**IN THE COURT OF OMBUDSMAN, ELECTRICITY PUNJAB,**

**66 KV GRID SUBSTATION, PLOT NO. A-2, INDL. AREA,**

**PHASE-I, S.A.S. NAGAR, MOHALI.**

**APPEAL No. 23 / 2016 Date of Order : 16 / 08 / 2016**

**M/S MANGLAM RECYCLING LIMITED,**

**VILLAGE; KANGANWAL,**

**POST OFFICE, JUGIANA,**

**DISTT: LUDHIANA. ………………..** PETITIONER

**Account no: LS- W11-EST1-00314**

*Through:*

Sh. Sukhminder Singh, Authorised Representative.

VERSUS

**PUNJAB STATE POWER CORPORATION LIMITED.**

**…….….** RESPONDENTS.

*Through*

Er. Gursharanjit Singh, AEE (Commercial)

O/O Addl. S.E. / Operation

Estate Division, PSPCL,

Ludhiana.

Petition no: 23 / 2016 dated 03.05.2016 was filed against order dated 24.07..2015 of the Grievances Redressal Forum (Forum) in case no: CG-51 / 2015 setting aside the decision dated 18.09.2014 of the Zonal Dispute Settlement Committee (ZDSC) and deciding that the account of the consumer for the period 01 / 2013 to 06 / 2013 be overhauled by adding 1% transformation losses in the recorded consumption of 11 KV meters, during this period.

2. Arguments, discussions & evidences on record were held on 16.08.2016.

3. Sh. Sukhminder Singh, the authorized representative alongwith Sh. Rajeev Gupta, attended the court proceedings on behalf of the petitioner. Er. Gursharanjit Singh, AEE (Commercial) authorized by Addl. Superintending Engineer / Operation, Estate (Special) Division, PSPCL, Ludhiana, alongwith Sh. Krishan Singh, Revenue Supdt., appeared on behalf of the respondent, Punjab State Power Corporation Limited (PSPCL).

4. An application for condonation of delay in filing the appeal was submitted by the Petitioner alongwith his Petition stating that the decision of the Forum was implemented by revising the amount as per RBS No. 91 / 2015 dated 31.12.2015 of Rs. 17,73,579/- and notice dated 06.01.2016 was issued by the AEE / Commercial, Estate Sub Division. However, due to slump in the industry and huge financial constraints being faced by the petitioner, the requisite balance amount to file appeal could not be arranged and deposited in time. After arranging the amount, the concerned office was approached to accept the balance payment to make it 40% of the disputed amount, but the same was not accepted as one month had elapsed after the decision of the CGRF. Accordingly, the office of Ombudsman, Electricity, Punjab was approached for imparting necessary directions to the respondents who vide letter dated 12.04.2016 directed Addl. S.E. Estate Division for accepting the payment and as such an amount of Rs. 71,200/- and Rs. 1,06,800/- (Total Rs. 1,78,000/-) was deposited vide Receipt No. 310 and 311 -48169 both dated 12.04.2016. The petitioner had already deposited an amount of Rs. 5,31,461/- on 17.06.2014. Thus, total amount of Rs. 7,09,461/- has been deposited which is requisite amount against disputed amount of Rs. 17,73,579/- for filing the appeal before the Ombudsman’s Court. In view of this, he prayed that the delay may kindly be condoned and consider the case on merits.

The respondents denying the facts narrated by the Petitioner stated that the Forum’s decision dated 24.07.2015 was sent to the petitioner on 07.08.2015 and delivered to the Petitioner well in time and thus he was required to file the appeal against this decision within a maximum period of 30 days from the date of receipt of this decision. In case one week is added as transit period, the maximum time limit can be extended only upto 16.08.2015 whereas he has filed his petition on 03.05.2016 so there is abnormal delay in filing of the appeal against which no sufficient cause, justifying the delay, has been placed on record. The only reason described is that necessary amount could not be arranged in time which is personal reason of the Petitioner and availing of such a long time did not seem convincing. Thus the facts given by Petitioner seems to be wrong and misleading which cannot be relied upon. The delay is unjustified and deliberate and thus the Petitioner did not deserve any relief for condonation of such deliberate delay. He requested not to condone the delay and dismiss the appeal on this ground.

The issue of condonation of delay was discussed and deliberated in detail wherein it was established that the Forum in its decision dated 24.07.2015 had reduced the leviable charges and implementation of this decision certainly requires revised calculations which were intimated to the Petitioner vide letter dated 06.01.2016 and specifically in the present case, this should be the date from which the time limitation should start. Accordingly, the Petitioner was required to file appeal within 30 days from the date of receipt of revised calculations. The Petitioner approached to my Court on 12.04.2016 to issue directions to Respondents to accept the balance disputed amount to make the total deposit as 40% but by this date the appeal was already delayed for which the Petitioner had admitted his fault on the grounds that due to slump in the industry and huge financial constraints being faced by him, he could not arrange the necessary amount required to make it mandatory 40% of the assessed disputed amount as per decision of Forum. Though, the reason mentioned is not fully convincing but simultaneously cannot be rejected altogether. Moreover, I am also of the view that rejection of appeal mere on the grounds of delay would not meet the end of justice and the petitioner might have deprived of the ultimate justice, if otherwise, he is entitled on merits. Thus, taking a lenient view and in the interest of natural justice, the delay in filing of appeal is condoned and the appeal is being considered on merits.

5 Thereafter, presenting the merits of the case on behalf of the Petitioner, his counsel Sh. Sukhminder Singh, stated that the petitioner is having Large Supply category 66 KV Cluster connection with two constituents connections namely M/S Manglum Recycling Ltd; (A/C no: LS-314) and M/S Tharaj Casting (P) Limited (A/C no: LS-218), with sanctioned load as 6600 KW and Contract Demand (CD) of 7329 KVA under Estate (Special) Division, PSPCL Ludhiana. The connection of the petitioner was checked by ASE / MMTS-3, Ludhiana vide Enforcement Checking Register (ECR) No. 31 / 2199 dated 29.07.2013 wherein the yellow phase of CT was alleged to be defective and on the basis of this report, the Centralized Billing Cell (CBC), Ludhiana issued energy bills from July, 2013 to January, 2014 by enhancing the recorded consumption of 66 KV meter by 50%. Thereafter on the basis of report of Addl. SE / MMTS-3 issued vide Memo No. 2957 dated 29.04.2014 regarding study of energy audit from print out of DDL of M/S Manglum Recycling Ltd;, A/C no: LS-314, the CBC revised the energy bills from January 2013 to June 2013 and charged Rs. 26,57,309/- vide RBS No. 36 / 2014 dated 06.05.2014. The AEE / Commercial vide his Memo No. 1972 dated 06.06.2014 issued notice to deposit this amount within ten days. The demand so raised was wrong, unjustified and unwarranted and without any reference to any instructions of the department contained in Electricity Supply Code 2007 and Electricity Supply Instructions Manual (ESIM).

The petitioner approached Chief Engineer / Central for review of his case in ZDSC, which decided the case on 18.09.2014 and gave only marginal relief by revising the disputed amount from Rs. 26,57,309/- to 22,81,745/-. Being not satisfied with the decision of the ZDSC, an appeal was filed before the Forum. However, the Forum decided the case by providing partial relief and copy of judgment was sent to the petitioner in 08 / 2015. Although the CGRF provided partial relief but it did not consider all the pleadings and its decision is also not as per rules.

While pleading the case of the petitioner, the counsel has submitted that the alleged findings as per energy audit by Addl. SE / MMTS are totally vague, baseless, unilateral and imaginary. The calculations carried out by Addl. SE / MMTS-3 vide Memo No. 2957 dated 29.04.2014 are so cumbersome and are very much difficult to understand. During some period, the combined consumption of 2-3 months of 66 KV meter has been taken and similarly, consumption of 4-6 months of 11 KV meters have been taken together for comparison with consumption of 66 KV meter. Furthermore, 3% transformation losses were added in the combined consumption of 11 KV meters for comparison with consumption of 66 KV meter. However, the Forum decided to charge 1% transformation losses whereas as per consumption data supplied by Addl. SE / Estate to the petitioner, the transformation losses are between 0.5% to 0.7% during the period 01 / 2012 to 12 / 2012.

He next submitted that the there are no instructions in Electricity Supply Code-2007 and ESIM to raise the demand on the consumer as per findings of energy audit. The amount against any less billing can be charged only, if there is some defect in the meter. Nothing has been mentioned in the Addl. SE / MMTS Memo no: 2957 dated 29.04.2014 regarding the nature of defect or the date from which the metering equipment is defective. The nature of defect and instructions under which overhauling of account has been done, have not been mentioned either in the report of MMTS or in the RBS issued by CBC. It is mentioned that as per relevant instructions of Electricity Supply Instructions Manual, Electricity Supply Code-2007 and guidelines issued by Punjab State Electricity Regulatory Commission (PSERC) from time to time, it is mandatory to quote rules / regulations under which the amount was charged to consumers.

He further stated that the copy of DDL taken on 04.04.2013 provided by Addl. S.E. / Estate reveals that upto 03.04.2013, the current on all the three phases is almost balanced and voltage is also correct which means the working of the meter was correct upto 03.04.2013. However, as per DDL dated 06.06.2013, the current on yellow phase (at less quantum of running load) is comparatively less. But it is in order at higher running load, which prove that slightly less consumption has been recorded for the period after 03.04.2013, which got substantiated from the combined consumption of 11 KV meters and consumption of 66 KV meter (without considering alleged 3% line losses). The information / data compiled by MMTS / CBC, shows that the combined consumption of 11 KV meters (A/C no: LS-314 and A/C no: LS-218) is less than the consumption of 66 KV meter during the month of 04 / 2013 but 3% losses have been added to increase the combined units of 11 KV meters from that of 66 KV meter. Similarly, there is marginal difference in the combined units of 11 KV meters and 66 KV meter (without 3% losses) during the month of 01 / 2013 and 02 / 2013, which may be due to error in recording the consumption of 11 KV meters. As such, the 66 KV meter cannot be said to be defective atleast upto 04 / 2013 even on the basis of information / data compiled by MMTS / CBC. If there was any defect in the 66 KV meter, then it should have been clearly mentioned whether current / voltage was not proper / missing on any phase or any other defect was there and the date of such happening.

He next submitted that the CGRF has not properly elaborated the point as to how the meter has been considered as defective from 01 / 2013 and what was the defect? The Forum was required to keep in view the Regulations 21.4 (g) which provides for overhauling of account, if the meter on testing is found to beyond the limits of accuracy for a period not exceeding six months immediately preceding the;

(a) date of test in case the meter has been tested at site to the satisfaction of the consumer; or replacement of inaccurate meter, whichever is later, or

(b) date the defective meter is removed for testing in the laboratory of the Distribution Licensee;

In the case of the petitioner, the accuracy of the meter was not tested at site & in M.E. Lab to ascertain the percentage of slowness. The meter of the petitioner was not replaced on the report of ASE / MMTS-3 vide ECR No. 31 / 2199 dated 29.07.2013 regarding alleged defect in Yellow phase of CT, rather carbonization of ‘Y’ phase terminal wire was removed on 20.01.2014 ( as per joint checking of Sr. Xen / Protection-II & Addl. SE / MMTS-III, vide ECR No. 35 / 2351 dated 20.01.2014. Further, the account of the consumer had already been overhauled (before raising the present disputed amount) from 07 / 2013 to 20.01.2014 i.e. for a period of more than six months before removing the alleged defect on 20.01.2014. Hence, further overhauling of account from 01 / 2013 to 06 / 2013 on the basis of energy audit report was not covered under any rule / regulation, but the CGRF ignored this fact.

He next contended that the CGRF also did not consider the valid argument in the petition that the respondent has failed to quote the relevant regulations of the Supply Code or any other regulations framed by the competent authority under the EA-2003 under which overhauling of account has been done, as required in view of CC no: 53 / 2013 & CC no: 59 / 2014. The Forum also ignored the data available as per DDL taken on 04.04.2013 which clearly reveals that upto 03.04.2013, the current on all the three phases was almost balanced and voltage was also correct, which means the working of the meter was correct upto 03.04.2013.

He further referred to the appeal case No. 29 / 2014 of M/S JVR Forging Ltd’; in which the Court of Ombudsman through its order dated 11.11.2014 has held that “it is considered fair and reasonable, if the account of the consumer is overhauled in accordance with Regulation 21.4 (g) (i) (b) of the Supply Code for a period of six months preceding the date of removal of disputed meter from site and the charges are accordingly revised on the basis of actual slowness factor as found during checking in the M.E. Lab”. But in the case of petitioner, the meter was not replaced on the report dated 29.07.2013 of Addl. SE / MMTS, even then the account had already been overhauled for more than six months, from 07 / 2013 to 01 / 2014, as such overhauling of account from 01 / 2013 to 06 / 2013 on the basis of energy audit, is not warranted / justified. As such, the demand raised through RBS, which was reduced to Rs. 1773579/- as per decision of the Forum, is totally vague, baseless, unilateral and the same may kindly be waived off by setting aside the decision of the Forum. In the end, he prayed to allow the petition.

6. Er. Gursharanjit Singh, Asstt. Executive Engineer (Commercial), representing the respondents submitted that the petitioner is having 66 KV Cluster, comprising of two constituents getting 11 KV supply having account no: LS-218 in the name of M/S Tharaj Casting (P) Limited & Account no: LS-314 in the name of M/S Manglam Recycling. The consumer was charged Rs. 26,57,309/- as per the Revised Billing Statement no: 36 / 2014 dated 06.05.2014 issued by Addl. SE / CBC. As per RBS, the accounts of the consumer were overhauled from January, 2013 to June, 2013 in view of Addl. SE / MMTS-3 memo no: 2957 dated 29.04.2014 vide which he had given speaking orders that there was erratic behavior of 66 KV meter from 17.09.2012 to 16.07.2013. Therefore, the total consumption of both the cluster constituents recorded at 11 KV was enhanced by 3% as Transformation Losses to get the consumption at 66 KV end.

The case was represented before the ZDSC which has decided the case on 18.09.2014 that the amount charged to the consumer is correct with only change that transformation losses may be taken as 2.16% instead of 3% in the consumption of 11 KV meters and as such, the RBS needs to be revised accordingly. An appeal was filed before the Forum which decided that the account of the petitioner for the period 01 / 2013 to 06 / 2013 be overhauled by adding 1% as transformation losses in the recorded consumption of 11 KV meters during this period. Accordingly, the respondents PSPCL raised a demand of balance amount of Rs 14,74,888/- vide letter no: 1772 dated 08.01.2016.

He next submitted that it has wrongly been stated by the petitioner that the alleged findings as per energy audit by Addl.SE / MMTS are vague, baseless and so cumbersome and difficult to understand. The findings contained in letter No. 2957 dated 29.04.2014 are correct and self speaking based on the correct data and information. The amount is absolutely correct as the yellow CT on 66 KV meter was reported to be contributing ‘Nil’ as per report of Addl. S E / MMTS vide ECR no: 31 / 2199 dated 29.07.2013. The checking of meter has been done by competent authority i.e. MMTS as per Instruction No. 59.4 of the ESIM in the presence of the consumer and he has signed this checking report by admitting the fact recorded in the ECR. Thus, the amount has correctly been charged as per Regulations 21.4 (g) and 70.4.2 of the Supply Code and instruction No. 59.4 of the ESIM.

He further stated that it is incorrect that the 11 KV meters were defective. As already reported by the MMTS vide ECR dated 29.07.2013, the contribution of the yellow CT was found nil and due to which the meter was recording less consumption. The Forum has correctly decided the case to overhaul the account for the month of 01 / 2013 to 06 / 2013 by taking 1% transformation losses. It is further submitted that the facts of M/S JVR Forging Ltd, Appeal case no: 29 / 2014 are not similar to the present case and thus is not applicable in the present case. In the end, he prayed to dismiss the appeal of the petitioner.

7. According to the contents recorded in the petition, the connection of the petitioner was checked at site by ASE / MMTS-3, Ludhiana vide ECR dated 29.07.2013 wherein it was reported that yellow phase of the CT at 66 KV meter is not contributing and on the basis of this report, energy bills from July 2013 to January 2014, were issued by CBC by enhancing the recorded consumption on 66 KV meter by 50%, which were paid by the Petitioner. The dispute arose when the Petitioner was charged a sum of Rs. 26,57,309/- vide notice dated 06.06.2014 issued on the basis of RBS dated 06.05.2014 prepared by CBC as per report of ASE / MMTS-3 dated 29.04.2014 after energy audit wherein it was pointed out that the behavior of meter installed at 66 KV end remained erratic between 17.09.2012 to 16.07.2013 causing reading difference of consumption recorded through 11 KV meters vis-à-vis 66 KV meter therefore the account of the consumer is required to be overhauled for six months prior to 16.07.2013. This notice was agitated by the Petitioner which was challenged by him in ZDSC and then in Forum. Being not satisfied with its decision, the present appeal is made.

The Petitioner vehemently argued that due to 66 KV cluster connection, the monthly billing is being done on the basis of readings recorded at 66 KV meter and all the bills were being paid timely to the Respondents. During the checking of 66 KV meter by MMTS on 29.07.2013, it was found that Yellow phase of CT was defective and not contributing towards consumption on 66 KV side. On the basis of this report, the monthly bills to the Petitioner were issued by enhancing 66 KV meter consumption by 50% from energy bill for the month of 07 / 2013 which continued till 01 / 2014 ( 20.01.2014), when the Respondents corrected the fault of carbonization at Yellow phase terminal. Considering that the action of Respondents for billing on the enhanced consumption, being one phase dead, is correct; all the bills as raised were paid without any objection or protest.

Thereafter, the MMTS conducted Energy Audit of the connection and sent its speaking orders on 29.04.2014 wherein it was pointed out that there is difference between the readings recorded at 11 KV meters vis-a-vis 66 KV meter and hence the consumer’s account is required to be overhauled for the period of six months prior to 16.7.2013, as per Regulations and accordingly the account was overhauled from 01 / 2013 to 06 / 2013 by enhancing the consumption, recorded at both 11KV meters by taking transformation losses as 3% to ascertain the consumption at 66 KV end, which was agitated by the Petitioner in the ZDSC which allowed partial relief by taking transformation losses as 2.16%. An appeal was filed in CGRF which also provided partial relief by further reducing the transformation losses from 2.16 % to 1%. The Petitioner is not agreeing to the decision of CGRF because there are no rules / regulations which provide for overhauling of account on the basis of Energy Audit, which is being done for departmental purpose to take corrective action in time. As such, the demand raised by the Respondents is illegal / unjustified and the Respondents have no legal right to overhaul petitioner’s account and charge any amount on the basis of energy audit.

The Respondents argued that the Energy Audit was conducted on the advice of CBC by the MMTS, after which speaking orders were issued by MMTS vide letter dated 29.04.2014 wherein it was directed that there is difference between combined consumption recorded by both 11 KV meters vis-à-vis 66 KV meter due to erratic behavior of 66 KV meter from 17.09.2012 to 16.07.2013 and therefore the consumer’s account is required to be overhauled by enhancing the energy recorded by both 11 KV meters by taking transformation losses as 3%. Accordingly, after overhauling the account, amount was charged for the period 01 / 2013 to 06 / 2013, which was challenged by the Petitioner in ZDSC. The ZDSC after considering all the facts directed for overhauling of Petitioner’s account by taking transformation losses as 2.16 % though the consumption data in respect of the Petitioner showed actual line losses at 2.6 %. While deciding his appeal against this decision, the CGRF, taking a lenient view, directed to take 1% line-losses instead of 2.16% as decided by ZDSC. This is the only overhauling which has been done for a period of six months in accordance with Regulation 21.4 (g) (i) of Supply Code, the energy bills charged from 07 / 2013 to 01 / 2014 were on the basis of enhanced consumption due to non-contribution of yellow phase CT and not overhauling of account as claimed by the Petitioner . Thus the overhauling on the basis of speaking orders of MMTS dated 29.04.2014 for a period of six months from 01 / 2013 to 06 / 2013 is correct and as per Regulation and the Petitioner is not entitled for any further relief.

I have gone through the written submissions made in the petition, written reply of the respondents and oral arguments of the petitioner and the representative of PSPCL as well as other evidences/ materials brought on record. The sole issue involved in the Petition is whether or not the Respondents are within their rights to overhaul consumer’s accounts on the basis of Energy Audit? To decide this typical issue the term Energy Audit is required to be analyzed thoroughly. The definition and objective of Energy Management provides that the fundamental goal of Energy Management is to produce goods and provide services with the least cost and least environmental effect. The objective of Energy Management is to achieve and maintain optimum energy procurement and utilization, throughout the organization. The primary objective of Energy Audit is to determine ways to reduce energy consumption per unit of product out-put or to lower the operating cost. Energy Audit provides a “bench mark” for managing energy in the organization and also provides the basis for planning a more effective use of energy. Further, the tariff orders issued by PSERC also shows that the PSPCL has initiated feeder-wise Energy Audit from the year 2012 for 47 towns, in which Ludhiana town is also included under centrally sponsored scheme of Restructured Accelerated Power Development & Reforms Programme (R-APDRP) with the purpose to take corrective measures to plug the loss of energy due to defective metering, theft and other reasons and to provide better services to the consumers.

In the present case, the CBC in its letter dated 24.04.2014, addressed to the SE / Enforcement has pointed out that the percentage difference of energy registered between 66 KV meter and 11KV meters from Nov. 2012 to May, 2013, varies from ( - ) 0.36% to ( +) 1.28%, on the basis of which the MMTS checked the connection for energy audit and issued speaking orders on 29.04.2014 pointing out that the behavior of 66 KV energy meter was erratic from 17.09.2012 to 16.07.2013 and accounts of the consumer are required to be overhauled for last six months prior to 16.07.2013 as per instructions of PSPCL. No Regulations, however, have been found quoted by the MMTS on the basis of which the overhauling of account has been suggested to be done.

Since, it is a large supply cluster connection and MMTS was supposed to check the meters installed at consumer’s premises after every seventy days and analyze the results / data, but no such record has been brought to record by the Respondents. Moreover, the PSPCL is also carrying out feeder-wise Monthly Energy Audit, especially of High Ended Consumers / independent feeders with a view to take corrective measures before hand but the Respondents failed to do so in this case. I have also observed that the Central Electricity Authority (CEA) vide its notification dated 17.03.2006 had provided that the Energy Accounting and Audit Meters shall be rectified or replaced by the Licensee immediately after notice of the following abnormalities:

1. The errors in the meter readings are outside the limits prescribed for specified accuracy class
2. Meter readings are not in accordance with the normal pattern of the load demand.
3. Meter tampering or erratic display or damage.

But inspite of such clear directives from the CEA, no corrective measure has been taken by the Respondents.

As a sequel of above discussions, it is very clear that the term Energy Audit nowhere provides for overhauling of accounts or billing the consumers on the basis of energy audit results and no Regulation / Rule provides billing on the basis of Energy Audit, was brought to record. Thus considering all the facts of the case, evidences brought to record, oral arguments of both parties, Rules and Regulations referred to in the petition, I am of the considered view that overhauling of accounts on the basis of Energy Audit is unwarranted and is not supported by any applicable rules / regulations. Accordingly, it is held that the demand raised by the Respondents vide letter dated 06.01.2016, for overhauling of Petitioner’s account for the period from 01 / 2013 to 06 / 2013, on the basis of Energy Audit is not justified and thus is set aside and the respondents are directed that the amount excess / short, if any, may be recovered / refunded from / to the petitioner with interest under the relevant provisions of ESIM-114.

8. The petition is allowed.

(MOHINDER SINGH)

Place: SAS Nagar( Mohali) OMBUDSMAN,

Dated: 16.08.2016. ElectricityPunjab, SAS Nagar, (Mohali).