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

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

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

 **APPEAL NO. 76/2018**

**Date of Registration : 31.12.2018**

**Date of Hearing : 07.03.2019 and 26.03.2019**

**Date of Order : 29.03.2019**

**Before:**

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

**In the Matter of :**

Suman Lata,

Plot No.C-158, Phase-7

Industrial Area,

S.A.S.Nagar (Mohali).

 ...Petitioner

 Versus

Addl.Superintending Engineer,

DS Division (Special) ,

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

 ...Respondent

**Present For:**

Petitioner : Er. R.S.Dhiman,

 Petitioner’s Representative (PR).

Respondent : 1. Er. G.S.Sandhu,

 Addl.Superintending Engineer,

 DS Division (Special),

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

 2. Er.Mohit Nagpal,

 Asstt.Executive Engineer/Commercial,

 DS Division (Special),

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

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 26.11.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-389 of 2018 deciding that :

*“****a****. The Plea of the Petitioner to treat his Power Factor as unity for the period 06.09.2016 to 31.10.2018 when meter with lag + lead protocol was installed at the premises of the Petitioner is not maintainable and is dismissed.*

***b****. Respondents are directed to replace the lag + lead protocol meter installed at the premises of the Petitioner with lag only protocol meter.”*

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

 The relevant facts of the case are that:-

1. The Petitioner was having a Large Supply (LS)Category

connection with sanctioned load of 496.330 kW and contract demand (CD) of 495 kVA for which, Metering was being done by providing HT static Energy Meter.

1. The Energy Meter of the Petitioner’s connection was replaced on

06.09.2016 vide Device Replacement Application No.100002405699 dated 16.08.2016 due to introduction of Time of Day (ToD) Tariff and the Energy Meter of “Secure” make was installed. **.**

1. The said Energy Meter was of Technical Specifications prescribed

by the PSPCL i.e. MQP-95 which was having LAG+ LEAD Tariff Protocol. Prior to this, the Energy Meter of LAG only Tariff Protocol was installed.

1. The Petitioner had relied upon the decision of the Hon’ble PSERC

dated 28.02.2018 in Petition No.47 of 2017 wherein **it was held that no consumer be penalized for leading Power Factor in case of LAG + LEAD Tariff Protocol Energy Meter was installed and in such cases, Power Factor shall be taken as unity**.

1. In the light of the above decision of the Hon’ble PSERC, the

Petitioner filed a Petition dated 30.10.2018 in the CGRF, PSPCL, Patiala, who, after hearing, passed the order dated 26.11.2018. (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 th*e* Petitioner’s claim for refund may be decided on the basis of kVARh consumption (Lag and Lead) available in the SAP billing System and directions may be issued for immediate replacement of the Energy Meter of MQP-95 specification, as decided by the Hon’ble PSERC.

**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 running an Industrial Unit under the name and

style of Kunal Founders and Engineers (P) Ltd. The unit was engaged in manufacturing Tractor Parts and had a Large Supply (LS) Category connection with sanctioned load of 496.330 kW and contract demand (CD) of 495 kVA for which, Metering was being done by providing HT static Energy Meter.

1. A new Energy Meter was installed by replacing the existing Energy

 Meter in the year 2016 at the time of introduction of ToD

metering..

1. Ever since its installation, the new Energy Meter was showing a vast

disparity in the kWh and kVAh consumption even though the Petitioner had installed capacitors of adequate capacity.

1. After getting the working of capacitors tested from its Suppliers, the

Petitioner was given to understand that there was some defect in the Energy Meter itself.

1. Further investigation into the matter led the Petitioner to the

conclusion that this vast disparity in kWh and kVAh consumption was on account of installation of the Energy Meter which was of banned technical specification of MQP-95. Hon’ble PSERC had banned the installation of Energy Meters of this specification vide its order dated 28.02.2018 passed in Petition No.47 of 2017 and directed to PSPCL vide order ibid to either replace all such Energy Meters already installed at the consumers’ premises immediately or change the Tariff Protocol of all the Energy Meters procured against MQP-95 from LAG + LEAD Tariff Protocol to LAG only Tariff Protocol. Hon’ble PSERC further directed PSPCL to ensure that no consumer was charged extra for leading Power Factor in case of Energy Meters of this Specification already installed at the premises of the consumers. In such cases, the Power Factor should be taken as unity.

1. As the Energy Meter installed at the Petitioner’s premises was of

banned technical specification of MQP-95, the same needed to be replaced immediately.

1. Excess amount paid in the shape of energy charges by the Petitioner

was also required to be refunded by treating its Power Factor as unity in accordance with the directions of the Hon’ble PSERC.

1. The Petitioner filed a Petition before the CGRF, Patiala for the

refund of excess payment recovered from it due to installation of faulty Energy Meter of wrong specification. The Forum, after hearing both the parties dismissed the Petition of the Petitioner on the ground that there was no variation in the Petitioner’s Power Factor from 04/2012 to 08/2016 with LAG only Tariff Protocol Energy Meter and from 09/2016 to 10/2018 with LAG + LEAD Tariff Protocol Energy Meter.

1. As the Petitioner’s Power Factor was on account of leading kVARh,

the Petitioner’s Power Factor should be treated unity as per the directions issued by the Hon’ble PSERC vide order dated 28.02.2018 in Petition No.47 of 2017, deciding that the consumer’s Power Factor was to be treated as unity in case it was less than unity on account of leading kVARh. The Petitioner felt that if Power Factor was less than unity due to leading kVARh since it had installed shunt capacitors of more than the specified capacity. The plea of the Petitioner could be verified from the SAP billing data where both Leading and Lagging consumption was recorded.

1. The disputed Energy Meter with banned specification had not been

replaced so far despite issuance of the directions by the Forum and required replacement immediately to avoid financial loss to the Petitioner.

1. Not satisfied with the decision of the Forum, an Appeal was

preferred in this Court with the prayer that th*e* Petitioner’s claim for refund may be decided on the basis of kVARh consumption (Lagging and Leading) available in the SAP billing System. Besides, directions may be issued for immediate replacement of the Energy Meter of banned specification.

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,

bearing Account No.3000244252, with sanctioned load of 496.330 kW and contract demand (CD) of 495 kVA.

1. An Energy Meter, bearing No. X0054256 of “Secure”, make was

installed at the premises of the Petitioner.

1. A scrutiny of bills of the Petitioner’s connection revealed that Power

 Factor of the Energy Meter was more than 0.90 which was correct.

1. The Petitioner had filed a case in the CGRF for compliance of the

decision in Petition No.47 of 2017 which was decided on 28.02.2018 by the Hon’ble PSERC and directions were issued to the PSPCL to replace the LAG + LEAD Tariff Protocol Energy Meter installed at the premises of the Petitioner with LAG only Tariff Protocol Energy Meter immediately. The Forum decided the case vide order dated 26.11.2018 (Reference Page-2, Para-1).

1. Subsequently, a meeting was held in the chamber of the Director

(Distribution), PSPCL Patiala on 28.11.2018, wherein the procedure to sanction refunds was formulated. While forwarding a copy of the minutes of the said meeting to the CE/ARR & TR, PSPCL, Patiala vide letter no.9121/29 dated 07.12.2018, as under:

“ *…..As per minutes, you are requested to kindly intimate the Hon’ble PSERC regarding timelines for implementation of order of Hon’ble PSERC dated 28.02.2018 due for compliance on 28.05.2018. During the pendency of the Petition in the regulator, PSPCL has floated tender enquiry for the purpose of new Meters with LAG protocol for implementation of the order but due to various reasons NIT date was extended 4 times. Finally first supply of Meters was received in October 2018. This has led to delay in replacement of Meters. Now sufficient Meters are available therefore time extension for compliance of the order is required.*

*This is for your information and necessary action please for seeking extension in time upto 31.03.2019 for implement order of Hon’ble PSERC in Petition No.47 of 2017”.*

1. Accordingly an e-mail dated 21.12.2018 was received from

AEE/MDAS in which Lag and lead data was provided to the Respondent.

1. The formula given in the Petition No.47 of 2017 for calculating the

 Apparent Energy was as under:-

Apparent Energy = √ [Active Import Energy]2 + [Reactive Energy

 (Lag+Lead)]2

and as per decision, the refund on account of Leading Power Factor be given to the consumer as per above formula after multiply by Multiplying Factor, if any.

1. As per the directions of the Hon’ble PSERC, the case for refund to

the Petitioner was sent to the Competent Authority i.e. Zonal Dispute Settlement Committee (ZDSC) and refund will be made to the Petitioner on receipt of the decision therefrom the Competent Authority.

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

4. **Analysis:**

The issues raised by the Petitioner for adjudication are the legitimacy of:

1. the claim for refund for the period from 06.09.2016 to 31.10.2018 due to installation of faulty Energy Meter of banned technical specification of MQP-95 on the basis of kVARh consumption (Lagging and Leading) available in the SAP billing System and
2. issuance of directions to the Respondent for immediate replacement of Energy Meter of the banned specification.

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

 **Issue No.(i)**

The Petitioner filed a Petition dated 30.10.2018 before the Forum for refund of excess payment received from it as the Petitioner’s Power Factor was on account of leading kVARh, Petitioner’s Representative also contended that the Petitioner’s Power Factor should be treated as unity as per the directions issued by the Hon’ble PSERC, vide order dated 28.02.2018 in Petition No.47 of 2017, deciding that the consumer’s Power Factor was to be treated as unity in case of leading Power Factor. The Petitioner felt that Power Factor was less than unity due to leading kVARh since it had installed shunt capacitors of more than the specified capacity. The plea of the Petitioner could be verified from the SAP billing data where both Leading and Lagging consumption was recorded.

I have perused the details of the consumption and Power Factor of the Petitioner brought on record by the Respondent and observed from perusal of Consumption and Power Factor recorded by the Energy Meter with LAG only Protocol from 04/2012 to 09/2016 and also with LAG + LEAD Tariff Protocol Energy Meter from 09/2016 to 10/2018 and found that there was no significant variation in Consumption and Power Factor. The Power Factor in the range of 0.93 to 0.94 has been recorded, from 04/2012 to 08/2016, with LAG Only Tariff Protocol Energy Meter while Power Factor in the range of 0.92 to 0.94 has been recorded, from 09/2016 to 10/2018, with LAG+ LEAD Tariff Protocol Energy Meter.

In this regard, I would like to reproduce here the order dated 28.02.2018 of the Hon’ble PSERC in Petition No.47 of 2012 as under:-

“*The Commission also directs PSPCL to ensure that no consumer is charged extra for leading Power Factor recorded with LAG plus LEAD Tariff Protocol meters already installed on the consumers’ premises and in such cases, the power factor shall be taken as unity. It is further directed that the amounts already charged on account* *of leading Power Factor may be refunded to the consumers*.”

I have gone through the written reply of the Respondent submitted vide letter No.2839 dated 26.03.2019 during hearing dated 26.03.2019 intimating that pursuant to decision dated 26.11.2018 of the Forum in the present case, a meeting was held on 28.11.2018 in the Chamber of Director/Distribution, PSPCL, Patiala. As per Minutes of the said Meeting, circulated vide Memo No.9121-29 dated 07.12.2018, the deliberations held and decisions taken were as under:-

“ *(1) EIC/Metering briefed all about the proceedings held at*

*PSERC on 26.11.2018. It was conveyed by Director/Distribution that the replacement of Meters along with refund issues emanating out of decision of PSERC given in the order of Petition No.47 of 2017 were to be implemented at the earliest.*

1. *CE/Enforcement sought 4 months time for checking of*

 *all the Meters totaling about 4300 numbers.*

1. *CE/IT informed about preparation of software to*

*extract kVARh readings with leading Power Factor within 4 months to enable DS Officers to sanction refunds.*

1. *Director/Distribution desired that Distribution Officers*

*shall replace Meters and sanction refund within 4 months i.e. upto 31.03.2019.*

1. *As far as submission of report on system Power Factor*

*at various voltages is concerned, the office of Director/Distribution will decide on the same.*

1. *It was concluded that EIC/Metering would submit a*

*comprehensive Note explaining causes of delay and required timelines for implementation of Hon’ble PSERC order to CE/ARR so that the office of CE/ARR may submit a reply to Hon’ble PSERC for seeking extension in time for compliance of the PSERC orders given in Petition No.47 of 2017”.*

The Respondent also stated in its written reply that an e-mail dated 21.12.2018 was received from AEE/ Meter Data Acquisition System (MDAS), PSPCL, providing Lag and Lead Data to its office. The Respondent added that *as per formula given in Petition No.47 of 2017 decided on 28.02.2018 by the Hon’ble PSERC, the necessary refund case has been prepared and sent to Competent Authority for approval.*

I have also perused the observations made in the Note given at the end of the Calculation sheet provided by the Respondent during hearing which reads as under:

*“ 1. The refund is only for period where AMR data is available.*

1. *The Meter was replaced in SAP System on 20.08.2016 whereas first consumption available in SAP is 07.02.2017.*
2. *The refund is made prejudice to the available consumption as in AMR without taking into consideration the ToD rebates/surcharges given to the consumer, the MMC period of consumption etc.*
3. *The refund is given at flat rate of Rs.5 per kVAh as monthly detailed consumption is not available”.*

In view of the above, appropriate action to authorise refund of excess amount recovered from the Petitioner needs to be expedited.

**Issue No.(ii)**

 During the course of hearing dated 26.03.2019, the Respondent apprised the Court that the disputed Energy Meter had been replaced vide Device Replacement Application dated 16.10.2018 effected on 06.02.2019. In view of the above submission by the Respondent, the issue was not deliberated further.

1. **Conclusion:**

From the above analysis, it is concluded that the Petitioner is entitled to the refund of excess amount recovered during the period from 06.09.2016 to 31.10.2018 ( due to installation of Energy Meter of banned technical specification) on the basis of consumption recorded in Lag and Lead mode.

**6.** **Decision:**

**As a sequel of above discussions, the order dated 26.11.2018 of the CGRF in case No. CG-389 of 2018 is set aside. The Respondent is directed to ensure compliance of order dated 28.02.2018 in Petition No.47 of 2017, followed by the decision taken in its proceedings dated 26.11.2018 and also as per Minutes of Meeting dated 28.11.2018 held in the chamber of Director/Distribution, PSPCL, Patiala and made a refund to the Petitioner in time bound as decided by the Hon’ble PSERC 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)

March 29, 2019 Lok Pal (Ombudsman)

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