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

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

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

 **APPEAL NO. 49/2018**

**Date of Registration : 09.08.2018**

**Date of Hearing : 20.11.2018**

**Date of Order : 28 .11.2018**

**Before:**

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

**In the Matter of :**

 Arvind Goyal,

 B-30, 2232, Gajja Jain Colony,

Near Moti Nagar, Ludhiana

 ...Petitioner

 Versus

Additional Superintending Engineer,

DS, CMC(Special) Division ,

PSPCL, Ludhiana

 ...Respondent

**Present For:**

Petitioner : 1 Sh.Sukhminder Singh,

 Petitioner’s Representative (PR).

Respondent : 1. Er.Sukhbir Singh,

 Addl.Superintending Engineer,

 DS, CMC (Special) Division,

 PSPCL, Ludhiana

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 04.07.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-154 of 2018 deciding that :

 *“ Amount of Rs.2,27,123/- charged by Audit party on the basis of final reading of the meter along with accuracy of the meter confirmed by ME Lab. within limits through Challan No.633 dated 19.09.2017 further supplied by DDL is justified“.*

**2*.* Facts of the Case*:***

 The relevant facts of the case are that:-

1. The Petitioner was having a Medium Supply Category connection

with sanctioned load of 59.620 kW and contract demand (CD) as 66.240 kVA for which the Metering was done by providing LT CT operated static Energy Meter.

1. The Energy Meter was declared defective by the concerned

AAE (JE-1) on 05.05.2017, while taking the Monthly Reading on finding that the Energy Meter had got hanged.

1. Thereafter, the connection was checked by the Addl.S.E,

Enforcement-2, PSPCL, Ludhiana vide ECR No.13/956 dated 13.07.2017 in the presence of the Petitioner’s Representative and accuracy of the Energy Meter was found within limits. DDL was also taken and directions were issued to replace the Energy Meter with Device Language Message Specification (DLMS) compliant Energy Meter.

1. The Energy Meter was accordingly replaced vide Device

Replacement Application No.100004256824 dated 13.07.2017, effected on 11.08.2017. The Readings of the Energy Meter were taken as under:

kWh = 1,28,5214

kVAh = 1,34,8920

kVA = 81.919

1. The Energy Meter was got checked from M.E. laboratory on

19.09.2017 with the reasons of “ Dead Meter ”, but its accuracy was found within limits. The Readings of the Energy Meter were taken as under:

kWh = 1,28,5214

kVAh = 1,34,8920

kVA = 81.919

1. The Audit Party, vide Half Margin No.108 dated 27.01.2018,

overhauled the account of the Petitioner as per actual consumption which was not previously billed, due to ‘D’ Code, for the period from 01.04.2017 to the change of the Energy Meter i.e. 11.08.2017.

1. In compliance to the Audit observations, the supplementary bill was

issued to the Petitioner on 29.01.2018 for a sum of Rs.2,27,123/-.

1. The Petitioner did not agree with the billed amount and filed a

Petition in the Forum, who, after hearing, passed order dated 04.07.2018. (Reference Page-2, Para-1).

1. Aggrieved 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 natural justice and fairness.

**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 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 Medium Supply Category connection

with sanctioned load of 59.620 kW and contract demand (CD) as 66.240 kVA.

1. The supply from the connection was being used for Hosiery unit.

The consumption of the Petitioner varied from month to month according to season and work in the Factory.

1. The official of the Respondent was recording readings regularly and

issued bills on the basis of recorded consumption. The normal measured consumption of the Petitioner since the last so many years, was in the range of 3000-5500 units depending upon the work in the Unit.

1. The consumption of 12,031 units, as recorded in the month of

02/2017, related to the period of more than two months.

1. The total consumption as recorded in the year 2015 ( i.e. from

01/2015 to 12/2015) and 2016 ( i.e. from 1/2016 to 12/2016) was 49,037 units and 48,735 units respectively. Similarly, the consumption, as recorded/billed in the year 2017 as per monthly regular bills issued (including units billed with ‘D’ Code bills) was 56,886 units, which was even more than the consumption as recorded in the previous two years. Thus, there was no scope of further unbilled consumption of 31,867 units as pointed out by the Audit and upheld by the Forum.

1. The unbilled consumption of 31,867 units was due to jumping of reading of the Energy Meter possibly due to defect in its software. As such, burdening the Petitioner with such a huge amount of Rs.2,27,123/- without considering the previous/normal consumption pattern of the Petitioner was unjustified and demand raised was liable to be withdrawn.
2. The reading as recorded by the Meter Reader on 14.07.2017 was 12,50,999 kVAh, with status of the Meter as ‘O’ (OK). After that, the Energy Meter was declared defective (‘D’ defective Code) on 05.05.2017 by the official recording monthly readings.
3. The Energy Meter was replaced on 11.08.2017 and reading on Meter Replacement Device Application was mentioned as 12,85,224 kWh and 13,48,920 kVAh. If the meter and final reading was considered as correct, then consumption from 01.04.2017 to 11.08.2017 was worked out to be 48,960 units in a period of four months & 10 days, meaning thereby average consumption of 11,300 units per month. Therefore, this much of average consumption, (specially in a continuous period of more than four months) was never recorded from the Energy Meter in the last so many years. Moreover, the average monthly consumption as recorded after the replacement of the Energy Meter on 11.08.2017 was also less than 5,000 units. Further, the alleged consumption of 48,960 kVAh units relating to the period from 01.04.2017 to 11.08.2017 was almost equal to the consumption of one year i.e. 2015 to 2016. It was worth mentioning that consumption/proportionate consumption as recorded during the same period of the previous year 2015-16 ( 4 months 10 days) was 18,875 units and 14,313 units respectively. Thus, the alleged consumption of 48,960 units including disputed consumption of 31,867 units was approximately 300% of consumption of the average consumption of the corresponding period of the year 2015-16, which was not possible considering the present market scenario and normal consumption pattern of the connection of the Petitioner.
4. The Respondent and the Forum had confirmed that there was no accumulation of consumption as the reading of 12,32,504 kVAh ( as per DDL report) as on 10.02.2017 which matched with the reading of 12,32,507 kVAh ( as recorded by the Meter Reader on 10.2.2017).
5. In view of the facts and circumstances stated, there was no scope of accumulation of consumption and 48,960 kVAh units consumption was not possible in a period of 4 months 10 days. Thus, upholding the demand of Rs.2,27,123/- for the unbilled consumption of 31867 units, was highly unjustified.
6. The Addl.SE, Enforcement, mentioned the reading of 12,61,664.7 kWh and 13,24,065.4 kVAh on 13.07.2017 while checking of the Energy Meter. The said Energy Meter was replaced on 11.08.2017 and reading on Meter Replacement Application Device was mentioned as 12,85,224 kWh and 13,48,920 kVAh, meaning thereby consumption of 12,427 units for a period of only 29 days ( i.e. from 13.07.2017 to 11.08.2017), which was abnormal keeping in view normal consumption pattern of the Petitioner.
7. The Forum and the Respondent had confirmed that billing report (accumulated consumption data) as per DDL print out was available upto 10.02.2017 only, this also substantiated the fact that software of the Energy Meter had become defective due to which, meter reading was erratic. The accuracy was declared when checked at running load of 6.99 kW only. Thus higher consumption/alleged unbilled units were due to some internal/ Software defect in the Energy Meter.
8. In view of the submissions made above, the Appeal may be allowed and undue charges raised may be set aside in the interest of justice.

**( b ) 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,

bearing Account No. 3002954465, with sanctioned load of 59.620 kW and contract demand (CD) as 66.240 kVA.

1. The Energy Meter of the Petitioner was declared defective by the

concerned AAE on 05.05.2017.

1. The connection of the Petitioner was checked by the Addl.S.E,

Enforcement-2, PSPCL, Ludhiana vide ECR No.13/956 dated 13.07.2017 in the presence of the Petitioner and it was found that accuracy of the Energy Meter was within permissible limit.

1. As per directions given by the Enforcement, DRA

No.100004256824 dated 13.07.2017 was issued and the Energy Meter was replaced on 11.08.2017. At the time of replacement of the Energy Meter, final reading of old Energy Meter was 12,85,214 kWh, 13,48,920 kVAh and kVA 81.919. As per DDL report reading on 10.02.2017 was 12,32,504 kVAh. Reading recorded by the concerned AAE on 10.09.2017 was 12,32,507 kVAh. This showed that this was not the case of accumulation of units. It could be seen from the DDL that date read time of the Energy Meter was not correct as it showed the date **27.01.2000**. It may be due to this fact that the readings after 10.02.2017 was not available in DDL. It meant that Real Time Clock (RTC) of the Energy Meter was not working correctly. As per Meter reading record, the Energy Meter was found hanged on dated 05.05.2017 by the concerned AAE who recorded ‘D’ Code in Meter reading record. Next month on 31.05.2017, it recorded reading 12,74,988 kVAh and on 04.07.2017, it was 13,20,149 kVAh. As the Petitioner was billed on ‘D’ Code on dated 05.05.2017, the Petitioner’s account started appearing in key exception whereafter, the Energy Meter was checked by the Addl.S.E. Enforcement-2, PSPCL, Ludhiana vide ECR No.13/956 dated 13.07.2017. Since the key exception could not be cleared, the Petitioner could not be billed on the actual reading recorded by the AAE until its accuracy of the Energy Meter was checked in the M.E. Laboratory.

1. The removed Energy Meter was sent to the ME laboratory vide ME

Laboratory Challan No.633 dated 19.09.2017. After checking, the ME laboratory found that accuracy of the Energy Meter was within permissible limits and DDL was also taken. Final reading of the old Energy Meter as per M.E. Laboratory report was 12,85,214 kWh and13,48,920 kVAh.

1. The Internal Audit Party, vide its Half Margin No.108 dated

27.01.2018 overhauled the account of the Petitioner as per actual consumption earlier not billed due to ‘D’ Code. Thus, Regulation 30.1.2 of the Supply Code-2014, supplementary bill was issued to the Petitioner on 29.01.2018, but the Petitioner did not agree with the supplementary bill issued on 29.01.2018 and approached the Forum, who, after hearing, rightly upheld the amount after affording due opportunity to the Petitioner. The Petitioner was not satisfied with the order of the Forum and filed an Appeal in this court.

1. The Petitioner was rightly billed as per actual consumption which

was used by it for the period from 01.04.2017 till the change of the Energy Meter in question i.e. 11.08.2017 after adjusting the units which were billed on ‘D’ Code. The Petitioner admitted that the connection was for Hosiery manufacturing business and its consumption pattern varied from month to month and also that spurt in consumption could not be ruled out due to some big order/work/contract. Moreover, reliance should be placed on Site Report and ME laboratory report which were taken in the presence of the Petitioner. If the Petitioner was not satisfied with the checking of ME laboratory, then, it had the option to get the Energy Meter tested/checked from outside Agency as per Instruction No.59.4 of the ESIM, but the Petitioner never opted for that. The Site Report, change of Energy Meter and checking of Energy Meter was done in the presence of the Petitioner, who was well aware of units consumed, but deliberately made a false story to avoid the payment of actual units consumed.

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

 dismissed.

**4. ANALYSIS:**

The issue requiring adjudication is the legitimacy of the amount of Rs.2,27,123/- charged to the Petitioner, by the Internal Audit Party vide Half Margin No.108 dated 27.01.2018, for the period from 01.04.2017 to 11.08.2017 i.e. the period, during which, the consumption was not previously billed as the status of the Energy Meter was of ‘D’Code.

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

1. Petitioner’s Representative (PR) contended that reply to the Appeal

given by the Respondent was not based on facts and thus, not convincing. The argument of the Respondent that abnormal consumption of 31,867 units (as per final reading of defective Energy Meter replaced on 11.8.2017) may be due to some big order or work contract*,* was based on conjectures and surmises, as the Petitioner’s unit had not received any such big order during the period from 05/2017 to 08/2017. The Respondent had also tried to justify the charges against consumption of 31,867 units as per final reading, on the ground that the Petitioner had not opted for checking of Energy Meter by outside agency. In fact, the amount had been charged for consumption of 31,867 kVAh units as per final reading of disputed Energy Meter tested in ME/Lab. The representative of the Petitioner ( present at the time of checking) was not aware of the previously billed reading/consumption. Even the Respondent’s office was probably not convinced with the abnormal final reading due to which, the demand against the alleged unbilled consumption was not raised after the checking in M.E. Laboratory on 19.9.2017 and supplementary bill for Rs.2,27,123/- was issued on 29.1.2018 i.e. more than 4 months after the checking in M.E. Laboratory only as per observation of the Audit Party of the PSPCL. Furthermore, the present dispute has arisen due to abnormal delay in the replacement of the defective Energy Meter. **Had the Respondent’s office replaced the defective Energy Meter within 10-15 days (as per requirement of Standard of Performance approved by the Hon’ble PSERC), then, there was no question of any dispute*.*** Thus the Respondent had no valid argument to justify the disputed demand of Rs.2,27,123/-. Petitioner’s Representative (PR) argued that the Forum as well as the Respondent had confirmed that billing report (accumulated consumption data) as per DDL print-out was available up to 10.2.2017 only, this substantiated the fact that software of the Energy Meter had gone defective from 10.2.2017 due to which Energy Meter reading was erratic. Petitioner’s Representative (PR) added that the total consumption as recorded in the year 2015 (01/2015 to 12/2015) and 2016 (01/2016 to 12/2016) was 49,037 units and 48,735 units respectively. Similarly, the consumption as recorded/billed in the year 2017 as per regular monthly bills issued (including units billed with ‘D’ code bills) was 56,886 units, which was even more than the consumption as recorded in the previous two years. Thus there is no scope of further unbilled consumption of 31867 units, as pointed out by Audit and upheld by the Forum. The unbilled consumption of 31,867 units may be due to jumping of reading of the Energy Meter possibly due to defect in the software of the meter.

I find that the Petitioner was issued Energy bills on 19.05.2017 and 19.06.2017 on ‘D’ Code status of the disputed Energy Meter. The Enforcement, during checking dated 13.07.2017 recorded reading of kWh=12,61,664.7 and kVAh = 13,24,065.4. After replacement of the said Energy Meter on 11.08.2017, the readings were mentioned as 12,85,224 kWh and 13,48,920 kVAh. Thus, the consumption during the period of 13.07.2017 to 11.08.2017 (29 days) was 24,855/2= 12,427 units ( MF= 0.5).

I have perused the consumption data placed on record that consumption in kVAh never went beyond 5800 units in a month. *I also observe that the Respondent defaulted in ensuring compliance of statutory requirements of replacement of the Energy Meter found defective as per SoP within the prescribed time limit which led to avoidable litigation.*

1. In its rejoinder to the reply of the Respondent, Petitioner’s

Representative (PR) stated that the accuracy and test results of the disputed meter had been taken only in Active mode (kWh) but test results were also required to be taken in Reactive mode (kVARh), especially considering the fact that billing of the consumer was on kVAh reading/consumption. The ME Lab of the Respondent did not take the accuracy and Dial test in Reactive mode. As such, the ME/Lab report was also not reliable. In the case of ‘Sunny Baweja Vs. PSPCL’- Appeal No.38/2018, this Court observed that disputed Energy Meter was also required to be tested in Reactive mode (kVARh). Petitioner’s Representative (PR) added that in the case of Petitioner this had not been done even though billing of the consumer was on kVAh reading/consumption and final kVAh reading had been considered for working out disputed unbilled consumption of 31,867 kVAh units.

 *I agree with the contention of the Petitioner’s Representative that at Site and also in ME laboratory, the accuracy of the Energy Meter was checked/tested in Active Mode (kWh) only and not in Reactive Mode, despite the fact the bills were issued in kVAh consumption. Thus, in the absence of checking of accuracy of the disputed Energy Meter in Reactive Mode, no reasonable conclusion about proper healthiness of the Energy Meter can be arrived at.*

 From the above analysis , it is concluded that from the DDL report, it clear that the Real Time Clock (RTC) was defective, meaning thereby that Software of the disputed Energy Meter was defective. Moreover, the accuracy in a Reactive Mode was not taken either at site or in ME Laboratory. Hence, the overhauling of the Petitioner’s account during the disputed period, as from 01.04.2017 to 11.08.2017 (date of replacement of the Energy Meter) done by the Audit Party is not just and fair. Rather, the account of the Petitioner for the aforesaid period is required to be overhauled in terms of provisions contained in Regulation 21.5.2 (a) of the Supply Code-2014 i.e. on the basis of consumption of the corresponding period of the previous year.

**5. Decision:**

 **As a sequel of above discussions, the order dated 04.07.2018 of the Forum in Case No.CG-154 of 2018 is set aside. It is held that the account of the Petitioner for the period from 01.04.2017 to 11.08.2017 (the date of replacement of the Energy Meter) shall be overhauled on the basis of the energy consumption of corresponding period of previous year in terms of provisions contained in Regulation 21.5.2(a) of the Supply Code-2014 and refund/recover the amount without any interest.**

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

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

**8.** 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)

November 28, 2018 LokPal (Ombudsman)

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