dated 31.03.2015 (PR No.01/2015) requiring that:

“*These Peak Load Hour Restrictions shall be applicable on Large Supply consumers only and the above changes may be got noted from all the concerned consumers well in time*”.

I also find that the Petitioner was earlier availing itself of relaxation of using 400 kW load during Peak Load Hour Restrictions and its request dated 25.08.2014 for withdrawal of Peak Load Exemption of 400 kW was allowed by the Chief Engineer/Power Purchase & Regulation, PSPCL, Patiala vide Endorsement letter No,5978-80 dated 26.08.2014.

I find that due to non-publicity of the Power Regulation (PR) Circular No. 01/2015 dated 31.03.2015, the Distribution Licensee issued Commercial Circular (CC) No. 25/2015 dated 16.06.2015 which reads as under:

*“Above Circular (PR No. 01/2015) had been uploaded on PSPCL website on 31.03.2015, but due to non-publicity of the same in the media, some of the consumers may not be able to observe the changes in Peak Load Restriction Hours. Those consumers who keep on observing previous Peak Load Hour Restriction timings in respective Zones after 31.03.2015, shall not be penalized till the issuance of first bill of such LS consumer due to the genuineness of the problem.*

*Meticulous compliance of these instructions be ensured. This Circular can be downloaded from the PSPCL website, www.pspvcl.in”.*

 I am of the view that PR Circular No. 01/2015 was applicable from 01.04.2015 but the file brought on record shows that the Petitioner had violated the Peak Load Hour Restrictions (PLHRs) as per new timings as per DDL dated 20.04.2015, 08.10.2015, 23.12.2015 and 03.03.2016 on many occasions. But the MMTS failed to intimate the same to the concerned office of PSPCL.

It, thus, becomes necessary for the MMTS to again check all the DDL printout from 01.04.2015 till date and point out the Peak Load Violations, if any, taken place as per Power Regulation(PR) Circular No. 01/2015 dated 31.03.2015

I further observe from perusal of record placed in file that similar cases wherein DDL was taken on 18.07.2016 and 23.09.2017, are under consideration with the State Consumer Dispute Redressal Forum, Chandigarh.

I have gone through the submissions made by the Petitioner citing the decision of the Hon’ble Punjab and Haryana High Court in CWP No.20636 of 2017 and also of this Court in Appeal no.66/2015 decided on 20.04.2016 and Appeal No.50/2016 decided on 02.12.2016 and found that the facts and circumstances of the above cited cases are different from those of the Petitioner’s case. Accordingly, the Petitioner’s prayer to grant complete relief, based on the decisions ibid, is without merit.

From the above analysis, it is concluded that the Petitioner is liable to be charged for the violation of Peak Load hour Restrictions (PLHRs) based on rechecking by MMTS of print outs of DDL dated 20.04.2015, 08.10.2015, 23.12.2015 and 03.03.2016 in terms of provisions contained in Power Regulation (PR) Circular No.01/2015 dated 31.03.2015 and intimate the Peak Load Violation (PLV) took place w.e.f. 01.04.2015 after giving due benefit of CC No.25/2015. At the same time, the charges levied on the Petitioner for the violations of the Peak Load Hour Restrictions (PLHRs) for the period (s) from 01.04.2016 to 11.04.2016, 15.04.2016 to 22.04.2016, 25.04.2016 to 29.04.2016, 01.05.2016 /03.05.2016 to 05.05.2016 are correct and recoverable. However, since the Respondent-PSPCL was responsible for not intimating the Peak Load Violation in contradiction to its own instructions dated 31.03.2015, the charges should be levied at single rate as per provisions contained in Instruction No.132 of ESIM.

5. **Decision:**

**As a sequel of above discussions, it is held that the Respondent should recheck all the DDL taken from 01.04.2015 to 05.05.2016 vis-a-vis the timings of Peak Load Hour Restrictions (PLHRs) circulated vide Power Regulation (PR) Circular No.01/2015 dated 31.03.2015 and thereafter, charge the Petitioner, at single rate, for all the Peak Load Violations committed after giving the due benefit of the provisions contained in CC No.25/2015 dated 16.06.2015 without any interest/surcharge.**

**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)

July 24, 2018 LokPal (Ombudsman)

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

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