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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 24/2018**

**Date of Registration : 03.05.2018**

**Date of Hearing : 06.09.2018**

**Date of Order : 11.09.2018**

**Before:**

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

**In the Matter of :**

 M.B.Rice & General Mills,

 Burja Road,

 Malout.

 ...Petitioner

 Versus

Additional Superintending Engineer,

DS Division, PSPCL,

Malout.

 ...Respondent

**Present For:**

Petitioner : Sh. R.S.Dhiman,

 Petitioner’s Representative (PR)

Respondent : Er. Harpreet Singh,

 Sr.Executive Engineer.

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 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 19.04.2018 of the Consumers Grievances Redressal Forum (Forum), in Case No. CG-101 of 2018, deciding that:

*“Overhauling account of the Petitioner by Respondent from 10.09.2014 to till date it was omitted by applying correct Multiplying Factor 2.00 instead of 1.00 is justified and recoverable as per Note to Regulation 21.5.1 of Supply Code-2014”.*

**2. Facts of the case***:*

 The relevant facts of the case are that:

1. The Petitioner was having a Medium Supply Category connection

(Seasonal Industry) with sanctioned load of 98.090 kW and contract demand (CD) of 100 kVA.

1. The connection was checked by the Sr.Xen, Enforcement-1, PSPCL,

Bhatinda vide ECR No.28/1901 dated 05.06.2017 and it was reported that the Energy Meter was of capacity 5/5A while the capacity of 11KV/110V, CT/PT unit was 10/5A, hence, Multiplication Factor (MF) should have been 2 instead of 1, being applied in the bills.

1. The Account of the Petitioner was overhauled from 10.09.2014

(Date of release of connection) till the date of applying correct Multiplication Factor (MF) 2 instead of 1.

1. The Petitioner was served a notice by the Respondent, vide memo

no.1084 dated 07.06.2017, for depositing Rs.17,48,486/-.

1. On the request of the Petitioner, the Chief Engineer/ DS, West

Zone, PSPCL, Bhatinda allowed to pay the amount in 10 equal monthly instalments, out of which the Petitioner paid only four monthly instalments.

1. The Petitioner did not agree with the aforesaid notice for demand of

Rs.17,48,486/- and filed a Petition on 19.03.2018 in the Forum who, after hearing, passed order dated 19.04.2018 (Reference: Page-2, Para 1).

1. Not satisfied with the decision of the Forum, the Petitioner filed

an Appeal in this Court and requested to set aside undue charges

raised against it in the interest of justice.

**3. 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 in the Appeal and reply of the Respondent as well as the oral submissions of the Representatives of the Petitioner and the Respondent alongwith material brought on record by both the sides.

1. **Submissions of the Petitioner**:

The Petitioner submitted the following for consideration of this Court:

1. The Petitioner was running a Rice Sheller at Burja Road, Malout

District Sri Muktsar Sahib, having an electricity connection, bearing account no.3000447193, with sanctioned load of 98.090 kW under Medium Supply Category.

**(ii)** The connection was checked by Sr.Xen, Enforcement-1, Bhatinda

on 05.06.2017 and it was reported that the overall Multiplication Factor (MF) in the Petitioner’s case was 2 while MF 1 was being incorrectly applied for billing.

 **(iii)** On the basis of the checking report, a demand of Rs.17,48,486/- was raised against the Petitioner by the Assistant Engineer(SDO), City Sub Division, Malout, vide memo no.1084 dated 07.06.2017 after overhauling the Petitioner’s account from 10.09.2014 to the date of checking and the Petitioner was directed to pay the said amount within 7 days.

**(iv)** Not agreeing with this unreasonable demand, the Petitioner represented to the Forum, who upheld the same without due application of mind to the facts and evidence on record. As a result, the Petitioner was constrained to file the present Appeal for justice.

**(v)** All the equipment including the Energy Meter and CTs belonged to

the Respondent-PSPCL. The Petitioner had no role in the installation of this equipment. As such, mismatch of the CTs and Energy Meter , if any, was not the Petitioner’s fault. Instruction No.102.10 and 102.11 of ESIM were clear, specifically in the matter of installation of the Energy Meter and CTs of matching ratio. The Respondent itself failed to comply with its own instructions. Therefore, the Petitioner could not be made to pay for the lapses on its part. .

1. Instruction No.104.1(i) of ESIM mandated checking of all Medium

Supply connections by the Respondent at least once every six months. These instructions too had not been followed by the Respondent. Had these instructions been complied with, the discrepancy of mismatch of the Energy Meter and CTs would have come to notice within six months of installation and the Petitioner would have been saved from the burden of undue charges for nearly 3 years.

1. It was not possible for the Petitioner to make payment of the

unjustified charges at this belated stage. The Petitioner had been doing business and preparing its accounts on the basis of cost of material, labour and electricity charges etc. and paying income tax and other taxes on profits based on these inputs. Now, having to pay the huge amount of Rs.17,48,486/-, the Petitioner’s business shall get affected adversely in the present scenario of cut throat competition.

1. In a similar case titled *Tagore Public School, Ludhiana Vs. PSEB*,

Hon’ble Punjab and Haryana High Court had held in *CWP No.14559 of 2007* that arrears in such cases could not be raised for more than six months. Appeals filed by the PSPCL before the Division Bench of the Hon’ble High Court as well as Hon’ble Supreme Court were also dismissed. Accordingly, the Petitioner also deserved similar relief.

1. In another identical case titled *Park Hyundai, Sangrur Vs PSPCL*,

the Hon’ble Punjab and Haryana High Court, held in *CWP No.17699 of 2014*, that arrears in such cases could not be raised for more than six months. This Judgement of the Hon’ble High Court was squarely applicable to the Petitioner’s case and entitled the Petitioner to the same relief.

1. Keeping in view the submissions made above, the undue charges

raised against the Petitioner may be set aside in the interest of justice.

1. **Submissions of the Respondent:**

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

1. The Petitioner was having a Medium Supply Category Connection for Rice Sheller, bearing Account No. 3000447193 with sanctioned load of 98.090 kW and Contract Demand (CD) of 100 kVA.
2. Multiplication Factor (MF) 1 was being applied in the energy bills issued to the Petitioner prior to checking, vide ECR 28/ 1901 dated 05.06.2017, by the Sr.Xen, Enforcement-1, Bhatinda, who reported that Multiplication Factor (MF) 2 (instead of 1) was required to be applied for billing purpose.
3. No checking of the Petitioner’s connection was conducted during the period from 09/2014 (month of release of connection) till the date of checking by the Enforcement on 05.06.2017.
4. Based on the said checking report of the Enforcement, the Petitioner’s account was overhauled and an amount of Rs.17,48,486/- was charged to the Petitioner on this account vide memo no.1084 dated 07.06.2017.
5. The Petitioner represented, against the amount charged, to the Chief Engineer,West Zone, PSPCL, Bhatinda, who allowed the chargeable amount to be recovered in 10 equal monthly instalments out of which, recovery of four monthly instalments had been effected from the Petitioner.
6. The Petitioner was still not satisfied and moved a Petition in the Forum, who, vide order dated 19.04.2018, decided that the amount charged to the Petitioner was justified and recoverable as per Note given under Regulation 21.5.1 of the Supply Code-2014.
7. In view of the above submissions, the Appeal was without merit and may be dismissed.

4. **Analysis:**

 The issue requiring adjudication is the legitimacy of overhauling the account of the Petitioner for the period from 10.09.2014 (date of release of the connection) till 07.06.2017 {the date of application of correct Multiplication Factor (MF)} and charging it for Rs.17,48,486/- on account of application of correct Multiplication Factor 2 instead of 1 as per applicable instructions.

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

1. The Petitioner Representative (PR) submitted that the

Petitioner was running a Rice Sheller at Burja Road, Malout District Sri Muktsar Sahib, having an electricity connection, bearing account no.3000447193, with sanctioned load of 98.090 kW under Medium Supply Category. The connection was checked by Sr.Xen, Enforcement-1, Bhatinda on 05.06.2017 and it was reported that the overall Multiplication Factor (MF) in the Petitioner’s case was 2 while MF 1 was being incorrectly applied for billing. On the basis of the checking report, a demand of Rs.17,48,486/- was raised against the Petitioner by the Assistant Engineer (SDO), City Sub Division, Malout, vide memo no.1084 dated 07.06.2017 after overhauling the Petitioner’s account from 10.09.2014 to the date of checking and the Petitioner was directed to pay the said amount within 7 days.

 The Respondent, in its defence, stated that the

Petitioner was having a Medium Supply Category connection for Rice Sheller and the metering was done by providing HT Energy Meter and CT/PT unit of 11kV/110V.The Multiplication Factor (MF) 1 was being applied in the energy bills issued to the Petitioner prior to checking, vide ECR 28/ 1901 dated 05.06.2017, by the Sr.Xen, Enforcement-1, Bhatinda, who reported that Multiplication Factor (MF) 2 (instead of 1) was required to be applied for billing purpose as capacity of HT Meter was 5/5A and that of 11kV/110V CT/PT unit was 10/5A. No checking of the Petitioner’s connection was conducted during the period from 09/2014 (month of release of connection) to 06/2017. The Petitioner represented against the amount charged to the Chief Engineer, West Zones, PSPCL, Bhatinda, who allowed the chargeable amount to be recovered in 10 equal monthly instalments out of which recovery of four monthly instalments had been effected from the Petitioner. The Petitioner was still not satisfied and moved a Petition in the Forum, who, vide order dated 19.04.2018, decided that the amount charged to the Petitioner was justified and recoverable as per Note given under Regulation 21.5.1 of the Supply Code-2014.

1. The Petitioner’s Representative next contended that all the equipment including the Energy Meter and CTs belonged to the PSPCL and the Petitioner had no role in the installation of this equipment. As such, mismatch of the CTs and Energy Meter, if any, was not the Petitioner’s fault. Instruction No.102.10 and 102.11 of ESIM were clear, specifically in the matter of installation of the Energy Meter and CTs of matching ratio. The Respondent itself failed to comply with its own instructions. Therefore, the Petitioner could not be made to pay for the lapses on its part. Instruction No.104.1(i)

of ESIM mandated checking of all Medium Supply Category connections by the Respondent at least once every six months. These instructions too had not been followed by the Respondent. Had these instructions been complied with, the discrepancy of mismatch of the Energy Meter and CTs would have come to notice within six months of installation and the Petitioner would have been saved from the burden of undue charges for nearly 3 years. It was not possible for the Petitioner to make payment of the unjustified charges at this belated stage. The Petitioner had been doing business and preparing its accounts on the basis of cost of material, labour and electricity charges and paying income tax and other taxes on profits based on these inputs. Now, having to pay the huge amount of Rs.17,48,486/-, the Petitioner’s business got affected adversely in the present scenario of cut throat competition.

*While agreeing with the above contention of the PR, I am also of the view that the Petitioner, being a Medium Supply Category consumer, ought to be responsible, prudent and vigilant in keeping a watch over its billing and the consumption mentioned therein. Besides, a consumer can*

*also bring to the notice of the Divisional/Sub Divisional Officer concerned, the fact of non-conduct of periodical checking of the connection at the relevant point of time.*

1. Petitioner’s Representative (PR) also contended that **t**aking cognizance of the blatant non-compliance of the Instruction No. 104.1 (i) of ESIM, Hon’ble Punjab and Haryana High Court decided in an identical case in *CWP No. 14559 of 2007* titled *Tagore Public School, Ludhiana V/s PSEB* that the Petitioner could not be charged for more than 6 months. This decision of the Hon’ble High Court was upheld by the Hon’ble Supreme Court of India. A similar order was passed by the said High Court in *CWP No. 17699 of 2014 titled Park Hyundai, Sangrur Versus PSPCL*. These two judgments were squarely applicable in the present case, hence, the Petitioner was entitled to the same relief.

 *I find that the Forum rightly observed, in its order dated 19.04.2018, that both the cases referred to above by the PR were decided by the Hon’ble High Court when the Supply Code-2007 was in vogue and that Clause 21.4 (g) (i) of Supply Code-2007 had been amended, with the coming into effect of the Supply Code-2014 effective from 01.01.2015, by inserting Note below Regulation 21.5.1 of Supply Code-2014 , which reads as under:*

*“Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued.”*

*I also observe that since checking of the connection of the Petitioner was done on 05.06.2017 and the period of overhauling of the account of the Petitioner was from 09/2014 to 6/2017, the provisions of the Supply Code-2014 (effective from 01.01.2015) only are applicable in the instant case.*

 From the above analysis, the legitimacy of overhauling the account of the Petitioner for the period from the date of release of connectin till the date of application of correct Multiplication Factor (MF) and charging it with a sum of Rs.17,48,486/-, on account of application of wrong Multiplication Factor 1 instead of 2, proves beyond doubt.

**5. Decision:**

 **As a sequel of above discussions, the order dated 19.04.2018 of the Forum in Case No. CG-101 of 2018 is upheld. It is also directed that the recovery of balance amount may be made by the Respondent in 10 monthly instalments and no interest and surcharge be levied since the Respondent was also responsible for lapses on its part.**

**6.** The Appeal is dismissed.

7. 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 11, 2018 LokPal (Ombudsman)

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