

**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. 19/2024

Date of Registration : 02.09.2024
**Date of Hearing : 12.09.2024, 19.09.2024,
25.09.2024, 04.10.2024**
Date of Order : 23.10.2024

Before:

**Er. Anjuli Chandra,
Lokpal (Ombudsman), Electricity, Punjab.**

In the Matter of:

M/s Gagan Agro & Rice Exporters,
V.P.O-Badrukhan,
Tehsil-Sangrur, Distt.-Sangrur.

Contract Account Number: BR0100031 (LS)

...Appellant

Versus

Addl. Superintending Engineer,
DS Division,
PSPCL, Sangrur.

...Respondent

Present For:

Appellant: Sh. J. K. Singla,
Sh. Ashok Kumar,
Appellant's Counsels.

Respondent : 1- Er. Varinder Deepak,
Additional Superintending Engineer,
DS Division,
PSPCL, Sangrur.
2- Sh. Gurpreet Singh, RA.

Before me for consideration is an Appeal filed by the Appellant in accordance with the order dated 08.07.2024 of Hon'ble Punjab & Haryana High Court in CWP No. 3788 of 2017, CWP No. 4748 of 2017 & CWP No. 4788 of 2017 in which the case was remanded back to this Court, with the observation as under:-

“Under the given circumstances, the present writ petitions are allowed at this stage, without commenting on merits of the respective parties. The order passed by the Electricity Ombudsman to the extent of applicability of Instruction No.132.3(i)(d) of the Electricity Supply Instructions Manual is set aside and the matter is remanded to the Electricity Ombudsman for reconsideration of the issue on merits and position in law.

The parties shall appear before the Electricity Ombudsman on 08.08.2024, whereupon final order shall be passed by the Ombudsman in accordance with law and after granting an opportunity of hearing to the respective parties. The Ombudsman shall consider the matter unfazed by any observation recorded for adjudication of the Writ as the same was solely for examining the writ petition and not an expression on the inter-se merits.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 02.09.2024, after the Hon'ble Punjab and Haryana High Court remanded back the case to this Court vide its order dated 08.07.2024 & directed

both the parties to appear before the Court of Ombudsman, Electricity, Punjab. The Counsels of the Appellant appeared in the office of this Court & requested time for filing the Appeal. They were told to file Appeal on or before 22.08.2024. On 22.08.2024, the Appellant's Counsels requested further time till 02.09.2024 for filing the Appeal which was allowed to them. On 02.09.2024, the Appellant's Counsel submitted the Appeal. Therefore, the Appeal was registered on 02.09.2024 and copy of the same was sent to the Addl. Superintending Engineer, DS Division, PSPCL, Sangrur for sending written reply/ parawise comments with a copy to the office of the CCGRF, Ludhiana under intimation to the Appellant vide letter nos. 483-485/OEP/A-19/2024 dated 02.09.2024.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 12.09.2024 and intimation to this effect was sent to both the parties vide letter nos. 499-500/OEP/A-19/2024 dated 04.09.2024. As scheduled, the hearing was held in this Court on 12.09.2024 and arguments of both the parties were heard. The Respondent submitted the written reply which was taken on record. A copy of the same was handed over to the Appellant's Counsel. The Appellant's Counsel requested for some time to file the Rejoinder to the written reply of the

Respondent. The next date of hearing was fixed for 19.09.2024. An intimation to this effect alongwith the copy of proceedings dated 12.09.2024 were sent to both the parties vide letter nos. 512-13/OEP/A-19/2024 dated 12.09.2024.

As scheduled, the hearing was held in this Court on 19.09.2024. The Appellant's Counsel submitted Rejoinder to the written reply of the Respondent, which was taken on record. A copy of the same was handed over to the Respondent. The Appellant's Counsel requested for next date for the oral arguments. The case was adjourned to 25.09.2024 and intimation to this effect alongwith the copy of proceedings dated 19.09.2024 were sent to both the parties vide letter nos. 522-23/OEP/A-19/2024 dated 19.09.2024.

The Appellant's Counsel requested this Court through email dated 20.09.2024 to give another date for the hearing in this case as he won't be able to attend the hearing on 25.09.2024 due to some personal difficulty. This Court considered the request of the Appellant's Counsel & the case was adjourned to 04.10.2024. An intimation to this effect alongwith the copy of proceedings dated 25.09.2024 were sent to both the parties vide letter nos. 541-42/OEP/A-19/2024 dated 25.09.2024. As scheduled, the hearing was held in this Court on 04.10.2024.

After hearing arguments of both the parties, the case was closed for the pronouncement of the orders.

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 deliberations made by the Appellant's Representative and the Respondent along with 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) Earlier the Appellant had filed appeal vide Appeal No. 31 of 2016 before Court of Ombudsman, Electricity, Punjab by challenging Order dated 28.04.2016 passed by CGRF, Patiala for levying penalty of ₹ 8,56,350/- by PSPCL upon the Appellant for violation of peak load hours restrictions during the period from 01.04.2015 to 28.05.2015 at various time intervals of PLHR and the Court of Ombudsman, Electricity, Punjab pleased to allow the Appeal of the Appellant vide Order dated 16.09.2016. However, PSPCL had filed Writ Petition No.4788 of 2017 before Hon'ble Punjab & Haryana

High Court, Chandigarh and ultimately the same was allowed and the matter had been remanded back to the Court of Ombudsman, Electricity, Punjab to decide afresh vide its Order dated 08.07.2024. The parties were directed to appear before the Court of Ombudsman, Electricity, Punjab on 08.08.2024. In compliance of Order dated 08.07.2024, the Appellant through its Representative appeared on 08.08.2024 before the concerned officer of the Court and the concerned officer of this Court had directed the authorized Representative of the Appellant for filing fresh Appeals separately of each notice/each DDL complete from all aspects by filing all the documents along with said Appeal. Upon which the time was granted by the concerned officer of the Court to the Representative of the Appellant for filing/submitting fresh Appeals separately qua three separate Impugned Notices/DDL which was filed before the Court of Ombudsman, Electricity, Punjab.

- (ii) The Hon'ble Punjab & Haryana High Court dealt with the issue involved in three separate writ petitions i.e. CWP Nos. 3788 of 2017, 4748 of 2017 and 4788 of 2017 being common issue/dispute pertaining to DDLs qua different periods and passed common order dated 08.07.2024 while remanding the

matter to the Court of Ombudsman, Electricity, Punjab for reconsidering of applicability of Instruction No. 132.3 (i)(d) of Electricity Supply Instructions Manual that apart from disciplinary proceedings to be initiated against the employees of Respondent due to lapse on their part for not intimating the Circular to the consumer in time/promptly in view of above said instructions, can any benefit be given to the consumer by giving the benefit of above said instructions being no findings or observations qua specific benefit by applying above said instructions had come in Order dated 16.09.2016 passed by the Court of Ombudsman, Electricity, Punjab.

It was worthwhile to mention here that the plea/arguments were neither been raised by the Respondent at the time of arguments nor at any other time either before the Court of Ombudsman, Electricity, Punjab or had been taken specifically before Hon'ble Punjab & Haryana High Court while filing their above mentioned writ petitions but had succeeded to obtain Order dated 08.07.2024 from the Hon'ble Punjab & Haryana High Court by misleading the Hon'ble Court totally contrary to their own arguments as earlier raised before the Court of Ombudsman, Electricity, Punjab as well as against various Judgments and orders passed by Court of

Ombudsman, Electricity, Punjab while giving benefit to other consumers in the similar situated circumstances as well as facts by applying/relying upon above said instructions i.e. 132.3 (i) (d) with support as well as relying upon Instructions i.e. C.C. No. 25 of 2015 dated 16.06.2015.

It was further submitted here that even the Representative of the Respondent PSPCL clearly admitted during oral arguments on 13.10.2016 at the first round of litigation before the Court of Ombudsman, Electricity, Punjab in Appeal No. 38 of 2016 that if the penalty imposed by them upon the Appellant was not found to be recoverable, then the Appellant might be directed to pay only PLEC charges at applicable rates which proved clear admission on the part of the Respondent about fault on their part and by denying their oral arguments, the Court of Ombudsman, Electricity, Punjab had given the benefit to the Appellant vide Order dated 13.10.2016. The relevant para/part was reproduced as under:

Appeal No.38/2016 Decided on: 13.10.2016

During oral arguments held on 13.10.2016, the respondents representative also argued that incase the penalty is not held recoverable, the petitioner may be directed to pay PLE Charges at applicable rates. In my view, the PLE Charges are payable only where the consumers are aware that they had to follow the

restrictions otherwise had to pay penalty for violations and accordingly to avoid penalty they obtain necessary permission to run their load during restriction hours, whereas, in the present case, the load had been run by the petitioner being unaware of any kind of instructions. MOREOVER, THE ARGUMENT IS NOT SUPPORTED BY ANY LAW/RULE/REGULATION, thus, I do not agree with the respondents argument that petitioner should at least pay PLEC at the applicable rates for the period of default, and hence, THE ARGUMENT IS HELD AS “NOT MAINTAINABLE”.

Thus, keeping in view of the above said observations as well as facts and circumstances of the present case the Appellant was fully entitled to get benefit for waiving off Peak Load Restrictions Hours by taking the benefit of above said instructions i.e.132.3 (i) (d) due to non-intimation promptly and the Court of Ombudsman, Electricity, Punjab while exercising their discretionary powers may kindly grant the benefits to the consumers i.e. Appellant by applying above said instructions i.e. 132.3 (i) (d) read with Circular No. 25 of 2015 dated 14.06.2015.

- (iii) The Appellant was running Large Supply Connection having load of 725 kW and CD 800 kVA at Village-Badrukhan under the jurisdiction of DS Sub-division, PSPCL, Badrukhan and DS Division, PSPCL, Sangrur.
- (iv) The electricity connection was released by the PSPCL in favour of Appellant on 10.11.2014 and since then the

connection of the Appellant was fully covered under TOD (Tariff of Day) Scheme, Peak Load Charges or Peak Load Restrictions Violation Surcharge.

- (v) The office of PSPCL never brought to the knowledge/Notice regarding applicability of peak load restrictions either at the time of release of connection in favour of Appellant or any other time thereafter. Even, in demand notice no such clause regarding applicability of peak load charges or peak load restrictions was incorporated in illegal and arbitrary Demand Notice.
- (vi) The AE, DS Sub Division, PSPCL, Badrukhan vide his office letter No. 1985 dated 17.11.2015 issued totally arbitrary notice regarding peak load violation penalty for the period 01.04.2015 to 28.05.2015. Then the Appellant came to know about this penalty only upon receiving of said letter.
- (vii) Vide PR Circular No. 1/2015 dated 31.03.2015, TOD Scheme which was applicable to LS and MS Consumers upto 31.03.2015 was discontinued with immediate effect i.e. from 01.04.2015 vide Circular dated 31.03.2015 i.e. on the very next day without any kind of valid notice/intimation to the respective LS & MS Consumers. Therefore, these instructions/Circular No.1/2015 dated 31.03.2015 was neither

brought to the knowledge of Appellant nor informed to the Appellant by the concerned officials of PSPCL in spite of the fact as well as specific averments of above said Circle that the same shall be served/supplied or got noted from all the concerned Consumers well in advance.

- (viii) When the Appellant came to know about the applicability of peak load charges even after two another default then the Appellant immediately applied for seeking exemption of peak load restrictions and the same had been granted in favour of Appellant by PSPCL vide CE/Power Purchase and Regulations, PSPCL Patiala vide Memo No. 1695 dated 07.04.2016.
- (ix) It was not out of place to mention here that if the concerned officials of PSPCL had performed their duties with due care and cautions by complying with the specific directions of Circular No. 01/2015 dated 31.03.2015 by giving proper and valid Notice or prior information well in time to the Appellant then it would had definitely applied for exemption earlier without any fault but in spite of this, the Appellant was still ready to pay peak load charges but without any penalty or any other charges being no fault on the part of Appellant due to the reasons:-

Firstly:- Circular No.01/2015 was neither been served nor been supplied either to the Appellant or any Representative of Appellant rather the same was never been brought into the knowledge of Appellant by the PSPCL.

It was worthwhile to mention here that the Representative of Respondent had taken various stands in 1st round of litigation with regard to giving information about P.R. No. 01/2015 to the authorized Representative of the Appellant and all the stands taken by the Representative of Respondent were contradictory with each other as somewhere, the Respondent orally submitted that they got noted down the said Circular through the Representative of Appellant (though, neither admitted nor noted down) and on the other hand the Respondent submitted that they had sent the said Circular to the Appellant but neither any valid, legal and reasonable evidence qua supplying/affecting delivery of said Circular to the Appellant in a legal and valid manners in accordance with Instruction No.148 of ESIM had come on record. The relevant part of Instruction No.148 of ESIM is as under:

“148. Manner of Delivery of Notice, Order or document

Government of Punjab vide its notification no. 1/78 /04-EB (PR)/565 dt. 25/8/2009 notified the Rules to prescribe

manner for serving the order of provisional assessment and means of delivery of notice, order or document.

148.1 Manner of Service of Provisional Order of Assessment – The order of provisional assessment, made by the assessing officer under the Act, shall be served upon the person concerned in the following manner, namely:

148.1.1 by delivery through registered post with acknowledgement due or through courier: or

148.1.2 by affixing at the conspicuous place of the premises where he ordinarily resides or carries on business in the presence of two witnesses, if there is no person in the premises to whom it can be served or if such person refuses to accept or otherwise evades the service: or

148.1.3 by publication in the newspaper having circulation in the area of the person concerned where he ordinarily resides or at the last place of his residence or business, as the case may be: or

148.1.4 by fax or e-mail to owners of industrial units only.”

Thus, the alleged totally wrong, illegal stand of Respondent for sending the said Circular No.01/2015 or either alleging to be got noted down from authorized Representative of Appellant was highly implausible and improbable story concocted by the delinquent officials of Respondent to save their skin as if there was any valid prior notice or intimation given by the Respondent to the Appellant then the same shall be in accordance with Instruction No.148 of ESIM but as such, no evidence or any kind of document either been

produced or any notice with any office diary number or any memo or endorsement number of the office of Respondent forwarded in the name of Appellant for providing intimation about Circular No. 01/2015 had come on record.

Secondly:-Even the concerned officials of PSPCL again failed to inform to the Appellant at the time of downloading data on 29.05.2015 about peak load at the premises of Appellant in spite of duly aware about the default and the same had been informed/intimated by way of arbitrary and illegal Demand Notice dated 17.11.2015 even after further two defaults which was clear violation of instructions 132.3(i) (d) of Electricity Supply Instructions Manual.

Thirdly:- The Appellant further also entitled for exemption being no fault on his part as well as keeping in view of Commercial Circular No. 25/2015 vide which the penalty was waived off by PSPCL.

- (x) The Appellant against the levy of penalty in an illegal and arbitrary manner, approached to Zonal Dispute Settlement Committee (South) Zone, PSPCL Patiala where ZDSC duly been accepted the arguments/ pleas of Appellant that instructions with regard to Circular No. 01/2015 dated

31.03.2015 was neither served nor got noted down from the Appellant and therefore, called for explanation of concerned SDO but the ZDSC held that amount of penalty was recoverable.

- (xi) The Appellant being aggrieved from decision of ZDSC, Patiala hence filed Appeal before Consumer Grievances Redressal Forum, PSPCL, Patiala but, the CGRF had not accepted the arguments of Appellant while ignoring the specific stand pertaining to instruction of Peak Load Charges and Peak Load Penalties were never got noted down with the Appellant and decided the case against the Appellant vide Order dated 28.04.2016.
- (xii) Thereafter, the Appellant had filed Appeal No. 31 of 2016 before the Court of Ombudsman, Electricity, Punjab and the same had been decided by the Court of Ombudsman, Electricity, Punjab in favour of Appellant vide well-reasoned detailed Order dated 16.09.2016.
- (xiii) The PSPCL had filed CWP No. 4788 of 2017 by challenging the Order dated 16.09.2016 passed by the Court of Ombudsman, Electricity, Punjab and the said writ petition had been allowed by the Hon'ble Punjab & Haryana High Court, Chandigarh and remanded back the matter to the Court of

Ombudsman, Electricity, Punjab to decide afresh vide its Order dated 08.07.2024.

- (xiv) Now, the Appellant had filed its fresh Appeal in compliance of Order passed by Hon'ble Punjab & Haryana High Court, Chandigarh on dated 08.07.2024 before the Court of Ombudsman, Electricity, Punjab.
- (xv) It was therefore, respectfully prayed that the Appeal of the Appellant may kindly be allowed in favour of the Appellant keeping in view the facts and circumstances of present case as well as keeping in view of instructions as well as Judgments passed by the Court of Ombudsman, Electricity, Punjab by considering Circular No.25/2015, in the interest of justice.
- (xvi) The Appellant had applied for new connection which was released on 10.11.2014.
- (xvii) When the connection was released in favour of Appellant then the TOD Scheme of billing had been applicable on the connection of Appellant and the bills of Appellant were duly been issued under the TOD Tariff. It was submitted here that peak load charges or penalty for violation of peak load hours were not applicable on the connection of Appellant being covered under the TOD Scheme.

(xviii) The Appellant or any Representative of the Appellant was never been informed about applicability of peak load charges or penalty of violations of peak load instructions either before release of connection or after releasing of connection which was clearly been proved being neither any record was available nor produced on record by PSPCL at any point of time before the Court of Ombudsman, Electricity, Punjab or before any Hon'ble Authority.

(xix) Very surprisingly and strangely, PSPCL had decided vide Circular No. 01/2015 dated 31.03.2015 that TOD Scheme will not be applicable to LS & MS Consumers from 01.04.2015 though, without any intimation or any prior notice promptly to any Consumer including present Appellant rather their invalid, illegal, unjust, unfair and arbitrary act, action and conduct had been proved when they issued Demand Notice to the Appellant by levying penalty of peak load violations or peak load charges even though, without incorporating or mentioning any single word 'what to talk off' any averments/particulars about peak load violations in said arbitrary demand notice especially which had been served upon the Appellant much later i.e. even after completion of another two defaults for the period 28.05.2015 to 05.08.2015

and 07.08.2015 to 25.09.2015. Due to the fault on the part of concerned officials of PSPCL being neither noted down about the Circular dated 31.03.2015 well in time (rather at the time of default) nor intimated/bring into the knowledge of Appellant.

(xx) It was pertinent to mention here that instructions issued vide PR Circular No. 01/2015 dated 31.03.2015, neither had been brought to the knowledge of Appellant nor any notice had been issued to the Appellant vide which TOD billing scheme was discontinued with immediate effect i.e. from 01.04.2015. There was no proof or any evidence had come on record in the first round of litigation about intimation or serving any notice to the Appellant by PSPCL with regard to Circular No. 01/2015 dated 31.03.2015 except oral false assertions of PSPCL.

(xxi) It was further submitted here that the fact with regard to not providing any intimation or not issuance of any notice to the applicant with regard to Circular No.01/2015 dated 31.03.2015 by PSPCL had clearly been proved that the Appellant had received their electricity bills from 01.04.2015 showing category as LSTOD on top of each bill issued by PSPCL.

(xxii) The concerned officials of PSPCL totally failed to perform their duties to comply with the instructions of Circular No. 01/2015 dated 31.03.2015, Letter No. 25/2015 as well as Instruction No. 131 of Electricity Supply Instructions Manual vide which it had clearly been mentioned that even the change of timings or duration of peak load hours instructions needed to be intimated to the consumers well in advance/promptly. The relevant part of said Circulars as well as relevant portion of ESIM is reproduced as under:-

CIRCULAR No. 01/2015 Dated: 31.03.2015

*“These Peak Load Hours Restrictions shall be applicable on Large Supply consumers only and the above changes **may be got noted from all the concerned consumers well in time.** Further, the above timings may be permanently displayed at all the complaint centers, Grid Sub Stations and Op Sub Divisions/Divisions etc.”*

“COMMERCIAL CIRCULAR NO.25/2015

Sub: Timing of evening Peak Load Hours Restrictions

PR Circular No.01 dated 31.3.2015 regarding Peak Load Hours Restrictions timings issued by the office of Chief Engineer/PP & R, PSPCL Patiala was made effective from 01.04.2015.

*Above circular had been uploaded on PSPCL website on 31.3.2015, but **due to non publicity of the same in the media, some of the consumers may not be able to observe the changes in Peak Load Restrictions Hours.** Those consumers who keep on observing previous Peak Load Hour restriction timings in respective zones after 31.3.2015, **shall not be penalized till the issuance of first bill of such LS consumers due to the genuineness of the problem.***

Meticulous compliance of these instructions be ensured. This circular can be downloaded from the PSPCL website www.pspcl.in.”

ESIM INSTRUCTIONS NO.132.3 (i) (d)

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 in this account.”

Thus, the above said instructions as well as Circulars neither been brought into the knowledge of the Appellant either promptly or well in time to avoid the default of peak load hours instructions because the connection of the Appellant was situated in rural area and in the rural areas, most of electricity connections issued in favour of Rice Mills were running from the UPS Feeders where the peak load instructions were not applicable.

It was worthwhile to mention here that even the Representatives of PSPCL had also admitted the fault on their part while arguing the matter before the Court of Ombudsman, Electricity, Punjab as duly been noted by the Court of Ombudsman, Electricity, Punjab in its Order dated 13.10.2016 and the relevant part of admission on the part of PSPCL is reproduced as under:

"Though we admitted administrative lapses but the petitioner should at least pay the peak load exemption Charges (PLEC) at the applicable rates".

(xxiii) As per above mentioned instructions, PSPCL was bound and required to be noted from the concerned Consumers about the Circulars but however, office of PSPCL failed to get these instructions noted from the Appellant. Then later on, during the pendency of proceedings/litigations, the concerned officials of PSPCL had made fabricated and concocted story regarding getting noted down the said circular from the employee of Appellant which was earlier never been taken this stand by PSPCL. Though, none of the employee of Appellant either received the paper or signed any paper and the signatures of the employee as obtained on last page of Circular were forged and fabricated as clearly been proved from the Circular itself that the forged signatures of said employee was on the last page which was even not forwarding or marking to the Appellant rather if the same had to be looked into or read jointly along with first page of the said circular i.e. Circular dated 31.03.2015 itself proved that neither the same had been marked to the Appellant nor was ever sent or received by any employee of Appellant. Rather it was entire manipulation on

the papers made by the concerned officials with their malafide intention just to save their skin.

(xxiv) It was further submitted that the concerned officials of PSPCL had visited the premises of Appellant for downloading the data and the same had been downloaded from the meter of Appellant on 28.05.2015. When the said concerned officials downloaded the data on 28.05.2015 then at that time also neither intimated nor informed either to the Appellant or to any other Representative/Person in the premises about peak load hours restrictions. The Appellant had only come into the knowledge about peak load hours restrictions when he had received Notice issued by SDO, Badrukhan vide Memo No. 1985 dated 17.11.2015 by raising demand of ₹ 8,56,350/- in illegal and arbitrary manner on account of penalty of peak load restrictions for the period of 01.04.2015 to 28.04.2015. Surprisingly it was issued after about more than 1 month 17 days from issuance of Notice from the concerned office of PSPCL, Patiala to the concerned office of SDO, Badrukhan vide Memo No. 305 dated 30.09.2015 and very strangely after the period of two another defaults.

(xxv) It was very important to mention here that few details of notices issued for better understanding of controversy in the

present case that PSPCL had issued three illegal notices to Appellant for recovery of peak load violation charges/violation of peak load instructions by running industry at peak load hours and details of the same as under:-

- a) Notice issued vide Memo No. 1985 dated 17.11.2015 of ₹ 8,56,350/- for DDL period of 01.04.2015 to 28.05.2015.
- b) Notice issued vide Memo No. 389 dated 17.02.2016 of ₹ 15,09,980/- for DDL period of 25.05.15 to 05.08.2015.
- c) Notice issued vide Memo No. 1127 dated 24.05.2016 of ₹ 7,47,920/- for DDL period 07.08.2015 to 25.09.2015.

Thus, in view of the above said details it was very much clear that first notice was issued on 17.11.2015 after due date of next two DDL's which was taken by MMTS on 05.08.2015 and 14.10.2015 (Copy of DDL by MMTS had also not been supplied at the time of downloading on the spot nor any photocopy or any copy of print out had been supplied at the same time to the Appellant) whereas, notice was likely to be issued to the Appellant immediately after occurrence of first default as per provisions of ESIM, so that the Appellant can take further measures from violating peak load hours. But PSPCL had not given any information to the Appellant with regard to Circular No. 01/2015 dated 31.03.2015 and even not issued notice before next due date of DDL and clearly violated

provisions of ESIM and committed a great error by issuing notice of penalty for peak load hours violation for their own fault or mistake/negligence from Appellant in a very arbitrary manner against law & facts without following prescribed procedure.

(xxvi) The default if any, the same had been occurred due to non-intimation about the applicability of peak load charges or peak load penalty on the part of PSPCL. The instructions of peak load charges and peak load penalty was neither been bring into the knowledge of Appellant nor any notice had been issued by PSPCL i.e. either at the time of applicability of peak load charges or at the time/before and after first DDL.

(xxvii) It was further submitted that the Appellant was fully covered by similar situated cases titled as “**M/s Dhaliwal Agro Foods, Nihalsinghwal, Distt. Moga**” passed in Appeal Nos. 54/2008 & 33/2010 by the Court of Ombudsman, Electricity, Punjab has given relief to the Appellant due to non-intimation about applicability of instructions of peak load restrictions by the Respondents.

Similarly partial relief was granted in Case titled as “**M/s Jagdambey Rice Mill, Sunam Road, Sheron**” (Appeal

Case No.CG-102 of 2012) by allowing the appeal filed against Consumers Grievances Redressal Forum, PSPCL, Patiala.

Again, the Court of Ombudsman, Electricity, Punjab in the Appeal case titled as “**M/s Jagdambey Rice Mill Sunam Road, Sheron**” (Appeal No. 03/2013) had waived off the full penalty of peak load violations and in the case titled as “**M/s DASHMESH RICE MILL UBHEWAL S/DIVN of (DS) Divn. Sunam**” (Appeal Case No.79/2012) partial relief was allowed by the CGRF, PSPCL, Patiala.

It was further submitted here that the Hon’ble Punjab & Haryana High Court, Chandigarh had also relied upon Circular No. 25/2015 by waiving off the penalty of peak load hours restrictions in case titled as “Punjab State Power Corporation Limited Vs. M/s Mohan Lal Garg Company and another”.

It was not out of place to mention here that the Court of Ombudsman, Electricity, Punjab was pleased to again and again held in favour of Appellant by waiving off the entire penalty with regard to peak load charges/peak load hours instructions while deciding many cases recently in case i.e. Appeal No.44/2018 decided on 31.12.2018 in case titled “Komal Staw Board & Mill Board Industries Vs. PSPCL,

Gurdaspur” and Appeal No. 58/2018 decided on 31.12.2018 in case titled as “Komal Staw Board & Mill Board Industries Vs. PSPCL, Gurdaspur”.

(xxviii) It was further submitted that PSPCL itself had taken the action against its employees due to non-supplying of above said Circulars well in time or failed for giving intimation to the Appellant then they were charge sheeted and ultimately, PSPCL punished its officials. Information with regard to the same had been obtained by the Appellant under RTI in which PSPCL found guilty of its own officials due to their fault.

(xxix) It was therefore, respectfully prayed that the illegal demand of PSPCL vide Impugned Notice dated 17.11.2015 and Order dated 28.04.2016 passed by CGRF, Patiala and any other proceedings/orders initiated/taken by PSPCL may kindly be set aside by waiving off penalty levied in an illegal and arbitrary manners for non-observing the peak load restrictions. Keeping in view of above said specific averments of Circulars as well as Instructions of ESIM and by taking into consideration the above said Judgments as well as law settled by Court of Ombudsman, Electricity, Punjab and Hon’ble Punjab & Haryana High Court, Chandigarh, in the interest of justice and even further by taking into

consideration the most relevant fact of the case that the Appellant was observing the instructions of PSPCL and are paying the bills and other charges well in time. The Appellant never violated any instructions which were brought into the knowledge/notice of Appellant.

(xxx) It was further respectfully prayed that keeping in view of the above said facts and circumstances of present case, detailed legal, valid with well reasoning/observations Order dated 16.09.2016 passed by the Court of Ombudsman, Electricity, Punjab in Appeal No. 31/2016 may kindly be upheld being speaking one passed on the basis of legal and valid grounds while allowing the Appeal of Appellant and there was no infirmity or illegality in the said order dated 16.09.2016, in the interest of justice.

(xxxi) It was respectfully prayed that the amount of penalty in question i.e. amount of ₹ 8,56,350/- pertaining to peak load violations/peak load hours instructions as per alleged Impugned illegal and arbitrary Letter No. 1985 dated 17.11.2015 of SDO, Sub-Division, PSPCL, Badrukhan may kindly be set aside/ waived off.

(xxxii) It was also further prayed that the Respondent/PSPCL may also kindly be directed to refund the amount as deposited by

the Appellant along with interest upto date, in the interest of justice.

(xxxiii) No compensation is required except the relief sought for and interest on the amount already deposited by the Appellant with the PSPCL.

(b) Submissions in Rejoinder

The Appellant submitted the following Rejoinder for consideration of this Court:-

- (i) The Respondent had neither filed specific reply as para-wise nor in the shape of reply as required by law to grounds of appeal dated 02.09.2024 filed by the Appellant and from which the act and intention of Respondent clearly showed that they had admitted the claim/grounds of appeal of the Appellant. Now to avoid any technicalities of law, the Appellant was filing rejoinder to the written reply filed by the Respondent in compliance of order dated 12.09.2024 passed by this Court.
- (ii) The contents as mentioned in Subject in written reply dated 12.09.2024 were true & correct only to the extent of history of case M/s Gagan Agro & Rice Exporters pertaining to Account No. BR0100031 but the amount claimed/mentioned was

totally wrong & in violation of various provisions as well as clauses of ESIM.

- (iii) It was further submitted that admittedly, the Appellant was having Large Supply connection with load of 725 kW and CD 800 kVA under DS Sub-Division, PSPCL, Badrukhan fell under the jurisdiction of DS Division, PSPCL, Sangrur.
- (iv) It was admitted that the Appellant applied for new connection through Punjab Bureau of Investment Promotion, Chandigarh and every amount for new connection as well as other requisite charges were deposited by the Appellant with PBIP, Chandigarh. The Appellant being a new consumer bonafidely applied all other conditions which were duly been accepted by the Respondent. Upon found to be correct and entitled, then the Respondent released new connection in favour of Appellant on 10.11.2014. It was further submitted that Government of Punjab had initiated the steps for development of State of Punjab and for establishment of big industries within the periphery of State of Punjab and therefore, opened One Window Scheme under above mentioned PBIP for establishment and running of big industries smoothly and as early as possible to avoid unnecessarily harassment to the

investors/industrialist for obtaining NOC etc. from various departments.

- (v) Therefore, the Appellant had also applied with PBIP for establishment of industry i.e. M/s Gagan Agro & Rice Exporters and admittedly obtained the connection through PBIP upon completion and duly been complied with all the terms and conditions.
- (vi) The Appellant being an ordinary and layman person who does not know about the technicalities of Electricity as well as benefits/schemes i.e. TOD etc. for running its industry being new consumer and then as per the instructions of local employees/concerned persons of the Respondent, the Appellant adopted TOD Scheme as per Commercial Circular No. 46/2014 and CC No. 16/2015.
- (vii) It had clearly been denied by the Appellant in earlier round of litigation as well as specifically denied in Para No. 5 & 6 of Grounds of Appeal dated 02.09.2024 and in Para No. 8 that the Respondent never got noted down of PR Circular No. 01/2015 dated 31.03.2015 either from the Appellant or any Representative rather they had forged the signatures of Representative in a wrongful and illegal manner and the fraud committed by the Respondent by forging signature clearly

been proved from PR Circular No. 01/2015 itself which was neither been forwarded in favour of the Appellant nor any Representative of the Appellant rather it was in violation of Instruction No. 148 of ESIM.

- (viii) Therefore, it was clearly denied that the Representative of the Appellant had ever received any letter or put his signature as wrongly been alleged by Respondent fraudulently just to save the skin of their employees/concerned person.
- (ix) The Appellant being new consumer were not aware about peak load hours restrictions. The DDL of meter of the Appellant was done by the Respondent on 29.05.2015 and even though, no copy had been supplied at the same time to the Appellant in view of Instructions No. 104.3 (i) of ESIM. The delay was on the part of the Respondent as clearly been reflected from the contents of its written reply that office of Additional S.E, E.A & MMTS, PSPCL, Patiala had given intimation for peak load violation by the Appellant vide letter no. 305 dated 30.09.2015. However, the said letter was intimated/forwarded by A.E, PSPCL, Badrukhan to the Appellant vide Notice No. 1985 dated 17.11.2015 which was more than after the period of 1 month 16 days which showed lapses were totally on the part of the Respondent.

- (x) It was further submitted that the contents of written reply dated 12.09.2019 filed by the Respondent for applying to Zonal Dispute Settlement Committee, PSPCL, Patiala by the Appellant and depositing of requisite amount were admitted but the findings recorded by ZDSC were totally wrong against instructions as well as manuals of PSPCL and ignorance of entire record properly and carefully.
- (xi) It was further submitted that the Appellant had filed appeal before Consumer Grievances Redressal Forum, Patiala but however, the said Forum had also fallen into great error by wrongly and illegally upheld the illegal demand of the Respondent without considering entire facts of present case. The findings of both the Forums were totally wrong, illegal, unfair and was a result of without perusal of entire record as well as the fault/lapse on the part of the Respondent.
- (xii) It was further submitted that the Appellant approached the Ombudsman, Electricity, Punjab upon depositing requisite amount as duly been mentioned in written reply dated 12.09.2024 filed by the Respondent and the Ombudsman, Electricity, Punjab had rightly and validly decided the case in favour of the Appellant by declaring/observing that the Appellant was not aware about the applicability of peak load

hour restrictions and even the Respondent also failed to inform the same (clearly been admitted by authorized representative of Respondent in its arguments before the Ombudsman, Electricity, Punjab about lapse/mistake on its part) and therefore, Ombudsman, Electricity, Punjab had rightly and validly set aside the Impugned Notice dated 17.11.2015 as well as orders of Forums by giving the benefits to Appellant under Instructions No. 132.3 (1) (d) of Electricity Instructions Manual and rather further directed to fix the responsibility by taking suitable action against concerned delinquent officer/official. The Respondent had taken the action against the concerned person and upon findings its mistake punished them in compliance of order dated 16.09.2016 passed by the Ombudsman, Electricity, Punjab.

- (xiii) It was further submitted that Respondent approached Hon'ble Punjab and Haryana High Court by way of filing of CWP No. 4788 of 2017 against Order dated 16.09.2016 passed by Ombudsman, Electricity, Punjab and the Hon'ble Punjab and Haryana High Court vide its order dated 08.07.2024 remanded back to Ombudsman, Electricity, Punjab for re-consideration of issue whether Ombudsman, Electricity, Punjab can grant benefit/waive off penalties by relying upon Instructions No.

132.3 (1) (d) of ESIM while taking action against delinquent officers/officials in view of 132.3 (1) (d) of ESIM and further directed to both the parties to appear before Ombudsman, Electricity, Punjab on 08.08.2024.

- (xiv) The Appellant through its Representative/undersigned were appeared on 08.08.2024 before Ombudsman, Electricity, Punjab in compliance of order dated 08.07.2024 passed in CWP No. 4788 of 2017 by Hon'ble Punjab and Haryana High Court, Chandigarh and the concerned officer/official directed undersigned for filing a fresh Appeal on or before 02.09.2024.
- (xv) The Appellant in compliance of directions issued by concerned/authorized officer of Ombudsman, Electricity, Punjab filed above mentioned Appeal on 02.09.2024 as per procedure of the Court by supplying requisite advance copies of paperback.
- (xvi) The contents of the para of written reply dated 12.09.2024 filed by the Respondent was totally wrong, illegal and misunderstanding/non-understanding of exact & proper meaning of order dated 08.07.2024 passed by Hon'ble Punjab and Haryana High Court in which the High Court had neither set aside the Instruction No. 132.3 (1) (d) of ESIM nor stated a word as wrongly been alleged or presumed by Respondent in

its written reply dated 12.09.2024 rather remanded the matter for re-consideration of Instruction No. 132.3 (1) (d) of ESIM and the Appellant had filed fresh Appeal as directed by concerned/authorized officer of Ombudsman, Electricity, Punjab.

(xvii) The contents of last para of written reply dated 12.09.2024 filed by the Respondent was totally wrong and hence denied. It was respectfully submitted that there was no fault on the part of the Appellant for violation of peak load hours instructions being totally unaware about PR Circular No. 01/2015 dated 31.03.2015 and the intimation had been given even after two another DDL which lapse on part of Respondent as well as clear violation of various instructions of ESIM as well as Electricity Rules.

(xviii) It was, therefore respectfully prayed that the Respondent was not entitled to recover any penalty or any amount as alleged in Impugned Notice dated 17.11.2015 and the said Impugned Notice was liable to be set aside, in the interest of justice as well as keeping in view of law & facts of present case and the Appeal filed by the Appellant may kindly be accepted.

(c) **Submissions in written arguments dated 04.10.2024**

The Appellant's Counsel submitted the following written arguments for consideration of this Court:-

- (i) The Appellant opted for TOD Scheme at the time when he applied for new connection which is still in force and has not changed his option till date and at the time of Peak Load restrictions Tariff Charged to the Consumer is normal as per instructions by the PSPCL.
- (ii) But Suddenly, PR 01/2015 dated 31.03.2015 was issued by the PSPCL which reads that "TOD Tariff applicable to LS Consumers will not be applicable from 01.04.2015 to 31.05.2015 and Peak Load exemption charges will be charged as approved by the Hon'ble PSERC in its tariff order for the FY 2013-2014."
- (iii) These Peak Load hours restrictions shall be applicable on LS Consumers only and the charges as per PR 01/2015 may be got noted from **all the concerned consumers well in time** (which were neither brought into knowledge of Consumer well in time nor even noted down from consumer.)
- (iv) These specific instructions mentioned at point No. 3 were not complied with by the PSPCL officials in accordance with settled provision of law i.e. as per ESIM Regulation

Instruction o. 148 of the PSPCL i.e. **Manner of Delivery of Notice, Order or Document.**

- (v) Furthermore, the PSPCL admitted their fault as lapses on their part while issuance of Circular vide CC No. 25/2015 dated 16.06.2015 that due to non publicity of the said Circular i.e. PR 01/2015 dated 31.03.2015 in the media resulting the Consumers may not be able to observe the changes in Peak Load restriction hours. Hence, after 31.03.2015 such Consumers shall not be penalized till the issuance of 1st bill of such LS Consumers due to genuineness of the problem.
- (vi) Keeping in view the above said facts and contents contained in PR 01/2015 & CC 25/2015. No such bill in **FORM R O 3-B OF PSPCL** was issued to Consumer till 3rd default i.e. on 24.05.2016 for the period 05.08.2015 to 24.05.2016.
- (vii) Only 1st Notice of first default for period 01.04.2015 to 28.05.2015 was issued to the Consumer by AE, Badrukhan OP. Sub Division Memo No. 1985 dated 17.11.2015 which was handed over to the Consumer on 28.11.2015.
- (viii) It is evidently clear from the above facts, the first default of the Consumer is from 17.11.2015.
- (ix) It is also pertinent to mention here that as per ESIM (updated till 31.03.2015) Clause 104.3(i)- the memorandum of

inspection the 3rd copy of such inspection has not been given to the Consumer or his representative under proper acknowledgement and also copy of such inspection /report has not been sent to CBC by the Inspecting officer because no bill in form of 3-B was issued by CBC. The result of such checking was also not entered in pass book available at the consumer's premises.

- (x) It is very important to mentioned that the PSPCL officers issued charge sheets to Sh. Gian Singh, AE; Sh. Mukal Ghai, RA; Sh. Mohinder Singh, AAE for non- issuance of Notice to the consumer for Peak Load hours restrictions well in time and Addl. SE/DS Division, Sangrur has also recommended for punishment to these employees/officers as per P & A Rules, 1970.
- (xi) The action of the PSPCL is this contradictory in itself as they are issuing notice to the Consumer on one hand and issuing charges sheets to its employees/officer for negligence in duty on the other hand, whereas –as per law of the land, two opposite parties cannot be punished for the same offence as has been done in this case by the PSPCL which has already on the record.

- (xii) The present case of the Appellant has fully covered by judgment passed by Hon'ble Punjab & Haryana High Court, Chandigarh in Case titled as –**“Punjab State Power Corporation Limited Vs M/s. Mohan Lal Garg Company and another, CWP No. 20636 of 2017, decide on 12.09.2017.”**
- (xiii) It is further submitted that even judgment/ orders passed by this Hon'ble Court /Forum in Case titled as **“M/s. Dhaliwal Agro Foods, Nihalsinghwal, Distt. Moga”** (Appeal Nos. 54/2008 & 33/2010) and **“M/s. Jagdambey Rice Mill Sunam Road, Sheron”** (Appeal No. 03/2013) vide which Hon'ble Ombudsman Electricity Punjab has given relief to the Consumer due to non-intimation about applicability of instructions of Peak Load restrictions by the Respondents.
- (xiv) It is prayed by the Appellant that the Appeal of the Appellant may kindly be accepted by waiving of the entire charges levied by the PSPCL in a illegal manners in the interest of justice.

(d) Submission during hearing

During hearings on 12.09.2024, 19.09.2024 & 04.10.2024, the Appellant's Counsel reiterated the submissions made in the Appeal & the Rejoinder and prayed to allow the same.

(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 LS Category Connection bearing Account No. BR0100031 running in the name of M/s Gagan Agro & Rice Exporters, VPO-Badrukhan, Distt.-Sangrur with sanctioned load/CD as 725 kW/800 kVA under DS Sub division Badrukhan under DS Division, Sangrur.
- (ii) The Appellant had applied for new connection through Punjab Bureau of Investment Promotion, Chandigarh. The Appellant had deposited the amount for the new connection i.e. ACD, Meter Security and Service Connection Charges with Punjab Bureau of Investment Promotion, Chandigarh. The demand notice, after submitting the test report, depositing service connection charges and complying with all other conditions mentioned therein the Demand Notice was issued to the Appellant by the o/o Dy. CE/Planning-2, PSPCL/ PBIP, Chandigarh. The connection was released on 10.11.2014 vide SCO No. 169/62629.
- (iii) Since the release of connection, the Appellant had submitted TOD option under respective Commercial Circulars i.e.

46/2014 & 16/2015 with the Sub-Division, PSPCL, Badrukhan. The PR Circular No. 01/2015 dated 31.03.2015 was got noted from the representative of the Appellant at its premises on 18.04.2015.

- (iv) The DDL of the meter was done by Addl. S.E., EA & MMTS, PSPCL, Patiala. After analysis of DDL, it was observed that the Appellant had violated Peak Load hour's restrictions. Accordingly, Notice No. 1985 dated 17.11.2015 was issued to the Appellant for depositing Peak Load Violation Charges of ₹ 8,56,350/- for DDL period from 20.03.2015 to 29.05.2015 as intimated by Addl. S.E., EA & MMTS, PSPCL, Patiala vide his letter no. 305 dated 30.09.2015 to the o/o Assistant Engineer, PSPCL, Badrukhan.
- (v) The Appellant had applied its case with Zonal Dispute Settlement Committee, PSPCL, Patiala. As per Memo No. 15296/98 dated 21.12.2015 of CE, South Zone, PSPCL, Patiala, the Appellant had deposited 33% of the disputed amount i.e. ₹ 2,85,450/- vide BA 16 No. 138/48458 dated 30.12.2015 in the o/o AE, PSPCL, Badrukhan. The hearing of the case was held in the o/o of CE, South Zone, PSPCL, Patiala on 15.01.2016 where it was held that the amount

charged was correct and recoverable from the Appellant. The decision of the ZDSC is reproduced as under:-

“The committee deliberated the case and decided that as per the instructions of the corporation, the TOD scheme is applicable up to 31.03.2015 and after that the peak load charges will remain applicable to the LS/MS consumers in case of violation of peak load hours. As per the report of Addl. SE/MMTS, PATIALA the concerned consumer run its load during peak load hours and violated the instructions of PSPCL. So, the amount charged to the consumer is correct and recoverable.”

(vi) The Appellant was not satisfied with the decision of ZDSC, so the Appellant filed an appeal in Consumer Grievance Redressal Forum (CGRF), Patiala. The CGRF, Patiala in its decision dated 03.05.2016 upheld the decision of the ZDSC. Subsequent to which Notice No. 1140 dated 25.05.2016 was issued to the Appellant for depositing the balance amount alongwith with interest. The decision of the CGRF is reproduced as under:-

“Keeping in view the petition, reply, oral discussions, and after hearing both the parties, verifying the record

produced by them & observations of Forum, Forum decides:

To uphold the decision of ZDSC taken in its meeting held on 15.01.2016, Forum further decides that the balance amount recoverable/refundable, if any, be recovered/refunded from/to the consumer along with interest/surcharge as per instructions of PSPCL.”

- (vii) Thereafter the Appellant had filed an Appeal before the Ombudsman, Electricity, Punjab against the order dated 03.05.2016 of the CGRF. In order to comply the instructions mentioned under Clause 113.2(11)(b) of ESIM, 2011, the Appellant deposited an amount of ₹ 1,42,725/- vide BA 16 No. 317/48458 dated 07.06.2016 in the o/o AE, PSPCL, Badrukhan. The Ombudsman, Electricity, Punjab had decided the said Appeal on 16.09.2016 in favour of the Appellant.
- (viii) The PSPCL had no other remedy of Appeal/Revision except to approach the Hon'ble Punjab and Haryana High Court by filing the petition under Article 226/227 of the Constitution of India. Therefore, PSPCL had filed CWP No. 4788 of 2017 in the Hon'ble Punjab and Haryana High Court against the order dated 16.09.2016 passed by the Ombudsman, Electricity, Punjab.

- (ix) The Hon'ble Punjab and Haryana High Court decided the CWP No. 4788 of 2017 on 08.07.2024 and passed the order which is reproduced as under:-

“Under the given circumstances, the present writ petitions are allowed at this stage, without commenting on merits of the respective parties. The order passed by the Electricity Ombudsman to the extent of applicability of instruction No. 132.3(1)(d) of the electricity instruction manual is set aside and the matter is remanded to the Electricity Ombudsman for reconsideration of the issue on merits and position in law.

The parties shall appear before the Electricity Ombudsman on 08.08.2024 where upon final order shall be passed by the Ombudsman in accordance with law and after granting an opportunity of hearing to the respective parties. The Ombudsman shall consider the matter unfazed by any observation recorded for adjudication of the writ as the same was solely for examining the writ petition and not an expression on the inter-se merits.”

- (x) The Hon'ble Punjab and Haryana High Court passed the above order dated 08.07.2024 in favour of PSPCL by setting aside the Instruction No. 132.3(1)(d) of ESIM, 2011 and had given the direction to both the parties to appear before the Ombudsman, Electricity, Punjab on the same grounds/facts. But the Appellant had filed the fresh Appeal which was against the order of the Court.
- (xi) On the basis of the above said order of the Court, it was requested to declare the whole amount recoverable from the Appellant alongwith interest at the rate of 18% P.A.

(b) Submission during hearing

During hearings on 12.09.2024, 19.09.2024 & 04.10.2024, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal.

5. Analysis and Findings

The issue requiring adjudication is the legitimacy of the decision dated 03.05.2016 of the CGRF, PSPCL, Patiala in Case No. CG-17 of 2016, deciding that Peak Load Violation Charges for the period from 01.04.2015 to 28.05.2015 of ₹ 8,56,350/- charged to the Appellant vide Notice No. 1985 dated 17.11.2015 were justified.

My findings on the points that emerged and my analysis is as under:

- (i) The CGRF, PSPCL, Patiala in its order dated 03.05.2016 observed as under:-

“The connection to the consumer under LS category was released on 10.11.2014. PSPCL vide CC No. 46/2014 dated 04.9.2014 issued instructions regarding Time of Day (TOD) tariff for LS and MS consumer as per approval of PSERC (against Petition No. 63 of 2013 filed by PSPCL) for the financial year 2014-15. Accordingly, the consumer opted for TOD tariff vide request dated 10.11.2014 and bills to the consumer were issued accordingly, up to 31.3.2015. Thereafter, PSERC vide order dated 30.3.2015 against petition No. 71/2014 decided that TOD tariff applicable to LS and MS industrial consumers upto 31.3.2015 will not be applicable from 01.4.2015 to 31.5.2015 and Peak Load Exemption Charges (PLEC) will be charged as approved by Hon'ble PSERC in its tariff order for the year 2013-14. The instructions in this regard, were issued by PSPCL vide PR Circular No. 01/2015 dated 31.3.2015 and this circular was got noted from the representative of petitioner on 18.4.2015.

ASE/MMTS down loaded the data of the meter on 29.5.2015 and pointed out PLV at different time intervals of PLHR during the period 01.4.2015 to 28.5.2015 against which penalty of Rs. 8,56,350/- was charged to the consumer.

The major submissions made by the PR on behalf of the petitioner are as under:-

1. The petitioner has opted the TOD scheme since the date of release of connection and was never informed regarding applicability of peak load charges or penalty for violation of peak load instructions.
2. The peak load charges were made applicable w.e.f 01-04-2015 vide PR circular No. 01/2015 dated 31/03/2015 when TOD scheme of billing was discontinued and the instructions as per this circular were to be got noted from the concerned consumers but PSPCL failed to get the instructions noted from the petitioner.
3. As per CC No. 25/2015 dated 26/06/2015, the PSPCL has admitted that due to non-publicity of the instructions of PR circular No. 01/2015 dated 31/03/2015 some of the consumers may not be able to observe the peak load timings as per circular No. 01/2015 and in their case the penalty has been relaxed up to the issuance of first bill of such LS consumer. On the analogy of these instructions the peak load penalty levied petitioner on 17.11.2015, may be treated as the first bill and the same may be waived off as per the instructions of CC 25/2015.

The Forum found it to be correct that the petitioner opted for TOD tariff from the date of release of connection i.e. 10.11.2014. The TOD tariff as circulated

vide CC No. 46/2014 was meant only for the financial year 2014-15 i.e. up to 31.3.2015 only. As such, the consumer who had opted for TOD tariff as per provisions of this circular, cannot deny the fact that he was not aware about its applicability only up to 31.3.2015.

The Forum is convinced with the submission of respondent that period of applicability of TOD tariff was apparently clear as per CC No.46/2014. Further, in the same circular, it has also been prescribed that LS industrial consumers who do not opt for TOD tariff shall be liable to pay normal tariff for financial year 2014-15 plus PLEC during Peak Load Hours as existing prior to FY 2013-14. Moreover, in this circular it has also been mentioned that Peak Load Hours shall not be for more than 3 hrs. between 6.00 PM to 10.00 PM depending upon season to season. Thus from CC No. 46/2014 (based upon which consumer opted TOD tariff), it is very much evident that TOD tariff was applicable only FY 2014-15, LS consumer who did not opt TOD tariff were be liable to pay normal tariff plus PLEC during Peak Load Hours and Peak Load Hours shall be for 3 hrs. between 6.00 PM to 10.00 PM. Therefore, the petitioner cannot be considered as ignorant about all these instructions incorporated in CC No.46/2014.

Forum observed that instructions as per PR circular No. 01/2015 have been duly got noted by the concerned office of PSPCL from the representative of consumer, as confirmed by the respondent and also evident from the signature dated 18.4.2015 appended by the representative of consumer on the copy of circular (placed before the Forum by the respondent). Further, the Forum find merit in the submission of the respondent that PR Circular No. 01/2015 mainly emphasized on getting the instructions of modified Peak Load Restriction Timings noted from the consumers and regarding TOD tariff it was just clarified that TOD tariff applicable to LS and MS consumers' upto 31.3.2015, not to be extended further. The PSPCL circulated the revised timings of PLHR (as approved by PSERC) vide PR circular No. 01/2015 dated 31.3.2015 (applicable from 01.4.2015). There was shift/modification of time of PLHR by half an hour to one hour, from the PLHR timings which was applicable to LS consumer up to 31.3.2015. However, the petitioner used the load during the entire period of 3 hours of PLHR during the disputed period and did not observe peak load hours as per previous timings applicable up to 31.3.2015 or as per PLHR timings made applicable w.e.f. 01.04.2015. Thus, in view of the Forum, the petitioner is not entitled to any relief even if, it is presumed that the instructions issued vide CC No. 01/2015 were not got noted from him as the petitioner failed to observe PLHR as per previous timings.

PSPCL vide CC No. 25/2015 dated 16.6.2015 provided some relief from levy of penalty to those consumers who keep on observing previous peak load hours timings (due to non-publicity of revised timings in the media), till the issuance of first bill. The Forum noticed that in the case of petitioner the first bill in the financial year 2015-16 was issued on 17.4.2015 but the consumer is not entitled to any relief from levy of Peak Load charges for the period 01.4.2015 to 17.4.2015 as he had not observed PLHR even as per previous PLHR timings. Thus contention of the PR that on the analogy of these instructions the peak

load penalty levied petitioner on 17.11.2015, may be treated as the first bill and the same may be waived off as per the instructions of CC 25/2015, is not maintainable at all.

Forum also discussed other submissions of the PR and reply submitted by the respondent there against, was found to be convincing. Further, the forum noted that ZDSC vide its order dated 15.1.2016 decided to call the explanation of SDO as per ESIM clause 132.3 (i) which deals only with action to be taken, when there is drift in the Real Time Clock viz- a viz IST, and has nothing to do with getting the instructions (issued vide PR circular No. 01/2015 dated 31.3.2015) noted from the consumers.

Keeping in view above discussions, the Forum came to the unanimous conclusion that Peak Load Violation Charges of Rs. 8,56,350/- charged to the petitioner are justified.”

- (ii) I have gone through the written submissions made by the Appellant in the Appeal as well as the Rejoinder to the reply, written reply of the Respondent & the data placed on the record by the Respondent as well as oral arguments of both the parties during the hearings on 12.09.2024, 19.09.2024 & 04.10.2024. It is observed by this Court that the Hon'ble Punjab & Haryana High Court, in its order dated 08.07.2024 in CWP Nos. 3788 of 2017, 4748 of 2017 & 4788 of 2017, had struck down the applicability of Instruction No. 132.3(i)(d) in the present case. The present case will therefore be decided on the merits and position in law as ordered by the Hon'ble Punjab & Haryana High Court while remanding back the case to this Court.
- (iii) The connection of the Appellant was released on 10.11.2014. It approached the Respondent & applied for TOD tariff as per the tariff of FY 2014-15 approved by the PSERC. The option

to opt for the TOD tariff was given by the PSPCL to its LS & MS consumers vide Commercial Circular No. 46/2014. It is clearly mentioned in the Commercial Circular No. 46/2014 that the TOD tariff was only for the period from 01.10.2014 to 31.03.2015. It is also mentioned in the same Commercial Circular that in cases of LS consumers, who do not opt for TOD tariff, they will have to pay PLEC during peak load hours as it existed prior to FY 2013-14. The Appellant opted for TOD tariff. From above, it is proved beyond any doubt that the Appellant was well aware of both the PLEC as well as TOD tariff options & it opted for the TOD tariff option for the period from the commencement of its connection, i.e. 10.11.2014 till 31.03.2015. The Appellant was aware about the fact that there are restrictions of running the industry load for three hours during the Peak Load hours between 6 PM to 10 PM depending upon the season.

- (iv) The Appellant is a Large Supply Category Consumer with sanctioned load/CD of 725 kW/ 800 kVA and it is expected to be vigilant and prompt. The Regulations/ Tariff issued by PSERC are in public domain of PSERC as well as on the Website of PSPCL. The Appellant should have approached the PSPCL for availing the PLEC tariff before the expiry of TOD

tariff on 31.03.2015, if it wanted to use the industrial load during the Peak Load hour's restrictions from 06.00 PM to 10.00 PM after 31.03.2015. But the Appellant did not do this at appropriate time.

(v) It is observed by this Court that the bills issued to the Appellant for the period from 01.04.2015 to 30.09.2015, as produced by the Appellant's Counsel, showed the number of units consumed by the Appellant during the time slot of 6 PM to 10 PM, but no surcharge was levied on these units due to which the bill of the Appellant was substantially reduced. However the Appellant never approached the Respondent to know about the reason for not levying surcharge on units consumed by the Appellant during this time slot. It is to be noted that surcharge & rebate as per TOD regime was levied on the units consumed during the time slot of 6 PM to 10 PM & 10 PM to 6 AM respectively in the bills issued to the Appellant for the period before 01.04.2015 & after 01.10.2015.

(vi) The Appellant contended that since the PR circular No. 01/2015 was not got noted from it, the disputed Peak Load Violation charges are not recoverable from it. In this regard, the Forum in its decision dated 03.05.2016 observed that the

instructions as per PR circular No. 01/2015 were duly got noted by the concerned office of PSPCL from the representative of the Appellant, as confirmed by the Respondent and also evident from the signature dated 18.04.2015 appended by the representative of the Appellant on the copy of circular placed before the Forum by the Respondent. But the Appellant's Counsel denied it before this Court.

- (vii) This Court has gone through the PR circular No. 01/2015 & found that this circular was applicable only to those LS consumers who had already got PLEC approved from the concerned authority of the PSPCL before 31.03.2015 as it contained instructions of modified Peak Load Restriction Timings. There was shift/modification of time of PLHR by half an hour to one hour, from the PLHR timings which were applicable to LS consumers up to 31.3.2015. But in the present case, the Appellant was not governed by the PLEC regime before 31.03.2015 and also had not applied for PLEC before 31.03.2015. So PR circular No. 01/2015 was not applicable on the Appellant. In fact, the Licensee had issued Commercial Circular No. 10/2015, regarding continuation of the existing tariff of FY 2014-15 after 31.03.2015 for the FY 2015-16 till

further orders as per the order dated 30.03.2015 of the PSERC, in which it was clearly mentioned that the TOD tariff applicable to LS & MS industry category consumers upto 31.03.2015 will not be applicable from 01.04.2015 to 31.05.2015. Further, PLEC will be charged to the LS consumers as approved by the PSERC in Tariff Order for FY 2013-14 and Peak Load hours will not be more than 3 hours between 6 PM to 10 PM depending upon the seasons. This Circular was uploaded on the website of the PSPCL. Therefore contention of the Appellant in this regard is rejected after due consideration.

- (viii) The Appellant quoted decisions of various cases by different adjudicating authorities in its Appeal, but this Court observed that facts of these cases were different from that of the present case. In the case of “M/s Jagdambey Rice Mills, Sunam Road, Village Sheron (Appeal No. 03/2013)” quoted by the Appellant, the Peak Load violation charges were charged to the consumer after its connection was shifted from 24 hours UPS feeder to category-I feeder by the Respondent. Since there were no Peak Load hour restrictions (PLHR) on 24 hours UPS feeder, the consumer was not aware that it has to observe PLHR in category-I feeder. These facts are totally different

from the facts of the present case as there was no change of supply to a different feeder in the present case.

- (ix) Also in the another case of “Punjab State power Corporation Ltd vs. M/s Mohan Lal Garg Company and another (CWP No. 20636 of 2017)”, the Hon’ble Punjab & Haryana High Court found the findings of the Ombudsman relevant that the PR circular no. 01/2015 contains the specific provision that the changes in Peak Load timings are to be noted from all the concerned consumers well in time. The Ombudsman had further observed that the consumer in that case had followed the PLHR as per the old schedule. But in the present case, as discussed above, firstly the PR circular no. 01/2015 is not applicable on the Appellant. Secondly, the appellant did not follow the PLHR even as per old schedule. Similarly, in the case of “Komal straw Board & Mill Board Industries, Gurdaspur (Appeal No. 05/2018)”, the consumer was given relief in view of PR circular no. 01/2015 & CC No. 25/2015, but these are not applicable to the Appellant in the present case.
- (x) In view of above, this Court is of the opinion that the Peak Load Violation Charges for the period from 01.04.2015 to 28.05.2015 of ₹ 8,56,350/- charged to the Appellant vide

Notice No. 1985 dated 17.11.2015 are correct & recoverable from the Appellant.

6. Decision

As a sequel of above discussions, the order dated 03.05.2016 of the CGRF, PSPCL, Patiala in Case No. CG-17 of 2016 is hereby upheld.

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, he 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.

October 23, 2024
S.A.S. Nagar (Mohali).

(ANJULI CHANDRA)
Lokpal (Ombudsman)
Electricity, Punjab.