IN THE COURT OF THE LOKPAL (OMBUDSMAN),

 ELECTRICITY, PUNJAB,

66 KV GRID SUB-STATION, PLOT NO. A-2,

INDUSTRIAL AREA, PHASE-1, S.A.S NAGAR (MOHALI)

Appeal No. 36 / 2017 Date of Order : 04.10.2017

Mahaluxmi Processing

# C-231, Phase-VIII, Focal Point

Ludhiana

 …….PETITIONER

Account No. 3002809448

*Through:*

Shri K.D. Parti, Petitioner’s Representative (PR)

VERSUS

PUNJAB STATE POWER CORPORATION LIMITED

 …..RESPONDENT

*Through:*

Er. K.P. Singh Sidhu,

Additional Superintending Engineer

“OP” Focal Point Division (Special)

PSPCL, Ludhiana.

Petition No. 36/2017 dated 13.07.2017 was filed against order dated 05.07.2017 in case No. T-142 of 2017 of the Consumer Grievances Redressal Forum (Forum) which observed that:

*“ the case has been filed by the Petitioner on 09.05.2017 and filed after a period of more than two years from the date of cause of action. As such, the case is time barred and can not be registered.”*

1. Arguments, discussions & evidence on record were held on 03.10.2017 and 04.10.2017.
2. Shri K.D. Parti, PR, attended the court proceedings on behalf of the Petitioner. Er. K.P. Singh Sidhu, Addl. Superintending Engineer / “Operation” Focal Point Division (Special), PSPCL, Ludhiana, and Shri Gur Satinder Singh, AAO (Revenue) appeared on behalf of the Respondent Punjab State Power Corporation Limited (PSPCL).

4. Presenting the case on behalf of the Petitioner, Shri K.D. Parti (PR) stated that the electric connection, bearing Account No. 3002809448, was running under the jurisdiction of Focal Point Division (Special) PSPCL, Ludhiana.

 PR further stated that the Petitioner’s average consumption (including Purchase of Power under open access) during FY 2014-15 was more than the average consumption during preceding three years and thus, it was entitled for rebate on excess consumption as per Commercial Circular (CC) No. 49 / 2014 dated 16.10.2014, in terms of which the said rebate was to be allowed through adjustment in Electricity Bills by the Respondent suo-motto as per the provisions of the Circular ibid and no request was required to be submitted. But, in the case of the Petitioner, the Respondent failed to allow the said rebate inspite of repeated oral requests and written submission by the Petitioner. However, after continuous efforts, its application dated 03.12.2016 was sent in original by AEE / Commercial, Focal Point Division (Special), PSPCL, Ludhiana vide endst. no. 3390 dated 05.12.2016 to Centralized Billing Cell (CBC), PSPCL, Ludhiana on the basis of which, Revised Bill Statement (RBS) No. 14 / 2017 dated 23.02.2017 was prepared by the CBC, PSPCL, Ludhiana which sent it to AEE / Commercial, Focal Point, PSPCL, Ludhiana vide endorsement no. 640 dated 23. 02. 2017. This RBS was subject to pre-audit.

 PR further stated that the Petitioner approached the office of the AEE / Commercial, to get the RBS pre-audited but to no avail because the audit for the disputed period had already taken place and the Petitioner was ultimately advised orally to present the grievance to the Dispute Settlement Committee or Forum as no action could be taken till the case was decided by the Competent Authority. Aggrieved with the unwarranted attitude of the Respondent, the Petitioner approached the Forum by filing a Petition on 09.05.2017 and the same was fixed for pre-hearing on 05.07.2017, when complete details of the case, in writing, were also submitted by the Petitioner to the Forum.

 PR also stated that the Forum, without considering the facts and logic of the case, refused to register it on the grounds that there was no record to prove that the Petitioner had moved any application for this rebate and now the period of two years had elapsed from the date of cause of action and as such, the case was time barred, and could not be registered.

 PR further stated that the Forum had not investigated and considered the facts of the case leading to the cause of action in true spirit as was evident from the following:

1. *No request to allow the rebate as per CC No. 49 / 2014 was required from the Petitioner and the rebate was required to be allowed suo-motto by the Respondent,*
2. *The time limitation was required to be counted from the date of preparation of RBS which, in the present case, was 23.02 2017 and not from the date when the rebate was due. The delay, in preparation of RBS, was purely on the part of the Respondent, for which the Petitioner could not be held responsible for rejecting the payment of its due rebate,*
3. *The Forum relied on a statement of the Addl. SE, Operation Division that no case was forwarded to CBC vide endst. no. 3390 dated 05.12.2016. In case, reference was not made by the said office, then why, the RBS, on receipt therein, was not back referred to CBC and what was the necessity for CBC to prepare the RBS in question, without any reference from the concerned Operation Division?*

 PR further stated that the decision was, thus, based on lied facts and was required to be set aside only on this ground as the whole record relating to the matter was in the control and custody of the Respondent who could be summoned to verify the actual facts. During pre-hearing on 05.07.2017, the Forum was requested to summon the record but it refused to accept the request and dismissed the Petition on filmsy grounds just to dispose-off the Petition. The Petitioner reiterated that:

1. *No request for this rebate was required from the Petitioner as per CC No. 49/2014 and the Respondent was required to allow the rebate suo-motto,*
2. *Even then, the Petitioner moved an application in writing to the Respondent asking for rebate and the same was forwarded in original by AEE / Commercial, Focal Point Division (Special), PSPCL, Ludhiana to CBC, PSPCL, Ludhiana vide endorsement no. 3390 dated 05.12.2016, on the basis of which, RBS was prepared and sent to the said AEE / Commercial vide endst. no.641 dated 23.02.2017,*
3. *The Forum had illegally refused to entertain the case without considering facts minutely. The relevant record should have been summoned by the Forum to verify the facts and statement made by Respondent’s officers,*
4. *Injustice had been meted out to the Petitioner by denying it legitimate rebate which, the Respondent was required to give without any application from the Petitioner. Further, the Forum had done grave injustice to the Petitioner by rejecting its case without conducting any investigations and without verifying the facts placed on record by the officers of the Respondent.*

PR prayed that either the case may be registered in this Court to investigate the facts in the interest of justice to the Petitioner or the Forum may be directed to register the case without going into the issue of time barred and decide the case on merits to redress the grievance of the Petitioner as it had suffered an unbearable financial loss and was trying hard to get this rebate, which was already delayed for a period of more than two years. While submitting rejoinder to the reply of the Petition submitted by the Respondent, the Petitioner requested vide e-mail dated 28.09.2017 that PSPCL should be directed to give the rebate in the electricity bill (s) with interest.

5. Er. K.P. Singh Sidhu, Addl. S.E. / Operation, Focal Point Division (Special), PSPCL, Ludhiana, defending the case, stated that the connection of the Petitioner was running under LS category in the name of Mahaluxmi Processing under Account No. 3002809448 having sanctioned load of 2495 kW with Contract Demand 2495 kVA. The consumer filed an application before Forum for allowing rebate as per CC No. 49/2014. He stated that as per this circular, the consumer, whose energy consumption during the year 2014-15 was more than the average threshold limit consumption in the preceding three years i.e. 2011-12, 2012-13 and 2013-14, were entitled to rebate of Rs. 1/- per unit (kWh / kVAh). The rebate was to be allowed through adjustment in Electricity Bills.

He stated that, as per Regulation 5 (2) (i) of PSERC (Forum and Ombudsman) Regulation-2005 (5th amendment), the Forum shall entertain only those complaints where the representation was made within two years from the date of cause of action in case, the complainant approached the Forum directly or within two months from the date of receipt of order of respective Dispute Settlement Committee under Consumer Complaint Handling Procedure (CCHP).

 He further stated that the Forum, after hearing both the parties, rejected the appeal on 05.07.2017 and observed as under:-

*“the case has been filed by the Petitioner on 09.05.2017 and filed after a period of more than 2 years from the date of cause of action. As such, the case is time barred and cannot be registered.”*

The Respondent also stated that in the light of CC no. 40 / 2016 dated 09.09.2016, CC No. 50 / 2016 dated 08.11. 2016 and clarification issued vide

memo no. 452 / 456 / SR-49 dated 07.06.2017 by O/O E-I-C / Commercial, PSPCL, Patiala, the respective Dispute Settlement Committees had been authorized for decision of disputed cases pertaining to the audit period. Subsequently, the case of the consumer has been sent to the Deputy Chief Engineer, City East Circle, Ludhiana for further forwarding it to the concerned Review Committee consisting of EIC / CE / DS concerned along with CAO / CA of Finance and Deputy Chief Engineer / Sales of Commercial wing. The case was fixed for hearing on 08.09.2017, but meeting was postponed due to unavoidable circumstances and the case was in due process of decision with the aforesaid Review Committee. The Respondent prayed that, in view of the above submissions, the appeal filed by the Petitioner be dismissed.

6. **Decision:**

 The relevant facts of the case are that the Petitioner, having electric connection, bearing account number 3002809448, consumed Electricity during 2014-15 in excess of average consumption worked out during preceding three years 2011-12, 2012-13 and 2013-14 and became entitled to rebate @ Rs. 1/- per unit (kWh / kVAh) on excess consumption by way of adjustment in Electricity Bills, as per E-I-C / Commercial Circular No. 49 / 2014 dated 16.10.2014 issued in compliance to Punjab State Electricity Regulatory Commission (PSERC) Tariff Order for the FY 2014-15. But, the rebate was not allowed suo-motto. The Petitioner statedly made continuous efforts for getting rebate in bills but to no avail. Finally, the Petitioner moved an application dated 03.12.2016 to the AEE / Commercial, Focal Point Division (Special), PSPCL, Ludhiana who forwarded the same in original to the Centralized Billing Cell (CBC), PSPCL, Ludhiana vide endst. no. 3390 dated 05.12.2016 (denied by the Respondent to have been sent in its reply, but copy thereof was sent by CBC, Ludhiana to this court, on being directed by this Court) on the basis of which, RBS was prepared by CBC and sent to AEE / Commercial, Focal Point (Special) Division, PSPCL, Ludhiana, vide endorsement no. 641 dated 23.02.2017. As the RBS was subject to pre-audit, the Petitioner approached the AEE / Commercial, Focal Point Division (Special), PSPCL, Ludhiana for getting the same pre-audited but was orally advised to present its grievance to the Dispute Settlement Committee or the Forum as the audit for the FY 2015-16 had already been completed. The Petitioner submitted a Petition dated 09.05.2017 to Forum which did not register it on the ground that there was no record to prove that the Petitioner had moved any application for this rebate and the period of two years had since elapsed from the date of cause of action. However, later on, in view of the instructions circulated vide Commercial Circular No. 40/2016 dated 09.09.2016, 50 / 2016 dated 08.11.2016 and clarification issued vide Memo. No. 452 / 456 / SR- 49 dated 07.06.2017 by the O/O E-I-C (Commercial), PSPCL, Patiala, the case was referred by AEE / Commercial, Focal Point Division (Special), Ludhiana to the Review Committee consisting of EIC / CE / DS concerned alongwith CAO / CA of Finance and Dy. CE / Sales of Commercial Wing and was fixed for hearing on 08.09.2017, but, the meeting of the Review Committee was postponed due to unavoidable circumstances as intimated by the Respondent and the decision is still pending. The Respondent, on being directed, e-mailed on 04.10.2017, a list of about 900 consumers who were eligible for the rebate as per CC No. 49 / 2014 which was given to most of them in different billing cycles in the year 2015.

I have gone through the written submissions made by the Petitioner in the Petition, written reply of the Respondent as well as oral arguments made by the Petitioner’s Representative and Representative of the Respondent PSPCL alongwith the materials brought on record. The issues requiring adjudication in the present dispute, are:

i) *whether the decision dated 05.07.2017 of CGRF is in order or warrants interference by this Court?*

*ii) whether this Court may decide to allow the rebate to which the Petitioner was legitimately entitled and also admitted by the Respondent but was not paid on becoming due within the audit period?*

 My findings on the above issues, after hearing both the sides are as under:

1. *In my view, the Forum erred in verifying the authenticity of the*

*contention of the Respondent as mentioned in its order dated 05.07.2017 that “as per its office record, no letter was sent to CBC vide endst. no. 3390 dated 05.12.2016”. The Forum failed to take cognizance of the fact that it was only on the basis of the said reference that RBS was prepared by A.S.E., CBC, PSPCL, Ludhiana and sent to A.S.E., Focal Point Division (Special), PSPCL, Ludhiana vide endst. no. 640 dated 23.02.2017.*

*The Forum’s observation that “the case has been filed after a period of more than two years from the date of cause of action. As such, the case is time barred and can not be registered” is not just and fair as per evidence / material brought on record viz. application dated 03.12.2016 of the Petitioner addressed to the AEE / Commercial, Focal Point Division (Special), PSPCL, Ludhiana called for on my instructions during the course of hearing. Its perusal reveals that the said application was forwarded in original by the AEE / Commercial, Focal Point Division (Special), PSPCL, Ludhiana, vide endst. no. 3390 dated 05.12.2016 to CBC, Ludhiana. I am of the view that since the Petitioner submitted application for rebate on 03.12.2016, in whose response the RBS was prepared by CBC and forwarded to ASE, Focal Point Division (Spl.), PSPCL, Ludhiana on 23.02.2017, the cause of action arose on 23.02.2017 and the Petitioner approached the Forum on 09.05.2017 within the stipulated time period of two years as per provisions contained in Regulation 2.25 of PSERC (Forum & Ombudsman) Regulations-2016.*

*ii) I am also of the view that it will be appropriate to decide the case on merits with a view to ensure expeditious delivery of justice instead of referring it back to the Forum for consideration accordingly. This is basically due to the reason that the Respondent did not contest the legitimacy of the claim of the Petitioner for rebate on excess consumption as per CC No. 49 / 2014 dated 16.10.2014 either in the reply to the Petition or during hearing. Rather, the Respondent admitted both in the reply to the Petition and also during hearing that the rebate was to be allowed by way of adjustment in the bills. Besides, the very fact that A.S.E., CBC, PSPCL, Ludhiana prepared the RBS and sent it to A.S.E. / Operation, Focal Point Division (Special), PSPCL, Ludhiana vide endst. no. 640 dated 23.02.2017 was also an admission that the Petitioner was legitimately entitled to the rebate in question.*

*During oral arguments, the A.S.E. Operation, Focal Point Division (Special), PSPCL, Ludhiana was directed to provide the list of consumers to whom the rebate as per CC No. 49/2014 was given suo-motto. Accordingly, the list was provided by the Respondent through e-mail dated 04.10.2017 which shows that about 900 consumers, entitled to rebate, were given this benefit in different billing cycles in the year 2015 while some eligible consumers were left out. The RBS for the left out consumers was statedly prepared by the CBC subject to pre-audit and sent to Focal Point Division (Special), Ludhiana. But, since this period stood already audited, hence, the rebate could not be given to the Petitioner who filed the appeal in the Forum.*

I also observe that the issuance of CC No. 49 / 2014 by PSPCL is in compliance to the Tariff Order for the FY 2014-15, approved by PSERC. This order of PSERC was aimed at giving incentive to high ended consumers for reducing the extra fixed cost of surrendered Power to some extent. The Tariff Order FY 2014-15 lays down that “ *The total loss of fixed cost of Rs. 1706 crore can be recovered if the whole of the surplus power of 12807 MU as projected by PSPCL in the ARR is sold within the State or outside the State, which seems to be unlikely. It is expected that about 3000 MU out of a total surplus power of 12807 MU may be sold if a discount is given on power consumption beyond a threshold.” ………… “the Commission approves rebate of Rs. 1/kWh (or kVAh) on the category-wise tariff for all categories, except Street Lighting and AP categories. This will result in reducing extra fixed cost of surrendered power to some extent.”……..*

It is thus clear that if the Petitioner is denied the benefit of rebate for power consumed beyond its threshold, it would be violative of the aforesaid PSERC Tariff Order for the FY 2014 -15.

As a sequel of above discussions, it proves beyond doubt that the Petitioner was subjected to undue hardship and was denied its rightful due on account of failure of the Respondent to comply with its own instructions. So, I have no hesitation to set aside the order dated 05.07.2017 of the Forum in case No. T-142 of 2017. The Respondent is directed to allow the requisite rebate to the Petitioner in letter and spirit in terms of instructions contained in CC No. 49/2014 and as per RBS No. 14 / 2017 dated 23.02.2017 prepared by CBC, Ludhiana. However, no interest on this payment is allowed.

E-I-C, Commercial, PSPCL, is also directed to ensure that the rebate is given to all similarly placed consumers in the light of this decision by 31.12.2017 and report compliance.

7. The appeal is disposed off accordingly.

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

 (VIRINDER SINGH)

 LokPal (Ombudsman)

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