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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL No. 55/2018**

**Date of Registration : 24.08.2018**

**Date of Hearing : 13.12.2018**

**Date of Order : 27.12.2018**

**Before:**

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

**In the Matter of :**

Life Insurance Corporation of India,

Guru Nanak Colony,

Rajpura, Distt. Patiala.

...Petitioner

Versus

Additional Superintending Engineer,

DS Division ,

PSPCL, Rajpura.

...Respondent

Present For :

Petitioner : 1. Sh. Pardeep Kumar,

Asstt. Executive Engineer (E), (PR)

2. Shri Ravinder Singh,

Administrative Officer (L) (PR).

3. Smt. Dimple Rani,

Higher Grade Asstt. (PR).

Respondent : Er. A.S. Gill,

Addl. Superintending Engineer,

DS Division,

PSPCL, Rajpura.

Before me for consideration is an Appeal preferred by the Petitioner against the order dated 17.07.2018 in Case No. CG-161 of 2018 of the Consumers Grievances Redressal Forum (Forum) deciding as under:

“A*mount charged to the Petitioner Rs. 3,84,662/- by issuing notice vide letter no. 1880 dated 04.10.2017 on account of final reading energy bill for 52,882 units (i.e. Final reading 7,67,718 minus Reading already charged 7,14,839) assessed by Audit Party vide Half Margin no. 20.07.2017 is justified and recoverable.”*

**2. Facts of the Case:**

The relevant facts of the case are that:

1. The Petitioner was having a Non Residential Supply (NRS) Category connection with sanctioned load of 56.240 kW and contract demand (CD) of 62.480 kVA for which , the Metering was being done by providing LT - CT operated static Energy Meter.
2. The Addl. S.E/Enforcement-I, PSPCL, Patiala checked the connection on 17.12.2016 and reported/directed as under:

*“The connection was checked and found correct. On the Meter display voltage and current were also checked which matched with LT side load and found correct. Meter was of old version. DLMS Meter be installed as per instructions. DDL was taken. Old Energy Meter after, replacement, be brought in the ME Lab. for checking. Readings recorded as 6,14,035 kWh and 7,63,651 kVAh with Maximum Demand as 163.83 kVA.”*

1. The Energy Meter was replaced on 08.02.2017. However, the LT CTs remained the same. The Readings at the time of replacement of Energy Meter as mentioned on Device Replacement Application dated 01.06.2016 was kWh = 6,12,332, kVAh = 7,14,839 and kVA = 55.
2. The Energy Meter was got checked from the M.E. Laboratory on 13.09.2017 without ensuring the presence of the Petitioner or having its consent. On checking, the accuracy of the Energy Meter was found within limits. The readings mentioned on the challan were kWh 6,17,681 and kVAh = 7,67,718.
3. The Audit Party, vide Half Margin No. 27 dated 20.07.2017, overhauled the accounts of the Petitioner as per final reading mentioned on M.E. Challan i.e. 7,67,718 kVAh and charged the Petitioner with a sum of Rs. 3,84,662/- for unbilled units of 52,882.
4. On the basis of the said Audit Report, the Respondent issued notice, vide memo no.1880 dated 04.10.2017, to the Petitioner to deposit Rs.3,84,662/-.
5. Aggrieved, the Petitioner filed a Petition dated 30.04.2018 in the Forum, who, after hearing, passed the order dated 17.07.2018. (Reference: Page 2, Para 1).
6. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court and requested to set aside the order dated 17.07.2018 of the Forum, in the interest of justice.
7. **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 side

1. **Submissions of the Petitioner**:

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

1. The Petitioner was paying the electricity charges as per bills raised and average monthly consumption was about 4,923 units (for last one year) till 12.04.2016.
2. During the period from 12.04.2016 to 08.02.2017, the installed Energy Meter was duly checked by the officers of the Respondent – PSPCL and the bills as raised by the Respondent – PSPCL on average basis mentioning ‘D’ Code, were paid regularly.
3. The Energy Meter was got checked from ME Lab in the absence of the Petitioner and without taking its consent.
4. The average consumption of the Petitioner was about 4,923 kVAh units, but, the Respondent - PSPCL stated that the Energy Meter was defective for the period from 12.04.2016 to 08.02.2017. Accordingly, the bill on average basis was issued to the Petitioner who paid the same.
5. For the period 12.04.2016 to 08.02.2017, the Petitioner deposited the bills for 48,314 kVAh units i.e. 7,14,839 kVAh units minus 6,66,525 kVAh units.
6. Based on the observations of the Audit Party, the Respondent – PSPCL raised the recovery of additional 52,882 kVAh units for the same period making the total consumption to 1,01,196 units (48,314 + 52,882 units), which was far more than the average monthly consumption of the Petitioner.
7. The Energy Meter was replaced on 08.02.2017 and the monthly average consumption of the new Energy Meter was about 5,500 units for the period from 08.02.2017 to 10.02.2018, for which the bills raised by the Respondent – PSPCL, were deposited by the Petitioner.
8. The Respondent ignored the fact that average monthly consumption of electricity of the Petitioner, prior to 12.04.2016, was 4,923 kVAh units and after the replacement of the Energy Meter on 08.02.2017, the average monthly consumption of the Petitioner was about 5,500 kVAh units. As such, it was not possible that during the period from 12.04.2016 to 08.02.2017, the average monthly electricity consumption of the same premises of the Petitioner rose to an extraordinary high figure of 10,000 kVAh units per month.
9. The Respondent had not rightly and correctly appreciated the legal position and gave a wrong finding on the issue that if the Energy Meter was defective during any period, then, it was the duty of the Respondent – PSPCL to collect average billed amount from the Petitioner on the basis of the total sanctioned load of 56.240 kW.
10. Not satisfied with the decision of the Forum, an Appeal was preferred in this Court with the request that the illegal demand of Rs. 3,84,662/- may be quashed and the order dated 17.07.2018 of the Forum be set aside in the interest of justice.
11. **Submissions of the Respondent:**

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

1. The average monthly consumption of 4,923 kVAh units shown by the Petitioner, was wrong as the consumption was 6,741 kVAh units in the month of June, 2015; 7,453 kVAh units in the month of July; 2015 7,313 units in the month of August, 2015 and 5,711 kVAh units in the month of September, 2015 had been recorded as per the consumption data.
2. The Energy Meter was not defective (as claimed by the Petitioner) for the period from 12.04.2016 to 08.02.2017 as the Energy Meter was checked by the Addl. S.E, Enforcement-1, PSPCL, Patiala, on 17.12.2016.
3. The Energy Meter was checked for being replaced with the DLMS meter as per the instructions of the PSPCL and found working accurately on all the three phases.
4. The DDL was taken for necessary checking and the Energy Meter was ordered (by the Enforcement) to be replaced and brought to ME Lab for further checking wherein its accuracy was found within the limits.
5. The reading of the Energy Meter in the ME Lab was recorded as 6,17,681 kWh and 7,67,718 kVAh .
6. While taking the readings on 11.05.2016, the Meter Reader inadvertently put ‘D’ Code and hence, the bill to the Petitioner was issued with the average reading.
7. In the succeeding months, the bills were issued on average basis only upto the date of change of the Energy Meter even though it was found correct and accurate by the Addl. S.E./Enforcement-1, PSPCL, Patiala.
8. The readings recorded on average basis were totally different from the actual readings which were taken at site by the Addl. S.E, Enforcement-1 and in ME Lab.
9. The actual average consumption from 10/2015 and upto 12/2016 was 4,665 kWh and 8,473 kVAh and further from 02/2017 to 06/2017 was 4,614 kWh and 5,372 kVAh respectively. Actually, the reading was 7,63,651 kVAh, on 17.12.2016, which could be corroborated from the fact that the Petitioner had itself agreed and signed on the ECR, prepared by the Enforcement.
10. Sometimes, the readings of the Energy Meter were not displayed due to external environmental conditions whereas the working of the Energy Meter was accurate and the reading was continuously being recorded and in this case also once the display was not visible on 11.05.2016, the ‘D’ Code was given whereas the Energy Meter was working accurately.
11. The billing, which was done on average basis, was only due to the wrong ‘D’ Code which was inadvertently recorded on SAP system whereas it should had been billed on actual reading on actual basis.
12. As per the Consumption Data, the actual consumption, even after change of the Energy Meter, was quite high and was more than the average consumption on which, the Petitioner was charged before the change of the Energy Meter.
13. There was no defect in the Energy Meter which was found accurate by the Enforcement at site and in ME Lab. So, the Petitioner was liable to be charged for actual consumption on the basis of actual reading recorded in M.E. Lab.
14. The Petitioner had not paid the entire amount due for the energy consumed. The Petitioner paid the amounts mentioned in the electricity bills issued upto that date. The electricity bills were issued on the basis of average readings only and not on the basis of actual readings vis-a-vis the actual consumption mentioned by the Petitioner.
15. The average monthly consumption, which was of 4,923 kVAh units before the installation of new Energy Meter, was ignored. Rather, it was totally on the basis of Last Year Same Month (LYSM).
16. The Petitioner had admitted that after the replacement of the Energy Meter, the average consumption increased from 4,923 kVAh units to 5,500 kVAh units. So, it was clear that earlier average consumption, on which the Petitioner was initially billed, was quite less than the actual consumption, it should had been billed. The consumption pattern of the Petitioner was studied by taking the readings which were recorded actually before the replacement of the Energy Meter and it could be clearly seen that this pattern matched the consumption after the replacement of the old Energy Meter.
17. The consumption pattern clearly showed that kWh consumption was more or less uniform/identical before and after the replacement of the Energy Meter. The main problem was regarding kVAh consumption. As per record, the kVAh billing of the consumer was started during October 2015. From 11.10.2015 to 17.12.2016, it was seen that Power Factor, maintained by the Petitioner, was only 0.55 and the kVAh consumption was manifold. It was clearly seen that though the average kWh consumption was the same before and after replacement of the Energy Meter, it was the difference in kVAh consumption that mattered and the Petitioner had been billed accordingly, to the actual kVAh consumption on the basis of Audit observation as per which, the notice dated 04.10.2017 was issued as per rules.
18. In view of the above, the Appeal may be dismissed.
19. **Analysis:**

The issue requiring adjudication is the legitimacy of the amount of Rs. 3,84,662/- charged to the Petitioner, vide letter no. 1880 dated 04.10.2017, on account of energy bill for 52,882 kVAh units for the period from 12.04.2016 to 07.02.2017 based on Audit Party’s Half Margin No. 27 dated 20.07.2017.

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

1. During the course of oral submissions, the Petitioner’s Representative contended that the amount charged to the Petitioner was illegal and unjustified while the Respondent justified the demand raised by reiterating the submissions made in its written reply. During deliberations, the Addl. S.E, DS Division, PSPCL, Rajpura expressed apprehensions about the possibility of capacitors installed by the Petitioner to improve its Power Factor which was recorded as 0.55 during the period of dispute. Accordingly, it was considered necessary by this Court to make on the spot checking at site to verify the factual position. Therefore, the said Addl. S.E/DS was directed to depute an AEE/AE to the premises of the Petitioner (where electricity connection was installed) and check as to whether any capacitor was installed therein. In compliance, the Addl. S.E/DS, PSPCL, Rajpura instructed Er. Mukhtiar Singh, AE, DS Sub-Urban Sub Division, PSPCL, Rajpura telephonically to conduct on the spot checking and report back. In response, Er. Mukhtiar Singh, AE, DS Sub-Urban Sub Division, PSPCL, Rajpura telephonically informed the Addl. S.E., DS Division, PSPCL, Rajpura during the hearing itself that the electricity connection installed at the premises of the Petitioner was checked and no capacitor was found installed therein. Thereafter, the Respondent was also directed to check as to whether the Energy Meter of the Petitioner, removed from its premises and got checked earlier from the M.E. Laboratory, was available in the DS office and if so, the Accuracy/Dial Test in Reactive Mode at various loads and Power Factor be got done from the M.E. Laboratory (as the same were not done previously in the presence of the Petitioner or its Representative) latest by 20.12.2018 and send the report of M.E. Laboratory, by e-mail.
2. The Addl. S.E, DS Division, PSPCL, Rajpura (Respondent) informed this Court vide e-mail dated 18.12.2018 as under:

*“The Respondent was directed to get the kVAh part of the meter tested from the ME Lab and also to submit the copy of DDL taken on 17.12.2016 by Sr. Xen, Enforcement-1, Patiala. In this case it is submitted that Sr. Xen, Enforcement-1, PSPCL, Patiala was requested to provide the copy but after lot of efforts his office could not find the DDL file from any of the computers lying in his office or in ME Lab. Further, it is submitted that the meter whose accuracy was checked vide Challan no.18 dated 13.09.2017 and was found OK, had been returned on the same date well before the institution of the case in CGRF filed on 30.04.2018. The reply as above is submitted for the kind consideration of Ombudsman and it is further prayed that the case may please be decided on merits and as per actual consumption recorded.”*

1. A perusal of the consumption data placed on record clearly shows that status of the Energy Meter prior to 12.04.2016 was OK but was ‘Defective’ from 12.04.2016 to 12.06.2017 due to which, the bills from 12.04.2016 were generated on average basis. The Respondent generated the bill dated 30.06.2017 for Rs. 61,900/- for the period from 12.04.2016 to 12.06.2017 (426 days) by taking actual reading of new Energy Meter and Old Energy Meter. The Final reading of old Energy Meter was taken as 7,14,839 kVAh.

I find that the Audit Party had taken final reading as per M.E. Challan and reading upto bill already generated on 30.06.2017 and pointed out the omission of not charging the Petitioner with the unbilled units of 52,882 and overhauled the account of the Petitioner vide Half Margin dated 20.07.2017 as per Final Reading pointed out by the M.E. Laboratory. I also find that on Device Replacement Application dated 01.06.2016 effected on 08.02.2017, the Readings were mentioned as kWh = 6,12,332, kVAh = 7,14,839 whereas as per checking report dated 17.12.2016 of the Enforcement, the readings were taken as kWh = 6,14,035, and kVAh = 7,63,615 while in M.E. Lab report, the readings were recorded as kWh = 6,17,681 and kVAh = 7,67,718, on dated 13.09.2017. This clearly gives an impression that the readings recorded on Device Replacement application dated 01.06.2016 were not correct.

I observe that despite the issuance of the directions during checking dated 17.12.2016 the replacement of the Energy Meter, the same was replaced on 08.02.2017. Thus, the Respondent is fully responsible for not replacing the disputed Energy Meter as per Time Schedule laid down in Standard of Performance (SOP), which led to avoidable litigation.

*I also observe that the Energy Meter was not got checked in the M.E. Laboratory in the presence of the Petitioner (or its representative) or by taking its consent which was in contravention of Regulation 21.3.6 (e) of the Supply Code-2014.*

1. Though, the accuracy of the Energy Meter was checked in Active Mode and found within limits by the Enforcement and in M.E. Laboratory, the Accuracy/Dial Test in Reactive Mode at various loads and Power Factor was not done neither at site nor in M.E. Laboratory, due to which, the healthiness of the Energy Meter could not be adjudged and the same is not ascertainable now as the Energy Meter has since been returned to the M.E. Laboratory as confirmed vide e-mail dated 18.12.2018 by the Respondent.

From the above analysis, it is concluded that the Enforcement and M.E. Laboratory defaulted in not taking Accuracy and Dial test of the disputed Energy Meter in Reactive Mode (kVARh) due to which its accuracy and the exact cause of recording of low Power Factor during the disputed period (12.04.2016 to 07.02.2017), is not ascertainable despite the fact that no capacitors were found installed at its premises as per checking dated 13.12.2018 of AE/DS Sub Urban Sub Division, PSPCL, Rajpura. *As such, the Respondent failed to prove that the overhauling of the account of the Petitioner for the disputed period on actual consumption basis, was justified. Instead, the account of the Petitioner is required to be overhauled for a maximum period of six months prior to the date of replacement of the Energy Meter (08.02.2017) on the basis of consumption of corresponding period of previous year in terms of provisions contained in Regulation 21.5.2 (a) of the Supply Code-2014, as the bills were issued to the Petitioner on ‘D’(Defective) Code.*

**6. Decision:**

**As a sequel of above discussions, the order dated 17.07.2018 of the Forum in Case No.CG-161 of 2018 is set aside. It is held that the account of the Petitioner shall be overhauled for a period of six months prior to the date of replacement of the Energy Meter (08.02.2017) on the basis of consumption of corresponding period of previous year in terms of provisions contained in Regulation 21.5.2 (a) of the Supply Code-2014. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, without interest/surcharge.**

1. The Appeal is disposed of accordingly.
2. Chief Engineer/Commercial, PSPCL, Patiala has already been directed to issue instructions to all Engineers-in-Chief/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 that necessary provision in this regard is made by incorporating an Instruction to this effect in ESIM. But, the compliance of the instructions ibid is still awaited.

**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 the Regulation 3.28 of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016.

(VIRINDER SINGH)

December 27, 2018 LokPal (Ombudsman)

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