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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 06/2018**

**Date of Registration : 15.01.2018**

**Date of Hearing : 02.07.2018**

**Date of Order : 06.07.2018**

**Before:**

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

**In the Matter of :**

 Ajay Bansal,

Aar Vee Steels,

Hargobind Nagar, Near Ganpati Mega Mart,

Sua road, Ludhiana.

 ...Petitioner

 Versus

 Additional Superintending Engineer/DS,

Estate Division (Special), PSPCL,

Ludhiana.

 ...Respondent

**Present For:**

Petitioner : Sh. Charanjit Singh,

 Petitioner’s Representative (PR).

Respondent : 1. Er.Shiv Kumar,

Assistant Engineer/Commercial,

 2. Er. Krishan Singh,

 Assistant Accounts Officer (AAO).

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 07.12.2017 of the CGRF in Case No. CG-266 of 2017 deciding that:

 *“Account of the Petitioner be overhauled from 28.02.2015 to the date of change of meter i.e. 05.03.2016 on the basis of consumption of corresponding period in the previous year. However, it should be ensured that monthly minimum charges, as per instructions of Corporation be recovered from the petitioner during these months, if the actual consumption charges is below the monthly minimum charges.”*

**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 63.860kW and Contract Demand as 70.960kVA. The Metering was being done by providing LT CT operated Static Energy Meter.
2. The connection was checked by the Addl. S.E, Enforcement-2, PSPCL, Ludhiana vide ECR No. 18/937 dated 10.02.2016 and it was reported that the Energy Meter as **“burnt”** and blacked. As such, full particulars of the Energy Meter could not be recorded.
3. The burnt Energy Meter was replaced through Device Replacement Application (DRA) No. 100001619657 dated 11.02.2016, effected on 05.03.2016.
4. The Energy Meter was tested in ME Lab on 27.07.2016 and declared ‘Burnt’. The Meter Reading was not visible and DDL could not be taken as intimated by ME Lab vide Memo No. 1400 dated 22.11.2017.
5. The Account of the Petitioner was overhauled as per observations of the Revenue Audit Party (RAP), Ludhiana vide Memo. No. 678 dated 24.08.2017 and the amount of Rs. 7,24,921/- was charged to the Petitioner for the period from 30.04.2015 to 05.03.2016 and a Supplementary Bill dated 24.08.2017 was issued to the Petitioner.
6. The Petitioner did not agree with the Supplementary Bill and filed a Petition in the Forum, who after hearing passed the order dated 07.12.2017 (Reference: Page-2, Para-1).
7. As per the decision of the Forum, the disputed amount increased to Rs. 7,36,747/- due to which, the Respondent issued notice to the Petitioner, vide Memo. No. 4562 dated 05.01.2018, to deposit the said amount.
8. Aggrieved with the decision of the Forum, the Petitioner preferred an Appeal in this Court praying for relief as per provisions of Regulation 21.5 of Supply Code-2014.

**3. Submissions made by the Petitioner and the Respondent:**

Before undertaking analysis of the case, it is necessary to go through the written submissions made by the Petitioner in the Appeal and reply of the Respondent as well as oral submissions made by the Representatives of the Petitioner as well as the Respondent alongwith the 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 having a Medium supply Category connection with Sanctioned Load of 63.860 kW.
2. The official of the PSPCL was visiting the premises of the Petitioner every month for taking readings of the Energy Meter. The bills issued by the PSPCL every month were being paid, without any failure.
3. The connection of the Petitioner was checked by Addl. S.E/Enforcement-2, PSPCL, Ludhiana vide ECR No. 18/937 dated 10.02.2016, on receipt of the telephone message from AEE (Tech), DS, Estate Division (Special), PSPCL, Ludhiana and the Energy Meter was found burnt.
4. The burnt Energy Meter was replaced on 05.03.2016.
5. The Energy Meter was tested in the ME Lab of PSPCL which intimated vide its report dated 27.07.2016 that the Energy Meter was “Burnt”.
6. After a lapse of more than one year from the date of replacement of the Energy Meter, AEE/Commercial DS Division Estate (Special) issued supplementary Bill dated 24.08.2017 for Rs. 7,24,921/- with due date as 04.09.2017. The AEE/Commercial added remarks on the Supplementary Bill as under:

 *“wkb nkfvN gkoNh d/ whw' BzL 678 fwsh 24H08H2017 d/ w[pskfpe whNo ;V/Q j'D eoe/ wkbh B[e;kB dh g{osh bJh .”*

1. The demand raised by the AEE/Commercial, for a period of about one year, without providing any details, was not covered under any regulation of Supply Code-2014 or The Electricity Act-2003.
2. The Petitioner approached the Forum for adjudication of its disputed case as per Consumer Complaint Handling Procedure (CCHP).
3. The representative of the Petitioner strongly pleaded before the Forum that the amount raised by the AEE/Commercial was very much on the higher side and against the Regulation 21.5 of Supply Code-2014. But, the Forum did not keep in view the genuine pleadings of the Petitioner and decided to order the overhauling the account of the Petitioner from 28.02.2015 to the date of change of Energy Meter i.e. 05.03.2016, on the basis of consumption of corresponding period in the previous year. The Forum also held that it should be ensured that Monthly Minimum Charges (MMC), as per instruction of the Corporation, be recovered from the Petitioner during these months, if the actual consumption charges was below the Monthly Minimum Charges (MMC).
4. Instead of providing relief admissible on merit, the Forum, vide its decision dated 07.12.2017, increased the period of overhauling as 28.02.2015 to 05.03.2016, which was against the rules.
5. The supply from the connection was being used for manufacturing of Nuts & Bolts and the consumption varied from month to month, and also not matching with the consumption of the corresponding period of previous year. However, burdening the consumer with such a huge amount of Rs. 7,24,921/-, without testing the accuracy of the Energy Meter and taking the DDL of the Energy Meter, was unjustified.
6. The Forum, in its proceedings dated 10.11.2017, directed the Respondent to get the DDL of the Energy Meter done in ME Lab or from the Manufacturer of the Energy Meter and submit Tamper Data, Billing Data, Cumulative Readings and analysis Report. But, the Respondent did not submit the record/information as desired by the Forum and just provided a letter of Addl. S.E/ME Lab stating that the DDL of the Energy Meter could not be taken, as it had been burnt.
7. The PSPCL had issued instructions from time to time that any penal action on the consumer should be supported by rules/regulation as per Supply Code or The Electricity Act-2003. The Chief Engineer, Commercial, PSPCL, Patiala also issued instructions vide CC No. 53/2013 and CC No. 59/2015 (in view of the order dated 26.09.2013 passed by the Hon’ble Punjab & Haryana High Court, in CWP No. 10644 of 2010) to the effect that while initiating proceeding against any consumer, the competent authority of the PSPCL must quote the relevant regulation of Supply Code or any other regulations framed by the competent authority under The Electricity Act-2003. These instructions had been against reiterated vide CC No. 30/2015 dated 05.08.2015 for strict compliance as Honb’le PSERC had taken serious view of non-compliance of these instructions. The demand raised, vide Supplementary Bill of Rs.7,24,921/- issued by the Respondent (after overhauling of account for about one year), was not supported by any rule/regulation of Supply Code or The Electricity Act-2003, but the Forum did not consider this fact while deciding the Petition filed by the Petitioner.
8. The account against inaccurate Energy Meter could be overhauled as prescribed in Regulation 21.5.1 of Supply Code-2014, while in the case of Defective (other than inaccurate) / Dead Stop / Burnt / Stolen Energy Meters, provisions contained in Regulation 21.5.2 of Supply Code-2014 were relevant.
9. The accuracy of the Energy Meter was not tested at site or in ME Lab. Besides, the Energy Meter was never declared slow/inaccurate by any authority of PSPCL before it got burnt. Thus, the account of the Petitioner was required to be overhauled for a maximum, period of six months. As such, the decision of the Forum ordering the overhauling of account from 28.02.2015 to 05.03.2016 (more than one year) was against the above said regulation of the Supply Code.
10. It was the responsibility of the Respondent – PSPCL (as prescribed in Supply Code and The Electricity Act-2003) to install correct/accurate Energy Meter and ensure checking of connection as prescribed in Instruction No. 104 of ESIM. The monthly readings of the Energy Meter should have been recorded by the competent official of PSPCL who was supposed to report the defect in the Energy Meter (if any), whereupon the department was to ensure the replacement of the Energy Meter within the stipulated time. As per Standard of Performance approved by the Hon’ble PSERC, the burnt meter of the Petitioner was required to be replaced within one week. Thus, where the connection was not checked or burnt/inaccurate Energy Meter was not replaced as per instructions, then the onus was on the part of the
Respondent. If the Respondent - PSPCL had suffered any loss, then action could be taken against the delinquent officials/officers.
11. The Petitioner had not even earned profit of the magnitude of the amount charged due to overhauling of its account for the period from 28.02.2015 to 05.03.2016 and could not recover this amount from its customers after a lapse of more than a year. The Petitioner was, thus, put to unbearable loss due to fault of the Respondent for not replacing the Energy meter within the stipulated time.
12. This Court, in the similar case of Shri Mandeep Singh V/s PSPCL (Appeal No. 04/2016) decided on 10.05.2016 and also in the case of Shri Ravinder Singh, (Appeal No. 03/2017) decided on 12.04.2017 restricted the period of overhauling of the account of the Petitioner to six months. Similarly, in the case of Shri Anmol Saluja and many other cases, the period of overhauling was restricted to six months, in respect of Defective / Inaccurate / Burnt Metering Equipment, in terms of Regulation 21.5.2 of Supply Code-2014.
13. The overhauling of the account for more than one year, was un-warranted and illegal, being not in accordance with the Regulation 21.5.2 of Supply Code-2014. As such, the decision of the Forum, may be set-aside and directions may be issued to overhaul the account for a maximum period of six months, with some realistic average basis in the interest of natural justice and fairness.
14. **Submissions of the Respondent:**

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

1. The Petitioner was having MS Category connection having Sanctioned Load of 63.860 kW and Contract Demand of 70.960 kVA.
2. The connection was checked by Addl. S.E/Enforcement-2, PSPCL, Ludhiana, vide ECR No 18/937 dated 10.02.2016 on getting the telephone message given by AEE (Tech), Estate Division (Special), PSPCL, Ludhiana. As per the Checking Report, the Energy Meter was found burnt and it was blacked due to which full particulars of the Energy Meter could not recorded.
3. The Energy Meter being burnt, was changed through DRA No. 100001619657 dated 11.02.2016 effected on 05.03.2016 and sent to ME Lab, Ludhiana on 27.07.2016, which declared that the Energy Meter as burnt and readings were not visible.
4. The account of the Petitioner was overhauled by the Superintendent, Revenue Audit Party, Ludhiana, vide Memo No. 678 dated 24.08.2017 and a sum of Rs. 7,24,921/- was charged for the period of 30.04.2015 to 05.03.2016. As a result, a Supplementary Bill dated 24.08.2017 was issued to the Petitioner to deposit the amount.
5. The Petitioner did not agree with the demand raised and filed a Petition in the Forum in October 2017.
6. The Revenue Audit Party rightly overhauled the account for the period from 30.04.2015 to 05.03.2016 as the consumption recorded during the month of 05/2015 and 06/2015 was 6058 units and 7624 units respectively as compared to consumption recorded during the same months of the previous year i.e. 2014 (05/2014, 10985 units and 06/2014, 11950 units) and during the months of 07/2015, 08/2015, 09/2015, 10/2015, 11/2015, 12/2015, 01/2016, 02/2016 and 03/2016, there was Nil consumption.
7. The Revenue Audit Party overhauled the account correctly by taking the average consumption as per calculations sent vide Memo No. 684 dated 24.08.201**7**.
8. The Petitioner had not submitted any documentary proof in support of its contention of less work. Moreover, the factory was found running at the time of checking done, vide ECR No. 18/937 on 10.02.2016, by the Addl. S.E, Enforcement-2, Ludhiana as per the remarks record in the ECR as under:

*“Meter found burnt, Factory is running.* ”

1. Keeping in view the submissions made, the Appeal of the Petitioner may kindly be dismissed.

**4. Analysis:**

 The issue requiring adjudication is the legitimacy of the overhauling of the account of the Petitioner for the period from 28.02.2015 to the date of replacement of the burnt Energy Meter i.e. 05.03.2016 on the basis of consumption of the corresponding period in the previous year as per applicable regulations.

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

1. PR contended that the connection of the Petitioner was checked vide ECR No. 18/937 dated 10.02.2016 by the Addl. S.E., Enforcement-2, PSPCL, Ludhiana, who, reported that the Energy Meter was “burnt” and blackened and also that full particulars of the Energy Meter could not be recorded. The said Energy Meter was replaced on 05.03.2016 and tested on 27.07.2016 in ME Lab of PSPCL. The ME Lab declared that the Energy Meter was burnt and blackened due to which, reading of the Energy Meter was not visible. The Respondent overhauled the account of the Petitioner for the period from 30.04.2015 to 05.03.2016 and charged a sum of Rs. 7,24,921/- vide Supplementary Bill dated 24.08.2017. Aggrieved by this, the Petitioner filed a Petition in the Forum. The Forum vide its order dated 07.12.2017, held that the account of the Petitioner be overhauled for the period from 28.02.2015 to the date of replacement of burnt Energy Meter i.e. 05.03.2016. As a result, the disputed amount increased to Rs. 7,36,747/- and notice was issued by the Respondent, vide Memo No. 4562 dated 05.01.2018 to the Petitioner. PR also submitted that overhauling of the account of the Petitioner for more than a year was illegal and not in accordance with the provisions applicable i.e. Regulation 21.5.2 of the Supply Code-2014 which provided for restricting the overhauling for a maximum period of six months.

*I observe that as per evidence brought on record, the Energy Meter was found “burnt” by the Addl. S.E/Enforcement-2, PSPCL, Ludhiana during checking dated 10.02.2016 and also during the course of testing in ME Lab, Ludhiana. A perusal of the material available on record also reveals that the DDL of the Energy Meter could not be taken either at site or in ME Lab, Ludhiana. The readings of the Energy Meter were also not visible as the Energy Meter was blackened due to its burning. As such, the account of the Petitioner is required to be overhauled in terms of provisions contained in Regulation 21.5.2(a) of Supply Code-2014, amended vide notification dated 17.05.2018 which reads as under:*

*“The account of a consumer shall be overhauled/billed for the period meter remained defective/dead stop subject to maximum period of six months. In case of burnt/stolen meter, where supply has been direct, the account shall be overhauled for the period of direct supply subject to maximum period of six months as per procedure given below:*

1. *On the basis of energy consumption*

 *of corresponding period of previous year.”*

I also observe that though the Energy Meter was declared “Burnt” by ME Lab, but direct supply was not given to the Petitioner’s connection, hence, the account of the consumer is required to be overhauled for six months prior to replacement of the Energy Meter (05.03.2016) based on energy consumption recorded during the corresponding period of previous year as per as per provisions contained in Regulation 21.5.2 (a) of Supply Code-2014.

1. PR next contended that the Petitioner had not even earned profit of the magnitude of the amount charged due to overhauling of its account for the period from 28.02.2015 to 05.03.2016 and could not recover this amount from its customers after a lapse of more than a year. The Petitioner was, thus, put to unbearable loss due to fault of the Respondent for not replacing the Energy Meter within the stipulated time.

The Respondent contested the contention of the Petitioner by stating that it had not submitted any documentary evidence in support of its contention that the Unit was not running. The Respondent added that the Addl. S.E/Enforcement-2, Ludhiana after checking the connection, reported that t**he Energy Meter was burnt but the Unit (factory) was running.**

1. PR argued that the supply from the connection was being used for manufacturing of Nuts & Bolts and the consumption varied from month to month, and also not matching with the consumption of the corresponding period of previous year. However, burdening the consumer with such a huge amount of Rs. 7,36,747/-, without testing the accuracy of the Energy Meter and without taking the DDL of the Energy Meter, was unjustified.
2. PR argued that the Revenue Audit Party wrongly overhauled the account for 30.04.2015 by taking 10631 units against the actual consumption of 6058 units and for June 2015 by 11577 units against the consumption of 7624 units. The consumption for the previous two months i.e. for March 2015 and April 2015, was 6136 and 6813 units respectively and the Meter was declared OK. Now the consumption for the period from March 2015 to June 2015 was almost the same which clears that the work was less and the same consumption pattern was continuing after June 2015 when the Energy Meter got burnt, but the Audit Party has wrongly overhauled the account by taking the average consumption for the period 29.03.2014 to 31.03.2015 which was wrong and unjustified.

*I observe that the Revenue Audit Party (RAP) overhauled the account of the Petitioner as the recorded consumption during the month of 05/2015, 06/2015 was 6058 and 7624 units respectively as compared to consumption recorded during the same month of previous year i.e. 2014 which were 10985 and 11950 units and during the month of 07/2015, 08/2015, 09/2015, 10/2015, 11/2015, 12/2015, 01/2016, 02/2016 and 03/2016 , the consumption was shown as nil. I further find from the Monthly Meter Reading Record, placed in the file that the Meter Reader recorded the status of Energy Meter as ‘D’ (Defective) from 28.07.2015 to 29.02.2016 and the same reading (1339129 kWh) was recorded but no action was taken by the AEE/Commercial to get the Energy Meter checked immediately from the Enforcement, resulting in avoidable litigation.*

*I also observe that the Petitioner, being a Medium Supply Category consumer, defaulted in discharging its obligation as a good consumer by not pin-pointing the fall in its consumption during the disputed period and bringing the same to the notice of the Distribution Licensee for taking corrective action. At the same time, the Respondent failed to keep a vigil on the variation in the consumption available in Energy Variation Register/SAP in respect of this connection, analyse the reasons for considerable decrease in consumption of energy vis-a-vis previous months and thereafter, take corrective action in time.*

From the above analysis, it is concluded that the account of the Petitioner is required to be overhauled for six months prior to the replacement of the burnt Energy meter (05.03.2016) on the basis of energy consumption of the corresponding period of the previous year in terms of provisions contained in Regulation 21.5.2 (a) of the Supply Code-2014.

**5. Decision:**

 **As a sequel of above discussions, the order dated 07.12.2017 of the Forum in Case No. CG-266 of 2017 is set-aside. Accordingly, the Respondent is directed to recalculate the demand as per conclusion arrived at para 4 above and refund/recover the amount found excess/short, if any, after adjustment as per rules of PSPCL, without any interest/surcharge.**

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

7. Engineer-in-Chief, Commercial, PSPCL, Patiala shall issue instructions to all the Additional Superintending Engineer/Senior Executive Engineers to keep a vigil on the variations in the energy consumption recorded and available in Energy Variation Register/SAP in respect of all categories of consumers falling within their respective jurisdiction, analyse the cases of abnormal decrease in consumption of current vis-a-vis previous month(s) and take immediate corrective action, wherever required, with a view to protect the interests of both the Utility and the consumers and avoid unnecessary litigation.

**8.** In case, the Petitioner or the Respondent (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)

July 06, 2018 LokPal (Ombudsman)

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