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

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

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

 **APPEAL NO. 14/2019**

**Date of Registration : 11.02.2019**

**Date of Hearing : 25.04.2019**

**Date of Order : 30.04.2019**

**Before:**

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

**In the Matter of :**

Rajeev Sood,

C-3, Industrial Area-A Extension,

Ludhiana-141003

 ...Petitioner

 Versus

Senior Executive Engineer,

C.M.C Division (Special),

 PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Petitioner : Sh.Rajesh Jain,

 Petitioner’s Representative (PR).

Respondent : Er.Jasbir Singh

 Asstt. Executive Engineer (Commercial),

 CMC Division (Special),

 PSPCL, Ludhiana.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 16.01.2019 of the Consumer Grievances Redressal Forum (Forum) in Case No.CGL-054 of 2018 deciding that :

*“(i) That the ACD and meter security deposited by the Petitioner be updated in the system and interest be paid to the petitioner on updated ACD under Regulation 17.3 of Supply code-2007 and Regulation 17.2 of Supply Code-2014 for the period 01.01.2008 to 31.03.2018 after adjusting interest already paid during 2016-17 and 2017-18.*

*(ii) Respondent is directed to check data of all connections and update ACD Security and Meter Security for these and ensure credit of upto date payment of interest on the same and further to ensure that it is paid in the first bill of April e*ach *financial year”.*

**2**. **Facts of the Case:**

 The relevant facts of the case are that:-

1. The Petitioner was having a Medium Supply Category connection

with sanctioned load of 89.950 kW and contract demand (CD) of 45 kVA. The connection was released in January, 1978.

1. The Petitioner requested the Respondent on 12.11.2017 for updation

of its Security in the System and payment of interest due from 01.01.2008 to 31.03.2018.

1. The Petitioner sought information under the Right to Information

(RTI) Act from the Respondent about the amount deposited towards Advance Consumption Deposit (ACD) [now known as Security (Consumption) and Security (Meter)] since the year 1978.

1. In response, the Respondent vide Memo No.4148 dated 17.07.2018,

supplied the information to the Petitioner as per which, the Petitioner had deposited Rs.65,640/- as Security (Consumption) and Security (Meter) with the Respondent on different dates and interest thereon, amounting to Rs.6,662/-,was paid to the Petitioner during the year 2016-17 and 2017-18.

1. The Petitioner filed a Petition dated 11.12.2018 in the CGRF,

Ludhiana for getting the relief under Regulation 17.4 of Supply Code-2007 and Regulation 17.3 of Supply Code-2014, who, after hearing, passed order dated 16.01.2019 (Reference Page-2, Para-1).

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

an Appeal in this Court and prayed that the order dated 16.01.2019 passed by the Forum be set aside by accepting the Appeal and the Petitioner be allowed interest on the ACD and Security(Meter) on the basis of Regulation 17.4 of the Supply Code-2007 and Regulation 17.3 of the Supply Code-2014 as the interest payment due had been delayed by the PSPCL from 2008 onwards, without any fault of the consumer may be seen from the perusal of the order ibid of the Forum.

**3. Submissions made by the Petitioner and the Respondent**:

 Before undertaking analysis of the case, it is necessary to go through written submissions made by the Petitioner and reply of the Respondent as well as oral submissions made by the Representatives of the Petitioner and the Respondent 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 Medium Supply Category connection, bearing account No.3002953892 (Old Account No.E-12MS260606K), with sanctioned load of 89.95 kW installed in its premises.
2. The Petitioner being a law abiding citizen of India, was regularly paying the electricity consumption bills raised by the PSPCL within the stipulated period as specified from time to time. The Petitioner did not have arrears in its account with the PSPCL.
3. The Petitioner deposited ACD and Security (Meter) from time to time with the Respondent, as per following details:

|  |  |  |
| --- | --- | --- |
| Sr.No | Amount( In Rupeess) | Date on which paid |
| 1. | 170/- | 20.01.1978 |
| 2. | 700/- | 16.10.1979 |
| 3. | 4,980/- | 24.04.1992 |
| 4. | 38,250/- | 25.04.2006 |
| 5. | 21,540/- | 08.07.2013 |
| **Total** | **65,640/-** |  |

1. Ever since the release of the electricity connection, the Petitioner had not received any interest on ACD and Security (Meter) despite verbal requests, as per Electricity Act-2003, Supply Code-2007 and Supply Code-2014 except Rs.2,906/- for 2016-17 and Rs.3,756/- for 2017-18.
2. The PSPCL was liable to pay the interest on both the Securities automatically to the Petitioner even without demand, as per Section 47(4) of the Electricity Act-2003.
3. On coming into effect of Supply Code-2007 on 01.01.2008, Regulation 17.1 became applicable, but the Licensee never paid any interest on securities. Since it did not pay the amount due in time, Regulation 17.4 of the Supply Code-2007 automatically became relevant in the matter.
4. Subsequently, Supply Code 2014 came into effect on 01.01.2015, as per which, PSPCL was liable to pay interest on the Security (Meter) and ACD automatically as per provisions of Regulation 17.1 to the Petitioner. But, the Respondent failed to do so and as such, provisions of Regulation 17.3 were automatically applicable.
5. The Petitioner had claimed an amount of interest which worked out to Rs.1,00,379/- which was due to be paid to it by the PSPCL, as per Regulation 17.4 of the Supply Code 2007 and Regulation 17.3 of the Supply Cde-2014 as per calculation sheet attached. 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.
6. A Petition on the above lines was filed before the CGRF, Ludhiana, who, vide order dated 16.01.2019 directed the Respondent to pay the interest on ACD and Security (Meter) for the period from 01.01.2008 to 31.03.2018 as per Regulations 17.3 of the Supply Code-2007 and Regulation 17.2 of the Supply Code-2014 by holding that the Petitioner neither approached the office of the Respondent to get its ACD updated in the System/monthly bills nor demanded any interest on the ACD fr a long period of 10 years. The Forum also held the Petitioner equally responsible for non-updation of ACD and non-credit of interest in its account. Hence, the claim of the Petitioner to allow interest under Regulation 17.4 of the Supply code-2007 and Regulation 17.3 of the Supply Code 2014 was not maintainable. The order of the Forum was arbitrary and without any cogent reasons.
7. The Forum while deciding the Petitioner’s case, failed to appreciate the Regulations of the Supply Code as well as Section 47(4) of the Electricity Act-2003 in the right earnest. Section 47(4) clearly indicated that “*the distribution licensee shall pay interest equivalent to the Bank rate or more, as may be specified by the concerned State Commission on the securities referred to in Sub-Section (i) and refund of securities on the request of the person who gave such securities”.*
8. In the light of the Section ibid of the Electricity Act-2003, the Regulatory authority of the PSPCL framed Regulation 17.4 of the Supply Code-2007 declaring that “ *in the event of delay in effecting adjustment due to consumer as per the Regulation17.3, the licensee will for the period of delay pay interest at twice the SBI’s short term PLR prevalent on 1st April of the relevant year”*.
9. Thereafter, the Supply Code-2007 was amended with effect from 01.01.2015 and Regulation 17.4 of 2007 was changed as 17.3 in the Supply Code by the Regulatory Commission which read as under:

*“ In the event of delay in effecting adjustment due to the consumer as per Regulation 17.2, the distribution licensee shall for the actual period of delay pay interest at twice of the SBI Base Rate prevalent on the 1 st .April of relevant year plus 2%*”.

1. As per the aforesaid provisions, the onus of paying the interest on ACD and Security (Meter) was on the shoulders of the PSPCL and not on the consumer in any way. Regarding updating of the ACD in the System of the PSPCL, it was also the duty of the PSPCL staff to update the securities in the System and not by the consumer concerned. The Consumer was in no way responsible to inform the PSPCL office of the Respondent for allowing interest as well as updating the securities in the System of the PSPCL as observed by the Forum in its order dated 16.01.2019.
2. The Forum has erred in interpreting the Supply Code Regulation correctly and allowed the Petitioner’s entitlement of interest in terms of Regulation 17.3 of the Supply Code 2007 and Regulation 17.2 of the Supply Code-2014, but disallowed the penal interest under Regulation 17.4 of the Supply Code-2007 and Regulation 17.3 of the Supply Code-2014. As such, the order of the Forum was not as per the law laid down by the Regulatory Commission of the PSPCL on this very point in the Supply Code 2007 and Supply Code-2014 and the same was not acceptable to the Petitioner.
3. Keeping in view the submissions made, the order dated

16.01.2019 passed by the Forum may be set aside and the Petitioner be allowed interest on the ACD and Security (Meter) on the basis of Regulation 17.4 of the Supply Code-2007 and Regulation 17.3 of the Supply Code- 2014 by accepting the Appeal. The due payment had been delayed by the Respondent from 2008 onwards and there was no fault of the Petitioner as observed by the Forum in its order dated 16.01.2019.

1. **Submissions of the Respondent:**

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

1. The Petitioner was having a Medium Supply Category connection

with sanctioned load of 89.950 kW and contract demand (CD) of 45 kVA**.**

1. On 12.11.2017, the Petitioner requested that its security should be updated in the System and demanded the interest due from 01.01.2008 to 31.03.2018 on Advance Consumption Deposit (ACD) and Security (Meter). As per record, the Petitioner had deposited Rs.65,640/- as Security till date.
2. The Petitioner was given interest for the Financial Year (FY) 2016-17 (Rs.2,906/-) and FY 2017-18 (Rs.3,756/-).
3. The Petitioner approached the Forum praying for relief for getting the interest on Advance Consumption Deposit(ACD) and Security (Meter) from 2007 to 2018. After hearing the case, the Forum directed to update the ACD and Security (Meter), deposited by the Petitioner, in the System and make payment of interest on the updated ACD and Security (Meter) for the period from 01.01.2008 to 31.03.2018, after adjusting the amount of interest already paid during 2016-17 and 2017-18, in terms of provisions contained in Regulation 17.3 of the Supply Code-2007 and Regulation 17.2 of the Supply Code-2014.
4. Accordingly, a refund of Rs.52,767/- was given vide SCA No.397/96R-608 after pre audit to the Petitioner.
5. The Petitioner was not satisfied with the decision of the Forum and filed an Appeal before this Court.
6. The Petitioner had been depositing the energy bills issued regularly but never pointed out about non updation of the Advance Consumption Deposit (ACD) and Security (Meter).
7. In view of the submissions made, the Appeal may be dismissed.

**4.** **Analysis:**

The issue requiring adjudication is the legitimacy of the plea of the Petitioner for grant of interest on the Security (Consumption) and Security (Meter) deposited by it, in terms of provisions of Regulation 17.4 of the Supply Code-2007 amended vide Regulation 17.3 of the Supply Code-2014 instead of as allowed in terms of Regulation 17.3 of the Supply Code-2007 amended vide Regulation 17.2 of the Supply Code-2014.

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

1. Petitioner’s Representative (PR) submitted that after the release of a

Medium Supply Category Connection in January 1978, the Petitioner had deposited the following amounts as Advance Consumption Deposit (ACD) [ now known as Security (Consumption) and Security (Meter) ]with the Respondent :

|  |  |  |
| --- | --- | --- |
|  Sr.No | Amount (In Rupees) | Date on which paid |
| 1. | 170/- | 20.01.1978 |
| 2. | 700/- | 16.10.1979 |
| 3. | 4,980/- | 24.04.1992 |
| 4. | 38,250/- | 25.04.2006 |
| 5. | 21,540/- | 08.07.2013 |
| **Total** | **65,640/-** |  |

 Petitioner’s Representative (PR) contended that despite

repeated verbal requests by the Petitioner to the Respondent, the amounts of the Securities deposited by it were not updated in the System and interest due thereon was not allowed except sums of Rs.2,906/- for Financial Year (FY) 2016-17 and Rs.3,756/- for Financial Year (FY) 2017-18. Petitioner’s Representative (PR) added that based on the provisions contained in Section 47(4) of the Electricity Act-2003, Hob’ble PSERC notified the Supply Code-2007 ( effective from 01.01.2008) which was subsequently amended as Supply Code-2014 ( effective from 01.01.2015). Accordingly, the Petitioner was entitled to applicable interest as per Regulation 17.4 of the Supply Code-2007, for the period from 01.01.2008 to 31.12.2014 and as per Regulation 17.3 of the Supply code-2014 for the period from 01.01.2015 to 31.03.2016. Petitioner’s Representative (PR) argued that the CGRF, Ludhiana erred in deciding the case and allowing interest in terms of provisions of Regulation 17.3 of the Supply Code-2007 amended as Regulation 17.2 of the Supply Code-2014. Petitioner’s Representative (PR) also submitted that the Petitioner was not at fault, in regard to non updation, of the Securities deposited by the Petitioner, in the System of the licensee and the onus was clearly on the Respondent- PSPCL.

 I find from the material available on record that the Petitioner never pointed out in writing to the Respondent any discrepancy prior to 12.11.2017 regarding non updation of Security (Consumption) and Security (Meter) in its System and for not allowing interest due thereon despite the fact that the Petitioner used to receive and pay the electricity bills regularly since the release of its connection in January 1978. A Medium Supply category consumer is expected to pay the billed amounts only after carefully going through all the details, including the Securities, mentioned therein.

 *I observe that grievance raised by a consumer must be bonafide and genuine and should be raised after ensuring that it had , on its parts, done its duty sincerely and responsibly and had not defaulted in any manner in discharging its duties/obligations*. In the present case, the Petitioner can not absolve itself of its own responsibility by keeping silent for more than 9 years and now laying the onus purely on the PSPCL.

 There is, however, no denying the fact that the Respondent also defaulted in ensuring timely updation of the amounts of Securities deposited in the Bills of the Petitioner. *Had both the Petitioner and the Respondent acted wisely and timely, the dispute would not have arisen at all*.

1. Since the Petitioner kept mum on the issue till submission of its

application dated 12.11.2017 and accepted the energy bills issued by the Licensee, the relevance of the provisions of Regulation 17.3 of the Supply Code-2007 amended vide Regulation 17.2 of the Supply Code-2014, reproduced below, was rightly decided by the CGRF, Ludhiana vide its order dated 16.01.2019:

**Regulation 17.3 of Supply Code-2007**:

*The interest will be credited to the account of a consumer annually on first day of April each year and will be adjusted on first May of every year against the outstanding dues and/ or any amount becoming due to* the Licensee thereafter.

**Regulation 17.2 of 2014 of Supply Code-2007***:*

*The interest on Security (consumption) and Security (Meter) shall be credited to the account of a consumer annually on first day of April each year and shall be adjusted/paid in first bill raised after first April every year against the outstanding dues and/ or any amount becoming due to the distribution licensee thereafter.*

I observe that the Securities deposited by the Petitioner now stand updated in the system of the PSPCL and payment of Rs.52,767/-(after deduction of TDS amounting to Rs.6,125/-) stands authorised to the Petitioner vide Sundry Charges Allowances No.397/96-R-608.

**5. Conclusion**:

From the above analysis, the legitimacy of allowing interest on the Security (Mete) and Security (Consumption) for the period from 01.01.2008 to 31.03.2016 in terms of provisions of Regulation 17.3 of the SupplyCode-2007 amended vide Regulation 17.2 of the Supply Code-2014, as also decided by the Forum, proves beyond doubt.

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

**As a sequel of above discussions, the order dated 16.01.2019 of the CGRF, Ludhiana in Case No. CGL- 054 of 2018 is upheld.**

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

**8.** In case, the Petitioner or the Respondent is not satisfied with the above decision, it is at liberty to seek appropriate remedy against this order from the appropriate Bodies in accordance with Regulation 3.28 of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016.

 (VIRINDER SINGH)

April 30, 2019 Lok Pal (Ombudsman)

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