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

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

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

 **APPEAL NO. 64/2018**

**Date of Registration : 01.10.2018**

**Date of Hearing : 09.01.2019**

**Date of Order : 22.01.2019**

**Before:**

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

**In the Matter of :**

B.M. Air-conditioning Pvt. Ltd,

Plot No. 808, JLPL,

Industrial Estate, Sector 82,

S.A.S Nagar (Mohali).

 ...Petitioner

 Versus

Addl. Superintending Engineer,

DS Division (Special),

PSPCL ,

S.A.S Nagar (Mohali).

 ...Respondent

**Present For:**

Petitioner : 1. Sh. R.S.Dhiman

 Petitioner’s Representative (PR).

 2. Sh. Manvinder Singh,

 Petitioner.

Respondent : Er. H.S.Oberai,

 Additional Superintending Engineer,

 DS Division (Special),

 PSPCL, S.A.S Nagar (Mohali).

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 04.09.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No. CG-300 of 2018 deciding that:

*“Overhauling the account of the Petitioner from 04.03.2012 to the date of checking i.e. 25.05.2018 (vide Checking Report No. 031/220 dated 25.05.2018) is justified and amount is recoverable as per Note to Regulation 21.5.1 of Supply Code 2014*.”

**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 35.960 kW and contract demand (CD) of 39.956 kVA since 05.03.2012. The Metering was done by providing LT-CT operated static Energy Meter.

1. The connection was checked on 25.05.2018, vide Load Checking

Register (LCR) No.031/220 by the AEE, DS Sub Division, Sohana

and it was reported that:

*“ w"e/ s/ ygseko d/ fpZb ftZu MF=1 nk*

 *fojk j?, id' fe ;kJhN w[skfpe MF=2,*

 *pDdk j?, :'r dcsoh ekotkJh ehsh ikt/,*

 *whNo Non DLMS j?, BtK whNo ikoh ehsk ikt/ .”*

1. The old Energy Meter was replaced vide Device Replacement

Application No. 100006382096 dated 18.08.2018.

1. The account of the Petitioner was overhauled by issuing the

Supplementary Notice vide no. 761 dated 11.06.2018, for Rs.28,96,944/-, which was modified as Rs. 20,45,765/-, for the period from 04.03.2012 ( date of installation of the Energy Meter and LT-CTs ) to 18.05.2018, vide memo no.837 dated 02.07.2018.

1. Aggrieved with the said notice, the Petitioner filed a Petition

dated 06.08.2018 in the Forum, who, after hearing, passed the order dated 04.09.2018. (Reference Page-2, Para-1)

1. Not satisfied with the decision of the Forum, the Petitioner preferred

an Appeal in this Court and prayed that the undue charges raised against the Petitioner may be set aside in the interest of justice.

**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 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, bearing account no.3000160963, with sanctioned load of 35.960 kW and contract demand (CD) of 39.956 kVA.

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

Squad of Sohana Sub Division on 25.05.2018 vide Load Checking Register (LCR) No.031/220.

1. The Checking Officer reported after checking that the overall

Multiplication Factor (MF) in the Petitioner’s case was 2 while MF 1 was being applied wrongly.

1. On the basis of the said checking report, a demand of Rs.25,96,944/-

was raised against the Petitioner vide Memo no.761 dated 11.06.2018.

1. The Account of the Petitioner was overhauled and a supplementary

Notice was issued for Rs.20,45,765/- vide Memo no.837 dated 02.07.2018 with the direction to the Petitioner to pay the amount within 15 days, failing which, action would be taken as per rules of the Department.

1. Aggrieved by the undue demand raised by the Respondent, the

Petitioner filed a Petition in the CGRF, who, after hearing, upheld the unjustified charges without due application of mind.

1. All the equipments including the Energy Meter and LT-CTs were installed by the Respondent and the Petitioner had no role. As such, mismatch of LT-CTs and Energy Meter, if any, was not attributable to the Petitioner. Instruction No. 102.10 and 102.11 of ESIM were specifically clear in the matter of installation of Meters and LT-CTs of matching ratio. The Respondent itself failed to comply with these instructions. of the Department. Therefore, the Petitioner could not be made to pay for the lapses of the Respondent.
2. Instruction no.104.1( i ) of ESIM mandated checking of all Medium Supply Category connections at least once every six months, but the Respondent failed to comply with the instructions.
3. It was not possible for the Petitioner to make payment of the unjustified charges at this belated stage. The Petitioner had been doing business and preparing its accounts on the basis of cost of material, labour and electricity charges and paying income tax and other taxes on profit basis on these inputs.
4. In similar cases, the Hon’ble Punjab and Haryana High Court in *CWP No.14559 of 2007 titled Tagore Public School, Ludhiana Vs. PSEB and in CWP No.17699 of 2014 titled Park Hyundai V/S PSPCL* held that arrears in such cases could not be raised for more than 6 months. The case of the Petitioner was squarely covered under the above stated judgments and it was entitled to the relief as sought for.
5. In view of the submissions made above, the Appeal may be allowed

and undue charges raised against the Petitioner be set aside.

1. **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.3000160963, with sanctioned load of 35.960 kW and contract demand (CD) of 39.956 kVA

**(ii)** The connection of the Petitioner was checked by the AEE, DS Sub

Division, PSPCL, Sohana on 25.05.2018 vide Load Checking Register (LCR) No.31/220.

**(iii)** As per this checking report, the LT-CTs installed at the site were

of capacity 200/5A and Energy Meter had a capacity of 100/5A. So Multiplication Factor (MF) 2 was leviable in the billing, but MF 1 was being incorrectly applied in the bills of the Petitioner.

**(iv)** On the basis of this report, the account of the Petitioner for the

period from 04.03.2012 to 18.05.2018 was overhauled by applying Multiplication Factor (MF) 2.

**(v)** Accordingly, a notice no.837 dated 02.07.2018 was issued to the

 Petitioner for depositing a sum of Rs.20,45,765/-.

**(vi)** Aggrieved against the demand raised to deposit Rs.20,45,765/-, the

Petitioner filed a Petition in the CGRF, who, after hearing, passed the order dated 04.09.2018 and held that the amount charged was recoverable.

1. Not satisfied with the decision of the Forum, the Petitioner preferred

 an Appeal in this Court.

1. The Account of the Petitioner was correctly overhauled as per

“ Note” under Regulation 21.5.1 of the Supply Code 2014.

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

4. **Analysis:**

 The issue requiring adjudication is the legitimacy of the overhauling of the account of the Petitioner, due to application of incorrect Multiplication Factor (MF) 1 instead of actual Multiplication Factor (MF) 2, for the period from 04.03.2012 (date of installation of the connection) till the date of checking on 25.05.2018 as per applicable regulations.

 *The points emerged in the case are deliberated and analysed as under:-*

1. The present dispute involves the overhauling of the account of the

Petitioner due to the application of incorrect Multiplication Factor 1 instead of actual Multiplication Factor 2 for the period from 04.03.2012 (date of installation of the connection) till the date of checking on 25.05.2018. Petitioner’s Representative (PR) contended that all the equipments including the Energy Meter and LT-CTs were installed by the Respondent and the Petitioner had no role in the matter. As such, mismatch of LT- CTs and Energy Meter, if any, was not attributable to the Petitioner. Petitioner’s Representative (PR) submitted that Instruction No. 102.10 and 102.11 of ESIM were specifically clear in the matter of installation of Energy Meters and LT-CTs of matching ratio. Petitioner Representative (PR) added the Respondent itself failed to comply with its own instructions. Therefore, the Petitioner could not be made to pay for the lapses of the Respondent. Instruction No. 104.1 (i) of ESIM mandated checking of all the Medium Supply Category connections at least once every six months, but the Respondent failed to comply with the said instructions too.

I observe that during the course of checking of the connection on 25.05.2018, it was observed that the LT-CTs installed at the premises of the Petitioner were of capacity 200/5A and Energy Meter had a capacity of 100/5A, resulting in net Multiplication Factor (MF) as 2 instead of 1 being charged to the Petitioner in the bills from the date of release of MS Category connection i.e. 04.03.2012. The Respondent had no evidence on record to disprove the Petitioner’s contention regarding non checking the connection at least once in every six months as per provisions contained in Instruction No. 104.1(i) of ESIM. At the same time, there is no denying the fact that the Petitioner was liable to pay for the actual energy consumed by it as is evident from the perusal of the provisions of “Note” given under Regulation 21.5.1 of the Supply Code-2014, which reads as under:

*“****21.5 : Overhauling of consumer Accounts***

*21.5.1 : Inaccurate Meters*

*If a consumer meter on testing is found to be beyond the limits of accuracy as prescribed hereunder, the account of the consumer shall be overhauled and the electricity charges for all categories of consumers shall be computed in accordance with the said test results for a period of not exceeding six months immediately preceding the:*

1. *date of test in case the meter has been tested at site to*

*the satisfaction of the consumer or replacement of inaccurate meter whichever is later;*

***Note****:* ***Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this******mistake continued****”.*

 I am of the view that as per the aforesaid Regulation, provision has been made that in case, Multiplication Factor (MF) is omitted or incorrectly applied due to some reason, this omission can be set right by applying correct Multiplication Factor (MF) from the date, it was omitted or incorrectly applied in the first instance.

1. As per material on record, the account of the Petitioner was overhauled by issuing the Supplementary Notice vide no. 761 dated 11.06.2018, for Rs.28,96,944/-, which was modified as Rs.20,45,765/-, for the period from 04.03.2012 ( date of installation of Energy Meter & LT-CT) to 18.05.2018 ( instead of upto

25.05.2018), vide memo No. 837 dated 02.07.2018.

 **I observe that the Energy Meter of the Petitioner was neither inaccurate nor defective, thus, the case falls in the category of under assessment** and is accordingly covered under the provisions of Regulation 30.5 (b) of the Supply Code-2007 amended vide Regulation 30.1.2 of the Supply Code-2014 which read as under:

 “ **30.5**

**(b)** *The bill for arrears in the case of under assessment or the charges levied as a result of checking etc. will be initially tendered separately and will not be clubbed with the current electricity bill. The arrear bill would briefly indicate the nature and period of the arrears”.*

**“30.1.2**

*The bill cum notice for arrears in the case of under assessment or the charges levied as a result of checking etc. shall be initially tendered separately and shall not be clubbed with the current electricity bill. The arrear bill cum notice would briefly indicate the nature and period of the arrears along with calculation details of such arrears. If the arrears are not cleared by the consumer such arrears shall be indicated regularly in the subsequent electricity bills. However, in case arrear bill is included in the current energy bill at the first instance, the distribution licensee shall not be entitled to take any punitive action against the consumer for non payment of such arrear amount along with the current bill”.*

I also observe that in view of the above provisions, a clarificatory Note on Multiplication Factor (MF), reproduced at page-9 above, was inserted under Regulation 21.5.1 of the Supply Code-2014 on the basis of which, the Petitioner has been charged.

1. Petitioner’s Representative contended that the Hon’ble Punjab and

Haryana High Court, in similar cases, such as, in *CWP No.14559 of 2007 titled Tagore Public School, Ludhiana Vs. PSEB and in CWP No.17699 of 2014 titled Park Hyundai V/S PSPCL,* held that arrears in such cases could not be raised for more than six months. The case of the Petitioner was squarely covered under the above stated judgments and it was entitled to get the relief as sought for.

I observe that facts and circumstances in the present Appeal are not similar to those in the cases referred to above by the Petitioner.

1. During the course of hearing, the Petitioner’s Representative also cited the order dated 20.09.2018 of the Hon’ble Punjab and Haryana High Court passed in *CWP No.2539 of 2017 (O&M) in the case titled Surinder Kaur V/s. Ombudsman, Electricity, Punjab and Others* deciding as under:

*“…. As against the contention of the Petitioner that demand can not be raised for more than six months, learned counsel for the respondents relies upon Electricity Act 2003 and Regulations made thereunder in Electricity Supply Code and Related Matter Regulations -2007 and amended Supply code -2014 (applicable from 01.01.2015) which entitles the respondents to raise demand for any period. However, it is to be noticed that the Supply Code-2014 came to be amended with effect from 01.01.2015, therefore, the respondents can take the advantage of Supply Code -2014 only with effect from 01.01.2015. Therefore, it is ordered that the respondents can recover the amount from the Petitioner only from 01.01.2015 and not prior thereto.*

*Consequently, the Civil Writ Petition is disposed of accordingly.”*

 I have gone through the order ibid of the Hon’ble Punjab and Haryana High Court and observe that it has not struck down “Note” given under Regulation 21.5.1 of the Supply Code 2014. I find that the Respondent PSPCL has filed  *Letter Patent Appeal (LPA) No. 7732 of 2018* in the Hon’ble High Court challenging the order dated 20.09.2018 ( passed by a Single Bench) referred to above by the Petitioner and the matter is pending adjudication before the Division Bench of the Hon’ble High Court.

1. In the present context, it is relevant to keep in view the order dated

19th April 2011 of the Hon’ble High Court of Delhi in W.P.(C) 8647/2007 titled *Jingle Bell amusement Park P. Ltd. Versus Delhi Power Ltd.* adjudicating a dispute regarding the **escaped billing/demand, due to application of wrong Multiplication Factor** **(MF)** **1 instead of actual Multiplication Factor (MF) 12**. In Para 7 of the Judgement ibid, reliance was placed on the findings of the **Hon’ble Supreme Court in *Swastic Industries Vs. Maharashtra State Electricity Board (1997) 9 SCC 465* upholding the order of the National Consumer Dispute Redressal Forum holding that even where, the electricity distribution company had woken up after nine years to make the claim, electricity dues have to be paid**.

 Hon’ble High Court of Delhi in Para 11 of its order ibid (i.e 19.04.2011), further held as under:

*“11. I am in respectful agreement with the view taken by the High Court of Jharkhand. The case here of the respondent is that though the electricity consumed by the petitioner from 30th November 2002 to July, 2003 was more; that the bill was raised for a lesser consumption owing to the inadvertent application of a wrong multiplying factor. Thus, the entire electricity claimed to have been consumed by the petitioner can not be said to have been billed by the respondent. To that part of the electricity consumed and for which no bill was raised, the dicta in H.D. Shourie (supra) will clearly apply. H.D. Shourie can not be read in a restrictive way to hold that even if the units consumed are say 100 but bill is erroneously raised for 10 units only, the claim for the balance 90 units for which no bill has been raised would also stand barred by time.*

*12. I find that the Division Bench of the Bombay High Court in Rototex Polyester V. Administrator, Admn. of Dadra & Nagar Haveli Electricity Dept., MANU/MH/0760/2009 in identical facts held that* ***in case the consumer is under-billed on account of clerical mistake such as where the multiplication factor had changed, but due to oversight the department issued bill with 500 as multiplication factor instead of 1000****, the bar of limitation can not be raised by the consumer.* ***It was held that the revised bill amount would become due when the revised bill is raised*** *and Section 56(2) of the Act would not come in the way of recovery of the amount under the revised bills”.*

**Thus, in view of the provisions of the Supply Code Regulations and Judgments cited above, the legitimacy of the amount charged to the Petitioner, on account of application of correct Multiplication Factor, proves beyond doubt since the Petitioner was earlier billed inadvertently for consumption less than that actually consumed and recorded by the Energy Meter installed at the premises of the Petitioner.**

1. A perusal of the reply, given by the Respondent, to the Appeal

preferred by the Petitioner revealed that details of the energy consumption of the connection of the Petitioner from the date of installation of its connection till date was not given. Accordingly, the Respondent was directed orally during hearing and also vide letter no.37 dated 09.01.2019, to send the same by 15.01.2019 positively. In compliance to the above direction, the Respondent sent the consumption of the Petitioner’s connection, received in this Court on 16.01.2019, which reveals that the consumption after application of correct Multiplication Factor (MF) has increased significantly. This confirms beyond doubt that the Petitioner was earlier billed for less consumption than that actually consumed and recorded by the Energy Meter which the Petitioner is bound to pay as discussed above.

 From the above analysis, it is concluded that the Petitioner is required to be charged for the energy consumption on the basis of actual Multiplication Factor applicable for the period from 04.03.2012 (date of installation of the Energy Meter) to 25.05.2018 (date of checking) as per provisions contained in ‘Note’ given under Regulation 21.5.1 of the Supply Code-2014. Since the Respondent is also responsible for the lapses on its part, hence no interest shall be charged.

5. **Decision:**

**As a sequel of above discussions, the order dated 04.09.2018 of the CGRF in Case No. CG-300 of 2018 is upheld. It is held that the Respondent shall recover the outstanding payment on account of wrong application of Multiplication Factor (MF) in ten monthly instalments without any interest.**

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

**7.** 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)

January 22, 2019 Lok Pal (Ombudsman)

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