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

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

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

 **APPEAL NO. 36/2018**

**Date of Registration : 12.07.2018**

**Date of Hearing : 17.10.2018**

**Date of Order : 25 .10.2018**

**Before:**

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

**In the Matter of :**

 Smt.Satya Devi w/o Sh.Partap Chand,

 Street No.05, Kirpal Nagar,

Ludhiana

 ...Petitioner

 Versus

Sr.Executive Engineer,

DS Sunder Nagar (Special) Division,

PSPCL, Ludhiana

 ...Respondent

**Present For:**

Petitioner : 1. Sh. Lucky Pasricha

 Petitioner’s Representative (PR).

 2. Sh.Ravi Kumar,

 Petitioner’s Representative (PR).

 3. Sh.Shamsher Singh,

 Petitioner’s Representative (PR).

Respondent : 1. Er. Ram Paul,

 Senior Executive Engineer.

 2. Sh.Sandeep,

 Revenue Accountant (RA)

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 13.04.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-46 of 2018 deciding :

“ *To uphold the decision of Division Dispute Settlement Committee (DDSC) office of Addl.SE, Op.Division, Sunder- Nagar (Special), Ludhiana taken in its meeting held on 13.07.2017 that the amount charged by way of power factor surcharge of Rs.52,987/- is recoverable from the Petitioner*”.

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

 At the outset, the issue for condonation of delay in filing the Appeal in this Court was taken up. The Petitioner’s Representative (PR) submitted that the present Appeal could not be preferred in this Court within the stipulated period of one month of date of receipt of order of the Forum due to the reason that copy of the decision of the Forum, sent by the Secretary, CGRF, Patiala, vide memo no.1409-1410 dated 13.04.2018 by Registered Post, did not reach the Petitioner at its given address till date. The Petitioner’s Representative (PR) added that the Petitioner did not also receive any notice, mentioning the amount due, till the filing of the Appeal. The Petitioner took time in arranging funds for depositing the requisite fee for filing the Appeal in this Court. However, the Petitioner filed the Appeal in this Court at its own. That is why, a delay of 53 days beyond the stipulated period of one month from the date of receipt of the Order ibid of the Forum had occurred which may be condoned 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 the course of hearing.

 In this connection, 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 though the Petitioner has given reasons for not filing the Appeal within the stipulated period, it ought to have been vigilant and should have kept a watch on the uploading of the decision of the Forum on its website or pursued the matter with the office of the Forum/ Respondent after the case was closed on 14.03.2018 by the Forum. 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. With this in view, 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. A Small Power Supply Category connection with sanctioned load of

19.840 kW was released to the Petitioner on 04.02.2015 and metering was done by providing Three Phase Four Wire, Whole Current, 10-60A, Energy Meter of Mahashakti Make.

1. The Petitioner got extended the load to 26.900 kW and contract demand

(CD) of 29.888 kVA with effect from 22.12.2017. Hence, the category of connection was changed from Small Power Supply to Medium Supply category.

1. The Petitioner was being charged Power Factor Surcharge since

09/2015. The Petitioner complained about the working of the Energy Meter on 07.09.2015 specifying that Power Factor (PF) was not being recorded correctly and requested that the Energy Meter installed be replaced with that of L&T Make.

1. The Energy Meter was checked vide Load Checking Register (LCR)

dated 29.09.2015 wherein it was reported that the Petitioner wanted to challenge the Energy Meter. Accordingly, the Petitioner deposited the Energy Meter Challenge Fee of Rs.450/- on 18.11.2015, whereafter the disputed Energy Meter was replaced vide Device Replacement Application No.100001368549 dated 18.11.2015.

 (vi) The challenged Energy Meter was sent on 10.10.2016 to ME Laboratory wherein the accuracy of the Energy Meter was found to be within limits. DDL of the said Energy Meter was also taken and the readings were mentioned as 6087 kWh and 22433 kVAh.

1. The Petitioner did not agree with the levy of Power Factor Surcharge and

represented to the Divisional Dispute Settlement Committee(DDSC), which, in the presence of the Petitioner’s Representative, decided the matter, in its meeting dated 13.07.2017, that the amount charged to the Petitioner was recoverable.

1. Accordingly, a notice was served on the Petitioner, vide memo no.239

dated 18.01.2018, to deposit a sum of Rs.55,568/- on account of Power

Factor Surcharge.

1. The Petitioner did not agree with the decision of the Divisional Dispute

Settlement Committee (DDSC) and filed a Petition on 12.02.2018 in the Forum, who, after hearing, passed the order dated 13.04.2018. (Reference Page-2, Para 1) deciding that the amount charged, by way of Power Factor Surcharge was recoverable from the Petitioner.

1. Aggrieved with the decision of the Forum, the Petitioner preferred an

 Appeal in this Court and prayed to accept the same.

**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 alongwith 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 initially having a Small Power Supply Category

connection with sanctioned load of 19.840 kW and got extended its load

to 26.900 kW and contract demand (CD) of 29.888 kVA with effect from 22.12.2017 due to which, the category of connection was changed from Small Power Supply to Medium Supply category.

1. The Respondent charged Power Factor Surcharge to the Account of the

Petitioner, from 09/2015 to 12/2015, amounting to Rs.52,987/-. The Petitioner requested many times to the concerned official to resolve its grievance, but to no avail.

1. The Petitioner complained about the working of the Energy Meter

specifying that Power Factor (PF) was not being recorded correctly and requested that the Energy Meter be changed.

1. Thereafter, the Petitioner challenged the Energy Meter by depositing

Energy Meter Challenge fee of Rs.450/- on 18.11.2015. In response, Device Replacement Application No.100001368549 dated 18.11.2015 was issued and Energy Meter was replaced on 23.11.2015.

1. In the following month i.e. in 01/2016, the Petitioner’s Power Factor

automatically started recording correct Power Factor and never recorded low Power Factor starting from 01/2016 till date.

1. The Petitioner was aggrieved with the levy of Power Factor Surcharge

and filed a Petition in Divisional Dispute Settlement Committee(DDSC), which, decided the Petition, in its meeting held on 13.07.2017, that the Power Factor Surcharge levied on the Petitioner was in order.

1. Not satisfied with the decision of the Divisional Disputes Settlement

Committee (DDSC), the Petitioner filed a Petition on 12.02.2018 in the Forum, who, after hearing, passed the order dated 13.04.2018 upholding the decision of the DDSC.

1. Aggrieved with the decision of the Forum, the Petitioner preferred

an Appeal to this Court and prayed to accept the same.

1. At the time of installation of new Energy Meter, no intimation was given

to the Petitioner that how much reading in kWh/kVAh was at the starting stage.

1. The challenged Energy Meter was checked in ME Laboratory where

DDL was taken, but the DDL did not cover the period of levy of Power Factor surcharge .

1. After replacement of challenged Energy Meter, the Energy Meter started

recording correct Power Factor. This clearly showed that the Energy Meter challenged by the Petitioner was defective.

1. In view of the submissions made above, the Appeal may be accepted.

**( c) Submissions of the Respondent**:

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

1. The Petitioner was having a Small Power Supply Category connection,

bearing Account No.3002456040, with sanctioned load of 19.840 kW.

1. The Petitioner challenged the amount of Rs.52,987/- which related to

period from 09/2015 to 12/2015 on account of Power Factor Surcharge.

1. The Petitioner also challenged the Energy Meter by depositing the Meter

 Challenge Fee on 18.11.2015with the Respondent.

1. Accordingly, the Respondent changed the Energy Meter installed at the

premises of the Petitioner vide Device Replacement Application (DRA) No.100001368549 dated 18.11.2015. The challenged Energy Meter was sent to the ME Laboratory for its internal checking vide ME Challan No.1378 dated 10.10.2016 and tested in the presence of Petitioner’s Representative (PR). On checking the same, the ME Laboratory reported that the accuracy of the Energy Meter was within limit. DDL was also taken.

1. The Petitioner was aggrieved with the Report of the ME Laboratory and

filed a Petition before the DDSC, which, after hearing, decided that the amount of Rs.52,987/- was recoverable from the Petitioner.

1. Not satisfied with the decision of the DDSC, the Petitioner filed a

Petition in the Forum, who, after hearing, passed the order dated 13.04.2018 and upheld the decision of the DDSC.

1. Aggrieved with the decision of the Forum, the Petitioner preferred an

Appeal in this Court and requested to accept the same.

1. The Appeal filed by the Petitioner was without any sufficient ground and

logic, whereas everything was within the knowledge of the Petitioner. Hence, the Respondent rightly charged the Power Factor Surcharge for the period from 09/2015 to 12/2015 amounting to Rs.52,987/-.

1. The Petitioner had changed its category from Small Power Supply

Connection to Medium Supply category connection by getting extended the sanctioned load from 19.840 kW to 26.900 kW with effect from 22.12.2017.

1. The Petitioner was charged Power Factor since 09/2015 and the Petitioner

itself complained about the working of the Energy Meter specifying that Power Factor of the Energy Meter was not coming correctly, therefore, the said Energy Meter be replaced with L&T Make.

1. In view of the submissions made above, there was no merit in the Appeal

 of the Petitioner and the same be dismissed with costs.

**5. Analysis:**

 The issue requiring adjudication is the legitimacy of the amount of Rs.52,987/- charged to the Petitioner by way of levy of Power Factor Surcharge during the months of 09/2015, 10/2015 and 12/2015.

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

**(i)** The present dispute arose when the Petitioner, having a Small Power

Supply Category connection, complained about the working of the Energy Meter on 07.09.2015 specifying that Power Factor (PF) was not being recorded by Mahashakti Make Energy Meter correctly, so, the Energy Meter be replaced with that of L&T Make. The said Energy Meter was then checked vide Load Checking Register (LCR) dated 29.09.2015 wherein it was reported that the Petitioner wanted to challenge the aforesaid Energy Meter. Accordingly, the Petitioner deposited the Energy Meter Challenge Fee of Rs.450/- on 18.11.2015, whereafter, the disputed Energy Meter was replaced vide Device Replacement Application No.100001368549 dated 18.11.2015. The disputed Energy Meter was sent on 10.10.2016 to ME Laboratory wherein its accuracy was found to be within limits. DDL of the Energy Meter was also taken and the readings on M.E. Laboratory report were mentioned as 6087 kWh and 22433 kVAh. The Petitioner’s Representative argued that after about one month of replacement of challenged Energy Meter, the new Energy Meter automatically started recording healthy Power Factor in 01/2016 and never recorded low Power Factor starting from 01/2016 till date. However, the Petitioner was aggrieved with the levy of Power Factor Surcharge, as such, it filed a Petition in Divisional Dispute Settlement Committee(DDSC), which, decided the Petition, in its meeting held on 13.07.2017, that the Power Factor Surcharge levied on the Petitioner was in order.

*I have perused the DDL report dated 10.10.2016 taken in M.E. Laboratory and found that daily Cumulative values of energy at 24.00 hrs were kWh =6120.14, kVAh =22474.98 which matched with the Final readings recorded in ME Laboratory during testing. The Power Factor during September 2015 was recorded as 0.55, in 10/ 2015 as 0.35, in 12/2015 as 0.35 and thereafter i.e. in 01/2016 as 0.98, in 02/2016 as 1.00, in 03/2016 as 0.80, in 04/2016as 0.98 and so on.*

(ii) A perusal of the ME laboratory Report also revealed that the accuracy of the Energy Meter was taken in Active Mode (kWh) only and found to be within limits.

 *I observe that Power Factor depends upon the kVAh consumption (P.F.=kWh/kVAh), hence, the accuracy and Dial Test should also have*

*been taken in Reactive Mode, but was not so taken in ME Laboratory. On inquiry from the Sr.Xen, DS, Sunder Nagar Division (Special), PSPCL, Ludhiana, during the course of hearing, the Court was apprised that the disputed Energy Meter had since been returned to the ME laboratory, the same was not available for checking the accuracy in Reactive Mode i.e. kVARh mode. I also observe that the Power Factor remained low, during the period when Energy Meter of Mahashakti make was installed but after its replacement by Energy Meter of L&T Make in 11/2015, the Power Factor came in the range of 0.80 to unity. This implies that Reactive Part of Mahashakti Make Energy Meter was defective, due to which, Power Factor was coming as low as 0.55 during the period of dispute.*

 From the above analysis, it is concluded that the M.E. Laboratory defaulted in taking accuracy and Dial test of the disputed Energy Meter in Reactive Mode (kVARh) as a result of which, the exact cause of low Power Factor during the disputed period is not ascertainable. As such, the Respondent failed to prove that levy of Power Factor Surcharge, during the period, when the Mahashakti make Energy Meter remained installed, is just and fair considering the default ibid in determining the accuracy of the Energy Meter tested in M.E. Laboratory in Reactive Mode.

**6. Decision:**

 **As a sequel of above discussions, the order dated 13.04.2018 of the Forum in Case No.CG-46 of 2018 is set aside. It is held that no Power Factor Surcharge on account of low Power Factor shall be recoverable from the Petitioner for the period, when the Energy Meter of Mahashakti Make remained installed at its premises. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, without interest/surcharge.**

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

**8**. Chief Engineer/Commercial, PSPCL, Patiala shall issue instructions to all Engineer-in-Chief/Chief Engineer, DS Zone, Chief Engineer/Enforcement and Chief Engineer/Metering, PSPCL that accuracy of the Energy Meters shall be checked /tested at site and /or in ME Laboratory in both Active (kWh) and Reactive Mode (kVARh) to determine the correctness of the Energy Meters. It also needs to be ensured that necessary provision in this regard is made by incorporating an Instruction to this effect in ESIM-2017. Compliance of this order need to be reported within one month of date of its issuance.

**9**. In case, the Petitioner or the Respondent 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)

October 25, 2018 LokPal (Ombudsman)

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