**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: 37 / 2016 Date of Order : 06 / 10 / 2016**

**S.D.O. PUBLIC HEALTH,**

**C/O Executive Officer,**

**MUNCIPAL COUNCIL,**

**DHARAMKOT (MOGA). …………** PETITIONER

Account No. MS-22/0010

*Through:*

Sh. Ranjit Singh, Advocate

VERSUS

**PUNJAB STATE POWER CORPORATION LIMITED.** **…….….** RESPONDENTS.

*Through*

Er. Kuldip Singh,

Addl. Superintending Engineer

Operation City Division, PSPCL,

MOGA.

Petition No. 37 / 2016 dated 24.06.2016 was filed against order dated 16.05.2016 of the Grievances Redressal Forum (Forum) in case no: CG-24 of 2016 deciding that the amount charged to the consumer from 07 / 2005 to 05 / 2014 by enhancing the recorded consumption by 50% is recoverable and further overhauling of account be ensured upto 10.06.2014 (date of replacement of meter). Further, SE/Operation, Faridkot shall ensure disciplinary action against the delinquent officials/officers who failed to conduct prescribed checking.

2. Arguments, discussions & evidences on record were held on 06.10.2016

3. Sh. Ranjit Singh, the authorized representative, attended the court proceedings on behalf of the petitioner. Er. Kuldip Singh, Addl. Superintending Engineer / Operation City Division, PSPCL, Moga alongwith Sh. Jagmohan Singh, UDC, appeared on behalf of the respondent, Punjab State Power Corporation Limited (PSPCL).

4. Sh. Ranjit Singh, Advocate, presenting the case on behalf of Petitioner, stated that the petitioner is having MScategory connection with sanctioned load of 36.070 KW under Dharamkot Sub-Division of City Division , PSPCL Moga. The petitioner received a letter vide memo no: 1515 dated 25.08.2015 from the office of AEE, DS Sub-Division, PSPCL, Dharamkot in which the demand of Rs. 9,43,027/- was raised on the basis of checking of meter by the Enforcement Moga but no detail of the amount and period for which the amount has been charged was mentioned. Later on, through letter no: 60 dated 21.01.2016, the demand was revised to Rs. 10,81,214/- but again without giving any detail. However, vide letter dated 29.01.2016, it was intimated that the demand has been raised from July, 2005 on the basis of slowness declared in the checking report dated 02.06.2014 of Enforcement that the meter was running slow by 33.38%.

He next submitted that the demand raised is not only illegal but also excessive. The data downloaded at the time of checking was never completely supplied to the petitioner inspite of specific request to the Asstt. Executive Engineer DS Sub Division, Dharamkot as per their letter dated 03.02.2016. The demand was raised, as per letter no: 199 dated 04.06.2014 of Enforcement Moga, but neither a copy of this letter nor the data downloaded from the meter was supplied to the petitioner, whereas as per Instruction No. 93.1 of the Electricity Supply Instructions Manual (ESIM), the detail of amount alongwith rule under which, the same has been charged is required to be supplied to the consumer. Furthermore, the demand is time barred and under no circumstances, any demand can be raised for more than three years. The meter is required to be checked time to time by the PSPCL and under Regulation 21.3.5 of the Supply Code-2014, the meter is required to be inspected / checked periodically atleast once in three years and PSPCL cant’s take the advantage of its own wrong deeds and charged the amount from July, 2005 in violation of the standing instructions of the PSPCL and against the natural justice. The meter of the petitioner was working properly and it is wrong that one phase of the meter was not recording the consumption as alleged in the checking report. The meter is required to be checked from the independent authority to the satisfaction of the consumer and in this context, the petitioner is ready to pay the fee. Though not admitted, if the meter on testing is found beyond the limits of accuracy, the account of the petitioner is required to be overhauled as per Regulation 21.5.1 of the Supply Code-2014 for maximum period of six months from the date of checking.

He further stated that the reading of the meter was being taken by the SDO every month and the meter installed at the premises of the petitioner is an static meter. The checking of meter on 02.06.2014 has been done on the basis of request by the SDO, Dharamkot vide its letter no; 304 dated 10.04.2014. As per report of checking dated 02.06.2014, Blue Phase PT was showing missing. However, the letter was written for the checking of the meter before 04 / 2014, when the reading was being taken regularly, PT of no phase was showing missing. Furthermore, the petitioner time and again requested to supply complete data downloaded so that petitioner can put his case before the ZDSC but the complete data was not supplied.

The case was represented before the ZDSC, wherein it was replied by the respondents PSPCL that complete data of DDL will be supplied in the next meeting. The ZDSC decided the case without supplying complete data of DDL and without giving proper hearing to the petitioner and as such; it was held that the amount is correct and recoverable. Being not satisfied with the decision of the ZDSC, an appeal was filed before the Forum, but PSPCL submitted the data of DDL of two pages only, which is not the complete data downloaded from the meter by the PSPCL but no other data, was supplied by the PSPCL before the Forum. The complete DDL taken from the meter is required to be submitted for adjudication and the copy of the same is required to be supplied to the petitioner without which clear picture of the data downloaded is not clear. The DDL print out submitted by the PSPCL before the Forum is incomplete. Furthermore, as per printout supplied by the PSPCL to the Forum, there is no data from 01.12.2009 to 27.06.2012 for about three years, which is not possible that meter is not recording any data during this period. The meter is required to be periodically checked in every three years by the competent authority of PSPCL and PSPCL cannot take the advantage of his own wrong by charging the amount beyond the period of three years.

In the end, he requested that the demand of Rs. 9,43,027/- raised vide letter dated 25.08.2015 by the AEE DS Sub-Division, PSPCL, Dharamkot which was subsequently enhanced to Rs. 10,81,214/- through letter no: 60 dated 21.01.2016 on the basis of checking report dated 02.06.2014 is illegal and excessive and the same may please be set aside and allow the petition.

6. Er. Kuldip Singh, ASE, on behalf of the respondents, PSPCL, submitted that the consumer is having MS category connection with sanctioned load of 36.070 KW operating under Dharamkot Sub-Division of City Division, PSPCL, Moga. . The connection of the petitioner was checked by Addl. SE / Enforcement Moga vide ECR no: 34 / 1758 dated 02.06.2014 and the meter was found slow by 33.38% when checked with LT ERS meter at running load of 16.230 KW. On further investigation, it was observed that ‘B’ phase potential i.e. voltage was missing on the display of the meter and ‘B’ phase voltage supply connection was disconnected due to which the meter was recording 1 / 3 less consumption being nil contribution on ‘B’ phase. The DDL of the meter was also taken at site by Addl.SE / Enforcement, Moga. The Senior Executive Engineer, Enforcement through its letter no: 199 dated 04.06.2014, directed the SDO, PSPCL Dharamkot to overhaul the account of the petitioner with effect from 04.07.2005 by enhancing the 50% of the consumption of the petitioner. Accordingly, the SDO, PSPCL Dharamkot overhauled the account of the petitioner and charged an amount of Rs. 9,43,027/- and the detail of amount was made available to the petitioner by the SDO, Dharamkot vide its Memo no: 84 dated 29.01.2016.

He next submitted that it was directed by the Sr. Xen, Enforcement Moga through its letter no: 199 dated 04.06.2014 to overhaul the account of the petitioner from 07 / 2005 but the SDO, PSPCL Dharamkot overhauled the account of the petitioner from 03 / 2007. Later on, the SDO, PSPCL Dharamkot vide its letter no; 84 dated 29.02.2016 overhauled the account of the petitioner for the correct period with effect from 07 / 2005 and issued a notice for an amount of Rs. 10,81,214/-. The letter no: 199 dated 04.06.2014 issued by the Sr. Xen, Enforcement Moga was addressed to the SDO, PSPCL, Dharamkot and neither a copy of which was endorsed to the petitioner nor any DDL was asked for by the petitioner.

He further stated that the petitioner has contended that as per Regulation 21.3.5 of the Supply Code-2014, his account cannot be overhauled beyond six months. But the Forum in its decision dated 12.05.2016 has decided that Regulation 21.3.5 is applicable only where the meter is found defective. In this case, Blue phase PT of the meter was missing and as such, the meter was recording 1 / 3 less consumption and thus, the amount charged to the petitioner is as per Rules and Regulations of the PSPCL. Moreover, it is wrong to state by the petitioner that the copy of instructions / DDL has not been supplied to him. It is also wrong to state that the amount charged to the petitioner has been time barred. The Forum in its decision has clearly mentioned that the amount charged is not time barred as per Section 56 (2) of Indian Electricity Act. It is correct that as per Regulation 21.3.5 of the Supply Code-2014, the connection was required to be checked once in three years, but the petitioner has been charged only due to non-recording of consumption of one phase. As such, only the difference of less billing has been charged. However, it is also clear from the DDL report that from 04.05.2007, there was no recording of consumption from the Blue phase.

He submitted that it is correct to some extent that the reading of MS connections is being taken by the concerned AE / AEE on the spot but the checking of this connection was made by the Sr. Executive Engineer / Enforcement, Moga on 02.06.2014 and accordingly data was downloaded and as per DDL report there was non-recording of consumption from one phase with effect from 04.07.2005. He contested that the copy of DDL was made available to him in the meeting of ZDSC. He denied that the report of DDL made available to the petitioner is incomplete as it was ratified by the Sr. Executive Engineer, Enforcement Moga through its letter no: 76 dated 28.04.2016, copy of which has been placed on record. In the end, he has prayed that the amount charged to the petitioner is correct and recoverable from the petitioner and requested to dismiss the appeal.

6. Written submissions made in the Petition, written reply of the respondents and other material brought on record, as well as oral arguments of the counsel and the representative of PSPCL have been perused and considered. The relevant facts of the case are that the Petitioner’s connection was checked and DDL was taken by Enforcement on 02.06.2014 in view of AEE, Sub Division, PSPCL, Dharmkot letter no: 304 dated 10.04.2014, wherein it was reported that Blue Phase was missing on the meter. It was also reported that the accuracy of the meter when checked with LT ERS meter at running load of 16.230KW, the meter was found running slow by 33.38%. On further investigations, it was found that the Blue Phase Potential was missing on display of the meter and Blue Phase Voltage supply was disconnected inside the meter. It was also directed to replace the meter which was replaced on 10.06.2014. On scrutiny of the DDL print-out, Enforcement vide Memo no: 199 dated 04.06.2014 intimated that Blue Phase PT of the meter was missing continuously from 04.07.2005 and as such the account of the consumer be overhauled from this date by enhancing the recorded consumption by 50% and a notice dated 25.08.2015 was issued to the Petitioner to deposit Rs. 9,43,027/-. The Petitioner agitated this amount in ZDSC wherein the amount was held recoverable because the same was charged to the consumer as per rules of PSPCL. The CGRF (Forum) also upheld the decision of ZDSC and further held that overhauling of account be ensured upto 10.06.2014 i.e. date of the replacement of meter.

The Petitioner in his prayer has raised his eye-brows on the main issue regarding period of overhauling of account for whole period and vehemently argued that readings of the meter were being taken by responsible officers of the Respondents every month but at no stage it has been pointed out that the Blue Phase voltage was missing. He further argued that the case does not fall in the ambit of Section 56 (2) of Indian Electricity Act 2003 as claimed by the Respondents because this Section provides for limitation if the charges are not recovered within a period of two years when it comes to the notice and further Limitation Act provides that no arrear can be charged beyond a period of three years. Moreover, the Respondents are duty bound to check the connections periodically after every six months, as per provisions contained in instruction No. 104.1 (ii) of ESIM and further to check the meter once in a period of five years, as provided in the Supply Code-2007 and ESIM, Instruction No. 15.3 but they failed to check the connection within mandatory period, hence, they have no right to charge beyond the specified period, in case of any default pointed out at a later stage. The Petitioner has been charged for the default on the part of the respondents which is illegal and unjustified and prayed to allow the appeal.

The Respondents argued that the overhauling of account has been correctly done for the actual quantum of energy consumed by the Petitioner but could not billed earlier, due to slow running of the meter during whole period of default. It was further argued that the officers, while taking readings, carries no meter checking equipment with them hence they, at the time of taking readings, cannot check the meter at site and further they are mainly supposed to take readings and submit to Billing Section to issue energy bills. The Respondent’s representative also argued that this case is a case of non-contribution of one phase and not of inaccurate or defective meter, therefore, the quoted regulation 21.4 (g) of Supply Code-2007 is not applicable and the Petitioner is liable to pay charges for actual energy consumed by him for the whole period of default. In the present case, the Tamper Data clearly shows the date of default and non-contribution of Blue Phase is existing since 04.07.2005, as such, the Petitioner is liable to pay for electricity charges from the date of default. The demand raised is correct and recoverable in accordance with Regulations and prayed to dismiss the appeal.

First submission made by the Petitioner was that since the meter was not checked periodically as required under relevant Regulations, hence, the Respondents cannot charge any amount beyond three years in accordance with Law of Limitation and to the maximum extent of five years which is limitation for periodical testing of meters. The arguments made by the Petitioner are worth considering that the Respondents failed to exercise their duties due to which the Petitioner was burdened at a later stage but it did not mean that the Petitioner is escaped for under-billing done by Respondents from time to time only due to the reason that his meter has not been periodically checked as provided in Regulations. In my view, the under-billing is surely recoverable from the consumers from the date of occurrence of default till its removal subject to limitation of period as provided in Electricity or other relevant Act. In the present case, the default period is clearly evident from the tamper status of DDL print-out of the meter, placed on the record which is w.e.f. 04.07.2005, which continued till 10.06.2014 (the date of replacement of meter).

Next issue raised by the Petitioner was regarding limitation of period for recovery of dues wherein the Petitioner by placing a copy of judgment dated 18.02.2015 of Gauhati High Court, in First Appeal no: 133 of 2005, pleaded that the recovery beyond of period of three years is not permissible as per decision of the High Court as provided in the Limitation Act (though no specific section of Limitation Act quoted). I have gone through the above referred decision of Gauhati High Court and found that the Petitioner’s case is not similar to the case involved in the said Petition and as such the Petition is not entitled to any relief in accordance with the said decision.

The Petitioner’s next argument was that his case is also covered under the limitation as provided in Section 56 (2) of the Electricity Act-2003, which debars to recover any charges beyond a period of two years. I have gone through the relevant Sections of the Act. The limitation of Section 56 (2), in accordance with decision of Hon’ble High Court in LPA no: 605 of 2009, is clearly defined through Commercial Circular no: 05 / 2012, the relevant portion is reproduced below:-

*“As per provisions of Section 56 (2) of Indian Electricity Act 2003 and Regulation No. 35.2 of Supply Code, notwithstanding anything contained in any other law for the time being inforce, no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied.*

*As per feedback received from the field, different interpretations are being made of the ibid provisions of Electricity Act/ Supply Code by the field officers for recovery of arrear not originally billed to consumer. Hon’ble Punjab and Haryana High Court in LPA No. 605 of 2009 decided on 9.9.2011* ***has observed that Section-56 of Electricity Act does not wipe off the recovery of arrears for more than two years. The right to recovery of arrear by way of suit has been specifically protected.***

*In view of above, it is clarified that limitation period of two years for charging the amount under Section 56 (2) of the Electricity Act 2003 shall start from the date of detection of mistakes by the officer (s) / Official (s) / demand raised by PSPCL. However, this will not be applicable for those cases where accuracy of meter / metering equipment is involved in view of the Regulation No. 21 of Supply Code.*

In the case of petitioner the demand of Rs. 9,43,027/- due to less billing during the period 02 / 2007 to 05 / 2014 was raised by the SDO/ Dharmkot vide notice bearing no: 1515 dated 25.8.2015, against the checking conducted by ASE / Enforcement on 02.06.2014. Thereafter notice of revised demand of Rs. 10,81,214/- ( disputed amount for the period 07 / 2005 to 05 / 2014 ) was issued vide Memo no: 60 dated 21.1.2016. Thus the period of limitation start from the date of detection of mistake i.e. 02.06.2014 as such, the issue of limitation as argued by the Petitioner is not maintainable.

As a sequel of above discussions, the evidences placed on record, shows that the meter was found inaccurate at site during checking on 02.06.2014 by Enforcement with LT ERS meter wherein the meter was found slow by 33.38% meaning thereby that the effective date of dispute is 02.06.2014, when Supply Code - 2007 was applicable and surely the account of the Petitioner is required to be overhauled in accordance with the provisions contained in Regulation 21.4 (g) of Supply Code – 2007 read with instruction No. 93.1 of ESIM for the whole period of default. Accordingly, the demand raised by AEE / Operation, PSPCL, Dharamkot vide notice dated 25.08.2015 read with notice dated 21.01.2016 is held recoverable by upholding the decision dated 16.05.2016 of CGRF taken in case no: CG-24 of 2016. The Respondents are directed that the amount excess / short, after adjustment, if any, may be recovered / refunded from / to the Petitioner with interest under the provisions of ESIM-114.

7. The appeal is dismissed.

(MOHINDER SINGH)

Place: SAS Nagar (Mohali) OMBUDSMAN,

Dated: 06.10.2016. Electricity Punjab, SAS Nagar, (Mohali).