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

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

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

 **APPEAL NO. 12/2019**

**Date of Registration : 01.02.2019**

**Date of Hearing : 09.05.2019**

**Date of Order : 16 .05.2019**

**Before:**

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

**In the Matter of :**

Perfect INC,

Sua Road,

Dhandari Kalan,

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 21.12.2018 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No.CGL-024 of 2018 deciding that :

*” The amount of Rs. 6,51,995/- charged to the Petitioner on account of difference of tariff of General and PIU, from 01/01/2014 to 08/2018 is in order and recoverable from the Petitioner”.*

**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 21.12.2018 of the Forum, sent by the Secretary, CGRF, Ludhiana, vide memo no.411-412 dated 24.12.2018 by Registered Post was received by the Petitioner on 31.12.2018. Though the appeal was required to be preferred by 30.01.2019 but its filing got delayed by two days as the same was filed on 01.02.2019. Petitioner’s Representative (PR) prayed that delay of two days, beyond the stipulated period of one month from the date of receipt of the Order ibid of the Forum, had occurred due to some pressing reasons 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 31.12.2018.

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 have been vigilant and must have ensured to file its Appeal in this Court within the stipulated period i.e. by 30.01.2019 and avoided the delay of two days in filing the Appeal in this Court. 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 of two days 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 presently having a Large Supply Category connection with sanctioned load of 489.894 kW and contract demand (CD) of 330 kVA, which was applied and sanctioned after submission of Application and Agreement (A&A) No. 34970 dated 05.04.2006
2. Initially, the Petitioner submitted the Test Report of 187.602 kW instead of sanctioned load of 489.894 kW and gave an affidavit that it will increase the load within six months. The load was released vide Service Connection Order (SCO) No. 66/1047 dated 17.08.2007, effected on 23.08.2007.
3. Subsequently, the Petitioner submitted Test Report on 12.02.2008 for total load of 489.894 kW which was verified by the AEE/Tech on 22.02.2008.The balance load was released vide SCO No. 1009 dated 28.03.2008, effected on 31.03.2008
4. As per Test Report submitted by the Petitioner on dated 12.02.2008, the Petitioner had declared **Induction Heater** load of 100 kW which was later on covered under Power Intensive Unit (PIU) Category. At the time of submitting the Test Report on 18.2.2008, the Billet Heater load was covered under **General Category.**
5. As per provisions contained in Commercial Circular (CC) No. 27/2014 dated 29.05.2014, connections wherein Induction Billet Heaters/Surface Hardening Machines were installed, should be treated under PIU Category w.e.f. 01.01.2014.
6. In view of above Commercial Circular, the Petitioner was issued Notice, bearing No. 9478 dated 05.09.2018, for deposit of Rs. 6,51,995/- as difference of PIU Tariff and General Tariff for the period from 09.01.2014 to 31.08.2014.
7. Aggrieved with the above notice, the Petitioner filed a Petition dated 09.11.2018 in the CGRF, Ludhiana, who, after hearing, passed the order dated 21.12.2018. (Reference Page-2, Para-1).
8. Not satisfied with the decision of the CGRF, the Petitioner preferred an appeal in this Court and prayed that charging of huge amount of Rs. 6,51,995/- as difference of General Tariff and PIU tariff for the period 01/2014 to 08/2018 ( 4 years and 8 months) was unwarranted and illegal and the decision of the Forum be set-aside in the interest 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 presently having a Large Supply Category connection with sanctioned load of 489.894 kW and contract demand (CD) of 330 kVA.
2. The extension in load of 302.292 kW was applied for by the Petitioner to its existing load of 187.602 kW in the year 2006. The extension was released on 31.3.2008. In the break up of load as submitted along-with A&A Form, 100 kW load was shown as load of Induction Heater. The manufacturing unit of the Petitioner did not require the use of Induction Heater and it was just mentioned to make up total load of 489.894 kW (187.602 kW+ 302.292 kW).
3. The load was sanctioned under General Category and billing was also under General Category of tariff.
4. After a gap of more than 10 years from the date of release of extension in load, the AEE/Commercial issued supplementary bill dated 5.9.2018 amounting to Rs.6,51,995/- charging difference of General Category Tariff and PIU Industrial Tariff for the period from 1/2014 to 8/2018 (4 years and 8 months). The Induction Heater was never purchased by the Petitioner nor was ever installed, therefore, charging of huge amount was highly unjustified and unwarranted.
5. The Petitioner requested the Respondent to verify the load at site but neither the load was verified nor the notice of demand was withdrawn.
6. Aggrieved with the attitude of the Respondent, the Petitioner filed a Petition in the Forum, who, after hearing both the sides, did not grant any relief to the Petitioner.
7. The Forum wrongly observed that test report submitted by the Petitioner included induction heater load of 100 kW, therefore, it could not be denied that heater was not installed at that time.
8. The break up of load was not given in the Test Report as verified by the SDO concerned. The test report was verified for total sanctioned load only, but the Forum did not consider all these facts available as per record of the Respondent-PSPCL.
9. The readings were taken every month by the official of the Respondent and energy bills were issued on the basis of recorded consumption by applying correct tariff applicable to General Category and the Petitioner paid regularly the amount of the energy bills so raised.
10. The DDL of the Energy Meter was also taken by the ASE/MMTS after about every 70 days, but neither the officials of the Respondent nor the MMTS ever pointed out the use of Induction Heater by the Petitioner. As per routine, the manufacturing process/use of load was checked by the visiting officials of the PSPCL to detect the unauthorized use of electricity (UUE), if any, by the consumers. But, in the case of the Petitioner, the PSPCL officials were well aware that billing was under General Category and if the use of Induction Heater had been there, it would have been pointed out by the PSPCL long ago.
11. Even, in case of any doubt, the connected load of the Petitioner was required to be verified to ascertain the installation of Induction Heater, before raising huge amount of Rs.6,51,995/- as difference of General Tariff and PIU Tariff.
12. After coming into force of the Electricity Act-2003 and Supply Code-2007 (revised w.e.f. 01.01.2015), 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.
13. Chief Engineer/Commercial, PSPCL, Patiala issued instructions vide Commercial Circular (CC) No.53/2013 and 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 PSPCl 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 again reiterated vide Commercial Circular (CC) No.30/2015 dated 05.08.2015 for strict compliance as Hon’ble PSERC took serious view of non-compliance of these instructions.
14. The Respondent charged the amount of Rs.6,51,995/- as difference of General Tariff and PIU Tariff for the period from 1/2014 to 08/2018 (4 years and 8 months) without referring to any rule/regulation of Supply Code/Electricity Act,2003.
15. The Forum altogether ignored the facts brought on record and did not keep in view the Instruction No.104 and 106 as contained in the ESIM and did not grant any relief. The decision of the Forum was apparently biased, wrong and non-speaking and was liable to be quashed
16. Keeping in view the submissions made above, the Appeal may be allowed in the interest of justice.
17. **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 489.894 kW and contract demand (CD) of 330 kVA**.**

1. The Petitioner applied, vide A&A No.34970 dated 05.04.2006, for total load of 489.894 kW showing 100 kW load for Induction Heater in the details attached to the said A&A.
2. The Petitioner submitted its Test Report on 01.08.2007 for 187.602 kW load, vide Test Report No.37/01.08.2007, to the then SDO, (now AEE/Commercial), in which there was no role of induction heater. . The Petitioner submitted an Affidavit dated 20.08.2007 in respect of part load stating that it had submitted test report of 187.206 kW instead of sanctioned load of 489.897 kW and also that it would increase its balance load in next six months.
3. The said load was released, vide SCO no.66/1047 dated 17.08.2007, effected on 23.08.2007, as part load.
4. Thereafter, the Petitioner submitted its test report, bearing no.45 dated 12.02.2008, for the total load of 489.894 kW, showing 100 kW load for Induction Heater and signed by the Contractor (Super Electric Works, The Mall, Ludhiana) was verified by the AEE (Technical) on 22.02.2008.
5. The said balance load was released vide SCO No.1009 dated 28.03.2008, effected on 31.03.2008 (previous availed load 187.602 kW+ load not availed 302.292kW = Total 489.894 kW with CD 330 kVA).
6. The Respondent issued Supplementary bill, vide memo no.9478 dated 05.09.2018, for a sum of Rs.6,51,995/- as difference of PIU Tariff and General Category Tariff for the period from 09.01.2014 to 31.08.2018 as per provisions contained in Commercial Circular (CC) No.27/2014, issued by the PSPCL.
7. Thereafter, the Petitioner requested for change in its category of connection from PIU to General Industry vide A&A dated 01.10.2018 and the same was released vide SJO No.88/1017 dated 15.11.2018, effected on 20.11.2018.
8. It was incorrect, on the part of the Petitioner to state that the Induction Heater was never purchased nor installed at its premises. As per the list of required electric load attached with the test report, there were 32 electric motors having different capacity and 02 Projection Welding of 100 HP and 80 HP making total load 312.574 kW. There was Induction Heater of 100 kW in this list. This list included different machinery/load of total sanctioned load 489.894 kW.
9. The contention of the Petitioner that round figure of major load of 100 kW was needed to complete the breakup of total load of 489.894 kW was not maintainable. If it was so, then, the same might be shown in the motor’s load or any other general load instead of specially shown as induction heater. The induction heater as shown in the list was actually installed by the Petitioner. The test report was verified by the AEE (T) at site on 22.02.2008.
10. The induction heater was covered under PIU category and the amount was correctly charged to the Petitioner as difference of PIU Tariff and General Category Tariff for the period from 09.01.2014 to 31.08.2018 as per CC No.27/2014 dated 29.05.2014.
11. The Forum correctly held that the amount charged to the Petitioner was correct and recoverable.
12. The PIU machinery was installed by the Petitioner in 2008 as was evident from its rejoinder to the reply of the Respondent given in the Forum
13. The MMTS did not check the connected load of the Large Supply Category consumers, while taking DDL. The connected load was required to be checked only if MDI exceeded its sanctioned contract demand in Large Supply category connections.
14. In view of the submissions made, the Appeal may be dismissed.

5. **Analysis:**

 The issue requiring adjudication is the legitimacy of the amount of Rs.6,51,995/- charged to the Petitioner, vide Notice bearing No.9478 dated 05.09.2018, on account of difference of Tariff of General Industrial and PIU from 09.01.2014 to 31.08.2018, as per applicable regulations.

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

1. In the present case, the Petitioner submitted, Application and

Agreement No.34970 dated 05.04.2006, for sanction of total load of 489.894 kW including 100 kW load for Induction Heater in the details attached to the said A&A. The Petitioner submitted its Test Report on 01.08.2007 for 187.602 kW part load, vide Test Report No.37/01.08.2007, to the SDO concerned, in which load of induction heater was not included. The Petitioner submitted an Affidavit dated 20.08.2007 in respect of part load stating that it had submitted test report of 187.206 kW instead of sanctioned load of 489.897 kW and also that it would increase its balance load in next six months. The said load was released vide SCO no.66/1047 dated 17.08.2007, effected on 23.08.2007, as part load. Thereafter, the Petitioner submitted its Test Report, bearing no.45 dated 12.02.2008, for the total load of 489.894 kW. The said Test Report in support of load of 489.894 kW showing 100 kW load for Induction Heater, signed by the Contractor (Super Electric Works, The Mall, Ludhiana), was verified by the AEE (Technical) on 22.02.2008. The said balance load was released vide SCO No.1009 dated 28.03.2008, effected on 31.03.2008 (previous availed load 187.602 kW + load not availed 302.292 kW = Total 489.894 kW with CD 330 kVA). The Respondent, after checking the documents of such categories of consumers, issued Supplementary bill, vide memo no.9478 dated 05.09.2018, for depositing a sum of Rs.6,51,995/- as difference of PIU Tariff and General Industrial Tariff for the period from 09.01.2014 to 31.08.2018 as per provisions contained in Commercial Circular (CC) No.27/2014 dated 29.05.2014, issued by the PSPCL. The load was sanctioned under General Category, accordingly, billing was also done under General Category.

Petitioner’s Representative (PR) contended that after a gap of more than 10 years from the date of release of extension in load, the AEE/Commercial issued supplementary bill dated 5.9.2018 amounting to Rs.6,51,995/- charging difference of General Industrial Tariff and PIU Tariff for the period from 01/2014 to 08/2018 (4 years and 8 months). The Induction Heater was never purchased by the Petitioner nor was ever installed, therefore, charging of huge amount was highly unjustified and unwarranted.

Aggrieved with the demand raised by the Respondent, the Petitioner filed a Petition in the Forum, who, after hearing both the sides, did not grant any relief to the Petitioner.

The Respondent, in its defence, stated that it was incorrect, on the part of the Petitioner to state that the Induction Heater was never purchased nor installed at its premises. As per the list of required electric load attached with the test report, there were 32 electric motors having different capacity and 02 Projection Welding Machines of 100 HP and 80 HP making total load 312.574 kW. There was induction heater of 100 kW in this list, which included different machinery/load as break-up of total sanctioned load 489.894 kW. The contention of the Petitioner that round figure of major load of 100 kW was needed to complete the breakup of total load of 489.894 kW was not maintainable. If it was so, then, the same could be shown in the form of motor’s load or any other general load instead of specially shown as induction heater. The induction heater as shown in the list was actually installed by the Petitioner. The test report was verified by the AEE (T) at site on 22.02.2018. The induction heater was covered under PIU category and the amount was correctly charged to the Petitioner as difference of PIU tariff and General Industrial Category Tariff for the period from 09.01.2014 to 31.08.2018 as per CC No.27/2014 dated 29.05.2014.

I, find that in compliance to the order dated 21.03.2012 of the Hon’ble PSERC, PR Circular No.03/2012 dated 09.04.2012 was issued by the PSPCL stating as under:

 “*In accordance with Honourable PSERC orders*

*dated 21.03.2012 it may be noted that for the purpose of Power Regulatory measures, the industrial consumers, who are using/having billet heater in their industry, shall be subjected to PR measures, as are applicable to general industries, fed from Category II, till the disposal of Petition No. 03/2012. This comes into force with immediate effect”.*

I also find that PSPCL subsequently issued CC No.27/2014 dated 29.05.2014 providing as under:

*“In view of Hon’ble PSERC order dated 28.10.2013 in Petition No. 3 of 2012, all LS consumers where the Induction Billet Heaters/Surface Hardening Machines are installed shall be treated under PIU category with effect from 1.1.2014. This circular supersedes CC no.28/2012 dated 06.09.2012.”*

I, thus, find merit in the contention of the Respondent that since extension in load of the Petitioner’s connection declaring Billet Heater Load of 100 kW was released to the Petitioner on 31.03.2008, under General Category, it was required to be charged the Tariff as per PIU Category from 01.01.2014 to 31.08.2018 because Billet Heaters were covered under PIU Category as per CC No.27/2014 dated 29.05.2014.

1. Petitioner’s Representative (PR) next contended that the DDL of the

Energy Meter was also taken by the ASE/MMTS after about every 70 days, but neither the officials of the Respondent nor the MMTS ever pointed out the use of Induction Heater by the Petitioner. As per routine, the manufacturing process/use of load was checked by the visiting officials of the PSPCL to detect the unauthorized use of electricity (UUE) if any, by the consumers. But, in the case of the Petitioner, the PSPCL officials were well aware that billing was under General category and if the use of Induction Heater had been there, it would have been pointed out by the PSPCL long ago.

The Respondent, in its defense, submitted that the MMTS did not check the connected load of the Large Supply Category consumers, while taking DDL. The connected load was required to be checked only if MDI exceeded its sanctioned contract demand in Large Supply category connections.

I observe that the Petitioner, being a Large Supply Category consumer, ought to be aware of the implication of giving details of the Load of the Billet Heaters in the Connected Load while applying for extension in the load and submission of the Test Report. If the Petitioner intended to change its mind not to install the Induction Furnace, it should have informed the Respondent accordingly in writing about the same and also submitted revised A&A Form by excluding the Billet Heater Load which was done by it on 14.09.2018 i.e. after raising of the disputed demand vide Notice dated 05.09.2018. Taking such a crucial decision, without the knowledge of the distribution licensee did not absolve the Petitioner of its responsibility to safeguard its interest and also does not entitle it to put the onus on the Respondent.

At the same time, the Respondent also defaulted in exercising the requisite vigilance and prudence to take necessary precautions to keep a watch on the installation or otherwise of the Billet Heaters by conducting periodical/statutory checking of such a Large Supply Category connection. Had this been done, the present dispute would not have arisen. It is, thus, held that no interest shall be chargeable from the Petitioner on basic amount worked out as difference between Power Intensive Unit (PIU) and General Industrial Tariff.

**6. Conclusion**:

From the above analysis, it is concluded that no tangible evidence has been brought on record by the Petitioner to disprove the legality of the demand raised against it by the Respondent. As such, the Petitioner is liable to be charged, for the period from 01.01.2014 (instead of from 09.01.2014 taken in the demand raised) to 31.08.2018, on account of difference between Power Intensive Unit (PIU) Tariff and General Industrial Tariff in terms of provisions contained in Commercial Circular (CC) No.27/2014 dated 29.05.2014 issued by the PSPCL, as also decided by the CGRF, Ludhiana vide order dated 21.12.2018. No interest shall be chargeable on the amount worked out as difference between Power Intensive Unit (PIU) and General Industrial Tariff.

7. **Decision:**

 **As a sequel of above discussions, the order dated 21.12.2018 of the CGRF, Ludhiana in Case No. CGL- 024 of 2018 is upheld.**

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

**9.** 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)

May 16, 2019 Lok Pal (Ombudsman)

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