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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL No. 65/2018**

**Date of Registration : 01.10.2018**

**Date of Hearing : 17.01.2019**

**Date of Order : 22.01.2019**

**Before:**

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

**In the Matter of :**

 Shiv Parvati Rice Mills,

Village Ghumiara, Malout.

 ...Petitioner

 Versus

 Addl. Superintending Engineer,

DS Division,

PSPCL, Malout.

 ...Respondent

Present For:

Petitioner : Shri R.S. Dhiman,

 Petitioner’s Representative (PR).

Respondent : 1. Er. Sukhdarshan Kumar,

 Addl. Superintending Engineer,

 DS Division,

 PSPCL, Malout.

 2. Sh. Gourav Gupta, UDC (Accounts).

Before me for consideration is an Appeal preferred by the Petitioner against the order dated 04.09.2018 in Case No. CG-305 of 2018 of the Consumers Grievances Redressal Forum (Forum) deciding as under:

*“Overhauling the account of the Petitioner from 10.09.2014 to the date of checking i.e. 03.06.2017 (vide ECR No. 18/1901 dated 03.06.2017) 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:

**(i)** The Petitioner was having a Medium Supply Category connection with sanctioned load of 98.440 kW and contract demand (CD) as 98.440 kVA for which, the metering was done by providing HT Static Energy Meter. The connection was released in the month of 10/2008.

**(ii)** The connection of the Petitioner was checked by the Sr. Executive Engineer, Enforcement-1, PSPCL, Bathinda vide ECR No. 18/1901 dated 03.06.2017 wherein it was reported that:

*“w"e/ s/ u?e ;hH NhH$ghHNhH ns/ whNo dh Ratio w[skfpe M. F. 2 brDk pDdk j? . w"e/ s/ ygseko tb"A Bill g/P BjhA ehsk frnk . foekov gVskb eoe/ gktoekw dhnK jdkfJs w[skfpe ekotkJh ehsh ikt/ ns/ fJ; ;pzXh fBwB j;skyo B{z ;{fus ehsk ikt/ .”*

**(iii)** Based on the said checking, a supplementary notice was issued vide Memo. No. 1085 dated 07.06.2017 to the Petitioner to deposit Rs. 14,60,691/- after overhauling the Account by applying correct Multiplication Factor (MF) 2 instead of 1, from the date of introduction of SAP Billing System i.e. 10.09.2014 to the date of checking i.e. 03.06.2017.

**(iv)** The Petitioner was allowed to deposit the amount in ten instalments by the CE/DS, West Zone, PSPCL, Bathinda. But the Petitioner deposited seven instalments and filed a Petition dated 07.08.2018 in the Forum, who, after hearing, passed the order dated 04.09.2018 (Page 2, Para 1).

**(v)** Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court and requested to set aside the undue charges raised in the interest of justice.

1. **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 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.

**(a) Submissions of the Petitioner**:

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

1. The Petitioner was running a Rice Sheller at Village Ghumiara Shekhu, Malout, bearing Account No. 3000447201, with sanctioned load of 98.440 kW and contract demand (CD) as 98.440 kVA under Medium Supply Category.
2. The Petitioner’s connection was checked by the Senior Executive Engineer, Enforcement-1, PSPCL, Bathinda on 03.06.2017 and it was reported that Multiplication Factor (MF) 1 had been applied instead of correct Multiplication Factor (MF) 2.
3. On the basis of the said checking, the account of the Petitioner was overhauled for the period from 10.09.2014 to the date of checking and a demand of Rs. 14,60,691/- was raised by the SDO, DS City Sub Division, PSPCL, Malout vide Memo. No. 1085 dated 07.06.2017.
4. All the equipments including the Energy Meter and CTs belonged to the PSPCL , therefore, mismatch of the CTs and the Energy Meter, if any, was not attributable to the Petitioner. Instructions No. 102.10 and 102.11 of ESIM were clear specifically in the matter of installation of Meters and CTs of matching ratio. Rather, the Respondent – PSPCL failed to comply with its own instructions.
5. Instruction No. 104.1 (i) of ESIM mandated the checking of all Medium Supply (MS) category connections at least once in every six months by the Respondent who did not follow the same.
6. Hon’ble Punjab and Haryana High Court decided in *CWP No. 14559 of 2007 titled Tagore Public School V/S PSEB* and in *CWP No. 17699 of 2014 titled Park Hyundai, Sangrur V/S PSPCL* that arrears in such cases could not be raised for more than six months. So, the Petitioner also deserved similar relief.
7. Not satisfied with the decision of the Forum, an Appeal was preferred in this Court with the request that the 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 connection of the Petitioner, bearing Account No. 3000447201, was running in the name of Shiv Parvati Rice Mills, Ghumiara Road, Malout with sanctioned load of 98.440 kW and contract demand (CD) as 98.440 kVA and the Energy Bills were issued from 09/2014 to 06/2017, regularly.
2. The connection installed at the premises of the Petitioner was checked by the Senior Executive Engineer, Enforcement-1, PSPCL, Bathinda on 03.06.2017 vide Checking Report No. 18/1901 and it was observed that in the bills issued to the Petitioner, wrong Multiplication Factor was applied.
3. After overhauling the account of the Petitioner and applying the correct Multiplication Factor (MF), SDO, DS City Sub Division, PSPCL, Malout, vide Notice bearing No. 1085 dated 07.06.2017, charged a sum of Rs. 14,60,691/- to the Petitioner.
4. The Petitioner approached the Chief Engineer/DS (West) Zone, PSPCL, Bathinda seeking permission to deposit the charged amount in ten monthly instalments and the same was granted. However, the Petitioner deposited Rs. 11,68,560/- in unequal seven monthly instalments.
5. The account of the Petitioner was overhauled on the basis of checking and the correct Multiplication Factor was applied in terms of provisions of the Note given under Regulation 21.5.1 of the Supply Code-2014.
6. As per instructions of the PSPCL, the checking of the Medium Supply (MS) connection was mandatory at least once in six months, accordingly, on checking dated 05.06.2017, the application of incorrect Multiplication Factor (MF) came to the notice and the account of the Petitioner was overhauled as per provisions of Note given under Regulation 21.5.1 of the Supply Code-2014.
7. The decisions of the Hon’ble High Court in *CWP No. 14559 of 2007* and *CWP No. 17699 of 2014* were not relevant in the light of provisions of the Supply Code-2007 notified by the PSERC. Subsequently, the Supply Code-2014 was notified and made effective from 01.01.2015 wherein a clear provision was made that in case of Multiplication Factor (MF) was omitted for some reason, the correct and genuine consumption of the consumer would be worked out by applying MF from the date it was omitted in the first instance and thus the account could be overhauled accordingly from the date, the mistake occurred.
8. In view of the above, the Appeal may be dismissed.
9. **Analysis:**

The issue requiring adjudication is the legitimacy of the amount charged to the Petitioner, after overhauling of its account for the period from 10.09.2014 to the date of checking i.e. 03.06.2017 on account of correction in Multiplication Factor incorrectly applied as per applicable regulations.

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

**(i)** The present dispute arose after the connection of the Petitioner was checked by the Sr. Executive Engineer, Enforcement-1, PSPCL, Bathinda vide ECR No. 18/1901 dated 03.06.2017 wherein it was reported that:

*“w"e/ s/ u?e ;hH NhH$ghHNhH ns/ whNo dh Ratio w[skfpe M. F. 2 brDk pDdk j? . w"e/ s/ ygseko tb"A Bill g/P BjhA ehsk frnk . foekov gVskb eoe/ gktoekw dhnK jdkfJs w[skfpe ekotkJh ehsh ikt/ ns/ fJ; ;pzXh fBwB j;skyo B{z ;{fus ehsk ikt/ .”*

Based on the said checking, a supplementary notice was issued, vide Memo. No. 1085 dated 07.06.2017, to the Petitioner to deposit Rs. 14,60,691/- after overhauling the Account by applying correct Multiplication Factor (MF) 2 instead of 1, from the date of operationalisation of SAP Billing System i.e. 10.09.2014 to the date of checking i.e. 03.06.2017.

PR argued that all the equipments including the Energy Meter and CTs belonged to the PSPCL, therefore, mismatch of the CTs and the Energy Meter, if any, was not attributable to the Petitioner. Instructions No. 102.10 and 102.11 of ESIM were clear specifically in the matter of installation of Meters and CTs of matching ratio. Rather, the Respondent – PSPCL failed to comply with its own instructions. PR added that Instruction No. 104.1 (i) of ESIM mandated the checking of all Medium Supply (MS) Category connections at least once in every six months by the Respondent who did not follow the same.

 I observe that the Respondent had no evidence on record to disprove the Petitioner’s contention regarding non checking of 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 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.

**(ii)** As per material on record, the account of the Petitioner was overhauled by issuing the Supplementary Notice vide no. 1085 dated 07.06.2017, for Rs. 14,60,691/-, for the period from 10.09.2014 (date of operationalisation of SAP System) to 03.06.2017.

During the course of hearing, the Respondent apprised the Court that as per provisions contained in Regulation 30.5 (b) of the Supply Code-2007 and 30.1.2 of the Supply Code-2014, the arrears of under-assessment due to application of wrong Multiplication Factor, full charges are to be levied and separate notice is to be given to the Petitioner.

**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 10 above, was inserted under Regulation 21.5.1 of the Supply Code-2014.

**(iii)** 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 the 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.**

 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 10.09.2014 (date of operationalization of SAP System) to 03.06.2017 (date of checking) as per provisions contained in ‘Note’ given under Regulation 21.5.1 of the Supply Code-2014. As the Respondent is also responsible for the lapses on its part, hence, no interest shall be recovered from the Petitioner.

5. **Decision:**

**As a sequel of above discussions, the order dated 04.09.2018 of the Forum in Case No. CG-305 of 2018 is upheld. It is held that the Respondent shall recover the balance payment on account of wrong application of Multiplication Factor (MF) in three monthly instalments without any interest on overall charges to be recovered due to application of wrong Multiplication Factor (MF) in this case.**

**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