

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

**(Constituted under Sub Section (6) of Section 42 of
Electricity Act, 2003)**

APPEAL No. 96/2021

Date of Registration : 07.12.2021

Date of Hearing : 10.01.2022

Date of Order : 10.01.2022

Before:

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

In the Matter of:

M/s. Jagraon Concast Pvt. Ltd.,
B-XXAX-536/6-B/2, Singla Cycle Road,
Opposite Dhandari Railway Station,
G.T.Road Ludhiana.

Contract Account Number: 3004875782(LS)

...Appellant

Versus

Additional Superintending Engineer,
DS Estate (Spl.) Division,
PSPCL, Ludhiana.

...Respondent

Present For:

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

Respondent : 1. Er. Amritpal Singh,
AEE/ Commercial,
DS Estate (Spl.) Division,
PSPCL, Ludhiana.

2. Sh. Krishan Singh, AAO

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 28.10.2021 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-249 of 2021, deciding that:

“i. As there is no instruction for allowing night tariff on proportionate basis where actual data is not available, so no night tariff rebate is allowable in the present case on proportionate basis.

ii. However, in this regard, Respondent may seek instructions/ clarification, from the competent authority and action be taken accordingly.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 07.12.2021 i.e within the period of thirty days of receipt of copy of the decision dated 28.10.2021 of the CGRF, Ludhiana in Case No. CGL-249 of 2021. The Appellant's Representative personally received the decision from CGRF, Ludhiana on 12.11.2021 and a copy of Dispatch Register of the Forum was attached with the Appeal to prove the receipt of the same. The requisite 40% of the disputed amount was not required to be deposited as this was a case of refund. Therefore, the Appeal was registered on 07.12.2021 and

copy of the same was sent to the Addl. SE/ DS Estate (Spl.) Division, Ludhiana for sending written reply/ parawise comments with a copy to the office of the CGRF, Ludhiana under intimation to the Appellant vide letter nos. 1717-19/OEP/A-96/2021 dated 07.12.2021.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 10.01.2022 at 12.15 PM and an intimation to this effect was sent to both the parties vide letter nos. 11-12/OEP/A-96/2021 dated 04.01.2022. As scheduled, the hearing was held in this Court. Arguments of both the parties were heard.

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 parties.

(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 bearing Account No. 3004875782 with sanctioned load of 3300 kW and CD as 3300 kVA under DS Estate (Spl.) Division, Ludhiana in the name of Appellant.
- (ii) The Appellant had opted for exclusive night time tariff scheme from 01.06.2020 and 50% fixed charges rebate was being allowed. The rebate for the period 01.06.2020 to 22.07.2020 was manually given by the Respondent vide Sundry No. 170/135/R-166 for ₹ 11,29,429/- in the bill dated 01.09.2020. This rebate was calculated on the basis of DDL given by the Enforcement to the Respondent. But the rebate for the disputed period from 17.08.2020 to 19.09.2020 was not given/ not calculated due to non-availability of DDL data in SAP/ MDAS System because modem was not working.
- (iii) The Appellant approached the Respondent but due to non-satisfactory reply by the Respondent, the Appellant approached the CGRF, Ludhiana. At the time of hearing in the Forum, the Respondent stated that MMTS had been asked to supply the required data alongwith DDL for the disputed period vide Memo No. 1139 dated 06.08.2021, so that further necessary rebate could be calculated/ given. The MMTS informed vide Memo No. 229 dated 18.10.2021 that the data for the disputed

period i.e. from 17.08.2020 to 19.09.2020 was not available in their record. The Appellant was maintaining a register to record the reading on daily basis for its own purpose and the same was produced by the Appellant in the CGRF, Ludhiana but the Forum did not admit it. The second plea of the Appellant was to give it the benefit by calculating the consumption on pro-rata basis.

- (iv) The Forum heard the case and passed order dated 28.10.2021 against the Appellant stating as under:-

“As there is no instruction for allowing night tariff on proportionate basis where actual data is not available, so no night tariff rebate is allowable in the present case on proportionate basis.

However, in this regard, Respondent may seek instructions/ clarification, from the competent authority and action be taken accordingly.”

The decision of the Forum dated 28.10.2021 was wrong and not admitted as neither the reading record maintained by the Appellant nor the assumed data as submitted by the Respondent were considered by the Forum which was against the natural law of justice.

- (v) The Appellant had the right according to tariff provision and was entitled to get the refund for the Night Tariff rebate for the period from 17.08.2020 to 19.09.2020.
- (vi) The Appellant's case was rejected by the Forum on the plea that since the actual data was not available, so the rebate for night tariff could not be given. The DDL was not available, which was not the fault of the Appellant, but due to this the Appellant had to suffer the loss. As per the Regulation 21.5.1 of Supply Code-2014; when a meter is defective, procedure is given to charge/ refund to overhaul the account.
- (vii) The consumptions/ readings from 6 AM to 10 AM for the disputed period i.e. from 17.08.2020 to 19.09.2020 were not available. But in SAP reading data, the consumption from 10 PM to 6 AM and from 6 AM to 10 PM was available which was detailed below:-

Time period	Disputed Month	Observation
6 AM to 10 AM	17.08.2020 to 19.09.2020	Consumption/reading not available
10 PM to 6 AM	17.08.2020 to 19.09.2020	Consumption/reading available
6 AM to 10 PM	17.08.2020 to 19.09.2020	Consumption/reading available

- (viii) The Respondent had submitted calculation on the basis of assumed data of consumption. But the Forum did not consider the assumed data to solve the matter. The other two readings/

consumption were available in data i.e. 10 PM to 6 AM & 6 AM to 10 PM and 3rd figure could be calculated by assuming.

- (ix) It was the duty of the Respondent to maintain the data required for giving the night tariff rebate as the Appellant had opted for the same. The relief must be given to the Appellant and the request could not be set aside. The right of the Appellant could not be seized.
- (x) The Appellant had prayed that the decision of the CGRF be set aside and night tariff rebate be allowed as there was no fault of the Appellant as the DDL was incomplete and it should be given either on the Appellant's reading data or as calculated by the Respondent on the basis of assumed data for the disputed period to the tune of ₹ 6,20,680/-.

(b) Submissions made in the Rejoinder

The Appellant had made the following submissions in the rejoinder to written reply of Respondent to Appeal on 27.12.2021:-

- (i) The Appellant in its rejoinder had denied the contents of the written reply except admissions made by the Respondent and reiterated the contents made by it in the Appeal.
- (ii) The Appellant refuted the claim of the Respondent made in reply that it did not approach them in time. The Appellant

submitted that its representative approached the Respondent and verbally requested to SDO/ RA for this period but no proper response was given. They only replied that Enforcement had been asked to provide data and ultimately when they refused, then the Appellant approached to CGRF for justice.

- (iii) The Respondent had not written to the concerned authority to seek clarification as per the decision of the Forum but only when the Appellant had filed the Appeal on 03.12.2021, the Respondent sought clarification vide Memo No. 4131 dated 13.12.2021 from the Chief Engineer/ Commercial, Patiala.

(c) Submission during hearing

During hearing on 10.01.2022, the Appellant's Representative (AR) reiterated the submissions made in the Appeal as well as in the rejoinder and prayed to allow the same. The AR informed the Court that the Appellant had never challenged the bill relating to the period 17.08.2020 to 19.09.2020 in the office of the Respondent. The case was filed in the Forum during 07/2021.

(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 3300 kW/ 3300 kVA. The Appellant had opted for Exclusive night Tariff Scheme from 01.06.2020 and 50% Fixed Charges Rebate was being allowed to him. The Rebate for the period from 01.06.2020 to 22.07.2020 was manually given to it vide Sundry No. 170/135/R-166 for ₹ 11,29,429/- in the bill dated 01.09.2020 which was calculated on the basis of DDL given by the Enforcement office.
- (ii) The Rebate for the disputed period from 17.08.2020 to 19.09.2020 as claimed in the Appeal was not calculated due to non-availability of DDL data in SAP/ MDAS system as the modem was not working. The Appellant had not represented for rebate for the disputed period from 17.08.2020 to 19.09.2020 in 09/2020. If the Appellant had timely represented regarding this to the Respondent then the MMTS would had been requested to supply DDL data for the disputed period and the rebate would had been given at that time.

- (iii) The Respondent asked MMTS to supply the required data vide Memo No. 1139 dated 06.08.2021 but MMTS-5, Ludhiana informed the Respondent that data was not available vide its letter no. 176 dated 12.08.2021.
- (iv) The Forum had decided the case by giving detailed speaking order. The Respondent submitted that Night time Tariff provisions were provided in Commercial Circular No. 30/2020, and Regulation 21.5.1 of Supply Code-2014, was not applicable in this Case. As per Commercial Circular No. 30/2020, the consumption for the period 10 AM to 10 PM was must to decide the eligibility of restriction of 10% as mentioned in condition (ii) in said Commercial Circular. There was no instruction in ESIM to proportionate the consumption data in order to calculate the eligibility data and as actual eligibility data for grant of this refund was not available, the decision of the Forum was correct.
- (v) The time wise bifurcation of information of consumption required for calculation of rebate, i.e from 6 AM to 10 AM for the period from 17.08.2020 to 19.09.2020, was not available in MDAS data of SAP System. But in SAP reading data, the consumption (693440 units) from 22:00 hours to 06:00 hours (10 PM to 06 AM) and the consumption (405000 units) of

06:00 hours to 22:00 hours (06 AM to 10 PM) was available.

So, the actual eligibility authentication could not be ascertained without complete data record.

- (vi) However, assumed data of consumption for timing 22:00 hrs to 06:00 hrs. (10 PM to 06 AM) on the basis of consumption data of 06/2021 and 07/2021 was prepared by the Respondent and was presented before the Forum as under:

	Night (22:00-06:00 with MF) 10 PM to 06AM	Morning (06:00 AM-10:00 AM)	06:00 AM-10 PM	Total kVAh
Actual available	693440	Not known	405000	1098440
Assumed	693440	346720 (693440*4/8)	(10 AM to 10 PM) 58280 Units (405000-346720)	1098440

- (vii) The figure 346720 had been calculated on basis of proportionate consumption of 4 hours as derived from the actual total consumption of 693440 in 8 hours (permissible working hrs.). It was submitted that the period from 06 AM to 10 AM was also permissible working time. The actual consumption from 06 AM to 10 PM was 405000 units and the consumption for the period 10 AM to 10 PM (restricted working time) came to $405000 - 346720 = 58280$ units. These figures were calculated on assumption (permissible working hours period of night and day) based but were not actual. The

Appellant was allowed to run its factory from 06 PM to 10 AM (next day). He was restricted to use only 10% of consumption of 10 PM to 06 AM (permissible working time) during the period 10 AM to 10 PM (restricted working time).

- (viii) The Respondent's office had written vide letter no. 4131 dated 13.12.2021 to the Chief Engineer (Commercial), Patiala to give clarification as required in the Forum decision.
- (ix) The Respondent sent the clarification received from the office of Chief Engineer/Commercial (SE/Sales-II) vide Memo no. 05/Misc Cl.-4 dated 06.01.2022 addressed to the Respondent, which is reproduced as under:

“With respect to subject cited above and the letter under reference, it is clarified that in the tariff orders 2020-21 & 2021-22, no provision for calculation of energy consumption on proportionate basis or any other provision regarding the cases where energy consumption data (as required for application of exclusive night tariff) is not available from DDL/MDAS etc. has been mentioned.

This issues with the approval of competent authority.”

(b) Submission during hearing

During hearing on 10.01.2022, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed

for the dismissal of the Appeal on the basis of clarification by the office of Chief Engineer/ Commercial (SE/Sales-II).

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of the claim of the Appellant of Exclusive Night time tariff rebate as per Commercial Circular No. 30/2020 for the period from 17.08.2020 to 19.09.2020.

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

- (i) The Appellant's Representative (AR) pleaded that the Appellant was having a Large Supply Category Connection, bearing Account No. 3004875782 with sanctioned load of 3300 kW and CD as 3300 kVA. The Appellant had opted for exclusive night tariff scheme from 01.06.2020. The Appellant was not given rebate under this Tariff for the period from 17.08.2020 to 19.09.2020 due to non-availability of DDL data in SAP/ MDAS system as the modem was not working. The Appellant produced the consumption record maintained by it before the Forum and also the Respondent produced assumed Consumption Data but the Forum decided against the Appellant and did not grant any relief to the Appellant in the absence of

actual time wise consumption data. The Appellant had prayed that the decision of the Forum be set aside and night tariff rebate be allowed as there was no fault of the Appellant as the DDL was incomplete and it should be given either on the Appellant's reading data or as calculated by the Respondent on the basis of assumed data for the disputed period to the tune of ₹ 6,20,680/-.

(ii) The Respondent controverted pleas raised by the Appellant and argued that the Appellant had not represented for rebate for the disputed period from 17.08.2020 to 19.09.2020 in 09/2020. If the Appellant had timely represented regarding this, then the MMTS would have been requested to supply DDL data for the disputed period and the rebate would have been given at that time. Now, since the time-wise actual data was not available so the eligibility of the Appellant to avail the rebate under Exclusive Night time tariff under condition (ii) of the Commercial Circular No. 30/2020 could not be decided and the rebate could not be given to the Appellant.

(iii) The Forum in its decision dated 28.10.2021 observed that:

“From the written submission/ oral arguments made by the petitioner along with the material brought on record, it is inferred that calculation is based on presumed/ proportionate consumption, but the actual TOD

consumption for availing night tariff may vary from time to time. So, these projections cannot be relied upon for calculation of rebate/charges. Further there are no instructions in Supply Code and ESIM to calculate the night tariff rebate/surcharge on proportionate basis. Therefore, in view of the above the Forum is of the opinion that night tariff rebate/surcharge be given/charged according to the night tariff data of the DDL report only, and proportionate calculations cannot be accepted.

Keeping in view the above, Forum came to the unanimous conclusion that as there is no instruction for allowing night tariff on proportionate basis where actual data is not available, so no night tariff rebate is allowable in the present case on proportionate basis. However, Respondent may seek instructions/clarification, from the competent authority and action be taken accordingly.”

- (iv) An opportunity was given to both parties to settle this dispute mutually if they desire to do so. The Respondent pleaded to settle the case as per regulations/ tariff orders.
- (v) This Court is bound to pass the orders as per Regulation No. 3.24 of PSERC (Forum & Ombudsman) Regulations, 2016 which is reproduced as below:-“

“Reasoned Orders

The Ombudsman shall pass a speaking order giving reasons for all his findings and award. While making an order, the Ombudsman shall be guided by the provisions of the Act, rules and regulations framed under

the Act, guidelines, directions & orders of the Commission issued from time to time and such other factors which are necessary in the interest of justice. The Ombudsman shall also decide regarding interest payable by either party on excess or short deposits made by the complainant”.

- (vi) As per para (ii) of the decision dated 28.10.2021 of the Forum, the Respondent was asked to seek instructions/ clarification from the competent authority and to take action accordingly.

The Respondent sought the required clarification from the office of Chief Engineer/ Commercial, PSPCL, Patiala vide Memo No. 4131 dated 13.12.2021. In reply to this, Chief Engineer/ Commercial (SE/ Sales-II) vide Memo No. 05/Misc Cl-4 dated 06.01.2022 addressed to the Respondent clarified that there was no provision for calculation of energy consumption on proportionate basis or any other provision regarding the cases where energy consumption data (as required for application of exclusive night tariff) was not available from DDL/ MDAS etc. had been mentioned in the Tariff orders of 2020-21 and 2021-22.

- (vii) I have gone through the written submissions made by the Appellant in the Appeal, written reply of the Respondent, rejoinder by the Appellant, clarification given by Chief Engineer/ Commercial (SE/Sales-II) as well as oral arguments of both the parties during hearing of the Appeal. The Appellant had opted for exclusive night time tariff scheme from

01.06.2020 as per Commercial Circular No. 30/2020 of the Respondent, but was not given rebate under this Tariff for the period from 17.08.2020 to 19.09.2020 due to non-availability of DDL data in SAP/ MDAS system as the modem was not working. The Appellant did not challenge the bills for the FY 2020-21 and represented for rebate for the first time in 07/2021 so the DDL data could not be taken for the disputed period of 17.08.2020 to 19.09.2020 by MMTS. The meter installed at the premises of the Appellant had limited storage capacity and the consumption data for the period 17.08.2020 to 19.09.2020 was washed when the same was brought into the notice of the Respondent during 07/2021. In the absence of the time wise actual consumption data for the disputed period, the rebate could not be given. The Appellant is a Large Supply Category Industrial Consumer and it was supposed to know all the regulations, tariff orders and instructions of the Licensee (PSPCL) relating to its connection. As per A&A forms, the Appellant had to follow all the regulations and tariff orders. All the electricity bills served upon the Appellant invariably depicted rebates allowed by the Respondent. In case of missing rebates in the monthly bills, the Appellant was supposed to give application in time to the Respondent for challenging the bill. I

have observed that the Appellant was well aware of all the tariff provisions and was well conversant with the Commercial Circulars of the Licensee, as such it applied for the continuation of the Exclusive Night time Tariff on 03.06.2020 itself in response to the Commercial Circular No. 30/2020 dated 03.06.2020 of the Licensee and when it assessed that this tariff was no more beneficial to it, the Appellant opted out by giving a request dated 21.09.2020 to the Respondent. The Appellant did not produce any evidence to prove that it challenged the bill dated 29.09.2020 for the disputed period of 17.08.2020 to 19.09.2020 in the office of the Respondent when it did not receive the Night tariff rebate in the same. The Appellant had the option to arrange its own compatible meter and got it installed from the Licensee as per the laid down procedure. Had the Appellant got the compatible meter installed, this dispute would not have arisen.

- (viii) There is no provision for calculating the rebate under Night time tariff on proportionate basis. The same is clarified by the office of Chief Engineer/Commercial (SE/Sales-II) vide their Memo No. 05/Misc Cl.-4 dated 06.01.2022 addressed to the Respondent. Also, the eligibility of the Appellant to avail the rebate under Exclusive Night time tariff as per condition (ii) of

the Commercial Circular No. 30/2020 cannot be ascertained in the present case on the basis of data available. As such, the plea of the Appellant for grant of relief is not tenable and sustainable in the eyes of the law. This Court cannot pass any order in violation of Regulation No. 3.24 of PSERC (Forum and Ombudsman) Regulations, 2016. Moreover, the Appellant brought nothing new in the Appeal which was not considered by the Forum at the time of passing the final order on 28.10.2021. Therefore, the Appeal of the Appellant deserves to be dismissed.

- (ix) In view of above, this court is inclined to agree with the decision dated 28.10.2021 of the Forum in Case No. CGL-249 of 2021.

6. Decision

As a sequel of above discussions, the Appeal of the Appellant against order dated 28.10.2021 of the Forum in Case No. CGL-249 of 2021 is hereby dismissed.

- 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.

January 10, 2022
S.A.S. Nagar (Mohali)

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

