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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 13/2019**

**Date of Registration : 06.02.2019**

**Date of Hearing : 30.04.2019**

**Date of Order : 28.05.2019**

**Before:**

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

**In the Matter of :**

 B.R. Herman & Mohatta (India) Pvt. Ltd,

Village Kanganwal,

Ludhiana.

 ...Petitioner

 Versus

 Senior Executive Engineer,

DS, Estate Division (Special),

PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Petitioner : Sh. R.S. Dhiman,

 Petitioner’s Representative (PR).

Respondent : 1. Er. Amandeep Singh,

 Senior Executive Engineer,

 DS, Estate Division (Special),

 PSPCL, Ludhiana.

 2. Shri Krishan Singh,

 Assistant Accounts Officer.

Before me for consideration is an Appeal preferred by the Petitioner against the order dated 15.01.2019 in Case No. CGL-047 of 2018 of the Consumers Grievances Redressal Forum (Forum), Ludhiana deciding as under:

“*The Bill cum Notice issued to the Petitioner for Rs. 10,53,086/- on account of pending unpaid bills for the month of 03/2016, 09/2016 and 10/2016 amounting to Rs. 6,79,793/- and late payment surcharge and interest of Rs. 3,73,293/- is in order in view of Section 56 (2) of Electricity Act, 2003 and Reg. 32.2 of Conditions of Supply.”*

2. **Facts of the Case:**

 The relevant facts of the Case are that:

1. The Petitioner was having a Medium Supply (MS) Category connection with sanctioned load of 89.990 kW and contract demand (CD) of 99.990 kVA for Steel Forging Unit for which, the metering was done by providing HT Static Energy Meter.
2. A bill for the month of 03/2016, showing current month charges as Rs. 1,81,178/- and arrear of Rs. 21,34,602/- making total billed amount as Rs. 23,15,780/-, was issued to the Petitioner, who did not deposit any amount against this bill.
3. The bill for the month of 09/2016, with current energy charges of Rs.2,37,114/- and arrears of previous financial year amounting to Rs.17,35,781/- and current financial year, amounting to Rs.10,82,449/-, making total billed amount as Rs. 30,55,340/- was issued to the Petitioner, who again did not deposit any amount against this bill also.
4. In the month of 10/2016, a bill of current month charges for Rs.2,61,500/-, arrear of previous financial year amounting to Rs. 12,57,958/- and arrear of current financial year amounting to Rs.13,40,929/-, making the total billed amount as Rs. 28,60,390/- was issued to the Petitioner, who, did not deposit the amount of this bill also.
5. A Notice specifically asking for deposit of the billed amount for 03/2016, 09/2016 and 10/2016 along with late payment surcharge and interest was sent to the Petitioner in the bill of 10/2018**.** The unpaid amount of the bills for 03/2016, 09/2016 and 10/2016 was continuously included in the total bills issued to the Petitioner as arrears of current and previous years but were not shown separately.
6. The Petitioner filed a Petition dated 06.12.2018 in the CGRF, Ludhiana, who, after hearing, passed the order dated 15.01.2019 (Reference: Page 2, Para 1).
7. Not satisfied with the decision of the Forum the Petitioner preferred an Appeal in this Court and prayed that the disputed amount of Rs. 10,53,086/-, may not allowed to be recovered in terms of provisions of Section 56 (2) of the Electricity Act, 2003.
8. **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 Steel Forging Unit at Village Kanganwal bearing Account No.W11MS02/1521K, with sanctioned load of 89.990 kW and contract demand (CD) of 99.990 kVA for which, the metering was being done on 11 kV right from the beginning and all the electricity bills were paid regularly by the Petitioner.
2. In October 2018, a sum of Rs. 10,53,086/- including surcharge of Rs. 3,73,293/- was shown recoverable from the Petitioner in its electricity bill dated 22.10.2018 mentioning that the said amounts, relating to the bills for 03 / 2016, 09 / 2016 and 10 / 2016, were not paid.
3. The inclusion of disputed amount in the Petitioner’s monthly bill was in violation of the Regulation 30.1.2 of the Supply Code-2014, as per which, a separate bill cum notice was required to be issued giving full details of the charges raised and also under the provisions of the Section 56 (2) of the Electricity Act, 2003. The said amount was not recoverable as per latest interpretation of this provision by the Hon’ble Punjab and Haryana High Court in LPA No. 605 of 2009 on the basis of which, PSPCL issued instructions vide Commercial Circular (CC) No. 05/2012.
4. The disputed amount illegally merged with a sum involved in a Court Case could not be treated as “continuously shown recoverable” for the purpose of Section 56 (2) of Electricity Act, 2003.
5. Not satisfied with the decision of the Forum, an Appeal was preferred in this Court with the request that the disputed sum of Rs. 10,53,086/- may be ordered not recoverable in terms of provisions of Section 56 (2) of the Electricity Act, 2003 in view of the submissions made above.

**(b) 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 (MS) Category connection with sanctioned load of 89.990 kW and contract demand (CD) of 99.990 kVA.
2. The Petitioner did not pay its current energy bills for the month of 03/2016, 09/2016, and 10/2016 amounting to Rs.1,81,179/-, Rs. 2,37,114/- and Rs. 2,61,500/- respectively making the total billed (unpaid) amount as Rs. 6,79,793/-.
3. A bill dated 22.10.2018 was issued by correcting the payable amount Rs.1,80,093/- as current billed amount for the month of 10/2018 and with previous unpaid bills for the months of 03/2016, 09/2016 and 10/2016 (Rs. 1,81,179 + Rs. 2,37,114 + Rs. 2,61,500 i.e. Rs. 6,79,793/-) apart from charging interest and surcharge of Rs. 3,73,293/- making the total outstanding balance amount as Rs. 10,53,086/-.
4. The Forum decided the case in favour of Respondent - PSPCL.
The disputed amount involved in the present Appeal Case was of unpaid current energy bills for actual energy consumed by the Petitioner for the months of 03/2016, 09/2016, and 10/2016 and the arrears of these bills had been included in the future bills.
5. As the previous balance amount shown in the bills also included the court case/disputed amount and due to the current bills outstanding amount was shown as included the previous total balances. The Forum had in its decision, made detailed observations that the unpaid bills for the months of 3/2016, 9/2016 and 10/2016 were continuously shown as recoverable in the subsequent bills issued to the Petitioner who had not objected to this in its rejoinder to the reply of the Respondent to the Petition. The Forum also mentioned in its order that there was no violation of Section 56 (2) of the Electricity Act, 2003.
6. The Petitioner had admitted that the bills for the months of 03/2016, 09/2016 and 10/2016 had not been paid by it due to the oversight or negligence committed on its part.
7. The Petitioner was well aware of the fact that the amount involved in Multiplying Factor case under trial in the Hon’ble Punjab & Haryana High Court stood debited to its account and the balance lying outstanding therein was being shown in the energy bills as previous balances and as such, it had to pay the current energy bills in time.
8. As the Petitioner had admitted in its Petition that it had not made the payment of the energy bills for the months of 03/2016, 09/2016 and 10/2016, the Petitioner was legally liable to pay these bills for the actual electricity consumed by it.
9. The outstanding unpaid amount was included in future energy bills and there was no violation of Section 56 (2) of the Electricity Act, 2003. As per Commercial Circular (CC) No. 05/2012, the demand had been raised within time and was not time barred.
10. The disputed amount remained as outstanding due to non-payment of bills of current amount of monthly energy consumption by the Petitioner. The fact of non-payment was detected in the month of 10/2018 and correction was made in the bill dated 22.10.2018 and the Petitioner was informed accordingly for not paying its bills in time and also of levy of surcharge/interest as per PSPCL instructions.
11. Interest of Rs. 3,73,293/- on principal amount of Rs. 6,79,793/- had been correctly charged and included Surcharge from the Petitioner for 15 days and Interest thereafter @ 1.5% for the period from 04/2016 to 10/2018 as per Instruction No. 21.4 of ESIM and a correct bill had been issued to it on 22.10.2018 by appending all the details of the unpaid current bills.
12. In view of the submissions made above, the Appeal may be dismissed in favour of the PSPCL which was an essential Govt. Commercial organization and spending huge amounts on production, transmission and distribution etc. costs of supply of electricity to the Consumers and also depended on the borrowings by paying interest.
13. **Analysis:**

The issue requiring adjudication is the legitimacy of the bill dated 22.10.2018 requiring the Petitioner to deposit a sum of Rs.10,53,086/- representing the pending unpaid bills of actual energy consumption for the months of 03/2016 (Rs.1,81,179/-), 09/2016 (Rs. 2,37,114/-) and 10/2016 (Rs.2,61,500/-) and late payment surcharge and interest thereon amounting to Rs. 3,73,293/-.

*The points emerged in the present dispute are deliberated and analysed as under:*

1. The present dispute involves non-payment of current energy bills for the actual energy consumption, for the months of 03/2016, 09/2016 and 10/2016 amounting to Rs. 1,81,179/- + Rs.2,37,114/- and Rs.2,61,500/- respectively totalling Rs.6,79,793/- in addition to the late payment surcharge and interest thereon amounting to Rs.3,73,293/-. The gross payable/ recoverable amount, on account of the above, worked out to Rs. 10,53,086/-. The bill for the month of 03/2016 with current month charges as Rs.1,81,179/- and arrear of Rs. 21,34,602/- making total billed amount as Rs.23,15,780/- was issued to the Petitioner who did not deposit any amount against this bill. The bill for the month of 09/2016 with current energy charges of Rs.2,37,114/- and arrears of previous financial year, amounting to Rs.17,35,781/- and current financial year, amounting to Rs.10,82,449/-, making total bill for Rs.30,55,340/- was issued to the Petitioner who did not deposit any amount against this bill. In the month of 10/2016, a bill of current month charges for Rs.2,61,500/-, arrear of previous financial year amounting to Rs.12,57,958/- and arrear of current financial year amounting to Rs.13,40,929/-, making the total bill for Rs. 28,60,390/- was issued to the Petitioner who did not deposit the amount of this bill also. A specific Notice to deposit the bills for 03/2016, 09/2016 and 10/2016 along with late payment surcharge and interest was sent to the Petitioner in the bill for 10/2018**.** The unpaid amount of the bills for 03/2016, 09/2016 and 10/2016 was continuously reflected in the bills issued to the Petitioner as arrears. The Petitioner filed a Petition dated 06.12.2018 in the Forum mainly on the plea that amount was not recoverable as per provisions of Section 56 (2) of Electricity Act, 2003. The Forum, after hearing, decided on 15.01.2019 that the Bill cum Notice issued to the Petitioner for Rs.10,53,086/- on account of pending unpaid bills for the month of 03/2016, 09/2016 and 10/2016 amounting to Rs. 6,79,793/- and late payment surcharge and interest of Rs. 3,73,293/-, was in order in view of Section 56 (2) of Electricity Act, 2003 and Reg. 32.2 of the Supply Code-2014.
2. During the course of hearing, the Petitioner’s Representative argued that the inclusion of disputed amount in the Petitioner’s monthly bill was in violation of the Regulation 30.1.2 of the Supply Code-2014, as per which, a separate bill cum notice was required to be issued giving full details of the charges raised and also under the provisions of the Section 56 (2) Electricity Act, 2003. The said amount was not recoverable as per latest interpretation of this provisions by the Hon’ble Punjab and Haryana High Court in LPA No. 605 of 2009 on the basis of which, PSPCL issued instructions vide Commercial Circular (CC) No. 05/2012. The disputed amount was illegally merged with a sum involved in a Court Case, could not be treated as “continuously shown recoverable” for the purpose of Section 56 (2) of Electricity Act, 2003.

The Respondent in its defence, stated that as the previous balance amount shown in the bills also included the court case/disputed amount and payment of current bills, outstanding amount was shown as included in the previous total balances. The Forum had, in its decision, given reasoned justification that the unpaid bills for the months of 03/2016, 09/2016 and 10/2016 were continuously shown as recoverable in the subsequent bills issued to the Petitioner who had not objected to this. The Forum also mentioned in its order that there was no violation of Section 56 (2) of the Electricity Act, 2003. The Petitioner had admitted that the bills for the months of 03/2016, 09/2016 and 10/2016 had not been paid by it due to the oversight or negligence committed on its part. The outstanding unpaid amount was included in the future energy bills and there was no violation of Section 56 (2) of the Electricity Act, 2003. The Petitioner was well aware of the fact that the amount involved in the Multiplication Factor case under adjudication in the Hon’ble Punjab and Haryana High Court stood debited to its account and the balance lying outstanding therein was being shown in the energy bills as previous balances and it had to pay the current energy bills in time. The disputed amount remained as outstanding due to non-payment of bills of current amount of monthly energy consumption by the Petitioner. The fact of non-payment was detected in the month of 10/2018 and correction was made in the bill dated 22.10.2018 and the Petitioner was informed accordingly for not paying its bills in time and also of levy of surcharge/interest as per PSPCL instructions. Surcharge and interest of Rs. 3,73,293/- on principal amount of Rs. 6,79,793/- had been correctly charged and demanded from the Petitioner as per Instruction No. 21.4 of ESIM for the period from 04/2016 to 10/2018 and a correct bill had been issued to it on 22.10.2018 by appending all the details of the unpaid current bills.

 I find that clubbing of the part of the disputed amount of Rs. 42,85,852/- (found recoverable by this Court, in an Appeal Case No. 55/2015, decided on 02.02.2016, on account of application of incorrect Multiplication Factor (MF) during the period from 02/2009 to 03/2015, which was challenged by the Petitioner by filing CWP No. 5130 of 2016 in the Hon’ble Punjab and Haryana High Court) with the current energy bills for the months of 03/2016, 09/2016 and 10/2016 by the Respondent was not in order. I also find that due to the said clubbing/merger of the unpaid amount involved in Multiplication Factor (MF) case, pending before the Hon’ble High Court, with the disputed bills for the month of 03/2016, 09/2016 and 10/2016, no action for disconnection of the Petitioner’s connection was taken by the Respondent.

 I have perused the CC No. 5/2012 issued by the PSPCL, vide Memo. No. 196/200/SR/37 dated 14.03.2012 (pursuant to the decision dated 09.09.2011 in LPA No. 605 of 2009 of the Hon’ble Punjab and Haryana High Court) clarifying as under:

 *“It is clarified that limitation period of two years for charging the amount under Section 56(2) of the Electricity Act, 2003 shall start from the date of detection of mistake by the officer(s)/official(s)/ demand raised by PSPCL. However, this will not be applicable for those cases where accuracy of meter/metering equipment is involved in view of the Regulation No.21 of the Supply Code-2014.*

 *It is further clarified that if, after the demand is raised by PSPCL, consumer approaches any Committee / Forum /Ombudsman / Commission / Court when the period for which case remained under litigation will not be included in calculating the limitation period of two years under Section-56 (2) of the Electricity Act, 2003.”*

 I observe that the contention of the Petitioner’s Representative that the disputed demand is barred by limitation as per provisions ibid is incorrect and not sustainable.

 I also observe that the Petitioner, being a Medium Supply (MS) Category consumer, ought to be aware of its duties and responsibilities and should have kept a vigil on the details given in the bills issued to it by the licensee and taken due care to see that the bills raised, as per current energy consumption, must necessarily be paid to it. I am of the view that if a consumer has the right to raise grievance against excess billing, it is also its moral and legal duty to make sure that legitimate dues are invariably paid by the due dates. At the same time, the Respondent must have taken necessary precautions to ensure the avoidance of mistake as has occurred in the present dispute.

 I also observe that the amount of arrear on account of difference of Multiplication Factor (MF) Charges for the period from 02/2009 to 03/2015 and current billed amounts for the months of 03/2016, 09/2016 and 10/2016 were not shown distinctly/separately in the bills issued from 04/2016 to 09/2018 which was not in conformity with the provisions contained in Regulation 30.1.2 of the Supply Code-2014.

1. **Conclusion:**

 From the above analysis, the legitimacy of the demand for payment of current energy bills, for the energy consumption actually consumed, for the months of 03/2016, 09/2016 and 10/2016 amounting to Rs.1,81,179/-, Rs.2,37,114/- and Rs.2,61,500/- respectively (totalling to Rs. 6,79,793/-) proves beyond doubt. However, the Petitioner is not liable to pay late payment surcharge and interest on the aforementioned amounts keeping in view the fact that the Respondent defaulted in taking appropriate and timely action for realization of its legitimate dues from the Petitioner as discussed in para 4 above.

1. **Decision:**

 **As a sequel of above discussions, the order dated 15.01.2019 of CGRF, Ludhiana in Appeal Case No.CGL-047 of 2018 is modified as per conclusion arrived at in para 5 above. It is also held that the amount of Rs.1,81,179/-, Rs. 2,37,114/- and Rs.2,61,500/- relating to bills for the months of 03/2016, 09/2016 and 10/2016 respectively will be recovered in three successive future bills along with current energy bills from the Petitioner without any surcharge/interest.**

1. The Appeal is disposed of accordingly.
2. In case, the Petitioner or the Respondent (Distribution 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 the Regulation 3.28 of the Punjab State Electricity Regulatory Commission

(Forum and Ombudsman) Regulations – 2016.

 (VIRINDER SINGH)

May 28 , 2019 LokPal (Ombudsman)

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