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

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

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

 **APPEAL NO. 17/2019**

**Date of Registration : 22.02.2019**

**Date of Hearing : 16.05.2019**

**Date of Order : 17.05.2019**

**Before:**

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

**In the Matter of :**

Garg Rice Mills,

Village Kot Bhai ,

Bharu Road,

Gidderabaha

District Sri Muktsar Sahib

 ...Petitioner

 Versus

Senior Executive Engineer,

DS Division,

 PSPCL, Gidderbaha.

 ...Respondent

**Present For:**

Petitioner : Sh.S.R.Jindal,

 Petitioner’s Representative (PR).

Respondent : 1. Er.Harish Kumar,

 Senior Executive Engineer ,

 DS Division,

 PSPCL, Gidderbaha.

 2. Sh.Harshul Garg,

 Revenue Accountant (RA).

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 04.02.2019 conveyed to the Petitioner by the Consumer Grievances Redressal Forum (Forum) vide Memo No. 298/299/T-25/2019 dated 04.02.2019 that :

*“ You filed the dispute before District Consumer Forum and State Consumer Forum and your appeal was dismissed on 21.01.2014 by the Hon’ble Consumer Forum. In view of Clause 2.27(a) and 2.27(c) of PSERC (Forum & Ombudsman) Regulations, 2016, your case has not been entertained in the Forum”.*

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

 The relevant facts of the case are that:-

1. The Petitioner was having a Medium Supply Category seasonal

connection (Rice Sheller) since 18.11.2004 initially with sanctioned load of 69.870 kW. Presently, the Petitioner was having sanctioned load of 94.756 kW and contract demand (CD) of 100 kVA. The metering was done by providing HT static Energy Meter and 11 kV/110 V, CT/PT Unit.

1. An energy bill for the month of July, 2010 for the period from

11.07.2010 to 12.08.2010) for Rs.1,10,160/- for consumption of 16,984 kWh and 22,709 kVAh units.

1. The Petitioner did not agree with the said bill and having

apprehension on the accuracy of the Energy Meter installed at its premises due to which, it requested the Respondent to get the accuracy of the Energy Meter checked. The Petitioner also formally challenged the working of the Energy Meter by depositing the requisite fee.

1. The connection of the Petitioner was checked by the Addl.SE/ EA&

MMTS, PSPCL, Bathinda, vide ECR No.04/426 dated 06.09.2010 in the presence of the Petitioner’s Representative and it was reported that :

“*The testing of this Meter was done on challenging the Meter by the consumer. Due to off season period, one Phase from outside was disconnected which was got connected by calling the JE (DS Office). The results of the Meter were found within the accuracy limits. The data of the Meter was downloaded with MRI”*.

1. Aggrieved with the above bill, the Petitioner filed a complaint

No.231 of 2010 on 01.09.2010 in the District Consumer Disputes Redressal Forum, Sri Muktsar Sahib, who decided on 28.01.2011 as under:

“ *The complainant is not consumer of the OP.*

*In view of the discussions, the complaint in hand*

 *is not maintainable under Consumer Protection Act 1986.*

 *Complaint Dismissed*.”

1. Not satisfied with the decision of the District Consumer Disputes

Redressal Forum, Sri Muktsar Sahib , the Petitioner preferred an Appeal No.375 of 2011 on dated 01.03.2011 before State Consumer Dispute Redressal Forum who decided on 21.01.2014 as under:

“*That the order of District Forum is just and proper and there is no need to interference with the same and the order is upheld and affirmed. Consequently, the appeal filed by the complainant/appellant is dismissed* ”.

1. Aggrieved, the Petitioner filed a Petition dated 29.01.2019

in the CGRF, Patiala who did not entertain the same in view of the provisions contained in Regulation 2.27(a) and 2.27(c) of the PSERC (Forum and Ombudsman) Regulations, 2016.

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

an Appeal in this Court and prayed to review its long pending disputed bill and withdraw the same along with surcharge/interest charged during the period of dispute as it had already deposited current bills regularly in the interest of justice.

**3. Analysis**

The issues requiring adjudication are the legitimacy of the prayer of the Petitioner to:

1. condone the delay in filing a Petition dated 29.01.2019 before the CRGF, Patiala, who did not entertain the same, being time barred, in terms of provisions of Regulation 2.27(a) and 2.27 (c) of the PSERC (Forum and Ombudsman) Regulations, 2016.
2. hear and adjudicate the present Appeal preferred against the bill for the month of July 2010 ( 11.07.2010 to 12.08.2010) amounting to Rs.1,10,160/-

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

 **Issue (i)**

 The present dispute arose after issuance of energy bill for the month of July 2010 ( for the period from 11.07.2010 to 12.08.2010) amounting to Rs.1,10,160/- for consumption of 16,984 kWh and 22,709 kVAh units. The Petitioner did not agree with the said bill and challenged the working of the Energy Meter. As a result, the connection of the Petitioner was checked by the ASE/MMTS, PSPCL, Bathinda, vide ECR No.04/426 dated 06.09.2010, in the presence of the Petitioner’s Representative and it was reported that the accuracy of the Energy Meter was within limits.

 Petitioner’s Representative submitted that the SDO, City, PSPCL, Gidderbaha issued Notice (after the decision dated 28.01.2011 by the Consumer Dispute Redressal Forum, Sri Muktsar Sahib) vide Memo No.925 dated 24.05.2011 to deposit balance payment of Rs.73,380/- whereas the Petitioner had already filed its Appeal against the said decision on 01.03.2011 (Appeal No. 375/2011) before the Hon’ble State Consumer Dispute Redressal Commission, Chandigarh. No notice/ directions were issued by the Respondent against the order passed by Hon’ble Commission, Chandigarh’s order dated 21.01.2014 till date. The Respondent continued to accept current bills payment, every month, as its case was referred to the higher authorities for review. Petitioner’s Representative also stated that the complainant visited the office of the Respondent every month to ask for the part payment of the bill (current bill) and the same was accepted by the Respondent. No electricity charges except this amount is pending towards the Petitioner. The Petitioner was never directed by the Respondent to file its case before the Hon’ble Court whereas payment of the current bill was accepted without any hitch. Petitioner’s Representative added that with the change of Revenue Accountant, the Respondent asked the Petitioner to file its Petition/grievance before the CGRF (Forum), Patiala in view of the PSPCL’s instructions/rules who did not accept the Petition of the Petitioner and hence, the present Appeal was preferred for reviewing the disputed amount/bill sympathetically and favourably besides allowing surcharge/interest charged during the disputed period in the interest of justice.

 The Respondent submitted in its written reply that the Petitioner was aware of the fact that the Appeal preferred by it before the Hon’ble State Dispute Redressal Commission had been dismissed on 21.01.2014 and no other Appeal/Petition was lying before any other Forum/Court. Still, the Petitioner used to tell the officials of the Respondent that the matter was pending with the higher authorities which was also mentioned by it in the present Appeal. Relying on the above submission of the Petitioner along with the request to avail itself of every available remedy, the concerned office of the Respondent accepted the payment of the current billed amount only on the plea that the disputed arrear amount was pending adjudication. The Respondent added that the Petitioner kept its office in the dark and constantly deferred to pay the amount recoverable from it during a long span of more than 5 years (being fully aware of the facts) until the office of the Respondent asked it to produce any documents in this regard. This clearly showed that it did not act in good faith and took undue advantage by regularly avoiding to make the due payment. The Respondent also submitted that since no Appeal/Petition was lying with any Court/Forum, the Petitioner approached the Consumer Grievance Redressal Forum (CGRF), Patiala, after a long period of 5 years of the cause of action, in January 2019. The Forum did not entertain the grievance by invoking Regulation 2.27(a) and 2.27(c) of the PSERC (Forum and Ombudsman) Regulations, 2016 vide its order dated 04.02.2019. It was evident that the Petitioner had availed all the available legal remedies and it was not granted any relief by any Court/Forum. With a view to defer payment of recoverable amount, the Petitioner approached this Court. The Respondent prayed that its Appeal should not be entertained as it was time barred and delay may not be condoned. If the delay is condoned then, it will adversely affect the interest of the Respondent.

 After perusing the material on record and oral submissions made by both the parties, I find that the Petitioner has not submitted cogent reasons/evidence in its Written Petition justifying the delay of more than 5 years in taking appropriate remedy after cause of action as per requirements of the Electricity Act-2003 and Consumer Complaint Handling Procedure (CCHP) approved by the Hon’ble PSERC. Even, during the course of oral submissions, the Petitioner’s Representative (PR), on being asked, failed to bring on record of this Court any documentary evidence in support of its contention in the Petition that the disputed matter was pending before the higher authorities. I also find that the Respondent has, in its Written Reply, objected strongly to the request of the Petitioner for condonation of delay in filing the Appeal in the CGRF, Patiala.

 I observe that though the Petitioner is fully responsible for the delay in question, ends of justice, would not be met if the delay ibid is not condoned and the Petitioner afforded an opportunity to present/defend its case on merits. I am of the view that the delay in filing the Appeal by the Petitioner in the CGRF, Patiala be condoned with a view to meet ends of ultimate justice and allow the Petitioner to defend its case.

**Issue No.(ii)**

 The Petitioner has prayed to this Court to hear and adjudicate the present dispute after condonation of delay in taking appropriate remedy within two years of the cause of action which arose on 21.01.2014 when its Petition was dismissed by the Hon’ble State Dispute Redressal Commission.

In this connection, I have perused Regulation 3.18(i) of the PSERC (Forum and Ombudsman) Regulation, 2016 which, reads as under:

“ No representation to the Ombudsman shall lie unless:

1. *The consumer had, before making a representation to the Ombudsman approached the Forum constituted under Sub Section (5) of Section 42 of the Act, for redressal of his grievance”.*

In view of the above, it will be appropriate that the Petition, already filed by the Petitioner in the CGRF, Patiala vide Case No. T-25 of 2019, be registered and heard by the Forum itself and adjudicated.

**4. Decision**

 **As a sequel of above discussions, the prayer of the Petitioner for condonation of delay in filing the Petition, bearing No.T-25 of 2019, in the CGRF, Patiala is allowed in the interest of justice. Accordingly, the Forum is directed to register and decide the Petition ibid (No.T-25 of 2019) within 90 days from the date of issue of this order.**

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

(VIRINDER SINGH)

May 17, 2019 Lok Pal (Ombudsman)

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