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

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

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

 **APPEAL NO. 08/2019**

**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 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. Sh. Krishan Singh,

 Assistant Accounts Officer (AAO).

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 26.10.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-310 of 2018 deciding that :

**“(a)** *Petitioner is liable to pay the excess credit given in his account No.3003018347 amounting to Rs. 28,38,459/- ( i.e. Rs.10,97,405/- wrong credit on 18.12.2017 plus Rs.4,91,054/- wrong credit on 21.03.2018 plus Rs.12,50,000/- wrong credit on 06.07.2018) as demanded by the Respondent vide supplementary notice vide Memo.525 dated 27.07.2018 as stipulated under PSPCL Tariff Order(s) FY 2017-18 & FY 2018-19 as per Clause 21 of General Conditions of Tariff.*

**(b)** *SE/Operation Circle, City West, 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 for condonation of delay in filing the Appeal in this Court was taken up. The Petitioner’s Representative (PR) submitted that the present Appeal could not be preferred in this Court within the stipulated period of one month due to the reason that copy of the decision dated 26.10.2018 of the Forum, sent by Secretary, CGRF, Patiala, vide memo no.4339-4340 dated 30.10.2018 by Registered Post was received by the Petitioner on 08.01.2019. Actually, the Petitioner had considered the prescribed period of one month from the date of receipt of the Demand Notice from the Respondent intimating the amount recoverable as per decision of the CGRF. Petitioner’s Representative (PR) submitted that delay beyond the stipulated period of one month from the date of receipt of the Order ibid of the Forum had occurred due to the said reason and may be condoned in the interest of justice.

 The Respondent submitted during the course of hearing that the Petitioner did not have any evidence in support of its contention that it had received copy of order from the Forum on 08.01.2019. Besides, it was not correct on the part of the Petitioner to consider the due date for filing Appeal in this Court as one month from the date of issue of Notice intimating the dues recoverable as per order of the Forum.

In this connection, 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, it ought to be vigilant and should have kept a watch on the uploading of the decision of the Forum on its website or pursued the matter with the office of the Forum/ Respondent after the case was closed on 28.10.2018 ( DOD:26.10.2018) by the Forum. 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 deliver 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 that:-

1. The Petitioner was having Large Supply Category connection

with sanctioned load of 2449.980 kW and contract demand (CD) of 2495 kVA**.**

1. The Audit Party charged Rs. 28,38,459/- to the Petitioner’s account,

vide letter No. 5383/85-CA-RA-503 dated 25.07.2018, on account of wrong ‘Check lots’ entered in SAP chronology by the Revenue Accountant (RA) on account of payment deposited by the Petitioner made in the SAP billing System which was pointed out by Audit as wrong excess credits were given to the Petitioner on dated 18.12.2017, 21,03.2018 and 06.07.2018.

1. Accordingly, the Respondent served a supplementary notice, vide

Memo No.525 dated 27.07.2018 enclosing therewith a supplementary bill to the Petitioner to deposit Rs. 28,38,459/-.

1. Aggrieved with the above notice, the Petitioner filed a Petition

dated 07.08.2018 in the Forum, who, after hearing, passed the order dated 26.10.2018. (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 charging of huge amount of Rs.28,38,459/- raised by the Respondent was unwarranted and requested to look into the merits of the case and set aside the demand of Rs.28,38,459/- keeping in view the principles of natural justice and fairness.

**4. 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 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 was having a Large Supply Category connection

with sanctioned load of 2449.980 kW and contract demand (CD) of 2495 kVA**.**

1. The Petitioner was served with a supplementary bill dated 27.07.2018, with due date as 31.07.2018 requiring the Petitioner to deposit an amount of Rs.28,38,459/- by mentioning in the energy bill that its account was checked by Special Audit Party, Patiala which noticed that entries were posted by ‘Check lots’ which was not correct, therefore, a sum of Rs.28,38,459/- was being charged.
2. The huge amount was charged to the Petitioner without reference to any rule/regulation of the Supply Code or Electricity Act, 2003 and the Respondent did not supply any other evidence/details such as bill raised, amount deposited, amount posted in the account of the Petitioner and calculation sheet of the amount charged. As such, the Petitioner was left with no option, but to approach the Forum, who did not grant any relief to the Petitioner.
3. The Forum had wrongly relied on the Clause 21 of General Conditions of Tariff ( Tariff Order for the FY 2015-16) 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.
4. The responsible official of the Respondent was recording readings every month and energy bills were issued on the basis of recorded consumption were duly paid. There was delay in payment of 3-4 energy bills during the year 2017-18, but the payment was deposited within 7 days after the due date as given in the energy bills. The charging of such a huge amount through supplementary energy bill was highly unjustified, arbitrary and illegal and was liable to be quashed.
5. After coming into effect of the Electricity Act, 2003 and Supply Code-2007, (effective from 01.01.2008), every penal action on the consumer should be supported by rules/regulations because it was the consumer who had to pay the difference due to less billing of previous period and it should be informed under which rule/regulation, the consumer was being penalized.
6. The Chief Engineer/Commercial, PSPCL, Patiala issued instructions vide Commercial Circular (CC) No.53/2013 and CC No.59/2014 (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 Respondent must quote the relevant regulations of the Supply Code or any other regulations framed by the Competent Authority under the Electricity Act, 2003. These instructions were reiterated vide Commercial Circular (CC) No.30/2015 dated 05.08.2015 for strict compliance as the Hon’ble PSERC had taken a serious view of non-compliance of these instructions.
7. The Respondent charged a sum of Rs.28,38,459/- without reference to any rule/regulation of the Supply Code or Electricity Act, 2003 especially considering the fact that the amount charged to the Petitioner was huge. It was mentioned in the supplementary energy bill that entries were posted by ‘Check lots’ which was wrong. As such, the amount charged to the Petitioner, was liable to be quashed being illegal and arbitrary.
8. All the energy bills issued by the Respondent were paid. The amount of Rs.28,38,459/- had been charged on the basis of observations of Audit Party that there was difference of payments credited (as per ‘Check lots’) vis-à-vis deposited by the Petitioner on 18.12.2017, 21.03.2018 and 06.07.2018 by Rs.10,97,405/-, Rs.4,91,054/- and Rs.12,50,000/- respectively. The said excess credits were not depicted in the energy bills issued to the Petitioner.
9. The details available as per energy bills especially issued in the year 2017-18 were very difficult to understand as there were sundry charges and allowances in majority of the energy bills. The Petitioner paid all the amount of the current energy bill issued every month. During some months, the payment was deposited in parts and there was some delay in depositing some portion of the payment. The Petitioner was ready to pay interest on that portion of the amount which was deposited late. There was no justification in asking the Petitioner to deposit Rs.28,38,459/- due to excess/wrong credit along with surcharge/ interest.
10. Regulation 30.3, 31.9, 31.9.2 and 32 of the Supply Code-2014 were relevant in support of the plea for not levying interest/surcharge on the unpaid amount.
11. Keeping in view the submissions made, 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. The Petitioner was having a Large Supply Category connection

with sanctioned load of 2449.980 kW and contract demand (CD) of 2495 kVA**.**

1. The Audit Party charged Rs. 28,38,459/- to the Petitioner’s account

vide letter no. 5383/85-CA-RA-503 dated 25.07.2018 on account of wrong ‘Check lots’ entered in SAP chronology by the Revenue Accountant (RA) on account of payment deposited by the Petitioner made in the SAP Billing System which had been pointed out by Audit as wrong credits were given to the Petitioner on dated 18.12.2017, 21.03.2018 and 06.07.2018.

1. The Respondent had made month wise detailed report of the energy bills issued for these months showing due date of payment and the date of actual payment with the detail of received/UTR No. / Mode of Payment, payment entered in chronology list made through ‘Check lots’ or RTGS with dates and the wrong ‘Check lots’ made by the Revenue Accountant (RA) and chargeable amount as wrong ‘Check lots’ of payment made by the consumer.
2. After thorough verification of the Audit Report, it was observed that the Audit had correctly charged the amount of wrong ‘Check lots’ of payment made by the Petitioner which were due to wrong credit/erroneous posting of ‘Check lots’ by the Revenue Accountant at its own level.
3. A supplementary bill was issued correctly to the Petitioner on the basis of Audit Report vide Memo No.525 dated 27.07.2018 for a sum of Rs.28,38,459/- + Rs.56,769/- as surcharge @ 2% totaling Rs.28,95,228/- payable within due date 31.07.2018.
4. The reason of the demand raised had been recorded in the supplementary energy bill along with calculation sheet which was handed over to the Petitioner. The amount had been charged as per Instruction No. 93.2 of ESIM as short assessment for which, the Petitioner was liable to pay as per PSPCL instructions.
5. The said amount was debited in the energy bill for the month of 09/2018 depicted in chronology list dated 20.08.2018 Rs.28,38,459/- and the said amount was continuing being showing in the future energy bills as arrear amount.
6. The wrong ‘Check lots’ (refunds) made by the Revenue Accountant in SAP Billing System had been detected by the Special Audit Party in July, 2018 and demand was raised in July, 2018. Hence, the short assessment/wrong refund had been detected by the Audit Party in July, 2018 and cause of action arose from the date of issue of supplementary bill dated 27.07.2018.
7. In view of the submissions made, the Appeal may be dismissed.

4. **Analysis:**

The issue requiring adjudication is the legitimacy of the demand of excess/wrong credit amounting to Rs.28,38,459/- (comprising wrong credits of Rs.10,97,405/-, Rs.4,91,054/- and Rs.12,50,000/- given on 18.12.2017, 21.03.2018 and 06.07.2018 respectively) along with surcharge and interest as per applicable regulations.

*The issues emerged in the case 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, PSPCL, Ludhiana, vide Memo No.5583-85 dated 25.07.2018, that wrong reversal and wrong posting of ‘Check lots’ involving the amount of Rs.360.75 lac were noticed as per test check of the accounts of the consumers and requested for taking appropriate action in the matter. In compliance to the said observation 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 credit given on 18.12.2017, 21.03.2018 and 06.07.2018 by the Revenue Accountant at its own level. Accordingly, a Notice and supplementary bill was issued by the Respondent vide Memo No.525 dated 27.07.2018, to the Petitioner to deposit a sum of Rs.28,38,459/-.

 Petitioner’s Representative (PR) submitted that the Petitioner was not aware about the Internal System (‘Check lots’) of the PSPCL and excess credit of amount, if any, given to its account. The excess credits of Rs.10,97,405/-, Rs.4,91,054/- and Rs.12,50,000/- had also not been depicted in the energy bills issued to the Petitioner. The details available in the bills issued, particularly in the year 2017-18, were difficult to be understood as sundry charges and allowances were shown in most of the bills with which, no separate details were attached. The Petitioner had paid all the current amounts of the bills. However, during some months, the payments were deposited in installments and there was some delay in depositing some installment of the payment. The Petitioner was ready to pay interest on the portion of the amount deposited late (after due date). But, there was no justification in asking the Petitioner to deposit Rs.28,38,459/- due to alleged excess/wrong credit along with surcharge and interest.

 Petitioner’s Representative (PR) also referred to lapses on the part of the Respondent by not complying with the requirements of Regulation 30.3 of Supply Code-2014 (requiring to show unpaid amounts in next bills) and also of Regulation 32.1 of Supply Code-2014 requiring disconnection of supply, in the event of non deposit of billed amount by due date, by giving a clear notice of 15 days to the consumer.

 The Respondent reiterated the submissions made in its written reply and added that the demand in the present dispute had been raised due to short realisation detected as per special audit as per Instruction No.93.1 of ESIM, Clause 21 of General Conditions of Tariff for Tariff Order for relevant Financial Year (FY) and Regulation 39.9 of Supply Code-2014. Besides, supplementary bill had been issued vide Memo No.525 dated 27.07.2018 as short assessment/realization and also debited in the energy bill for 09/2018 as depicted in chronology list dated 20.08.2018 for Rs.28,38,459/- and this amount was continuously being shown as arrears in the subsequent energy bills.

 I find that the Petitioner was having a Large Supply connection since 12.02.1980 and energy bills were being issued every month to such category of consumers, with the availability of energy bills on-line 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. 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 on threeoccasions i.e. on 18.12.2017, 21.03.2018 and 06.07.2018 for sums of Rs.10,97,405/-, Rs.4,91,054/- and Rs.12,50,000/- respectively.

 I also find from perusal of the Bank Statement brought on record that the Petitioner made less payment on 18.12.2017 and did not make any payment on 21.03.2018 and 06.07.2018.

 I observe that the Revenue Accountant acted beyond its jurisdiction by incorrect usage of ‘Check lots’ facility thereby giving wrong/excess credit to the account of the Petitioner on its own 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.

1. Regulation 21 of General Conditions of Tariff for the Tariff Orders

pertaining to the FY 2016-17, 2017-18 and 2018-19 provides 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.”* |

In view of the above provisions, the Petitioner is liable to pay the amount charged as per supplementary bill issued vide Memo No.525 dated 27.07.2018 amounting to Rs. 28,38,459/-, which has remained unpaid till date, along with surcharge and interest. Had both the Petitioner and Respondent shown sincerity, prudence and morality in their actions, the present dispute would not have arisen.

At the end of hearing, the Petitioner’s Representative (PR) prayed to allow payment of the amount charged in twelve equal monthly installments without any interest because the payable amount is very huge.

I find genuineness in the request of the Petitioner for being allowed accordingly.

**6. Conclusion**:

From the above analysis, the legitimacy of the demand raised by the Respondent, as per supplementary bill issued vide Memo No.525 dated 25.07.2018, requiring to deposit the unpaid amount of Rs.28,38,459/- (representing excess/wrong credits amounting to Rs.10,97,405/-, Rs.4,91,054/- and Rs.12,50,000/- given on 18.12.2017, 21.03.2018 and 06.07.2018 through wrong ‘Check lots’ along with surcharge and interest thereon proves beyond doubt.

7. **Decision:**

**As a sequel of above discussions, the order dated 26.10 .2018 of the CGRF in Case No. CG- 310 of 2018 is upheld. It is also held that recovery of the amount due, after adjustment of 40% amount deposited, will be effected through subsequent energy bills in twelve monthly interest free instalments along with current energy bills.**

**8.** 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.

**9.** The Appeal is disposed of accordingly.

**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.