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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 33/2019**

**Date of Registration : 25.06.2019**

**Date of Hearing : 22.08.2019**

**Date of Order : 29.08.2019**

**Before:**

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

**In the Matter of:**

 Sidharath Exporters,

 Mohkam Arian Road,

 Jalalabad

 ...Petitioner

 Versus

 Addl. Superintending Engineer,

DS, Division,

PSPCL, Jalalabad

 ...Respondent

**Present For:**

Petitioner : 1. Sh. Budh Ram Jindal ,

 Petitioner’s Representative (PR)

 2. Sh.Davinder Singh

 Petitioner’s Representative (PR)

 3. Sh. Ashok Kumar

Petitioner’s Representative (PR)

Respondent : Er. Kuldeep Verma,

 Addl.Superintending Engineer,

 DS Division, PSPCL, Jalalabad.

Before me for consideration is an Appeal preferred by the Petitioner against the decision dated 30.05.2019 in Case No. CGP-66 of 2019 of the Consumers Grievances Redressal Forum (Forum), Patiala stating as under:

*“(c) Amount of Rs 3,13,350/- charged to the Petitioner vide Half Margin No 57 dated 06/16 is justified and recoverable”.*

**2. Facts of the Case:**

 The relevant facts of the case are that:

1. The Petitioner was having a Large Supply (LS) Category connection

for Rice Sheller (Seasonal Industry) with sanctioned load of 699.523 kW and contract demand (CD) of 700 kVA. The Petitioner’s Industry observed seasonal period from Ist September to 31st May next year.

1. The Petitioner’s Industry had obtained peak load exemption as per

PR Circular No.2/98, 11/98, 7/2011, 4/12 & 5/12 against Account No. 3000855886 vide Memo No. 7488 dated 01.10.2012 from the Chief Engineer/PPR, for 450 kW for the period 01.10.2012 to 31.05.2013 against payment of peak load exemption charges (PLEC).

1. The PSPCL, in the energy bills issued for the period from 06/2013

to 08/2013, charged PLE charges and the Petitioner deposited the same. After issuance of PR Circular No.36/2013 dated 04.10.2013, the Petitioner applied for refund of PLEC charged in its bills and was given the refund of Rs.3,13,350/- as applied.

1. The Audit Party, vide Half Margin No.57 of 06/2016, observed

 that as per PR Circular No.36/2013 dated 04.10.2013, it was clarified that *“Seasonal Industries which had been charged PLEC during off season*

 *(as per the provisions of PR Circular No.05/12 or 11/12) but were actually not operating may apply for withdrawal of peak load exemption charges to this office alongwith a certificate from the concerned AEE/Sr.XEN/DS after verification of the energy consumption data for the relevant period*.”Accordingly, the Audit Party held the refund of Rs.3,13,350/- as against the Rules and Instruction of PSPCL.

1. The Petitioner challenged the amount charged in the Energy bill by

 depositing Rs 900/-on dated 20.04.2018.

1. Addl.SE/MMTS, Moga vide Memo no 32 dated 29.04.2019, intimated that the connection of the Petitioner was checked vide ECR No 82/277dated 02.10.2013 due to damage of CT/PT unit but at the time of checking, there was no Electricity Supply and due to low indication of Meter Battery, DDL of the Energy Meter could not be taken. Data for the month of 06/2013, 07/2013, and 08/2013 was also not available in MMTS office.
2. Aggrieved with the demand raised by the Respondent, the Petitioner

filed a Petition dated 07.03.2019 in CGRF, Patiala who after hearing, passed the Order dated 30.05.2019. (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 same may be allowed by quashing the observation raised in Half Margin 57 of 06/2016 charging a sum of Rs 3,13,350/-. which was held recoverable by 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 Representative of the Petitioner and the Respondents 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 a Large Supply Category Consumer with

sanctioned load at 699.523 kW and contract demand (CD) as 700 kVA and was running a Rice Sheller (Seasonal Industry). The Petitioner’s Industry observed the seasonal period from 1st September to 31st May next year, as admissible under Instruction No. 18.2 of ESIM.

1. The Petitioner’s Industry had obtained peak load exemption as per

provisions of the PR Circular No. 2/98, 11/98, 7/11, 4/12 & 5/12 vide Memo No. 7488 dated 01.10.2012 from the Chief Engineer/PPR, PSPCL, Patiala for the period from 01.10.2012 to 31.05.2013 against payment of peak load exemption charges. This Memo stipulated that exemption could not be reduced /increased/ withdrawn before one month from the date of its issue. The Petitioner’s industry used PLE for the period from 01.10.2012 to 31.05.2013 and PLE charges as per grant of PLE at 450 kW were levied in the relevant bill and paid.

1. Subsequently, after issuance of PR Circular No. 36/2013 dated

04.10.2013, the Petitioner applied for refund of PLE charges amounting to Rs.3,13,350/- which was given to it by the Respondent.

1. The Audit Party, vide Half Margin No. 57 of 6/16, observed that as

per PR circular No.36/2013 dated 04.10.2013, it was clarified that “*Seasonal Industries, which have been charged PLEC during off season, but were actually not operating, may apply for withdrawal of peak load exemption charges to this office alongwith a certificate from concerned AEE/Sr.XEN/DS after verification of the energy consumption data for the relevant period*.”

1. Based on the above observation, the Audit Party had raised a

demand of Rs. 3,13,350/- observing that the refund granted to the Petitioner was not as per instructions of the PSPCL. The Petitioner represented against charging of the said amount to the CGRF, Patiala who, after hearing, held that the amount charged was justified and recoverable.

1. The amount charged as PLE charge in the energy bills for the

|  |  |
| --- | --- |
| **Month** | **Amount****(INR)** |
| 06/2013 | 1,05,583/- |
| 07/2013 | 98,775/- |
| 08/2013 | 1,08,994/- |
| **Total** | 3,13,350/- |

 months of 06/2013 to 09/2013 were tabulated below :

1. The Forum erred in its finding in regard to that Half Margin No. 57 of 06/2016 charging a sum of Rs. 3,13,350/- with the observation that during off seasonal period, the Petitioner’s Industry had violated the provisions of PR Circular No. 36/2013 and operated their plant during off seasonal period, as such, the amount was rightly charged by the Audit Party.
2. The observation of the Forum in its decision was reproduced below:

*“ That during off season, the Petitioner should have used only 10% of the sanctioned load subject to maximum of 50 kW, as allowed during peak load hours as per Clause 131 of ESIM for lighting purposes and minor repairs during the off seasonal period but the above data indicates that the Petitioner have consumes much beyond the said limit during this period.”*

1. The Forum had wrongly considered Instruction 131 of ESIM i.e. Clause for use of load during Peak Load Hour Restriction (PLHRs) and not for the off season period .
2. The use of light load included ACs , fans, flood lights for outer boundary wall, street light, water supply and repair of all kinds of plant and its testing.
3. The Consumption details of the Seasonal months vis-a-vis Non -Seasonal months were given as under:-

|  |  |  |
| --- | --- | --- |
| **Seasonal Month** | **Non-Seasonal** | **% age****Consumption** |
| 10/2012 | 1,45,710 | 06/2013 | 10,222 | 7.00% |
| 11/2012 | 2,14,942 | 07/2013 | 10,330 | 4.80% |
| 12/2012 | 1,98,675 | 8/2013 | 8,802 | 4.40% |

1. The ASE/Operation, Jalalabad, submitted in writing before the Forum that factory did not work during the month of 6/2013 to 8/2013.The reason to charge the said amount i.e. Rs. 3,13,350/- by the Audit was not on the basis of wrong refund, rather, it was just that consumption data was not got certified from the ASE/ Operation, Jalalabad.
2. In view of the submissions made above, the Appeal may be allowed by quashing observation of the Audit in the Half Margin 57 of 6/2016 charging a sum of Rs. 3,13,350/- .
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 (LS) category connection for Rice Sheller ( Seasonal Industry) with sanctioned load of 699.523 kW and contract demand (CD) of 700 kVA.
2. The Petitioner applied for grant of peak load exemption (PLE) as per PR Circular No.2/98, 11/98, 7/2011, 04/12, and 05/12. Accordingly, peak load exemption (PLE) for 450 kW was granted by the Chief Engineer/PPR, PSPCL, Patiala, vide Memo No.7488 dated 01.10.2012, for the period from 01.10.2012 to 31.05.2013 against payment of peak load exemption charges(PLEC). With the stipulation that this peak load exemption could not be reduced/increased/withdrawn. The Petitioner availed peak load exemption (PLE) granted for the period from 01.10.2012 to 31.05.2013 and paid the requisite PLE charges.
3. Thereafter the Respondent-PSPCL issued a PR Circular No.36/2013 dated 04.10.2013, on the basis of which, the DS Sub-division, PSPCL, Jalalabad, incorrectly refunded a sum of Rs.3,13,350/- without adopting a proper procedure as mentioned in the aforesaid Circular. The Petitioner had applied for refund to the Competent Authority on the basis of the provisions contained in the PR Circular No.36/2013.
4. The Internal Audit Party pointed out, vide Half Margin No.57 of 2016, that the amount refunded was chargeable to the Petitioner because the procedure mentioned in the aforesaid PR Circular No.36/2013 was not followed by the Petitioner.
5. The amount of incorrect refund of Rs 3,13,350/- was correctly charged by the Audit Party and was recoverable from the Petitioner.
6. The Respondent issued a Notice, bearing No.3778 dated 25.11.2016, to the Petitioner to deposit the amount refunded to it, but the Petitioner did not deposit the same.
7. Aggrieved with the Notice dated 25.11.2016, the Petitioner approached the CGRF, Patiala, who, after hearing, decided that the amount was chargeable to the Petitioner.
8. Peak load exemption charges (for the months of 06/2013 to 08/2013) were to be refunded only to those consumers, who did not run their Plants during off season as was mentioned in PR Circular No.36/2013.
9. The connection of the Petitioner was checked by the Addl.S.E. /MMTS, Moga vide ECR No.82/277 dated 02.10.2013 due to damage of CT/PT as stated in its Memo No.32 dated 29.04.2019. During checking, due to no electricity and low indication of Meter Battery, DDL of the Energy Meter could not be taken. Data for the months of 06/2013,07/2013 and 08/2013 were not in the office of the Sr.XEN, MMTS, Moga, but as per record submitted by the AE, City Sub Division, Jalalabad, consumption and MDI was as under:

Month MDI (in kVA) Consumption (in kVAh)

06/2013 48.863 10,223

07/2013 58.295 10,330

08/2013 34.878 8,803

The consumption data and MDI during the seasonal period was as under:

Month MDI (in kVA) Consumption (in kVAh)

04/2013 258.300 79,215

05/2013 103.638 14,960

10/2013 364.690 1,67,609

It was clearly evident from the analysis of the consumption data that the Petitioner was using its connection regularly during the off season period from 06/2013 to 08/2013, as both consumption as well MDI beyond reasonable limits was recorded by the Petitioner’s connection during these months.

1. The Petitioner should have used only 10% of sanctioned load subject to a maximum of 50 kW as allowed during peak load hours as per Instruction No. 131 of ESIM for lighting purposes and minor repairs during the off seasonal period but, the data indicated that the Petitioner had consumed much beyond the said limit during this period.
2. 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.3,13,350/- charged to the Petitioner by the Internal Audit Party, vide Half Margin No.57 dated 06/2016 on account of refund of Peak Load Exemption Charges (PLEC) given for the months of 06/2013 to 08/2013 deposited by the Petitioner for availing Peak Load Exemption (PLE), during off Seasonal period of the Rice Sheller.

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

From the material brought on record of this Court, it is observed that the Petitioner availed Peak Load Exemption as allowed by the Chief Engineer/PPR, PSPCL, Patiala, vide Memo No.7488 dated 01.10.2012, for 450 kW upto 31.05.2013. As per PR Circular No.05/12 and 11/12, “*all existing industrial consumers (including seasonal) availing peak load exemption as on 31.05.2012/09.06.2012 are hereby granted the said exemptions on regular basis. Only such consumers were required to put in their application who had to seek enhancement/reduction/surrender of any quantum of peak load. As such, the peak load exemption (PLE) of 450 kW granted to the Petitioner vide the aforesaid Memo No.7488 dated 01.10.2012 stood automatically extended as the Petitioner had not applied for any enhancement/reduction/surrender of any quantum of peak load.*” Accordingly Peak load Exemption charges as per energy bill 06/2013 Rs.1,05,588/-, 07/2013 Rs.98,775/- and 08/2013 Rs.1,08,994/- respectively (totalling Rs.3,13,350/-) were deposited by the Petitioner. These amounts were, however, refunded to the Petitioner vide SCA No.39/5/127 after issuance of PR Circular No.36/2013 which reads as under:

*“Seasonal industries covered under clause 18.1 of ESIM 2010, which have been charged PLEC during the off season (As per the provision of PR circular 05/12 or 11/12) but were actually not operating may apply for withdrawal of peak load exemption charges to this office along with a certificate from the concerned ASE/Sr XEN/DS after verification of energy consumption data for the relevant period”.*

I observe that PR Circular No.36/2013 was issued to give the relief to those seasonal consumers who did not run their plant during off seasonal period. Refund in the case was allowed vide SCA No.39/5/127 as per the provisions of PR Circular No.36/2013 treating the Petitioner’s Industry as a seasonal consumer and considering that it had not run its plant during off seasonal period. The said amount of Rs.3,13,350/- was charged to the Petitioner, vide Half Margin No.57 of 2016, in the impression that the procedure laid down (such as submission of requisite application duly authenticated by the Addl.S.E/Sr.Xen concerned) was not observed.

I also observe from the material available on record that Maximum Demand recorded during 07/2013 was 58.295 kVA which is for the full month of 07/2013 and does not indicate as to whether this demand was recorded during peak load hours due to non- availability of DDL report . Besides, the consumption during off-season period was in the range of 4% to 7%, which cannot be considered as high keeping in view that 50 kW load was allowed during the Peak Hours.

I find that the Addl.S.E, DS Division, PSPCL, Jalalabad requested the Senior Executive Engineer, MMTS, PSPCL, Moga, vide letter No.2349 dated 22.04.2019, about DDL report relating to the disputed period of the connection of the Petitioner. In response, the MMTS vide letter no.32 dated 29.04.2019, informed the DS Division, Jalalabad (W) that the connection of the Petitioner was checked by the MMTS, vide ECR No.82/277 dated 02.10.2013, due to damage of CT/PT Unit. Owing to non availability of Power Supply and low indication of Meter Battery, DDL could not be taken. As a result, the requisite data for the months of 06/2013 to 08/2013 was not available in MMTS office.

I have also noted the contention of the Petitioner’s Representative (PR) that the Addl.S.E, DS Division, Jalalabad furnished comments on its Petition, vide letter No. 2537 dated 29.04.2019 to the CGRF, Patiala and stated on the basis of consumption data available in its Sub division that the Petitioner’s Industry did not run during the months of 06/2013 to 08/2013.

**6. Conclusion**

From the above analysis, it is observed that in the absence of the DDL Report of the Petitioner’s connection relating to the months of 06/2013 to 08/2013 (for which, the PLE charges were initially charged and deposited by the Petitioner, subsequently refunded by the Respondent, thereafter, charged by the Audit Party vide Half Margin No.57 of 2016 and upheld by the Forum), does not establish or lead to the conclusion that the Petitioner’s Industry had run during the said off seasonal period. As a result, the Petitioner can not be made liable to be charged PLE charges amounting to Rs.3,13,350/- as decided by the Forum in its Order dated 30.05.2019.

**7.** **Decision:**

**As a sequel of above discussions, the order dated 30.05.2019 of the CGRF, Patiala in Case No. CGP- 66 of 2019 is set-aside. It is held that the amount of Rs.3,13,350/-, charged to the Petitioner by the Internal Audit Party, vide Half Margin No.57 of 06/2016, is not recoverable from the Petitioner. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short after adjustment, if any, without interest**

**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)

August 29, 2019 Lok pal (Ombudsman)

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