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

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

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

 **APPEAL NO. 58/2018**

**Date of Registration : 12.09.2018**

**Date of Hearing : 27.12.2018**

**Date of Order : 31.12.2018**

**Before:**

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

**In the Matter of :**

Komal Straw Board & Mill Board Industries,

 Dera Baba Nanak Road

V&P.O. Hayat Nagar

Distt. Gudaspur

 ...Petitioner

 Versus

Addl. Superintending Engineer,

DS Division,

PSPCL, Gurdaspur

 ...Respondent

**Present For:**

Petitioner : 1. Sh.Sarover Kumar,

 Petitioner.

 2. Sh.S.R.Jindal,

 Petitioner’s Representative (PR).

Respondent : 1. Er. Arvinderjit Singh Boparai,

 Additional Superintending Engineer,

 DS Division,

 PSPCL, Gurdaspur.

 2. Sh.Gagan Kumar,

 Assistant Revenue Accountant.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 14.08.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-245 of 2018 deciding that :

 *“Peak load hours violation charges levied by issuing a Supplementary Notice vide Memo No.99 dated 17.01.2017 received on 30.01.2017 to deposit Rs.14,93,574/- on account of Peak Load Violation Charges for the period 11.05.2016 to 24.05.2016, 26.05.2016 to 27.05.2016, 30.05.2016 to 02.06.2016, 04.06.2016 to 12.06.2016, 15.06.2016 to 16.06.2016 as reported by Addl.SE/EA& MMTS, PSPCL, Batala vide Memo No.685 dated 22.08.2016 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 1180.280 kW and contract demand (CD) as 1400 kVA.

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

Memo no.99 dated 17.01.2017 to deposit a sum of Rs.14,93,574/- on account of Peak Load Violation Charges (PLVs) for the period(s) from 11.05.2016 to 24.05.2016, 26.05.2016 to 27.05.2016, 30.05.2016 to 02.06.2016, 04.06.2016 to 12.06.2016 and 15.06.2016 to 16.06.2016 as reported by the Addl.SE/ EA& MMTS,PSPCL, Batala, vide memo no.685 dated 22.08.2016, for the DDL taken on 15.07.2016.

1. The Petitioner filed a complaint under Section 12 of the Consumer

Protection Act before the District Consumer Disputes Redressal Forum, Gurdaspur where the Respondent-PSPCL appeared and filed its written statement. After hearing both the sides, the District Consumer Disputes Redressal Forum, Gurdaspur passed order dated 13.09.2017 in favour of the Petitioner and against the Respondent setting aside the demand of Rs. 14,93,0574/- raised against the Petitioner.

1. On 04.12.2017, the Respondent preferred an Appeal against the said

order of the District Consumer Disputes Redressal Forum, Gurdaspur before State Consumer Disputes Redressal Commission, Punjab, Chandigarh, who allowed the Appeal of the Respondent, vide order dated 04.05.2018 , stating as under :

*“ We hereby allow this appeal in the same terms as in FA No.198 of 2017 decided by the First Additional Bench of this Commission and FA No.815 of 2017 decided on 16.03.2018 by Principal Bench of this Commission. Accordingly, the impugned order passed by the District Forum dated 13.09.2017 is set aside. The complaint of the complainant is dismissed on the ground that the complainant is not a “ consumer” as defined under the Act with a liberty to seek redressal of his grievances before the competent/appropriate forum in accordance with the law, who shall consider the time spent by the complainant before the District Forum and the present appeal before this Commission for the purpose of accounting the period of limitation under Section 14 of Limitation Act 1963”.*

1. As a result, the Petitioner filed a Petition on 19.06.2018 in the Forum, who, after hearing, dismissed the same vide order dated 14.08.2018. ( Reference: Page-2, Para-1).
2. Not satisfied with the decision of the Forum, the Petitioner filed an

Appeal in this Court and prayed that it was not justified to charge any penalty on this account as new timings had come to its notice on 23.08.2016, so, the amount may be allowed to be recalculated as per old schedule of timings in the interest of justice along with interest on amount deposit and compensation be also awarded for harassment.

**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 Respondents alongwith 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 was having an Large Supply (LS) Category connection with sanctioned load of 1180.280 kW and contract demand (CD) of 1400 kVA under General category since long for Paper Mill and Straw Board.
2. The Respondent issued the notice to the Petitioner, vide Memo

No. 99 dated 17.01.2017 (received on 30.01.2017), in view of PR Circular No.1/2015 dated 31.03.2015 effective from 01.04.2015 to deposit Peak Load Violation (PLV) charges of Rs.14,93,574/- after noticing Peak Load Violations as per DDL taken on 15.07.2016 by the Addl. S.E/MMTS, PSPCL, Batala as reported vide its letter no. 685 dated 22.08.2016.

1. The Respondent had got noted Peak Load Hours Restrictions timing

schedule vide Memo No.417 dated 08.02.2002 as under in view of PR Circular No.12/2001 dated 29.06.2001:

|  |  |  |
| --- | --- | --- |
| **S.No.** | **Months** | **Timings** |
| 1 | November/December/January | 1800 hrs to 2100 hrs |
| 2 | February/March/September/October | 1830 hrs to 2130 hrs |
| 3 | April/May/August | 1900 hrs to 2200 hrs |
| 4 | June/July | 1930 hrs to 2230 hrs |

1. The Respondent, vide PR Circular No.01/2015 dated 31.03.2015

(effective from 01.04.2015), amended the schedule of timing of Peak Load Hour Restrictions (PLHRs) in partial modification of PR No.09/2003 dated 08.12.2003 (effective from 16.12.2003) as under:

|  |  |  |
| --- | --- | --- |
| **S.No.** | **Months** | **Timings** |
| 1 | April to August ( 5 months) | 1830 hrs to 2130 hrs |
| 2 | September to March ( 7 months) | 1800 hrs to 2100 hrs |

The circular No. 01/2015 dated31.03.2015 stipulated that the above changes may be got noted from all the consumers well in time.

1. Since the date of issue of PR Circular No.01/2015 dated 31.03.2015,

the following DDLs were recorded by Addl.SE/MMTS, Batala:

* 1. DDL dated 20.4.2015 for the period 08.02.2015 to 20.04.2015
	2. DDL dated 08.10.2015 for the period 29.07.2015 to 08.10.2015
	3. DDL dated 23.12.2015 for the period 12.10.2015 to 22.12.2015
	4. DDL dated 03.03.2016 for the period 23.12.2015 to 02.03.2016
	5. DDL dated 10.05.2016 for the period 29.02.2016 to 09.05.2016
	6. DDL dated 18.07.2016 for the period 10.05.2015 to 17.07.2016
	7. DDL dated 23.09.2016 for the period 18.07.2016 to 22.09.2016
1. The Petitioner did not receive any letter from the Respondent regarding PLV charges against DDL recorded on dated 20.04.2015, 08.10.2015, 23.10.2015 and 03.03.2016 whereas the Petitioner had run its Industry according to the old schedule of timing of Peak Load Hour Restrictions (prior to 01.04.2015) as the Petitioner was not aware of the same and the Addl.SE/ MMTS, Batala had also not pointed out levy of any Peak Load Violation Charges (PLVs) against the violation of new timings with effect from 01.04.2015. It meant that the Respondent was also not aware of the modified PLHRs timings as per PR Circular No.01/2015 dated 31.03.2015,

 effective from 01.04.2015.

1. Moreover, the Petitioner came to know that other industries of the

Area were also not aware of any amendment in timings of Peak Load Hour Restrictions (PLHRs) as per instructions issued vide PR Circular No.01/2015 and the Industrialists continued observing Peak Load Hour timings as per old schedule for the year 2015 to 2016. If the Respondent was well aware of the Circular No.01/2015, it owed explanation as to why the PLV charges were not pointed out by it to the Petitioner who ran its industry as per old schedule of timings already got noted from them.

1. The Petitioner had received the following notices against DDL recorded

 on 10.05.2016 , 18.07.2016 and 23.09.2016:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **S.No.** | **DDL on** | **Notice No/Date** | **Amount** | **Received on** |
| 1 | 10.05.2016 | 951/22.08.2016 | 1,58,307/- | 23.08.2016 |
| 2 | 18.07.2016 | 099/17.01.2017 | 14,93,574/- | 31.01.2017 |
| 3 | 23.09.2017 | 1166/07.11.2016 | 3,37,030/- | 10.01.2017 |

1. After receipt of notice vide letter no.951 dated 22.08.2016 on

23.08.2016, no Peak Load Violation took place thereafter as per new timings introduced w.e.f. 01.04.2015.

1. The Petitioner honestly and faithfully observed three hours complete Peak Load Hour Restrictions (PLHRs) as per the directions of the Respondent according to old schedule of timings and there was no violation in observing the evening Peak Load Hours if the calculation was done as per old schedule which was evident from the DDL recorded as per material on record. This Court had already allowed to overhaul the account of the consumers on the basis of old schedule of timings in Appeal No.66/2015, 44/2016,48/2016 and 50/2016. Moreover, the present demand was in violation of Instruction No. 132.3 (d) of ESIM as the Respondent failed to comply with the instructions to issue notice of Peak Load Violation Charges before the next DDL became due.
2. The Forum, in its decision, erred in observing that after issuance of

CC No.25/2015 dated 16.06.2015, the first violation occurred after more than a year and during this period, there was no violation, as such, it was not agreeable that the Petitioner was not aware of the changed timings. In fact, the Forum did not keep in view that the Respondent had not levied any penalty after taking DDL on 20.04.2015, 08.10.2015, 23.12.2015 and 03.03.2016 after the issue of PR Circular No.01/2015 dated 31.03.2015 effective from 01.04.2015. Though, the Petitioner ran its Industry according to the old schedule of timing of Peak Load Hours applicable prior to 01.04.2015, the Respondent had not levied any penalty for the violations till 01.04.2016.

1. It was an admitted fact that the Petitioner came to know for the first time regarding new timings on 23.08.2016. The demand raised by the Respondent was not in order, rather, illegal and beyond rules and regulation of the PSPCL as it was evident from the DDLs recorded by the MMTS that the Petitioner had observed complete three hours Peak Load Hour Restrictions (PLHRs) as per old schedule of timing which were in its knowledge and the Respondent had failed to get noted the new timings well in time. There were no violation in peak load hours timings after the receipt of disputed notice on 23.08.2016.

Accordingly, the amount charged may be allowed to be recalculated, as per old schedule of timings, in the interest of justice and interest on the amount deposited along with compensation be awarded to the Petitioner.

1. **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 with sanctioned load of 1180.280kW and contract demand of 1400 kVA.
2. It was a fact and law that the consumer was fully aware and having

knowledge of the imposition of Peak Load Hour Restrictions (PLHRs) and change of timing of the PLHRs being imposed on it and it, instead of following the Peak Load Hour Restrictions (PLHRs) as per PR Circular No.01/2015, issued on 31.03.2015, had committed breach and violation intentionally and was found doing so as per data downloaded (DDL) by MMTS, PSPCL, Batala on 15.07.2016. The PR Circular No.01/2015 came into effect from 01.04.2015 and the violations were committed by the Petitioner during 11.05.2016 to 16.06.2016 and accordingly was penalized to the tune of Rs.14,93,574/- for committing the violations during the said period. The demand of the Respondent was legal, valid as per rules, provisions and instructions and the Petitioner is liable to pay the demand.

1. There was no delay in raising the demand and the Respondent was

within its right to recover the amount for Peak Load Violation and breach of Peak Load Hour Restrictions (PLHRs) imposed on the Petitioner.

1. 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 08.02.2006 onwards were not complied with by the Petitioner and it was also charged and penalized for making/committing violations and breach of Peak Load Hour Restrictions (PLHRs) and weekly off days restrictions imposed vide different memos/letters issued by the Respondent from time to time.
2. The Petitioner was fully aware of the Peak Load Hour Restrictions

(PLHRs) timings and was earlier availing relaxation/exemption of using 400 kW during Peak Load Hours for which, the Petitioner itself had requested and withdrawn the same as per approval given vide Endst. no.5975/80 dated 26.08.2014 by the Chief Engineer / Power Purchase and Regulation, PSPCL, Patiala.

1. The Petitioner was also aware of the timing and 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 15.07.2016. The demand raised by the Respondent was bonafide, legal and valid and was binding on the Petitioner who was liable to pay the same.

1. The Petitioner could not claim any benefit regarding not having

received any intimation of change of Peak Load Hour Restrictions (PLHRs) timings vide PR Circular No.01/2015 dated 31.03.2015. Further, the Petitioner could not also claim any relief by referring to Circular 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.

1. 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 violations after one year i.e. after 01.04.2016 as evidenced vide DDL taken by MMTS, PSPCL, 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 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.
2. 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 Hour Restrictions/ weekly off days from PSPCL website. They were 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, effective from 01.04.2015.

1. 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.14,93,574/-, on account of violations of Peak Load Hour Restrictions for the period from 11.05.2016 to 24.05.2016, 26.05.2016 to 27.05.2016, 30.05.2016 to 02.06.2016, 04.06.2016 to 12.06.2016 and 15.06.2016 to 16.06.2016, as per applicable regulations.

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

1. The present dispute involves the levy of charges amounting to Rs.14,93,574/- as per the demand raised by the Respondent, in view of the Addl.SE, MMTS, Batala’s letter no.685 dated 22.08.2016, for the Peak Load Violations noticed from the DDL taken on 15.07.2016.

 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 the Peak Load Hour Restrictions (PLHRs) and weekly off days.

 I also find that PSPCL issued Power Regulation (PR) Circular No. 04/2012 dated 22.05.2012 vide which, General industrial consumers had been requested to visit the website of the PSPCL on regular basis in future for updating themselves about the Peak Load Hours Restrictions/Weekly off Days. On the basis of this Circular, the Petitioner had obtained refund of different weekly off days/PLHRs as per its written requests dated 19.08.2013 and 21.08.2014.

 *I observe that the 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 hosted on its website. Such a consumer was not expected to find alibis and pinpoint lacunae in the working of the Distribution Licensee only when it was charged as per rules to suit its interest. There is, however, no denying the fact that the Distribution Licensee also defaulted in ensuring compliance of its own instructions dated 31.03.2015 (PR Circular 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 find from the material brought on record that the Petitioner has the background and knowledge of the subject matter as it was availing relaxation of using 400 kW load during the course of imposition of Peak Load Hour Restrictions and it had requested on dated 25.08.2014 for withdrawal of Peak Load Exemption of 400 kW which was allowed by the Chief Engineer/Power Purchase & Regulation, PSPCL, Patiala vide Endorsement letter No.5978-80 dated 26.08.2014.

 I also 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”.*

1. Though PR Circular No. 01/2015 was applicable from 01.04.2015, the file / material 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.

 I find that during the course of hearing of similar Appeal No. 05/2018 filed by the present Petitioner, this Court had considered it necessary and accordingly, directed the MMTS to again check all the DDL prints out from 01.04.2015 onwards and point out the Peak Load Violations, if any, taken place as per Power Regulation(PR) Circular No. 01/2015 dated 31.03.2015

 During the course of hearing of this case, the Respondent was again directed to get, the prints out of DDLs taken, checked for the period of 01.04.2015 to 05.05.2016 from MMTS after issuance of Circular No.01/2015 dated 31.03.2015, to check the Peak Load Violations committed by the Petitioner with effect from 01.04.2015, if any, for taking necessary action. In response, the Respondent, vide e-mail dated 28.12.2018, forwarded a copy of letter dated 27.12.2018 of the Senior Executive Engineer, MMTS, Batala and intimated that on rechecking of prints out of DDLs for the period from 01.04.2015 to 05.05.2016, it was noticed that amounts of Rs.28,541/- (DDL dated 20.04.2015), Rs.1,87,892/- (DDL dated 08.10.2015) and Rs.1,58,307/- (DDL dated 10.05.2016) were chargeable on account of Peak Load Violations (PLVs) committed by the Petitioner. The Respondent added that out of the above amounts, sums of Rs.28,541/- (DDL dated 20.04.2015) and Rs.1,87,892/- (DDL dated 08.10.2015) were not charged to the Petitioner by the AEE/DS, City Sub Division, Gurdaspur.

I find from the perusal of Memo No.363 dated 27.12.2018 of the Sr. Executive Engineer, MMTS, Batala that it had intimated the DS Office regarding Peak Load Violations (PLVs) committed by the Petitioner against DDL dated 20.04.2015 and 21.05.2015, vide Memo No.260 dated 21.02.2015 and 836 dated 20.10.2015 respectively, but DS Office failed to intimate the Petitioner about the Peak Load Violations ibid.

1. 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 present Appeal. Accordingly, the Petitioner’s prayer to grant relief, based on the decisions ibid, is without merit.

From the above analysis, it is concluded that the Petitioner is required to be charged **at single rate** in terms of provisions contained in Power Regulation (PR) Circular No.01/2015, on account of Peak Load Violations committed:

1. from 11.05.2016 to 24.05.2016, 26.05.2016 to 27.05.2016,30.05.2016 to 02.06.2016, 04.06.2016 to 12.06.2016 and 15.06.2016 to 16.06.2016,
2. from 01.04.2015 to 05.05.2016, as per directions issued by this Court in Appeal No.5 of 2018, decided on 24.07.2018 and report dated 27.12.2018 of the Senior Executive Engineer, MMTS, Batala for the DDLs taken on 20.04.2015, 08.10.2015 and 10.05.2016 by giving due benefit of Commercial Circular (CC) No. 25/2015 dated 16.06.2015.

However, no interest/surcharge be levied in view of the omission on the part of the Respondent, as discussed in the proceeding paras.

5. **Decision:**

 **As a sequel of above discussions, the order dated 14.08.2018 of the CGRF in Case No. CG-245 of 2018 is modified. It is held that the Petitioner shall be charged as per conclusion arrived at in Para-4 above. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short after adjustment, if any, without interest/surcharge.**

**6.** The Appeal is disposed of 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)

December 31, 2018 Lok Pal (Ombudsman)

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