**COURT OF THE LOKPAL (OMBUDSMAN),**

**ELECTRICITY, PUNJAB,**

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

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

**Appeal No. 100/2017**

**Date of Registration : 26.12.2017**

**Date of Hearing : 07.06.2018**

**Date of Order : 14.06.2018**

**Before:**

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

**In the matter of**

Vohra Foods Pvt. Ltd,

 Mohan Ke Road,

 Guru Har Sahai,

 Ferozepur.

...Petitioner

Versus

Additional Superintending Engineer

DS Division,

 PSPCL, Jalalabad.

 ...Respondent

**Present For :**

Petitioner **:** Shri Budh Ram Jindal,

Petitioner’s Representative (PR).

Respondent **:** 1. Er. Kuldeep Verma,

 Addl. Superintending Engineer.

 2. Ms. Manisha Mirok,

 Revenue Accountant (RA).

 Before me for consideration is an Appeal preferred against the order dated 17.11.2017 of the Consumers Grievances Redressal Forum (Forum) in Case No. CG-210 of 2017, deciding that:

*“Peak Load Violation charges for the period 01.04.2016 to 23.07.2016 are justified and recoverable from the Petitioner.”*

**2. Facts of the Case:**

 The relevant facts of the Case are that:

1. The Petitioner was having a Large Supply Mixed Category connection with Sanctioned Load of 726.637kW (Seasonal Load : 130kW and Non-seasonal : 596.637kW) and Contract Demand of 783kVA.
2. The Petitioner was charged a sum of Rs. 49,326/- for Peak Load Violations (PLVs) for the period from 01.04.2016 to 08.04.2016 and also a sum of Rs. 9,52,751/- for the PLVs from 09.04.2016 to 23.07.2016 vide notices bearing Memo No. 62 dated 18.01.2017 and Memo No. 1177 dated 20.07.2017 respectively.
3. The Petitioner did not agree to the amount raised vide above notices, and filed an Appeal in the Forum which, after hearing, passed order dated 17.11.2017 ( Reference: Page 2, Para 1).
4. Not satisfied with the decision of the Forum, the Petitioner filed a Petition in this Court and prayed to grant relief from penalty levied for Peak Load Violations (PLVs) and agreed to pay Peak Load Exemption Charges (PLEC) charges at prescribed rates as per Instructions No. 132 of ESIM.

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

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

1. **Submissions of the Petitioner:**

The Petitioner submitted the following for consideration of this Court:

1. The consumer was having Large Supply Category connection with Sanctioned Load 726.637kW (Seasonal Industry 130kW and General Category 596.637kW) and Contract Demand of 783kVA.

**(ii)** The consumer had opted for ToD Tariff for the FY 2014-15. The consumer had not violated any provision of PLEC for the FY 2014-15.

**(iii)** The Petitioner was charged for the Peak Load Violations as per Checking Report of MMTS, for the period 01.04.2016 to 08.04.2016 amounting to Rs.49,326/- and from 13.04.2016 to 23.07.2016 amounting to Rs.9,52,751/- vide MMTS Memo No.1177 dated 20.07.2017.

**(iv)** The Petitioner did not agree with the amount charged and filed a Petition in the Forum which, after hearing, decided the case against the Petitioner.

1. The Respondent incorrectly contended in the Forum that the Commercial Circular (CC) No. 46/2014 dated 04.09.2014 related to ToD Tariff for the FY 2014-15 and since the dispute related to FY 2016-17, it was irrelevant in the present case. However, the Petitioner pleaded in the Forum that there was no condition for any PLVs rather, PLEC charges were to be charged from the consumer as per Instruction No. 132 of ESIM-2011 which clearly mentioned regarding penalty for non-compliance of Peak Load Restrictions as per ToD Tariff for Large Supply /Medium Supply consumers vide CC No.16/2016.
2. The PSPCL issued CC No.16/2015 dated 07.05.2015, when revision of Tariff w.e.f. 01.04.2015 for the FY 2015-16 was in process. In the Tariff Order, the Schedule of Tariff with revised rates of tariff for various categories of the consumers, as approved by the Hon’ble PSERC, was provided by mentioning that these schedules shall be read with uploaded provision of General Conditions of Tariff approved by the Commission as per Annexure I, Volume II of the Tariff Order.
3. General Condition of Tariff Clause 15 - Levy of Peak Load Exemption Charges (TOD Tariff), provided as under :

*“ All large supply consumer and medium supply consumer (except essential services) having sanctioned load of 50 KW or more may be subjected to peak load hours restrictions as declared by the distribution license from time to time with the approval of the commission. During peak load hours restrictions, the consumer shall be allowed to use only part of their sanctioned load without payment of any additional charges. However a consumer shall be entitled to use additional load during peak load hours restrictions which will be governed by such conditions and payment of peak load exemption charges (PLEC) as approved by the Commission.”*

*Clause 15.2 Provided that* - “*The consumer, covered under peak load hours restrictions as per 15.1 above, may opt to be covered under ToD Tariff on such terms & conditions, as specified by the Commission, instead of Peak Load Hours Restrictions.”*

1. The Clause 15.1 and 15.2 specified that PLEC charges were to be paid but no penalty was required to be levied during the Peak Load Hours Restrictions.
2. The General Conditions of Tariff were part and parcel of the Tariff order for the FY 2015-16 and be read accordingly. The consumer had used energy during PLHRs period for the FY 2015-16 with no penalty for any violations. The Clause 15.1 gave the option to the consumer to use upto 50 KW load and additional load on payment of Peak Load Exemption Charges. The Peak Load Exemption Charges as per Instruction No. 131.3 (ii) of ESIM were Rs.1.80 per kW per hour for the exemption upto 65% of sanctioned CD and Rs.2.70 paise per kW per hours for the exemption allowed beyond 65% of the sanctioned CD over and above their normal energy bill.
3. Under the General Conditions of Tariff (which were part of Tariff), penalty for non-compliance of PLHRs by the consumers was withdrawn by the Commission. Thus, Instruction No. 132 of ESIM became null and void and could not be applied on the consumer for non-observance of PLHRs.

**(xii)** The PSPCL, vide CC No. 12/2016 dated 31.03.2016, issued instructions for continuation of existing tariff structures as per Tariff Order issued on 05.05.2015 for the FY 2015-16 till the notification of the Tariff Order for the FY 2016-17 as determined by the Commission.

1. The Tariff Order for the FY 2016-17 was notified on 29.07.2016, as such, for the period from 01.04.2016 to 23.07.2016 only Tariff Order for the FY 2015-16 was in force. As such, General Conditions of Tariff for the FY 2015-16, which did not prescribe any penalty for PLHRs violations, continued to be applicable.
2. The PSPCL, vide PR Circular No. 01/2016 dated 29.07.2016 for the FY 2016-17, had withdrawn the instructions, regarding PLHRs, exemption and violations thereof, issued vide PR Circular Nos. 01/2015 dated 31.03.2015, 11/2014 dated 29.08.2014, 05/2013 dated 11.04.2013, 0/2003 dated 25.04.2003 and 07/99 dated 28.09.1999. This implied that for the FY 2016-17, there was no levy of charges for violations for Peak Load Hour Restrictions. As such, the Instructions No. 132 of ESIM stood withdrawn for the FY 2016-17. Therefore, the consumer could not be charged for Peak Load Violations (PLVs) for use of energy consumed during peak load restrictions hours. The PSPCL had filed the ARR for approval of the Tariff in the month of November 2015 and PSERC was to approve and levy the same for the FY 2016-17 w.e.f. 01.04.2016 as per earlier practice. But, it issued Tariff Order on 29.07.2016 for the FY 2016-17 w.e.f. 01.08.2016. Had the PSERC issued Tariff Order for the FY 2016-17 in the month of April 2016, there would not have been any Peak Load Violations as per General Conditions of Tariff for the FY 2016-17 and earlier also for the FY 2015-16.
3. In view of the above, the Petitioner may be granted relief from penalty for PLHR violations. The Petitioner is ready to pay Peak Load Exemption Charges at prescribed rates as per Instruction No. 132 of ESIM.
4. **Submissions of the Respondent:**
5. The Petitioner was having a Large Supply connection with Mixed load i.e. Seasonal and Non- Seasonal Load. The description of nature of load and Contract Demand was as under:

Sanctioned Load : 726.637(Seasonal-130kW and

 Non-seasonal 596.637kW)

Contract Demand : 783kVA

1. On receipt of the copies of the DDL and details of Peak Load Violations done by the Petitioner during the period from 01.04.2016 to 08.04.2016 and from 09.04.2016 to 12.05.2016 and 13.05.2016 to 23.07.2016 received from MMTS, Moga, the notices for these Peak Load Violations were issued to the Petitioner vide Memo No.62 dated 18.01.2017 to deposit Rs.49,326/- and Memo No.1177 dated 20.07.2017 to deposit Rs. 9,52,751/-. Subsequently, the amounts ibid were charged in the bills of the Petitioner.

**(iii)** It was correct that Regulation 15.2 of General Conditions of Tariff entitled the consumer to opt ToD Tariff on such terms and conditions as specified by the PSERC instead of Peak Load Hours Restrictions. But, since the consumer opted for ToD Tariff, so, CC No.16/2015 dated 07.05.2015 was applicable to the consumer. An extract of the provisions of the above Circular read

as under:

*“1(a) The following Tariff is approved for large Supply Industrial Consumers during the period of 01.04.2015 to 30.09.2015:*

|  |  |  |
| --- | --- | --- |
| ***Period*** | ***Time Period*** | ***Tariff*** |
| *April 2015 to September, 2015* | *06:00 AM to 06:00PM* | *Normal Tariff for FY 2015-16* |
| *06:00 PM to 10:00 PM* | *Normal Tariff for FY2015-2016 plus PLEC during peak load hours as approved by the Commission in the Tariff Order for FY 2013-14.*  |

***Note*** *(1): There shall be no ToD rebate/ ToD Tariff during month*

*of April and May 2015.*

***Note*** *(2): The Load to be run during peak load hours shall be as*

 *per sanction granted by CE/PP&R to the respective*

 *Industrial consumers and on the basis of which, PLEC*

 *shall be charged.*

**(iv)** Hon’ble PSERC, vide its Order dated 28.03.2016, issued directions to the PSPCL to continue the existing tariff structure till the date of issue of Tariff Order for the year 2016-17. In compliance, Commercial Circular No. 12/2016 dated 31.03.2016 was issued by the PSPCL. Thus, it was clear that during April 2016 to September 2016, from 06.00PM to 10.00PM, Normal Tariff plus PLEC during Peak Load Hours as approved by the PSERC in the Tariff Order 2013-14 stood applicable. Thus, the contention of the Petitioner that PLEC charges were not applicable during this period, was incorrect.

**(v)** It was correct that General Conditions of Tariff were part and parcel of Tariff Order for the FY 2015-16, but there was no denying the fact that the Clause 15.2 of General Conditions of Tariff provided for applicability of ToD Tariff. Besides, Commercial Circular No. 16/2015 dated 07.05.2015 (regarding ToD Tariff) was also to be kept in view according to which, Normal Tariff plus PLEC were applicable for the period of dispute. So far as Clause 15.1 of General Conditions of Tariff was concerned, the consumer had withdrawn its Peak Load Exemption taken earlier for 400kW from 10.07.2015 onwards. In this regard, letter no. 3895/3900 of the Engineer-in- Chief, Power Purchase & Regulation dated 07.07.2015 may be referred to. Thus, Peak Load Exemption Charges were not applicable to the consumer instead, PLV Charges were applicable and as per Instruction No. 132 of ESIM.

**(vi)** Instructions No. 132 of ESIM did not become null and void as contended by the Petitioner. Rather, the same was applicable upto 29.07.2016 till the issuance of the P.R. Circular No. 01/2016.

**(vii)** P.R. Circular No. 01/2016 dated 29.07.2016 was applicable only with effect from 01.08.2016. Till then, the PLVs and PLE charges were applicable to the consumer.

**(viii)** Theconsumer had been rightly charged for the Peak Load Violations during the period concerned and the amount charged was recoverable.

**4. Analysis:**

The issue requiring adjudication is the legitimacy of the Peak Load Violation Charges, for the period from 01.04.2016 to 23.07.2016, charged to the Petitioner.

 *The points raised are deliberated and analysed as under:*

1. PR contended that the dispute involved due to imposition of penalty for Peak Load Violations, noticed by the MMTS, as per following details:

|  |  |  |  |
| --- | --- | --- | --- |
| Sr. No. | Period | Amount Charged | Notice issued vide MMTS Memo No. and Date |
| 1 | 01.04.2016 to 08.04.2016 | Rs.49,326/- | 62 dated 28.01.2017 |
| 2 | 09.04.2016 to 12.05.2016 and 13.05.2016 to 23.07.2016 | Rs.9,52,751/- | 1177 dated 20.07.2017 |

1. PR submitted that its prayer for relief form levy of PLV charges detailed above was based on the following grounds:
2. ToD (Time of Day) Tariff was introduced by the PSPCL vide Commercial Circular (CC) No. 46/2014 dated 14.09.2014. In the ToD Tariff, there was no provision for levy of penalty for violation of Peak Load Hours Restrictions (PLHRs) and only, Peak Load Exemption Charges (PLEC) were to be charged. The Petitioner had opted for ToD Tariff for the FY 2014-15 and did not violate any provision for PLEC for the said year.
3. The Petitioner opted for ToD Tariff, in terms of provisions contained in CC No. 16/2015 dated 07.05.2015 ( issued on the same basis as issued first time vide CC No. 46/2014) stating, inter-alia that Hon’ble Commission has approved the Time of Day (ToD) Tariff for Large Supply Industrial Category and Medium Supply Industrial consumers w.e.f. 01.04.2015 to 30.09.2015 on optional basis detailed below:

|  |  |  |
| --- | --- | --- |
| ***Period*** | ***Time Period*** | ***Tariff*** |
| *April, 2015 to September, 2015* | *06:00 AM to 06:00 PM* | *Normal Tariff for FY 2015-16* |
| *06:00 PM to 10:00 PM* | *Normal tariff for FY 2015-16 plus PLEC during peak load hours as approved by the Commission in the Tariff Order for FY 2013-14*  |

 *Note*:(1) *There shall be no ToD rebates/ToD Tariff during the months of April and May 2015.*

*Note: (2) The Load to be run during Peak Load Hours shall*

*be as per sanction granted by CE/PP&R to respective Industrial Consumers and on the basis of which PLEC shall be charged.*

1. In compliance to order dated 28.03.2016 of the Hon’ble PSERC, the Respondent issued CC No. 12/2016 dated 31.03.2016 with the directions to charge the existing Tariff from all categories of consumers with effect from 01.04.2016 till the date of issue of the Tariff Order for the FY 2016-17 which, in turn, was notified by the Hon’ble PSERC on 29.07.2016 w.e.f. 01.08.2016.

In view of the above, it could be safely concluded that for the period from 01.04.2016 to 23.07.2016, only Tariff Order for the FY 2015-16 was in force. As such, the General conditions of Tariff for the FY 2015-16, not prescribing any penalty for PLHRs violations, remained applicable.

1. After notification of Tariff Order for the FY 2016-17 on 29.07.2016, the Respondent had, vide PR Circular No. 01/2016 dated 29.07.2017, withdrew the instructions regarding Peak Load Restrictions, exemptions and violations thereof issued vide PR Circular No. 01/2015 dated 31.03.2015, 11/2014 dated 29.08.2014, 05/2013 dated 11.04.2013, 02/2003 dated 25.04.2003 and 07/1999 dated 28.09.1999. This clearly meant that for the FY 2016-17, no charges for Peak Load Violations/Exemptions were leviable. As a result, Instruction No. 132 of ESIM became null and void. Thus, the Petitioner could not be charged for PLVs for use of energy during Peak Load Restriction Hours for the period from 01.04.2016 to 23.07.2016. Moreover, if Hon’ble PSERC had issued the Tariff Order for the FY 2016-17 in April 2016 (instead of on 29.07.2016) there would not have been Peak Load Exemption Violation as per General Conditions of Tariff for the FY 2016-17 and earlier also for the FY 2015-16.
2. The Respondent contested that averments made by the PR and stated that since the Petitioner had opted for ToD Tariff, hence, the provisions of CC No. 16/2015 dated 07.05.2015 were applicable in its case. Besides, there was no merit in the contention of the PR that had the Tariff Order for the FY 2016-17 been issued in April 2016 (instead of on 29.07.2016), there would have been no Peak Load Exemption Violation.

Since, the Respondent had, in compliance to orders dated 28.03.2016 of Hon’ble PSERC, issued CC No. 12/2016 dated 31.03.2016 for continuation of existing Tariff Structure till the date of issue of Tariff Order for the FY 2016-17, hence, Normal Tariff for the FY 2015-16 plus PLEC during Peak Load Hours, from April 2016 to September 2016, as approved by the Commission in the Tariff Order for the FY 2013-14 were applicable. The Respondent referred to the plea of the PR about Clause 15.1 of General Conditions of Tariff and stated that **the Petitioner had withdrawn the Peak Load Exemption of 400kW (which was taken by it earlier) from 10.07.2015 onwards. Thus, PLEC was not applicable, instead, Peak Load Violation Charges were applicable.**  The Respondent stated that Clause 132 of ESIM did not become null and void as argued by the PR. Rather, it remained applicable till issuance of PR Circular No. 01/2016 on 29.07.2016, effective from 01.08.2016, after notification of Tariff Order for the FY 20167-17.

*I fully agree with the defence put forth by the Respondent. I am also of the view that instructions in whatever form (i.e. PR or Commercial Circulars) issued on a particular date, making the same applicable for a particular Financial Year 2016-17, by the Distribution Licensee, with the approval or on the directions of the Regulatory Commission are valid and are to be implemented in letter and spirit. Accordingly, the Petitioner has no locus standi to find an alibi by arguing that had the Tariff Order for the FY 2016-17 been issued in April 2016 (instead of on 29.07.2016), there would not have been Peak Load Exemption violations during the said Financial Year.*

From the above analysis, it is concluded that the charges levied on the Petitioner for the Peak Load Violations, during the period from 01.04.2016 to 23.07.2016, are correct and recoverable from the petitioner in terms of provisions contained in Instruction No. 132 of ESIM-2011.

**5. Decision:**

 **As a sequel of above discussions, the order dated 17.11.2017 of CGRF in Case No. CG-210 of 2017 is upheld. Accordingly, the Respondent is directed to calculate the demand and recover/refund the amount found short/excess, if any, after adjustment without interest.**

**6.** The Appeal is dismissed.

**7.** In case, the Petitioner or the Respondent (Licensee) 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)

June 14, 2018 LokPal (Ombudsman)

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