

**COURT OF THE LOK PAL (OMBUDSMAN),
ELECTRICITY, PUNJAB,
PLOT NO. A-2, INDUSTRIAL AREA, PHASE-1,
S.A.S. NAGAR (MOHALI).**

APPEAL No. 30/2021

**Date of Registration : 22.03.2021
Date of Hearing : 07.04.2021
Date of Order : 09.04.2021**

Before:

**Er. Gurinder Jit Singh,
Lokpal (Ombudsman), Electricity, Punjab.**

In the Matter of:

M/s Malerkotla Steels & Alloys (P) Ltd.,
Near Naudharani Railway Crossing,
Barnala Road, Malerkotla.

Contract Account Number: L36-MS01-00018

...Appellant

Versus

Senior Executive Engineer,
DS Division, PSPCL, Malerkotla.

...Respondent

Present For:

Appellant: Sh. Parvesh Chadha,
Appellant's Representative.

Respondent : Er. Aamir Ashraf,
Senior Executive Engineer,
DS Division, PSPCL,
Malerkotla.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 02.03.2021 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-56 of 2021, deciding that:

“The Petitioner has been rightly charged under PIU category by the Respondent and as such, the Petitioner is not entitled for any refund on account of difference of Tariffs in case of PIU & mixed category load.”

2. Registration of the Appeal

The present Appeal was received in this Court on 22.03.2021 i.e. within thirty days of decision dated 02.03.2021 of the CGRF, Patiala in Case No. CGP-56 of 2021. The Appellant was not required to deposit the requisite 40% of the disputed amount as relief claimed was on account of refund of billing under PIU category including auxiliary and general load. Therefore, the Appeal was registered and copy of the same was sent to the Addl. Superintending Engineer/ DS Division, PSPCL, Malerkotla for sending written reply/ parawise comments with a copy to the office of the CGRF, Patiala under intimation to the Appellant vide letter nos. 389-391/OEP/A-30/2021 dated 22.03.2021.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 31.03.2021 at 11.30 AM and an intimation to this effect was sent to both the sides vide letter nos. 427-28/OEP/A-30/2021 dated 30.03.2021. However, an e-mail was received on 30.03.2021 itself from the Appellant's Representative requesting for adjournment of hearing. Accordingly, the hearing was adjourned to 07.04.2021 at 12.30 PM and intimation to this effect was sent vide letter nos. 450-51/OEP/A-30/2021 dated 30.03.2021. As rescheduled, the hearing was held in this Court on the said date and time. Arguments of both the sides were heard and order was reserved. Copies of the minutes of the proceedings were sent to the Appellant and the Respondent vide letter nos. 502-03/OEP/A-30/2021 dated 07.04.2021.

4. Submissions made by the Appellant and the Respondent

Before undertaking analysis of the case, it is necessary to go through written submissions made by the Appellant and reply of the Respondent as well as oral submissions made by the Appellant's Representative and the Respondent alongwith material brought on record by both the sides.

(A) Submissions of the Appellant

(a) Submissions made in the Appeal

The Appellant made the following submissions in its Appeal for consideration of this Court:-

- (i) The Appellant was having a Large Supply Category Connection with sanctioned load of 3909.64 kW/4011 kVA as CD.
- (ii) The Appellant was being issued bills regularly and the same were being deposited by the Appellant in full. There was no outstanding amount. The bills to the Appellant were being issued on CD and kVAh consumption basis as per tariff orders issued by PSPCL and approved by PSERC. The Appellant was being issued bills by ignoring clauses of Tariff Orders since 2016 till date.
- (iii) SI 3.5 under Schedule of LS Tariff of General Conditions of Tariff provides as under: -

“For Arc/ PIU industries, where the load is of mixed nature, i.e. in addition to Arc/ Power Intensive loads, General Industrial loads are also running, monthly minimum charges shall be determined by computing the contract demand on prorated basis in proportion to such loads duly sanctioned by the load sanctioning authority.

In such cases, Power Intensive loads shall comprise of loads as mentioned in para SI 3.2, including auxiliary loads, loads of pollution control machinery, gas plants & corresponding lighting loads and general industrial loads in such cases shall comprise loads of rolling mills and its allied loads, related workshop, general engineering machinery and corresponding lighting load, for the purpose of levy of monthly minimum charges.

- (iv) The above clause had remained the same in CC No. 26 of 2016, CC No. 46 of 2017, CC No. 23 of 2018, CC No. 29 of 2019 and CC No. 12 of 2020.
- (v) The Appellant was fulfilling the clause as it was having Induction Furnace load and mixed load but since the year 2016, billing was being done on Furnace load/ CD. No separation of load was got done, which was mandatory when the clause was introduced in the tariff. Due to deficiency in service of the Respondent, the overbilling was done and the Appellant was paying the same.
- (vi) The Appellant had claimed refund of excess billing of MMC/ fixed charges & Tariff difference paid due to deficiency in service of the Respondent.

- (vii) The Forum had decided the case without going through the points raised by the Appellant in its petition, rejoinder and oral discussions.
- (viii) The Appellant was not supplied copy of A & A form of the sanctioned load. It was demanded during the proceedings in the Forum that copy of the letter be supplied vide which it was given to the Appellant but the Forum totally ignored the demand. The Appellant was in good faith that the load would remain as applied and accordingly, the test report was submitted for obtaining the connection. In the absence of the copy of sanctioned A & A, nobody could know as to whether the bifurcation of load was made or not. There was deficiency on the part of the Respondent and excess billing was done. The ESIM Instruction No. 25.3 was clear that PSPCL would provide the photocopies of Agreement to LS consumers by obtaining acknowledgement and in compliance, the Respondent should produce the same. The relevant clause is reproduced as under:

“25.3 A photocopy of accepted A&A form/ agreement shall be supplied to the consumer on payment of Rs. 5/- per copy, if so requested by him. As far as possible photocopies of the agreement shall be made available to

the Medium, Large, Bulk Supply, Railway Traction and Street Lighting consumers after obtaining their acknowledgement.

Load sanctioning authority shall supply a photocopy of sanctioned and accepted A&A Form in case of MS/LS/BS/RT/SL and DS/NRS (exceeding 100kW) consumers to Centralized Billing Offices.”

- (ix) It was pointed out that Appellant had not objected till date about PIU & General Load and had not applied for the bifurcation of load till date. The excess billing was done on total load but the Appellant could not claim the refund. The question was that any objection could only be raised for wrong billing if the Appellant had knowledge about the facts. As and when it came to the knowledge of the Appellant, the Appellant filed its claim and the Respondent was convinced with the plea of the Appellant.
- (x) It was cleared vide clause no. (viii) of CC No. 23 of 2018 issued on 24.04.2018 to charge billing on pro-rata basis. No notice was issued to the Appellant to submit the detail of load of General & Induction Furnace. The Centralized Billing Cell of the Respondent had not called for load details while implementing CC No. 23 of 2018.

- (xi) There was no instruction in ESIM, Supply Code that which type of load was general load and which includes auxiliary load. The Respondent had sanctioned the total load in PIU category and the Appellant was not at fault. The A & A form was not having separate column to be filled for PIU & General Load and similar position was in test report form. The Forum had not decided the case properly and was in a hurry to decide the case in favour of the Respondent.
- (xii) The Forum had not provided copy of A & A to the Appellant and ignored the demand of the Appellant.
- (xiii) The detail of PIU & General Load was submitted before the Forum during proceedings of the case in rejoinder as PIU = 3696 kW, auxiliary load = 176.820 kW and general load = 36.720 kW. The billing of the Appellant needed to be revised on pro-rata base as per this bifurcated load.
- (xiv) The amount of excess billing should be refunded by applying pro-rata base factor as given in CC No. 23/2018 by setting aside the order of the Forum.

(b) Submissions in the Rejoinder

In its rejoinder to written reply, the Appellant's Representative made the following submissions:

- (i) It was correct that no fee was deposited for obtaining copy of A & A. As per A & A form supplied during the proceeding in the Forum, the Appellant noted that the total load was sanctioned under PIU and there was no bifurcation of load of Furnace and General load but the Appellant had applied this load separately as mentioned in A & A forms at the time of applying for connection which was released on 19.10.1989 with sanctioned load of 3909.64 kW/4011 kVA as CD. The A & A, Test Report were attached with the petition at cp-26 to 29. The detail of Furnace, Auxiliary and General load was attached separately. The concerned SDO verified the same on 27.06.1998. The Respondent also attached these documents with the reply. Thus the reply of the Respondent was wrong and denied. The Appellant was not at fault. The load sanctioning authority had wrongly sanctioned the load without bifurcation.
- (ii) It was correct that the Tariff Orders were issued and uploaded on web site but the PSPCL failed to implement the CC-23 of 2018 issued on 24.04.2018. The tariff of the FY-2018-19 was itself clear to implement the billing of PIU & General Load on pro-rata base.

- (iii) The question was under which instruction, it was clearly mentioned about the load of General and auxiliary category. It was simply replied that the detail was mentioned in tariff circular of mixed nature. The proper reply was needed from the Respondent.
- (iv) The detailed load was as per detail of General and auxiliary load submitted with A & A Forms and Test reports and both test reports were verified before release of connection/extension. These documents were given with the reply in the Forum during the proceedings of the case. The exact detail was available therein.
- (v) It was prayed that excess billing charged be refunded to the Appellant.

(c) Submission during hearing

During hearing on 07.04.2021, the Appellant's Representative reiterated the submissions made in the Appeal as well as in the rejoinder and prayed to allow the relief claimed.

(B) Submissions of the Respondent

(a) Submissions in written reply

The Respondent submitted the following written reply for consideration of this Court:

- (i) The Appellant was having a Large Supply Category Connection with Sanctioned load of 3909.64 kW/ 4011 kVA as CD under Op. S/D, Malerkotla.
- (ii) The Appellant never demanded the copy of A&A approved / sanctioned load or any agreement and neither deposited any payment of ₹ 5/- per copy as specified in ESIM Instruction No. 25.3. Also the load on A&A form was filled by the Appellant itself and the same had been approved by PSPCL. The bifurcation of the load was required to be done by the Appellant itself while submitting A & A form.
- (iii) The details about PIU Tariff and General Industry tariff was declared time to time in the Tariff Order and same had been uploaded on the PSPCL website from time to time. The details about PIU Industry and General Industry was also specified in Schedule of Tariff in Tariff Order.
- (iv) The billing on prorata basis was to be charged only for ARC/PIU industries where load was of mixed nature. These details were available in Annual Tariff Order and were available openly on PSPCL website. If the Appellant had load of mixed nature, it was the only responsibility of the Appellant to submit fresh test report.

- (v) In ESIM under Schedule of Tariff, SI. 3.6 specifies which load was Power Intensive load and which was General Industrial Load.
- (vi) The Appellant never demanded the copy of A & A. The test report was produced before CGRF, which indicated the load details.
- (vii) The load of 36.720 kW considered as General load in the rejoinder submitted before the Forum, comes under the definition of auxiliary load and corresponding lighting load which according to SI. 3.6 will be counted under Peak Intensive Industry Load category. So, there was no need to revise billing.
- (viii) It was prayed that there was no refund allowable to the Appellant.

(b) Submission during hearing

During hearing on 07.04.2021, the Respondent reiterated the submissions made by it in the written reply and contested the submissions of the Appellant's Representative and requested for dismissal of the Appeal of the Appellant.

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of charging of disputed amount of ₹ 20,35,556/- for the period from

14.06.2016 to 20.11.2020 on account of tariff billed and claim for refund thereof as per application regulations.

My findings on the points emerged, analysed and deliberated are as under:

- (i) The Appellant's Representative contended that the Appellant had applied for Furnace and General loads separately in A & A Form but the load sanctioning authority approved the load as PIU Category without bifurcating the load as applied. The Appellant was not provided copy of that approved A & A Form separately or with demand notice to check the approved load. Feasibility clearance was only a part of the process to submit the A & A forms and to deposit the ACD & Meter Security. The Appellant had paid the amount as per demand raised by the Respondent. The Respondent had cleared in the clause of Tariff SI 3.5 of 2016-17 that the monthly minimum charges shall be determined by computing the contract demand on pro-rata basis in proportion to such loads duly sanctioned by the load sanctioning authority. The load of the Appellant was not sanctioned separately and Appellant was not at fault as the Respondent had not supplied copy of A & A Form and the Appellant was not aware about this. The Tariff Order was not implemented as per approval and example given therein and the

Appellant was depositing the bills as issued by the Respondent. The Respondent had not provided copy of approved/ sanctioned A & A form as applied and had not issued any notice to bifurcate the load as per CC No. 24 of 2018. The Appellant had demanded copy of letter vide which copy of sanctioned load was supplied to the Appellant in the Forum and it was overruled/ ignored. The reply to submission made for compliance of ESIM Instruction No. 25.3 was not provided and the same should be provided. It was correct that a copy of A & A Form was being retained by the Consumers but copy of sanctioned load was not provided by the Respondent. The Respondent had submitted the copy during the proceedings before the Forum but not earlier and had been claiming that copy had been provided. The same was to be provided as per ESIM Instruction No. 25.3 but not provided. The Respondent had stated in the written reply that the Appellant had not submitted revised A & A Forms as per CC No. 23 & 24/2018 for bifurcation of load. The same was not submitted as the Respondent had not issued any notice and the Appellant had submitted it now. The Respondent had not complied with the instructions issued by PSERC and misled the Forum and now this Court as the Respondent had not issued bills on pro-rata

base as given in Tariff Circular CC No. 23/2018 vide clause (viii). The Respondent should furnish the instruction, in which separate column was provided for in A & A form and test report for PIU & General Load. The Forum had not decided the case by incorporating proper oral discussion and passed the order in favour of Respondent. The Forum had not noticed whether A & A Form was supplied to the Appellant or not and whether any notice was issued to petitioner as per CC No. 23 & 24 of 2018.

- (ii) The Respondent contended that the Appellant was having Large Supply Connection with Sanctioned load of 3909.64 kW/ 4011 kVA as CD. The Appellant never demanded the copy of A & A form of approved/sanctioned load or any agreement and neither deposited any fee payment of ₹ 5/- per copy as specified in ESIM clause 25.3. Also, the load on A & A form was filled by the Appellant itself and the same had been approved by PSPCL. The bifurcation of the load needed to be done by the Appellant itself while submitting A & A form. The details about PIU Tariff and General Industry tariff was mentioned annually in the Tariff Order and same had been uploaded on the PSPCL website from time to time. The details about PIU Industry and General Industry was also specified in Schedule of

Tariff in Tariff Order. The billing on pro-rata basis was to be charged only for ARC/PIU industries where load was of mixed nature. If the Appellant had load of mixed nature, it was the responsibility of the Appellant itself to submit fresh test report. In ESIM under Schedule of Tariff, SI. 3.6 specifies which load was Power Intensive load and which was General Industrial Load. The test report was produced before CGRF, which indicates the load details. The load of 36.720 kW considered as General load in the rejoinder submitted before CGRF, comes under the definition of auxiliary load and corresponding lighting load which according to SI. 3.6 will be counted under Peak Intensive Industry Load category. So, there was no need to revise billing. It was prayed that there was no refund allowable to the Appellant.

- (iii) As per evidence on record, the following A & A Forms were signed between the licensee and the consumer as per details tabulated below:

Date of signing A& A	Signatories to A & A	Approved by	Sanctioned Load	Contract Demand	Supply Voltage	T/f Capacity
19.02.1988	SE, Sangrur, Xen, AEE	CE, Distribution, Patiala	1700 kW	2000 kVA	11 kV	2000 kVA
10.01.1990	SE, Sangrur, Xen, AEE	SE, Distribution, Patiala	1877.640 kW	2209 kVA	11 kV	2300 kVA
10.11.1997	Xen, DS	CE, Comm., Patiala	3909.640 kW	4481 kVA	66 kV	6.3/8 MVA
27.06.2018	Dy. CE, Bamala, Sr. Xen	CE/DS, South, Patiala	3909.640 kW	4011 kVA	66 kV	6.3/8 MVA

The Appellant had deposited ACD/Security (Consumption) as per load/CD got sanctioned from time to time as intimated by the Respondent and reflected in the bills issued by the licensee and paid by the Appellant.

- (iv) It is observed that Appellant had got its connection released on 19.10.1989 and got its load/CD extended in the year 1990 and 1997 i.e. before circulation/publicity of Tariff Orders for FY 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 vide CC Nos. 26/2016, 47/2017, 24/2018, 25/2019 and 28/2020. However, the Appellant got its CD reduced in the year 2018. The above cited Tariff Orders were circulated and uploaded on the websites of PSPCL/PSERC for wide publicity. Accordingly, at the time of submission of A & A form for release of its connection (after Feasibility Clearance) for load/CD (under PIU category), the Appellant became aware that it had applied for and agreed to the sanction of load/CD under PIU category (as per A & A form signed). But, the consumer never submitted any request in writing or fresh A & A Form for bifurcation of load as of mixed nature if it had mainly General Industrial Load as per relevant provisions of General Conditions of Tariff and Schedules of Tariff.

- (v) It is also observed that the Appellant did not point out in writing any instance of excess billing due to charging of Tariff as per PIU category load to the Respondent on receipt of regular energy bills from PSEB/PSPCL. Rather, the Appellant continued to pay the bills issued to it regularly by PSEB/PSPCL without any objection / challenge.
- (vi) There is merit in oral and written submissions of the Respondent that Large Supply Connections were applied by the Consumers with the relevant documents and a copy of these documents was to be retained by the Consumers. The Appellant, being a Large Supply Category Consumer, must keep record of all documents submitted to the Respondent and maintain a separate LS connection file. Copies of bills/ receipts of securities etc. were preserved by the Consumers for accounting and other purposes. Moreover, one copy of A & A Forms and other documents were given to the Consumers by the Respondent.
- (vii) The Appellant's Representative stated in its Appeal that the Appellant was not supplied copy of A & A form of the sanctioned load. It was demanded during the proceedings in the Forum that copy of the letter be supplied vide which it was given to the Appellant but the Forum totally ignored the

demand. The Appellant was having a good faith that the load would remain as applied and accordingly, the test report was submitted for obtaining the connection. In the absence of the copy of sanctioned A & A form, nobody could know that the bifurcation of load was made or not. There was deficiency on the part of the Respondent and excess billing was issued / recorded. The ESIM Instruction No. 25.3 was clear that PSPCL would provide the photocopies of Agreement to LS consumers by obtaining acknowledgement and in compliance, the Respondent should produce the same.

In this connection, it is worthwhile to peruse the Instruction No. 25.3 of ESIM 2018 which reads as under:

“25.3 A photocopy of A&A form/agreement shall be supplied to the consumer on payment of Rs. 5/- per copy, if so requested by him. As far as possible photocopies of the agreements shall be made available to the LS, MS, BS, RT and SL consumers after obtaining their acknowledgement.

Load sanctioning authority shall forward a photocopy of sanctioned and accepted A&A Form to centralized billing office where billing is not done in the sub division.”

Subsequently, the Appellant’s Representative, in its rejoinder to written reply , confirmed that it had not deposited the requisite

fee of ₹ 5/- per copy for obtaining photocopies of sanctioned A & A forms from the Respondent and he had not even given any request in writing in this regard to the Respondent. In view of the above, the contention of the Appellant's Representative regarding non supply of sanctioned A & A forms does not hold good.

(viii) It is observed that the Appellant had misunderstood the instructions contained in General Conditions of Tariff and Schedule of Tariff relating to the Tariff Orders for FY 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 whose perusal revealed that billing on the basis of PIU load and General Load in proportion to it was only to be applied where General and PIU load had been separately sanctioned by the Load Sanctioning Authority in the A & A Form. In the present case, the whole load was sanctioned by the Load Sanctioning Authority under PIU Category and billing was done correctly.

(ix) The Appellant's Representative, in its rejoinder and during hearing, admitted that all the Commercial Circulars issued by PSPCL are available on its website and are in public domain but stated that their implementation was not done correctly.

The Court observed that the Tariff Order issued by PSERC are available on the websites of PSERC as well as PSPCL. Wide

publicity was also given in the press about tariff rates approved by PSERC in respect of various categories of the consumers. The Appellant, being LS consumer, cannot say that it was ignorant about tariff orders / regulations relating to tariff matters. There was no need to issue separate notices to each consumer informing about changes in tariff structure. Each consumer had to take appropriate action for getting any benefit given in the tariff orders approved by the PSERC. The Appellant failed to take timely appropriate action to pin point any instance of incorrect implementation of Tariff Order or bifurcation of PIU & General Load by submitting revised A & A forms so as to obtain the approval of bifurcated load from the Load Sanctioning Authority.

- (x) The averments made by the Appellant particularly in its rejoinder to written reply and during hearing on 07.04.2021 (specifically that the Appellant was not at fault and that the load sanctioning authority had wrongly sanctioned the load without bifurcation) are not convincing and not sustainable. Ever since release of the Appellant's LS category connection, it did not point out in writing that bifurcation of load applied for by it had not been reflected in the bills which, in turn, were paid regularly. A LS category consumer is expected to be

sincere, responsible and vigilant in discharging its obligations instead of incorrectly pointing out lacunae in the working of the distribution licensee. Thus, the Appellant cannot absolve itself of the responsibility and liability for the disputed amount billed to it as per instructions of PSPCL/PSERC.

- (xi) From the above analysis, it is concluded that the entire load of the Appellant was sanctioned by the Competent Authority under PIU category. The Appellant had not submitted new A&A Forms by bifurcating the PIU load & General Load. Further, the Appellant did not file any objection to charging it as per PIU load in terms of instructions contained in SI 3.5/3.6 of General Conditions of Tariff and Schedules of Tariff for FY 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21. It proved that the total load of the Appellant falls under PIU category and there was no other general industry (General Load) except PIU load. The proportionate billing of PIU and general tariff was to be done only if it was separately sanctioned in the A & A Form by the Load Sanctioning Authority as per provisions referred to above. Thus, the Forum rightly decided that the Appellant was not entitled for any refund on account of billing done by the Respondent.

- (xii) The allegation of deficiency of service in this case is not just and fair. As such, the claim of the Appellant regarding refund of disputed amount (₹ 20,35,556/-) already paid through the bills for the period from 14.06.2016 to 20.11.2020 without any challenge is devoid of merit and is hereby rejected after due consideration of all the facts/documentary evidence of the case.

6. Decision

As a sequel of above discussions, the order dated 02.03.2021 of the CGRF, Patiala in Case No. CGP-56 of 2021 is upheld. The Appellant is at liberty to submit fresh/ revised A & A forms to the Licensee (PSPCL) so as to obtain the approval/ sanction of Load Sanctioning Authority of PSPCL in respect of PIU and General Load separately if it wants to get the benefit of tariff rates in future.

7. The Appeal is disposed of accordingly.
8. As per provisions contained in Regulation 3.26 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016, the Licensee will comply with the award/ order within 21 days of the date of its receipt.
9. In case, the Appellant 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.

April 09, 2021
S.A.S. Nagar (Mohali)

(GURINDER JIT SINGH)
Lokpal (Ombudsman)
Electricity, Punjab.

