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

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

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

 **APPEAL NO. 72/2018**

**Date of Registration : 18.12.2018**

**Date of Hearing : 14.02.2019**

**Date of Order : 22.02.2019**

**Before:**

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

**In the Matter of :**

Ess Ess Forging,

Kanganwal Road,

Ludhiana.

 ...Petitioner

 Versus

Senior Executive Engineer,

DS Estate Division (Special) ,

 PSPCL , Ludhiana.

 ...Respondent

**Present For:**

Petitioner : 1. Sh. Sukhminder Singh,

 Petitioner’s Representative (PR).

 2. Sh.Vivek Goel,

 Petitioner’s Representative (PR).

Respondent : 1. Er. Amandeep Singh,

 Senior Executive Engineer,

 DS Estate Division (Special),

 PSPCL, Ludhiana.

 2. Sh. Varun Goyal,

 Revenue Accountant.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 26.10.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-353 of 2018 deciding that :

*“****a****. Petitioner is liable to pay the past energy charges for*

*the period 31.10.2015 to 30.11.2015 amounting to Rs.2,68,796/- and for the period 30.11.2015 to 31.12.2015 amounting to Rs.3,03,175/- along with surcharge and interest thereon as stipulated under PSPCL Tariff Order FY 2015-16 as per Clause 21 of General Conditions of Tariff.*

***b****. Dy.CE/Operation Circle, City West, Ludhiana is*

 *directed to take disciplinary action against the delinquent official for wrong credit to Petitioner by misusing his official position and conniving with Petitioner in a fraudulent manner incurring financial loss to the Company.”*

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

 The relevant facts of the case are that:-

1. The Petitioner was having a Large Supply Category connection

since 01.01.1980 with sanctioned load of 526.398 kW and contract demand (CD) of 495 kVA.

1. Two energy bills were issued to the Petitioner, one bill was issued

on 14.12.2015 for Rs.2,68,800/- for 35,850 kVAh units and another bill was issued on dated 07.01.2016 which included current charges of Rs.3,03,175/- for 39,780 kVAh units and also arrears of previous bill balance of Rs.2,80,204/- (Rs. 2,68,796/- plus surcharge etc.). As such, total of bill dated 07.01.2016 amounted to Rs.5,83,380/- (Rs.3,03,175+ Rs.2,80,204/-)

1. The Petitioner did not make payment of the said two bills and these

unpaid amounts were not shown in subsequent bill issued on 01.02.2016, which was of current amount of Rs.3,11,070/- and was deposited by the Petitioner on 10.02.2016.

1. A scrutiny of the account of the Petitioner in 08/2018 revealed that

two nos. check lots one of Rs.5,89,615/- and the other of Rs.1000/- in respect of energy bills for the period from 31.10.2015 to 30.11.2015 amounting to Rs.3,68,796/- and from 30.11.2015 to 31.12.2015 amounting to Rs.3,03,175/- were wrongly posted/credited to the account of the Petitioner by the Revenue Accountant (RA). On detection of the mistake during this scrutiny, the Petitioner was served with supplementary bill dated 08.08.2018 for Rs.9,25,487/- (representing the amounts of unpaid bills plus surcharge and interest) with calculation sheet and details of the supplementary bill issued.

1. The Petitioner did not agree with the amount charged in the

aforesaid supplementary bill and filed a Petition dated 13.09.2018 in the Forum, who, after hearing, passed the order dated 26.10.2018. (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 demand of Rs.18,635/- as surcharge and Rs.3,34,880/- as interest (on two unpaid bills ibid) charged to it, keeping in view the principle of naturaljustice 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 Large Supply Category connection since 01.01.1980 with sanctioned load of 526.398 kW and contract demand (CD) of 495 kVA.
2. The reading of the Energy Meter was taken every month and the bills as raised on the basis of consumption were paid..
3. The AEE/Commercial, DS Estate Division (Special), Ludhiana issued supplementary bill dated 08.08.2018, with due date as 22.08.2018, directing the Petitioner to deposit a sum of Rs.9,25,487/-. It was mentioned in the Energy Bill that “ provisional notice was issued after overhauling its account. If it had any record in this case, then, the same may be presented and got checked from the office before the due date of this notice”.
4. The huge amount was charged to the Petitioner without reference to any rule/regulations of Supply Code-2014 and Electricity Act-2003.
5. Aggrieved with the supplementary bill dated 08.08.2018, the Petitioner filed a Petition on 13.09.2018 in the Forum, who, after hearing, wrongly decided the matter as per Clause 21 of General Conditions of Tariff of Tariff Order for the FY-2015-16 by ignoring Regulation 30,31 & 32 of the Supply Code-2014 and passed the Order dated 26.10.2018.
6. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court and prayed to set aside the demand of Rs.18,635/- as surcharge and Rs.3,34,880/- as interest charged/levied on unpaid bills by the Respondent.
7. As per billing system prevailing in the PSPCL, if any energy bill remained unpaid, the outstanding amount was always shown in the regular next bill against the item “Arrears Current Financial Year” and the same was required to be shown continuously in every subsequent bill, until the outstanding amount was fully paid.
8. The payments against energy bills for the period from 31.10.2015 to 30.11.2015 (due date 24.12.2015) and from 30.11.2015 to 31.12.2015 (due date 18.01.2016) for Rs.2,68,796/- and Rs.3,03,175/- respectively were not made by the Petitioner to the Respondent. The total amount (including surcharge) against these two energy bills had been shown as Rs.5,90,607/-. However, as per record of the Petitioner, none of the energy bills, issued and delivered to the Petitioner, was pending for payment.
9. The subsequent energy bill issued to the Petitioner for the period from 31.12.2015 to 31.1.2016 for Rs.3,11,070/- was duly paid by the Petitioner vide receipt dated 10.02.2016. In the said bill, “ Arrears Current Financial Year” had been shown as Rs.6,353/- and total amount of the bill including arrears had been duly paid. Thus, there was no outstanding amount, except Rs.6,353/-, relating to the previous period i.e. prior to issue of energy bill for the period from 31.12.2015 to 31.01.2016. As such, the supplementary bill dated 08.08.2018 issued by the Respondent to the Petitioner regarding non payment of energy bills, issued for the period from 31.10.2015 to 30.11.2015 ( due date 24.12.2015) and from 30.11.2015 to 31.12.2015 (due date 18.01.2016) for a sum of Rs.2,68,796/- and Rs.3,03,175/- respectively, was unwarranted and not based on record of the Respondent.
10. Even if it was presumed that the energy bills for the period from 31.10.2015 to 30.11.2015 and 30.11.2015 to 31.12.2015 for Rs.2,68,796/- and Rs.3,03,175/- respectively were issued/delivered to the Petitioner and the Petitioner made default in making the payment, then, the Respondent should intimate reason for not showing the outstanding amount in the subsequent energy bills and also the reason for not disconnecting the connection of the Petitioner.
11. After receiving the supplementary bill of the disputed amount for the disputed period, the Petitioner verified its record and could not locate/trace any energy bill issued in 11/2015 and 12/2015. The possibility of non-preparation of the energy bills for the period from 31.10.2015 to 30.11.2015 and 30.11.2015 to 31.12.2015 was not ruled out. If it was so, the fault was in the billing system of the Respondent or on the part of the concerned officials dealing with the billing.
12. If the System of the Respondent could not check the non-issuance of the energy bills, the Petitioner could not be held responsible for non deposit of the amount noticed afterwards.
13. The fault of non issue of energy bills was either in the Billing System of the Respondent or concerned officials, therefore, charging huge amount of Surcharge of Rs.18,635/- and interest as Rs.3,34,880/- was highly unjustified, arbitrary and illegal and was liable to be quashed.
14. The Chief Engineer/Commercial, vide CC No.53/2013 and CC No.59/2014, had issued instructions on the basis of Order dated 26.09.2013 passed by the Hon’ble Punjab and Haryana High Court in CWP No.10644 of 2010 that while initiating proceedings against the consumer, the Competent Authority of the PSPCL-Respondent must quote the relevant regulations of the Supply Code or any other regulations framed by the Competent Authority under the Electricity Act-2003. These instructions had been reiterated, vide CC No.30/2015 dated 05.08.2015, for strict compliance as the Hon’ble PSERC had taken serious view of non-compliance of these instructions.
15. The Respondent charged the amount of Surcharge Rs.18,635/- and interest of Rs.3,34,880/- without citing any rules/regulations of the Supply Code-2014 or the Electricity Act-2003 which was unjustified, especially considering the fact that the disputed energy bills were never issued to the Petitioner and outstanding amount against these energy bills was also not shown in the subsequent energy bills.
16. The Respondent failed to follow the provisions contained in Regulation 30.3, 30.8, 30.9, 31.9, 31.9.1, 31.9.2, 32.1 of the Supply Code-2014 and due to not following the procedure contained in the regulations stated ibid, the Petitioner had been great sufferer in the hands of Respondent. There was possibility of non-issue of energy bills for the period from 31.10.2015 to 30.11.2015 and 30.11.2015 to 31.12.2015. If the payment against energy bills for the said period was considered due for 12/2015 and 01/2016 respectively, then the Petitioner was not legally liable to pay any amount in terms of provisions of Regulation 32.2 of the Supply Code.
17. Even if, if the submission of the Respondent was considered as correct and payment of Rs.2,68,796/- and Rs.5,90,606/- (Rs.2,68,796+ 3,03,175+ Surcharge Rs.18,635/-) was considered first due from 12/2015 and 01/2016 respectively, the Petitioner was not liable to pay any amount against the disputed bills, as the sums due were not shown in as recoverable in the subsequent bills issued to the Petitioner.
18. The Petitioner was a very genuine consumer of the Respondent and did not want to escape the charges of electricity consumed (due to billing mistake detected at later stage), but at the same time, it should not be burdened with surcharge and interest against the outstanding payment of energy bills which were never issued/delivered to the Petitioner.
19. Keeping in view the submissions made, the Appeal may be

allowed in the interest of justice.

1. **Submissions of the Respondent:**

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

1. The Petitioner was having a Large Supply Category connection

with sanctioned load of 526.398 kW and contract demand (CD) of 495 kVA.

1. Two energy bills were issued to the Petitioner, one bill was issued

on 14.12.2015 for Rs.2,68,800/- (rounded) for 35,850 kVAh untis while another bill was issued on dated 07.01.2016 which included current charges of Rs.3,03,175/- for 39,780 kVAh units and also arrears of previous bill balance of Rs.2,80,204/- (Rs. 2,68,800/- plus surcharge etc.). As such, total of bill dated 07.01.2016 amounted to Rs.5,83,380/- (Rs.3,03,175+ Rs.2,80,204/-)

1. The Petitioner did not pay these bills and the unpaid amounts were

not shown in subsequent bill issued on 01.02.2016 and its current billed amount of Rs.3,11,070/- was deposited by the Petitioner.

1. A scrutiny of the account of the Petitioner revealed that

two nos. check lots one of Rs.5,89,615/- and the other of Rs.1000/- in energy bills for the period from 31.10.2015 to 30.11.2015 amounting to Rs.2,68,796/- and from 30.11.2015 to 31.12.2015 amounting to Rs.3,03,175/- were wrongly posted/credited to the account of the Petitioner by the Revenue Accountant (RA). On detection of the mistake in 08/2018, the Petitioner was served with supplementary bill dated 08.08.2018 for Rs.9,25,487/- (representing the amounts of unpaid bills plus surcharge and interest) with calculation sheet and details of bill issued.

1. The Petitioner did not agree with the aforesaid supplementary bill

and filed a Petition in the Forum, who, after hearing, decided the case in favour of the Respondent vide order dated 26.10.2018.

1. Aggrieved with the decision of the Forum, the Petitioner preferred

 the present Appeal in this Court.

1. The plea of the Petitioner regarding non issuance/ non receipt of the

energy bills issued on 14.12.2015 and 07.01.2016 was not sustainable, as prior to 12/2015, the energy bill was issued to the Petitioner on 09.11.2015 for Rs.3,46,510/- which was paid by the Petitioner.

1. The Petitioner was well aware of the fact that the Respondent issued

monthly energy bills and if it had not received the said energy bills, then it could have inquired about non-receipt from the Respondent, but, it did not do so which proved that the energy bills were delivered to the Petitioner.

1. The energy bills for the months of 12/2015 and 01/2016 had been

correctly issued in the SAP System, but the payment of these energy bills was not made by the Petitioner and the wrong check lot was posted by the Revenue Accountant due to which, the arrear amount of these energy bills was not shown in the subsequent energy bill issued on and after 01.02.2016. Therefore, it was a case of non payment of energy bills and not of under assessment of outstanding dues. The disputed amount stood as outstanding amount due to non payment of the energy bills of current amount of monthly energy consumed by the Petitioner and this mistake was detected during 08/2018 and corrective action was taken by issuing supplementary bill dated 08.08.2018 and the Petitioner was informed accordingly for making payment of its energy bills with interest as per instructions of the PSPCL.

1. The mistake was detected in 08/2018 and according to Commercial

Circular (CC) No.5/2012 dated 14.03.2012, the demand was raised within the stipulated time and was thus not time barred.

1. The amount of unpaid bills along with surcharge and interest

charged to the Petitioner was correct as per Instruction No.21.1 of ESIM and Clause 21 of General conditions of Tariff Order for the FY 2015-16.

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

4. **Analysis:**

The issue requiring adjudication is the legitimacy of the demand raised to the Petitioner to deposit a sum of Rs.9,25,487/- ( due date 22.08.2018) for payment of the amounts of unpaid bills dated 14.12.2015 and 07.01.2016 of amounting to Rs.2,68,796/- and Rs.3,03,175/- respectively along with surcharge and interest thereon.

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

1. The dispute relates to non-payment of two energy bills issued to the

Petitioner, one bill dated 14.12.2015 for Rs.2,68,800/- (rounded) for 35,850 kVAh untis and another bill dated 07.01.2016 which included current charges of Rs.3,03,175/- for 39,780 kVAh units apart from arrears of previous bill ( dated 14.12.2015) balance of Rs.2,80,204/- (Rs. 2,68,800/- plus surcharge etc.). As such, total of bill dated 07.01.2016 amounted to Rs.5,83,380/- (rounded) (Rs.3,03,175+ Rs.2,80,204/-). Petitioner’s Representative (PR) referred to the reply filed by the Respondent stating that the disputed bills were issued, but the Petitioner did not make the payment against the bills issued on 14.12.2015 and 07.01.2016. Petitioner’s Representative (PR) added that if the bills were actually issued, the Respondent should provide evidence as prescribed in Regulation 30.9 of the Supply Code.

 The Respondent, contested the contention of the Petitioner regarding non-receipt of the bills issued on dated 14.12.2015 and 07.01.2016 was not maintainable. During the course of hearing, the Sr.Executive Engineer, DS Estate Division (Special), Ludhiana brought on record of this Court evidence showing delivery of the disputed bills to the representative of the Petitioner (available in its office then) after obtaining its signatures in token of receipt thereof. The evidence ibid was also shown to the Petitioner who identified the same. The Respondent added that prior to 12/2015, an energy bill was issued on 09.11.2015 for Rs.3,46,510/- which was paid by the Petitioner who was well aware of the fact that PSPCL issued monthly bills. If it had not received the disputed bills then, it could inquire from the PSPCL office but it did not do so which proved that the bills were delivered to it. Moreover, the amount of bill issued on 14.12.2015 had been correctly shown as arrears in the next bill issued on 07.01.2016, but the Petitioner did not deposit the same. Pursuant to hearing, Petitioner’s Representative (PR) sent an e-mail dated 18.02.2019 stating as under:

“ *In continuation to submission already made on 14.02.2019, it is made clear that bills for the period 31.10.2015 to 30.11.2015 ( due date 24.12.2015) and 30.11.2015 to 31.12.2015 (due date 18.01.2016) for Rs.2,68,796/- and 3,03,175/- respectively were never delivered to my authorized person of the Petitioner, as contended by the Respondent. The Dak/Delivery Book which was shown to the Petitioner Sh.Vivek Goyal on 14.02.2019 by the Respondent (showing alleged delivery of bills to employee of the Petitioner) in your Hon’ble Court were actually not received by any authorized person of the Petitioner. The Petitioner verified the signature appended on the Dak Book but the same were not found to be the signature of any of his authorized employee*.”

1. Petitioner’s Representative (PR) next contended that if for the sake

of argument, it was presumed that the bills dated 14.12.2015 and 07.01.2016 were actually issued/delivered to the Petitioner, the Respondent should intimate as to why the amount of unpaid bill was not shown in the subsequent bills (from 02/2016 onwards) till its payment as prescribed in Regulation 31.9.2 of the Supply Code-2014. Besides, The Respondent should also intimate as to why the connection of the Petitioner was not disconnected, due to non-payment of disputed bill dated 14.12.2015 and 07.01.2016 after the due date of payment as required in Regulation 32 of the Supply Code-2014.

 I have perused the reply of the Respondent in this regard

stating that the Revenue Accountant, by usage of check lots, credited the amounts of Rs.5,89,615/- and Rs.1000/- (current energy charges and surcharge/interest thereon) in the account of the Petitioner in 01/2016 as a result of which, the amounts of two disputed bills not actually paid by the Petitioner, were not carried forward as arrear in the subsequent bills (from 02/2016 onwards) and the omission was detected during the course of scrutiny of records in 08/2018.

I have also gone through the order dated 26.10.2018 of the Forum in this case observing that:-

“… *it is inferred that RA of the concerned Sub Division, by the usage of check lots, credited the amount of Rs.5,90,615/- (Ist Check lot Rs.5,89,615/- plus 2nd Check lot Rs.1000/-) i.e. two energy bills for the period 31.10.2015 to 31.11.2015 amounting to Rs.2,68,796/- and 30.11.2015 to 31.12.2015 amounting to Rs.3,03,175/- plus surcharge thereon, in the account of the Petitioner, actually helped the Petitioner in financial terms. Forum also clearly feels that in this case the Petitioner is ultimately benefiting and possibility of involvement with RA can not be ignored. Therefore, Petitioner is liable to pay the past energy charges along with surcharge and interest thereon as per rules of the PSPCL. Further, Respondent has already taken action against the RA for doing wrong credit of check lots in various consumer accounts including of Petitioner*”.

 I find that the Forum has, vide its order ibid, directed the Dy. Chief Engineer, DS Circle, City West, PSPCL, Ludhiana to take disciplinary action against the delinquent official for wrong credit to the Petitioner’s account by misusing his official position and in conniving with the Petitioner’s employee in a manner incurring financial loss to the Company. *I observe that the Revenue Accountant acted beyond its jurisdiction by correcting the bill in its hand and in the SAP Billing System by reversing the entries and crediting the amounts of disputed unpaid bills dated 14.12.2015 and 07.01.2016 to the account of the Petitioner by usuage of check lots, on its own* ***without approval of the competent authority i.e. AEE/Commercial, DS Estate Division (Special), Ludhiana******who has the authority to sign the original bill and thus any amendment thereto.***

1. Petitioner’s Representative (PR) submitted that the Petitioner was a

very genuine consumer of the PSPCL and did not want to escape charges of electricity consumed due to billing mistake detected at a later stage but, at the same time, should not be burdened with surcharge/interest against non payment of bill relating to a period of about 3 years ago.

 I have perused the reply of the Respondent in this regard stating that the Petitioner was having a Large Supply Category connection since 01.01.1980 and such categories of consumers were getting energy bills every month and with the operationalization of SAP System, energy bills were available online and could be generated from the website of the PSPCL. I observe that the Petitioner, being a Large Supply Category consumer, should have approached the Addl.SE / Sr.Xen/AEE (Commercial) and brought the matter of non issuance/non delivery of disputed bills, if any, to their notice orally or in writing instead of contacting the Revenue Accountant etc. for the purpose.

1. PR submitted that the present case of the Petitioner should be

considered as of dues relating to previous months/year as per Instruction No.93.1 of ESIM and supplementary bill for the difference in billing had already been issued as prescribed in the ESIM. Petitioner’s Representative (PR) added that the Petitioner would pay the actual amount of the bills dated 14.12.2015 and 07.01.2016 relating to the period from 31.10.2015 to 30.11.2015 and 30.11.2015 to 31.12.2015 respectively and prayed that all aspects of the case be looked into and demand of surcharge and interest on the said unpaid bills be set aside in the interest of natural justice and fairness.

 I find that the Respondent, in its defence, stated that this was a case of non payment of regular energy bills and not of under assessment of dues. Besides, the demand raised in 08/2018 was within time and not time barred in terms of provision of Commercial Circular (CC) No.05/2012 dated 14.03.2012. Accordingly, the Respondent added that the amount charged to the Petitioner by way of Surcharge and interest on the disputed unpaid bills was correct and recoverable as also decided by the Forum.

 *I observe that the bills dated 14.12.2015 and 07.01.2016 for the period from 31.10.2015 to 30.11.2015 and from 30.11.2015 to 31.12.2015 amounting to Rs.2,68,796/- and Rs.3,03,175/- respectively have remained unpaid till date. The Petitioner, being a Large Supply Category consumer did not act prudently and responsibly by not making payment of two successive energy bills dated 14.12.2015 and 07.01.2016. At the same time, the Respondent defaulted in performing its duty efficiently and intelligently by not ensuring discharge of its functions/responsibilities as per its own rules and instructions for timely realization of its legitimate dues from the consumers. I also observe that the Revenue Accountant overstepped its jurisdiction by reversing the entries of disputed bills on its own without any justification and without approval of the competent authority viz AEE/Commercial who has the authority to sign the original bill and thus any amendment thereto.*

From the above analysis, the legitimacy of unpaid energy bills dated 14.12.2015 and 07.01.2016 amounting to Rs.2,68,796/- and Rs.3,03,175/- respectively along with surcharge and interest thereon proves beyond doubt as the Petitioner could not disprove the contention of the Respondent, by bringing on record of this Court any valid evidence to the effect that the disputed energy bills dated 14.12.2015 and 07.01.2016 were not issued/delivered by the Respondent, who, in turn, placed on record of this Court necessary evidence of issuance/delivery of the said energy bills.

5. **Decision:**

**As a sequel of above discussions, the order dated 26.10.2018 of the CGRF in case No. CG-353 of 2018 is upheld..**

**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)

February 22, 2019 Lok Pal (Ombudsman)

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