**COURT OF THE LOK PAL (OMBUDSMAN),**

**ELECTRICITY, PUNJAB,**

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

**S.A.S.NAGAR (MOHALI).**

**APPEAL NO. 20/2018**

**Date of Registration :05.03.2018**

**Date of Hearing :23.08.2018 and 30.08.2018**

**Date of Order : 06.09.2018**

**Before:**

 **Er. Virinder Singh, Lok Pal (Ombudsman) Electricity**

**In the Matter of :**

 Smt. Maninder Kaur Dhiman,

C/o Shri Gian Singh,

House No. 3019, Phase-7,

S.A.S. Nagar (Mohali).

 ...Petitioner

 Versus

 Additional Superintending Engineer,

DS Division (Special),

 PSPCL,

S.A.S. Nagar (Mohali).

 ...Respondent

**Present For:**

Petitioner : 1. Sh.R.S. Dhiman,

 Petitioner’s Representative (PR).

 2. Sh. A.P. Singh,

 Petitioner’s Representative (PR).

Respondent : 1. Er. H.S. Oberoi,

 Addl. Superintending Engineer.

 2. Er. Mohit, AEE/Commercial.

 3. Er. Avanit Kaur, Assistant Engineer.

Before me for consideration is an Appeal preferred by the Petitioner against the order dated 13.12.2017 of the Consumer Grievance Redressal Forum (Forum) in Case No. CG-298 of 2017 deciding that:

“*Petitioner be charged for 2 years for the connection (beyond 22.07.2013 to 21.07.2015) on the basis of 179 units per month (30 days).”*

*2.* **Condonation of Delay:**

 At the outset, the issue of condonation of delay in filing the Appeal in this court was taken up.

 PR stated that the Appeal had been filed beyond the limitation period of one month due to the reason that the Petitioner’s case was decided by the Forum on 13.12.2017 and copy of the decision was sent by the Forum on 14.12.2017 by Registered Post, but, the same did not reach the Petitioner. As such, after waiting for about one month, the Petitioner enquired about the same from the Forum on telephone. The Petitioner was told that the decision had already been sent by post. Then, on the request by the Petitioner, the Forum sent a copy of the decision by e-mail on 29.01.2018. It was apparent from the copy of screen shot dated 29.01.2018 that the decision was received by the Petitioner on 29.01.2018. Thereafter, the notice for depositing Rs. 58,170/-, based on the decision of the Forum, though shown issued on 16.01.2018, was received and was found dropped in the Petitioner’s letter box. Thereafter, the filing of the Appeal in this Court got a bit delayed and could be filed only on 05.03.2018. Thus, the inability of filing the Appeal within limitation period was beyond the Petitioner’s control and may be condoned and the Petition heard in the interest of justice.

The Respondent, in its reply to the Appeal, did not offer any comments on the submissions made by the Petitioner regarding condonation of delay and also did not raise any objection in this regard during hearing.

I have gone through Regulation 3.18(ii) of the PSERC (Forum and Ombudsman) Regulation-2016 which reads as under:

 “*No representation to the Ombudsman shall lie unless the representation is made within one month of the date of receipt of order of the Forum.*

 *Provided that the Ombudsman may entertain a representation beyond one month on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of one month”.*

*I observe that the Petitioner has valid reasons for not filing the Appeal within the stipulated period.*

 *I also observe that non condonation of delay would deprive the Petitioner of the opportunity, required to be afforded, to seek remedy and would also not meet the ends of ultimate justice. Thus, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court is condoned and the Petitioner is afforded an opportunity to present the case.*

**3. Facts of the Case:**

The relevant facts of the case are that:

1. The Petitioner was having a Non Residential Supply (NRS) Category Temporary Connection with sanctioned load of 4kW.
2. The Petitioner received a bill dated 21.06.2017 for Rs. 9,56,061/- for 1402 days for the period from 21.07.2013 to 24.05.2017 on account of the previous/current year arrears.
3. The Petitioner did not agree with the billed amount and the Petitioner filed a Petition in the Forum, which passed the order dated 13.12.2017 ( Reference: Page 2, Para 1).
4. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court and prayed to set aside the decision of the Forum and allow the Appeal in the interest of justice.

**4. Submissions made by the Petitioner and the Respondent:**

Before undertaking analysis of the case, it is necessary to go through written submissions made by the Petitioner and reply of the Respondent as well as oral submissions made by the Representatives of the Petitioner and the Respondent along with material brought on record by both the sides.

1. **Submissions of the Petitioner**:

The Petitioner made the following submissions for consideration of this Court:

1. The Petitioner was having a NRS category electricity connection of 30kW, bearing Account No. 3000316326, at Plot No. 375, Bulk Material Market, Phase-XI, S.A.S. Nagar. The connection was permanent and running since 14.08.2013. All electricity bills of this connection had regularly been paid and there was no dispute in this regard.
2. Earlier, in 2012, the Petitioner obtained a Temporary Connection of electricity, bearing Account No. 3000299416, for construction on the above cited Plot. The construction work was completed in 2013 and the Temporary Connection was disconnected and the Energy Meter was removed from site on 16.06.2013.
3. After completion of construction work, the Petitioner applied for a permanent connection at the above site in May 2013. Apprehending a delay in the release of Permanent Connection, the Petitioner applied for another Temporary Connection on 18.07.2013 as a stop gap arrangement. However, Permanent Connection was released on 14.08.2013 with Account No. 3000316326. As such, the Petitioner did not press for the installation of Temporary Connection and the same was also not released to the Petitioner.
4. Thereafter, as a bolt from the blue, the Petitioner received a bill dated 21.06.2017 for Rs. 9,56,061/- in respect of Account No. 3000319418 which was not sustainable as the said connection was not physically released at site.
5. The Forum, in its decision, observed that **from the documents on record it could not be established whether the connection was ever physically released on ground or not** other than the fact that it was applied for by the consumer and was released on SAP system. No document was available to substantiate as to why it was extended beyond two years without any approval, if released in the first instance. With that being the position, it was not imaginable on what basis the Forum had chosen to decide that the Petitioner be charged for two years.
6. The Forum had further held that after removal of the first Temporary Connection, bearing Account No. 3000299416, on 16.06.2013, a new Temporary Connection bearing Account No. 3000319418 was applied for on 18.07.2013
7. There was no Checking Report, no readings or any other record to prove that the alleged second Temporary Connection was ever installed physically at site especially when a Permanent Connection, bearing Account No. 3000316326, had been released at the same site on 14.08.2013. All these findings of the Forum were contrary to its decision of charging the Petitioner for two years. It was a well established law that no one could be penalized on the basis of mere conjectures and surmises.
8. It stood proved on the basis of Respondent’s own record that a permanent connection of NRS Category of 30kW, bearing Account No. 3000316326 had been released at the Petitioner’s premises on 14.08.2013. It being so, it could not be believed that the Petitioner allowed another Temporary Connection of higher tariff to run at the same premises for nearly four years from 18.07.2013 onwards. The Petitioner would had got it removed immediately if one had been actually installed on ground.
9. It was true that the Petitioner, after removal of its first Temporary Connection, applied for a new Temporary Connection apprehending delay in the release of its permanent connection. But, after release of a permanent connection, it did not press for installing a Temporary Connection. The Respondent – PSPCL, instead of cancelling the Petitioner’s application for a Temporary Connection, **showed it released in papers only**. It continued to run only in papers for nearly four years and a bill for Rs. 9,56,061/- was raised against the Petitioner in July, 2017. The above amount was not recoverable as no second Temporary Connection was ever released at the Petitioner‘s premises after release of its permanent connection on 14.08.2013.
10. The decision of the Forum may be quashed and the demand of Rs. 58,170/- raised against the Petitioner may also be set aside.
11. **Submissions of the Respondent:**

The Respondent, in its defence, submitted the following for consideration of this Court:

1. The Petitioner, Shri Gian Singh, General Power of Attorney (GPA) holder of Mrs. Supreet Dhiman, 375, Block Market, Phase-11, S.A.S Nagar (Mohali), applied on 18.07.2013 for Temporary Connection of 4kW load, which was released on 22.07.2013.
2. Due to non-recording of the reading of the Temporary Connection, the Petitioner was issued the bill of Rs. 8,13,080/- for energy consumption of 61536 units on average basis of “N” Code with LDHF formula under SAP System, for the period from 22.07.2013 to 23.01.2017
3. The Petitioner was issued another energy bill of Rs. 9,41,020/- for 5712 units, on average basis for 119 days of “N” Code with LDHF formula including the amount of previous bill (Rs. 8,13,038 plus Surcharge Charge thereon).
4. The Petitioner did not agree with the billed amount and preferred a Petition in the Forum. The Forum, vide its order dated 13.12.2017, decided to charge the Petitioner for 2 years for the connection (beyond 22.07.2013 to 21.07.2013) on the basis of 179 units per month (30 days).
5. As per the said decision dated 13.12.2017 of the Forum, the account of the Petitioner was overhauled by the AEE/Commercial, S.A.S. Nagar (Mohali) vide Notice bearing No. 153 dated 16.01.2018 and directed the Petitioner to deposit an amount of Rs. 58,170/-, but it did not deposit the amount and preferred an appeal in this Court. The Appeal was devoid of merit and may be dismissed.

 **5. Analysis:**

The issue requiring adjudication is the legitimacy of charging the Petitioner for the Temporary Connection, statedly not released/installed, for 2 years (beyond 22.07.2013 to 21.07.2015) on the basis of 179 units per month (30 days).

 *The points emerged are analysed and deliberated as under:*

1. In the present dispute, a Temporary Connection of 4kW was initially released to the Petitioner on 25.04.2012 (bearing Account No. 3000299416) which was removed on 16.06.2013 for which, all the payments were made by the Petitioner. Subsequently, a permanent connection of 30 kW was released on 14.08.2013 in the same premises. In between, another Temporary Connection (bearing Account No. 3000319418) of 4 kW was applied for by the Petitioner on 18.07.2013, which was closed by SAP system on 22.07.2013, but there was no checking report, no reading record and no MCO were available pertaining to this connection. As per bill available on record, the Energy Meter, bearing Sr. No. 104366 was issued.

 I find that during hearing on dated 23.08.2018, PR referred to the observation of the Forum, in its decision, stating as under:

*“It can not be established whether the connection was even physically released on ground or not other than the fact, it was applied by the consumer and was released on SAP.”*

*I have also noted the contention of the PR that the Forum assumed that the connection was released and remained operational for a maximum period of two years as per instructions and took the actual consumption of the previous Temporary Connection and decided to overhaul the account of the disputed Temporary Connection (bearing Account No. 3000319418) from 22.07.2013 to 21.07.2015 on the basis of 179 units/month, which was not correct.*

 *I find that the Energy Meter was subsequently traced out and got checked from ME Lab on 08.12.2017, as per directions of the Forum, but, the Energy Meter was found “Dead” and did not respond to Common Meter Reading Instrument (CMRI) due to which, the DDL could not be taken.*

1. With a view to arrive at the factual position, Assistant Engineer (Sub divisional Officer), ME Lab, PSPCL, Ropar was directed to place on record of this Court on the next date of hearing (30.08.2018) the evidence in regard to issuance of the Energy Meter of Temporary Connection bearing Account No., 3000319418. Simultaneously, the Addl. S.E, DS Division (Special), S.A.S. Nagar was also directed to, place on record of this Court on 30.08.2018, evidence regarding the whereabouts of the said Energy Meter issued, if any.
2. In response, the Assistant Engineer, ME Lab, PSPCL, Ropar attended the hearing on 30.08.2018 and submitted that the said Energy Meter was issued to AEE/Tech-II, DS Division (Special), S.A.S. Nagar and also showed the relevant record of the ME Lab as an evidence to this effect. But, the Respondent, who was also present in this hearing, could not produce any evidence in regard to issuance and disconnection of the disputed Energy Meter for Temporary Connection to the consumer relating to Account No. 3000319418.

*From the above, it is evident that the Respondent has failed to place on record of this Court any documentary evidence to substantiate its contention that Temporary Connection, bearing Account No. 3000319418, was ever released and if so, disconnected.*

1. As per provisions contained in Instruction No. 8.2 of ESIM, recovery of energy charges shall be made in accordance with the provisions of Schedule of Temporary Metered Supply Tariff as approved by the Hon’ble PSERC. Meter Reading for temporary supply will be taken at the end of each fortnight or on expiry of each specified period, but not less than once a month. However, the Respondent failed to comply with its own instructions in this regard.
2. Also, as per provisions contained in Instruction No. 8 (vi) of ESIM, if the Temporary Connection was given for more than one month, it will be desirable to conduct periodical checking of the installation, not exceeding one month, so as to ensure that the temporary nature of installation did not constitute any danger. Defect, if any, should be got removed. But, the Respondent failed to discharge its obligation in this regard too.
3. As per provisions contained in Instruction No. 8 (iv) of ESIM, temporary supply will be given for a period not exceeding three months in the first instance, this period of 3 months may be extended upto 2 years for constructions phase of large projects by Chief Engineer/DS and upto 3 years or beyond by the CE/Commercial. But, the Respondent did not implement these instructions.

 From the above analysis, it is concluded that the Petitioner is not liable to be charged for the Temporary Connection in the absence of any documentary evidence supporting release, operation and disconnection thereof. Therefore, the amount raised against Temporary Connection, bearing Account No. 3000319418, relating to the period from 22.07.2013 to 21.07.2015 on the basis of 179 units per month is not sustainable.

**6. Decision:**

 **As a sequel of above discussions, the order dated 13.12.2017 of the Forum in Case No. CG-298 of 2017 is set-aside. As a result, the notice issued by the Respondent, vide memo no. 153 dated 16.01.2018, to the Petitioner, pursuant to order ibid of the Forum, raising a demand of Rs. 58,170/-, is quashed and no amount is recoverable from the Petitioner for the Temporary Connection bearing Account No. 3000319418. Accordingly, the Respondent is directed to refund the amount deposited by the Petitioner for filing Appeal in this Court, without any interest because the Petitioner is also responsible for not withdrawing the application dated 18.07.2013 against which, it applied for new Temporary Connection.**

 **7.** The Appeal is disposed off accordingly.

**8.** In case, the Petitioner or the Respondent (Distribution Licensee) is not satisfied with the above decision, it 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.

 (VIRINDER SINGH)

 September 06 , 2018 LokPal (Ombudsman)

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