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

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

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

 **APPEAL NO. 43/2018**

**Date of Registration : 23.07.2018**

**Date of Hearing : 06.11.2018**

**Date of Order : 15.11.2018**

**Before:**

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

**In the Matter of :**

 Bhandhari Brothers,

 Village Kangniwal,

Hoshiarpur Road,

Jalandhar.

 ...Petitioner

 Versus

Additional Superintending Engineer,

DS, Cantt Division ,

PSPCL, Jalandhar

 ...Respondent

**Present For:**

Petitioner : 1. Sh.Mayank Malhotra,

 Petitioner’s Counsel (PC).

Respondent : 1. Er.Chetan Kumar

 Addl.Superintending Engineer.

 2. Er. Ms.Yamini,

 Assistant Engineer/ Commercial.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 23.05.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No.T-43 of 2018 deciding that :

*“After going through the Petition as well as reply to the Petition submitted by the Respondent, Forum noted that connection was originally released to the Petitioner under the ‘NRS’ category. However, as per the ASE/Enforcement-2, PSPCL, Jalandhar’s checking vide ECR No.18/2350 dated 27.11.2017, it was found that connection is being used for Índustrial purpose´. Checking Officer further concluded that it is a case of unauthorized use of electricity (UUE). As per Clause 1.5 (g) of PSERC (Forum & Ombudsman) Regulations, 2016, the Forum can not take up grievances pertaining to UUE which are covered under Sec.126 of Electricity Act-2003 and Petitioner needs to approach appropriate authority competent to decide the case under the provisions of Electricity Act 2003”.*

2. **CONDONATION OF DELAY**:

 At the outset, the issue of condonation of delay in filing the Appeal in this Court was taken up. Petitioner’s Counsel stated that though the Order dated 23.05.2018 of the Forum had been received on the same day, the Appeal could not be preferred within the period of limitation as he had gone abroad and on return there from, asked for some documents from the Petitioner, who could not trace the same because these documents were very old. Petitioner’s Counsel added that after receipt and study of the documents ibid, the Appeal was filed in this Court on 23.07.2018 and prayed that the delay in filing the same in this Court may be condoned in the interest of justice.

 The Respondent, in its reply, did not offer any comments in this regard and also did not object, during the course of hearing , to the request of the Petitioner’s Counsel to condone the delay in filing the Appeal in this Court.

 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 the Petitioner has given reasons for not filing the Appeal within the stipulated period are not convincing. 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 this fact 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. The Petitioner was having a Non Residential Supply Category

connection with sanctioned load of 82.720 kW and contract demand (CD) of 91.910 kVA.

1. The connection was checked by the Addl.SE, Enforcement-2,

PSPCL, Jalandhar vide ECR No.18/2350 dated 27.11.2017. As per its Report, the connection was used for Industrial purpose i.e Soap Manufacturing. Hence, it was a case of Unauthorized Use of Electricity (UUE) and the DS office was directed to take necessary action.

1. Accordingly, AEE/ Commercial Unit No.3, Barring, Jalandhar

issued memo no.1581 dated 01.12.2017, *Notice of Provisional Order of Assessment of UUE* in exercise of Power conferred under Section 126 of the Electricity Act-2003, charging the Petitioner with a sum of Rs.11,22,024/-

1. Not satisfied with the above assessment, the Petitioner filed an

Appeal in the Forum, who, after hearing, passed the Order dated 23.05.2018. (Reference Page-2, Para-1)

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

an Appeal in this Court and requested that since the case of the Petitioner was not covered under UUE, so the Order dated 23.05.2018 of the CGRF and the notice bearing No.1581 dated 01.12.2017 charging the Petitioner for Rs.11,22,024/- by the Respondent be quashed and excess amount deposited by the Petitioner from time to time be refunded alongwith interest

**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 and reply of the Respondent as well as oral submissions made by the Representative of the Petitioner and the Respondents 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:

**(i)** The Petitioner was having a Non Residential Supply Category

connection with sanctioned load of 82.720 kW and contract demand (CD) of 91.910 kVA, bearing Account No.3000607122.

1. The connection of the Petitioner was running since long and the

energy bills issued by the Respondent on “O” code, were regularly paid and nothing was due except the disputed amount charged vide Notice bearing no.1581 dated 01.12.2017.

1. The Addl.SE, Enforcement-2, PSPCL, Jalandhar checked the

connection of the Petitioner vide ECR No.18/2350 dated 27.11.2017 and it was reported that the connection was used for Industrial purpose despite the fact that the connection was released under NRS category, hence, it was declared as a case of Unauthorised Use of Electricity (UUE). The Checking Officer directed the DS office to take necessary action in the matter.

1. AEE/Commercial Unit No.3, Barring, Jalandhar issued Notice

bearing no.1581 dated 01.12.2017 asking the Petitioner to deposit a sum of Rs.11,22,024/- on account of UUE.

1. The Assessing Officer had neither inspected the premises of the

Petitioner nor made any inspection report which was mandatory. The demand raised, vide notice dated 01.12.2017, was liable to be set-aside since these had been issued in gross violation of all the statutory instructions.

1. As per Regulation no.21.3 of the Supply Code-2014, the licensee

had to conduct periodical checking/testing of the Energy Meters installed at the premises, but there was nothing adverse against the Petitioner on record.

1. Earlier, the Petitioner had submitted an application dated 14.07.2006

to the Respondent to change the category of its connection from NRS to Medium Supply, but needful was not done.

1. Though the connection of the Petitioner was checked by the ASE,

Enforcement-1, Jalandhar, vide ECR No.43/129 dated 31.03.2010, it did not give any remarks regarding UUE in its report. Subsequntly, the Respondent issued notice bearing no.923 dated 28.10.2010, much after checking dated 31.03.2010, alleging therein UUE with directions to the Petitioner to deposit a sum of Rs.2,08,738/- due to overhauling of the account for the period from 04/2009 to 09/2010.

1. The Petitioner made a representation dated 29.10.2010 to the

Sr.Xen/DS, Cantt Division, PSPCL, Jalandhar mentioning therein that the Checking Officer had not made any remarks of misuse of connection in ECR No.43/129 dated 31.03.2010. It was stated by the Petitioner that it was paying higher tariff under NRS category against lower tariff of MS category.

1. The Sr.Xen/DS, Cantt. Division, PSPCL, Jalandhar examined the

case regarding allegation of UUE and decided that the Petitioner was already paying higher tariff under NRS category and it was not a case of UUE as per provisions of the Supply Code-2007 and CC No.53/2006.

1. The connection of the Petitioner was again checked on 05.05.2011

and 09.06.2012 by the Xen, Enforcement-1, Jalandhar who found nothing adverse.

1. Subsequently, the connection of the Petitioner was checked by the

ASE, Enforcement-1, Jalandhar vide ECR No.6/271 and again vide ECR No.34/2300 dated 17.02.2016 which did not report anything regarding misuse of electricity connection.

1. The disputed Notice bearing no.1581 dated 01.12.2017 was in

violation of Instruction No.57.5 of ESIM, which provided that

recovery of charges, if any, was to be effected after serving the consumer with a notice of show cause, but no such show cause notice was ever issued to the Petitioner. It was worth mentioning that the energy bill issued by the Respondent before the date of checking i.e. 27.11.2017 was of ‘O’ Code.

1. The Petitioner did not agree with the above energy bill and filed a

Petition in the Forum, who, decided, vide order dated 23.05.2018, not to admit the same.

1. Accordingly, an appeal was preferred in this Court with the request

to quash the order dated 23.05.2018 of the Forum and also the Notice bearing no.1581 dated 01.12.2017 amounting to Rs.11,22,024/- along with the request to refund the excess amount deposited with interest.

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

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

**(i)** The Petitioner was having a Non Residential Supply Category

connection with sanctioned load of 82.720 kW and contract demand (CD) of 91.910 kVA.

1. The Petitioner submitted an application dated 14.07.2006 and again

on 18.07.2006 in the office of the Respondent requesting for extension in its load/CD and conversion of category from Non Residential Supply to Medium Supply. But the Petitioner did not submit the requisite Application and Agreement (A&A) and other related documents, rather, the Petitioner increased the connected load on its own

1. The connection of the Petitioner was checked by the

Enforcement-1, Jalandhar vide ECR No.43/129 dated 31.03.2010,whereafter, the Petitioner was informed by the SDO, Jandu Singha, vide letter no.923 dated 28.10.2010 that Audit party had charged the Petitioner with a sum of Rs.2,08,738/- after overhauling its account for the period from 04/2009 to 09/2010. The Petitioner submitted an application dated 29.10.2010 against

charging the amount ibid to the Sr.Xen, Cantt .Division, PSPCL, Jalandhar, who, considered the matter and decided that the case of UUE was not made out against the Petitioner in terms of instructions contained in the Supply Code-2007 read with para 2(iv) of CC No.53/2006 as the Petitioner had been paying higher Tariff under Non Residential Supply (NRS) Category. The above decision was conveyed to the Petitioner, vide Endst No.7902 dted 09.11.2010 by the Sr.Xen, Cantt. Division, Jalandhar stating therein that it (Sr.Xen, Cantt.Division, Jalandhar) was the Competent Authority to take a decision in this regard and it did not agree with the observations of Audit to charge the said amount to the Petitioner who was informed accordingly vide Endst.no.7901 dated 02.11.2010.

1. The connection of the Petitioner was checked by the Officers

authorized to do so as laid down in Clause 29.4 of Conditions of Supply (COS) and Regulation 21.3.5 (iii) of the Supply Code-2014.

1. The connection was checked by the Addl.SE, Enforcement-2,

PSPCL, Jalandhar vide ECR No.18/2350 dated 27.11.2017. As per its Report, the connection was used for Industrial purpose i.e Soap Manufacturing, hence, it was a case of Unauthorized Use of Electricity (UUE) and the DS office was directed to take necessary action.

1. Accordingly, action was taken as per Instruction No.10 of

Commercial Circular (CC) No.19/2012 dated 9.07.2012 and a Notice of Provisional Order of Assessment for Unauthorized Use of Electricity was issued by the AEE/Commercial, Unit No.3, Barring, Jalandhar, under Section 126 of the Electricity Act-2003 in exercise of powers conferred, vide Government of Punjab Notification No.1/60/03-EB(PR)/1186 dated 27.12.2004.. As per the said notice, the Petitioner was charged a sum of Rs.11,22,024/- after overhauling of its account.

1. The Petitioner submitted an application dated 12.12.2017 in the

office of the Respondent requesting to intimate the name of the Assessing Officer. In response, the Petitioner was informed by the DS Division, vide Memo No.65 dated 11.01.2018 that the name of the Assessing Officer was Er.Ms Yamni, AEE/Commercial, Unit No.3, Barring, Jalandhar.

1. The Petitioner did not deposit the amount charged to it and

approached the Forum , who, passed Order dated 23.05.2018 that the Forum could not take up grievance pertaining to Unauthorized Use of Electricity under Section 126 of the Electricity Act-2003.

1. The amount charged to the Petitioner, vide Notice bearing No.1581

dated 01.12.2017 was chargeable/recoverable in terms of provisions of Para 10 of Commercial Circular (CC) No.19/2012 which Provided that if a Petitioner used its Residential/Non-Residential Category connection for the purpose of Industry, it was a case of Unauthorized Use of Electricity.

1. In view of above, the Respondent prayed t dismiss the Appeal.

**5. ANALAYSIS:**

The issue requiring adjudication is the legitimacy of the Notice issued vide No.1581 dated 01.12.2017 charging a sum of Rs.11,22,024/- to the Petitioner who used its Non Residential Supply Category connection for Industrial purpose i.e. manufacturing of Soap as per checking dated 27.11.2017 by the Addl.SE/Enforcement-2, Jalandhar.

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

1. Petitioner’s Counsel (PC) contended that the Petitioner had submitted applications dated 14.07.2006 and 18.07.2006 in the office of the Respondent requesting for extension in load/CD and for change of category of its connection from Non Residential Supply Category to Medium Supply Category, but no action was taken by the Respondent in this regard.

 The Respondent, in its defence, stated that though the applications ibid submitted by the Petitioner were on record, the Petitioner did not submit the requisite Application and Agreement for extension in load and change of category from Non Residential Supply to Medium Supply. Rather, the Petitioner increased the connected load of the connection on its own and used Non Residential Supply Category connection for Industrial purposes i.e. for manufacturing of Soap which was violative of the provisions of the Supply Code-2014. The Respondent added that the amount charged to the Petitioner, vide Notice bearing no.1581 dated 01.12.2017 issued by the Assessing Officer was justified and recoverable from the Petitioner.

 *I observe that the Petitioner, being a Non Residential Supply Category consumer, ought to be wise and aware of the rules and regulations concerning use of connected load of the connection installed at its premises and also about formalities required for extension in load/change of Category of connection. Mere submission of the application for extension in load and change of Category from Non Residential Supply to Medium Supply does not suffice. The Petitioner should have followed up the matter with the Respondent till its logical conclusion to avoid such like disputes. At the same time, the Respondent did not act prudently by not apprising the Petitioner, on receipt of its applications for extension in load/ change of Category , about submission of the Application and Agreement (A&A) Form mandatorily required for the purpose.*

1. Petitioner’s Counsel contended that the order dated 23.5.2018 of the Forum not to admit the Petition dated 26.03.2018 of the Petitioner and dismiss the same was not just and fair as the Petitioner’s case was not that of Unauthorized Use of Electricity (UUE) as made out by the Respondent by issuing Notice of Provisional Order of Assessment of Unauthorized Use of Electricity (UUE) on 01.12.2017. Petitioner’s Counsel added that the Notice ibid could not be deemed to be operational as the Petitioner did not receive any reply to its application dated 12.12.2017 requesting the Respondent to intimate the name of the Assessing Officer, who had issued the disputed Notice dated 01.12.2017. In this regard, Petitioner’s Counsel referred to provisions contained in Section 126 (2) and 126(3) of Electricity Act-2003 providing as under:-

*“****Sec.126 (2 )***

 *The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.*

***126(3)*** *The person, on whom an order has been served under sub section(2), shall be entitled to file objections, if any, against the provisional assessment before the Assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable to such person”.*

Petitioner’s Counsel submitted, during course of hearing, that the Petitioner did not receive any response to its communication dated 12.12.2017 from the Respondent, the disputed Notice, bearing no.1581 dated 01.12.2017 issued by the Assessing Officer, ceased to have legal validity as a result of which, the Petitioner was not liable to be charged the amount mentioned therein also keeping in view the submissions made in the Appeal on merits.

The Respondent, in its defence stated that a Notice of Provisional Order of Assessment for Unauthorized Use of Electricity (UUE) was issued on 01.12.2017 by the AEE/Commercial, Unit No.3, PSPCL, Barring, Jalandhar in exercise of powers of Assessing Officer vested under the provisions of Section 126 of the Electricity Act-2003. On receipt of the said Notice, the Petitioner requested the Respondent, vide application dated 12.12.2017 to intimate the name of the Assessing Officer. In response, the Petitioner was apprised of the name of the Assessing Officer as Er. Ms Yamni, AEE/Commercial, Unit No.3, PSPCL, Barring, Jalandhar, vide letter no.65 dated 11.01.2018. On inquiry during the course of hearing, the Respondent stated that documentary evidence, in regard to taking acknowledgement from the Petitioner, of the said memo dated 11.01.2018 was not available. The Respondent added that the action of the Petitioner asking about the name of the Assessing Officer was simply a delaying tactic as evidenced from the fact of subsequent filing of a Petition dated 26.03.2018 in the Forum who did not admit the same and dismissed it vide order dated 23.05.2018.

*I find merit in the contention of the Respondent during the course of hearing that the act of the Petitioner in asking for the name of the Assessing Officer ( who issued disputed Notice dated 01.12.2017), was a delaying tactic which proved to be true as the Petitioner subsequently filed a Petition dated 26.03.2018 in the Forum challenging the Notice ibid. Had the Petitioner been really sincere in filing the objection, under Section 126(3) of the Electricity Act-2003, to the disputed Notice, it would have followed up the matter with the Respondent seeking reply to its application dated 12.12.2017. Besides, there does not appear to be any justification in asking for the name of the Assessing Officer as the Assessing Officer is designated by virtue of designation held by a person in the PSPCL and the objection, if any, could be filed accordingly without knowing its name. At the same time, the Respondent defaulted in not maintaining record/evidence in token of having sent letter dated 11.01.2018 by Registered Post and in support of acknowledgement from the Petitioner, if sent through some official.*

 From the above analysis, it is concluded that the Petitioner could not file objection to the Notice of Provisional Order of Assessment of UUE issued by the AEE/Commercial, Unit No.3, Barring, Jalandhar, in exercise of power vested under Section 126 of the Electricity Act-2003. Therefore, with a view to meet the ends of ultimate justice, the Petitioner is required to be afforded an opportunity to file objection, if it so desires, to the Notice ibid in terms of provisions contained in Section 126 of the Electricity Act-2003, within 15 days from the date of receipt of this Order.

**6. Decision:**

 **As a sequel of above discussions, the order dated 23.05.2018 of the Forum in Case No.T-43 of 2018 is set-aside. It is held that the Petitioner shall file objection, if it so desires, within 15 days from the date of receipt of this Order to the Notice dated 01.12.2017 issued by Er. Ms. Yamini, Assessing Officer who shall take further necessary action as per provisions laid down in Electricity Act-2003.**

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

 (VIRINDER SINGH)

November 15, 2018 LokPal (Ombudsman)

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