COURT OF THE LOKPAL (OMBUDSMAN),

 ELECTRICITY, PUNJAB,

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

 S.A.S NAGAR (MOHALI)

**Appeal No. 61/2017**

Date of Registration: 18.09.2017

Date of Hearing : 27.02.2018 Date of Order: 06 .03.2018

**In the matter of**

Narinder Kumar Madan,

 Kissan Crates,

 Plot No. B-2, Focal Point,

 Abohar-152 116.

…….Petitioner

Versus

Additional Superintending Engineer,

DS Division,

 PSPCL, Abohar.

 .….Respondent

**Present For**

Petitioner 1. Shri S. R.Jindal, Petitioner’s Representative

Respondent 1. Er.Malkeet Singh Sidhu,

 Additional Superintending Engineer 2. Er. Mulkh Raj, Assistant Engineer

 The Petitioner preferred an Appeal in this Court against the order dated 18.08.2017 in Case No. CG-170 of 2017 of the Consumers Grievances Redressal Forum (Forum) deciding that:

 *“The Petitioner be given TOD tariff (Peak Load Charges and TOD rebate) from 01.12.2015 to 31.03.2016. Forum further decided that Peak Load Violation Charges charged to the Petitioner for violations upto 30.11.2015 is correct and chargeable and from 01.12.2015 to 17.02.2016 Peak Load Violation Charges are not chargeable.”*

**2. Facts of the Case**

1. The Petitioner was having a Large Supply category connection with Sanctioned Load of 200kW and Contract Demand of 222kVA. The connection was released on 01.10.2015 on the request of the Petitioner vide Application and Agreement (A&A) dated 06.07.2015. The metering was being done by providing DLMS Compliant Energy Meter.
2. The Petitioner statedly came to know of the scheme for introduction of ToD Tariff, for the period from 01.10.2015 to 31.03.2016, circulated by the PSPCL vide Commercial Circular (CC) No. 16/2015 dated 07.05.2015 as per which, Large Supply Industrial category consumers could opt for ToD Tariff by 15.09.2015. After the release of the said connection on 01.10.2015, he Petitioner opted for ToD Tariff on 09.11.2015
3. The connection was checked by Senior Executive Engineer, MMTS, Bathinda on 11.12.2015 and 18.02.2016 when down loaded data of the Energy Meter was taken.
4. Senior Executive Engineer, MMTS, Bathinda submitted its report of checking the connection vide memo dated 17.02.2016 and 28.06.2016 on the basis of which the Petitioner was served with notices for violation of Peak Load Hours Restrictions (PLHRs) and amounts of Rs. 97,646/- and Rs. 3,21,435/- were charged on 23.02.2016 for the period from 05.10.2015 to 06.12.2015 and 05.07.2016 (for the period 12.12.2015 to 17.02.2016) respectively.
5. The Petitioner did not pay the amounts charged within the stipulated period and the same were debited in the energy bills issued in the months of 09/2016 and 05/2017. The Petitioner then paid the entire amount through the bills.
6. The Petitioner did not agree with the amounts charged and filed a Petition in the Forum, which, after hearing, passed order dated 18.08.2017 ( refer Para 1 at Page-2 ).

(vii) The Petitioner was not satisfied with the decision of the Forum and filed an Appeal in this Court statingthat the Respondents had no rules to recover any amount from the Petitioner, as raised illegally and beyond the rules of the PSPCL, hence, the Petitioner prayed that the same be withdrawn in the interest of justice.

**3. Analysis and Findings**

I have gone through the written submissions made in the Appeal by the Petitioner and written reply of the Respondent as well as oral submissions made by the Representatives of both the Petitioner and the Respondent alongwith material brought on record by both the sides.

The issue requiring adjudication is the legitimacy of the ToD rebate claimed by the Petitioner from 01.10.2015 to 08.11.2016 and the Peak Load Violation (PLV) charges charged to the Petitioner for these violations during the period from 01.10.2015 to 30.11.2015.

*My analysis and findings in this case are deliberated as under:*

1. PR argued that the connection of the Petitioner for Load of 200kW and CD of 222kVA (LS category) was released on 01.10.2015 for General industry, while the scheme for ToD Tariff for Large Supply/Medium Supply Industrial Category consumers was introduced vide CC No. 16/2015 dated 07.05.2015 effective from 01.10.2015 to 31.03.2016 for such consumers opting for ToD tariff by 15.09.2015. Besides, instructions relating to ToD Tariff as well as Peak Load Hour Restrictions (PLHRs), if any, were not got noted from the Petitioner at the time of release of connection on 01.10.2015. PR also stated that on 09.11.2015, at the time of recording monthly readings, Shri Jai Inder Maheshwari, AEE told the Petitioner about ToD scheme introduced by the PSPCL, hence, the Petitioner handed over the request/option for ToD Tariff w.e.f. 09.11.2015 and took the acknowledgement. This fact was admitted by the Respondent in the proceeding dated 28.07.2017 in the Forum. As per the said circular, time of fifteen days was given for replacement of the existing Energy Meter, whereas in the case of the Petitioner, DLMS compliant Energy Meter had already been installed at the time of release of the connection. Besides, the Respondent had, with it, the information available about the energy units consumed from 18:00 hours to 22:00 hours and from 22:00 hours to 06:00 hours from the next day onwards. Hence, there was no hitch in implementation of ToD tariff from 09.11.2015.

 The Respondent submitted that in the present case, the connection of the Petitioner was released on 01.10.2015 whereas Large Supply Industrial category consumers were given the opportunity to opt for ToD Tariff by 15.09.2015 as per CC No. 16/2015 dated 07.05.2015.

 I have perused CC No. 16/2015 dated 07.05.2015 circulating the approval of PSPCL for Time of Day (ToD) Tariff for Large Supply Industrial category and Medium Supply Industrial category consumers with effect from 01.10.2015 to 31.03.2016 on optional basis. I have also gone through the A&A Form submitted by the Petitioner at the time of taking the connection and noted the Clause No. 12, which read as under:

*“The consumer shall pay to be PSPCL every month charges for electricity supplied to the consumer in accordance with the provisions of General Conditions of Tariff and relevant Schedule of Tariff as approved by the Commission.”*

*A bare perusal of Clause No. 12 of the said Application and Agreement dated 06.07.2015, reveals that the consumer, at the time of release of the Connection, was aware of the General Conditions of Tariff and the relevant schedule of Tariff approved by the Hon’ble Punjab State Electricity Regulatory Commission (PSERC). As such, the Petitioner cannot feign ignorance about the provisions of CC No. 16/2015 dated 07.05.2015 issued by the PSPCL with the approval of the Hon’ble PSERC while deciding the Petition No. 71 of 2014 filed by the PSPCL and approving the Time of Day (ToD) Tariff for Large Supply Industrial Category and Medium Supply industrial Category consumers w.e.f. 01.10.2015 to 31.03.2016 on optional basis. It is also well known that circular ibid and all other instructions issued by the PSPCL, from time to time, are available on its website. It is, therefore, unbelievable that the Petitioner was not aware of the fact that it could opt for ToD Tariff immediately after release of connection on 01.10.2015. I also find from the material available on record that though the Petitioner submitted its option for ToD Tariff on 09.11.2015, it did not raise any objection either orally or in writing at that point of time that the Respondent PSPCL did not inform it about the same on 01.10.2015 when the connection was released.*

1. PR argued that notices for PLV charges after recording of DDL by the MMTS on dated 11.12.2015 and 18.02.2016 were issued in violation of Instruction 132.3 (i) (d) of ESIM -2010 vide SDO, Abohar’s memo no. 273 dated 23.02.2016 and 346 dated 28.06.2016 respectively as the Respondent - PSPCL had failed to comply with the said Instructions No. 132.3 (i) (d) which warned that PLV charges, as per DDL, be intimated to the consumer promptly before the next date of DDL due.

 PR also contended that the Petitioner had no knowledge of Peak Loads Timings/ToD Tariff and the same has not been got noted from the Petitioner by the Respondent and PLV charges as pointed out were not recoverable from the Petitioner as per rules.

PR further stated that the Respondent had illegally / wrongly recovered the PLV charges as, detailed below, directly through energy bills for the month of 09 / 2016 and 05 / 2017 in violation to the instructions of the PSPCL and no details/instructions/rules were provided as required under CC No. 04/2008 dated 09.01.2008:

|  |  |  |
| --- | --- | --- |
| Month | Date of issue of Bill | Amount charged (in Rs.) |
| 09/2016 | 12.10.2016 | 97,647/- |
| 05//2017 | 05.06.2017 | 3,21,435/- |
|  | Total: | 4,19,082/- |

 PR added that the bill showing the charged amount of Rs. 3,21,435/- was issued on 05.06.2017 and the same was collected from the office of the Sub Division No.3, PSPCL, Abohar on 13.06.2017. The last date of the bill was 15.06.2017. Hence, the Petitioner deposited the same to avoid surcharge/disconnection under protest.

 The Respondent, in its defence, stated that as per the Application and Agreement signed by the Petitioner, before release of Large Supply connection on 01.10.2015, the Petitioner agreed, inter-alia, to abide by the following:

“14. a) the consumer shall agree to restrict or regulate consumption of electricity under this agreement during peak hours as may be directed by the Commission / State Govt. or any other appropriate authority.”

*I have perused instruction no 132.3 (i) (d) of ESIM 2010 which reads as under:*

*“It may be ensured by MMTS and Distribution Organization that peak load hours restrictions/weekly off day violations, if any, as per DDL are intimated to the consumers promptly, but in any case before the due date for second DDL. However, In case of any delay, the responsibility may be fixed by the Chief Engineer/ Enforcement/concerned CE/DS and suitable action may be initiated against the delinquent officers/officials to avoid disputes on this account.”*

*I observe that the Respondent defaulted in complying with the above provisions by not intimating the PLVs of the first DDL dated 11.11.2015 before taking the next DDL on 18.02.2016.*

*As per records, the demand notice for PLVs, based on first DDL dated 11.11.2015 report, was issued by the Respondent, on 23.02.2016 i.e. after taking the second DDL on 18.02.2016. I also observe that the plea of the PR that the Petitioner came to know about PLVs, only on being so informed by Respondent vide notice dated 23.02.2016, is not convincing as the Petitioner, being a Large Supply Consumer must be well aware that it had signed the Application and Agreement for release of the connection on 01.10.2015 as per which, it agreed to restrict or regulate the consumption of electricity during Peak Hours as may be directed by the Commission/State Government or any other appropriate authority of the PSPCL. As such, the Petitioner should have observed Peak Load timings applicable from 01.04.2015 as Circulated vide PR circular No. 1/2015 dated 31.03.2015 also hosted on the website of the PSPCL.*

1. The PR also contended that the Petitioner further got approved Peak Load Exemption of 89kW load w.e.f. 14.07.2016 to 31.03.2017 against request dated 06.07.2016.

The Respondent, in its reply, stated that it had never granted any Peak Load Hours Exemption to the Petitioner.

1. PR argued that the connection fell at Alamgarh Focal Point, Abohar where the provision for erecting the Sub-station for the same was sanctioned, but the same had not been erected so far with the result that Power was not available due to continuous failure of Power supply and Power cuts.

 The Respondent, in its defence, stated that the contention of the PR was not relevant in the present dispute.

**(v)** PR also stated that this Court, in the Appeal Case No. 22 of 2011 decided on 29.09.2011 of Subiz Infotech Ltd, Mohali accepted the plea of the Petitioner that the instructions for observation of Peak Load Hour Restrictions (PLHRs) were not got noted at the time of releasing Large Supply connection (MS to LS). Similarly, the Appeals No. 54 of 2008, 03 of 2013, 31 of 2016 and 38 of 2016 were also accepted on the same or similar grounds.

 The Respondent contested the contention of the Petitioner by stating that the judgments cited above were not applicable to the facts and circumstances of the present case.

**4. Decision**

**As a sequel of above discussions, it is held that the Petitioner should be given benefit of ToD Tariff from 09.11.2015 ( the date of exercising of option for ToD Tariff). It is also held that Peak Load Violation Charges are chargeable only for the period from 01.10.2015 (date of release of connection) to 08.11.2015 are chargeable as per DDL dated 11.12.2015. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short without interest after adjustment, if any.**

4. The Appeal is disposed of accordingly.

5. In case, 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 and Ombudsman) Regulations – 2016.

 (VIRINDER SINGH)

 March 06, 2018 LokPal (Ombudsman)

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