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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 29/2019**

**Date of Registration : 13.06.2019**

**Date of Hearing : 01.08.2019**

**Date of Order : 16.08.2019**

**Before:**

 **Er. Virinder Singh, Lokpal (Ombudsman), Electricity**

**In the Matter of:**

 Sonia Narwal,

 Village-Landran,

 S.A.S. Nagar, (Mohali)

 ...Petitioner

 Versus

 Addl. Superintending Engineer,

DS, Division (Special),

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

 ...Respondent

**Present For:**

Petitioner : Sh. Mayank Malhotra , Advocate

 Petitioner Counsel (PC)

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

Addl. Superintending Engineer,

DS, Division (Special),

 2. Er. Mohit Nagpal,

 AEE/Commercial

 DS Division (Special)

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

Before me for consideration is an Appeal preferred by the Petitioner against the decision dated 11.04.2019 in Case No. CGP-74 of 2019 of the Consumers Grievances Redressal Forum (Forum), Patiala stating as under:

*“Forum has no jurisdiction to deal with the cases relating to UUE as per Clause 2.27 (b) of PSERC (Forum and Ombudsman) Regulations 2016. As such, the case is dismissed, however, the Petitioner is at liberty to approach appropriate authority for redressal of his grievance. Accordingly, the case is closed as dismissed.”*

 **2.** **Condonation of Delay:**

At the outset, the issue for condonation of delay in filing the Appeal in this Court was taken up. Petitioner’s Counsel (PC) submitted that the order, passed, vide proceedings dated 11.04.2019, by the CGRF, Patiala was conveyed to the Petitioner vide Memo No. 930 dated 12.04.2019. The Petitioner was under confusion regarding appropriate authority to be approached for redressal of its grievance in compliance to the proceedings dated 11.04.2019 due to which, delay of 30 days in filing the present Appeal within limitation period of one month had occurred. PC prayed to condone the delay in filing the Appeal in this Court as the grounds for preferring the Appeal were genuine.

The Respondent did not object, during the course of hearing, to the condonation of delay in filing the Appeal in this Court. In this connection, I have gone through Regulation 3.18 (ii) of the PSERC (Forum and Ombudsman) Regulation-2016 which reads as under:

“*No representation to the Ombudsman shall lie unless the representation is made within one month of the date of receipt of order of the Forum.*

 *Provided that the Ombudsman may entertain a representation beyond one month on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of one month”.*

I observe that though the Petitioner has given reasons for not filing the Appeal within the stipulated period, it ought to have ensured to avoid the delay to the extent possible and should have filed the Appeal with due promptitude. But the Petitioner did not do so and filed the present Appeal after about a month of expiry of the limitation period. I also observe that non condonation of delay would deprive the Consumer of the opportunity, required to be afforded, to seek remedy and would also not meet the ends of ultimate justice. With this in view, the delay in filing the Appeal in this Court is condoned and the Petitioner is afforded an opportunity to present the case.

**3. Facts of the Case:**

 The relevant facts of the case are that:

1. The Petitioner was having a Domestic Supply (DS) Category connection since August 2016 with sanctioned load of 19.500 kW for which, the Metering was being done by providing, Three Phase Four Wire, Whole Current, 10-60 Amp, Energy Meter.
2. The connection was checked by the Meter Inspector, (MI), vide

Checking Resister No. 27/227 dated 04.07.2018, whereby, it was reported as under:-

***“ਬਿਜਲੀ ਦੀ ਵਰਤੋ ਏਸ਼ੀਅਨ ਹੋਸਪੀਟੇਲਟੀ ਦੇ ਤੋਰ ਤੇ ਰਹੀ ਹੈ। ਜਦ ਕਿ ਬਿਲ ਘਰੇਲੂ ਲਗ ਰਿਹਾ ਹੈ ਸੋ ਮਹਿਕਮੇ ਅਨੁਸਾਰ ਬਣਦੀ ਕਾਰਵਾਈ ਕੀਤੀ ਜਾਵੇ।”***

1. On the basis of the said checking report, Internal Audit Party,

vide Memo No. 314 dated 31.12.2018, observed that as per the checking report of the Meter Inspector, the electricity was being used for Ashiyaan Hospitality, hence, this was a case of Unauthorised Use of Electricity (UUE). Accordingly, the Audit Party charged Rs. 2,73,740/- for the period from 06.07.2017 to 05.07.2018.

**(iv)** The Respondent issued bill dated 04.01.2019, amounting to Rs. 2,84,920/- for the period from 04.12.2018 to 04.01.2019 (31 days) for the consumption of 1220 kWh units and included Rs 2,73,740/-(amount charged for UUE by the Audit Party) under the Head **“Sundry charges.”**

**(v)** The Petitioner did not agree with the above bill and filed a Petition dated 30.01.2019 in CGRF, Patiala who, after hearing, dismissed the same, by deciding that it was related to the UUE and was covered under Section 126 of the Electricity Act, 2003 and Regulation 2.27 (b) of the PSERC (Forum and Ombudsman ) Regulation -2016.

**(vi)** Not satisfied with the decision of the Forum, the Petitioner filed an Appeal in this Court and prayed that the illegal demand of Rs. 2,73,739/- on account of alleged UUE raised, vide bill dated 04.01.2019, may be quashed in the interest of justice and the Respondent may be directed to refund the amount deposited by the Petitioner along with interest.

**4.** **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. An electric connection under DS category with sanctioned load of

19.500 kW, bearing Account Number-3003311033, was running in the name of the Petitioner under DS Sub Division, PSPCL, Sohana.

1. The Respondent issued illegal, abnormal and unrealistic bill dated

04.01.2019 amounting to Rs 2,84,920/- for the period 04.12.2018 to 04.01.2019 (31 days) for consumption of 1220 kWh units. The Respondent included an amount of Rs 2,73,740/- on account of sundry charges without any justification.

1. The Respondent issued previous bills on ‘O’ code (OK status) and

 the Petitioner paid all legitimate bills issued by the Respondent.

**(iv)** The Respondent neither supplied any instructions according to which, this illegal amount of Rs 2,73,740/- was charged nor the details of this charged amount which was required to be given in view of instructions issued by the PSPCL vide CC No. 04/2018.

**(v)** During proceedings before the CGRF, it came to notice that the

demand of Rs 2,73,740/- had been raised by the Respondent on account of UUE pointed out by Internal Audit Party vide Memo No. 314 dated 31.12.2018 but the fact that Internal Auditor was not designated as Assessing Officer by the Government of Punjab on the basis of checking vide No. 27/227 dated 04.07.2018 by the Meter Inspector who was also not an authorized officer to declare a case of UUE as per Notification dated 27.12.2004 of Government of Punjab.

1. The demand of Rs2,73,740/- on account of alleged UUE was raised

by the Respondent in the bill dated 04.01.2019, after much delay from the date of checking (04.07.2018) by an unauthorised officer. According to Regulation-36.1.8 of Supply Code-2014, the Provisional Notice was required to be served within 30 days of the date of serving provisional order of Assessment. But this was not done and the said amount had been charged in the bill dated 04.01.2019. So, the demand was required to be quashed on this ground.

**(vii)** The charging of sundry charges amount directly in the bill was in

violation of instructions of the PSPCL. The Respondent was required to issue notice before charging any amount in the bill so that the Petitioner could appeal against such notice.

(**viii)** The Petitioner approached the CGRF for consideration of the case

and deposited an amount of Rs 54,750/-, vide Receipt No 217000244634 dated 18.02.2019, as pre-requisite for registration of the case. The Petitioner deposited rest of the disputed amount in two instalments.

1. According to Instruction No 51.1, of ESIM, it was the responsibility

of the PSPCL to install a correct Energy Meter of suitable capacity. The Petitioner never interfered with the Energy Meter or its connection and there was no allegation as such against the Petitioner.

1. According to Regulation 21.3 of Supply Code-2014 and Instruction 104.1 of ESIM, the licensee had to conduct periodical inspection/testing of the Energy Meter installed at the consumer’s premises. But there was nothing on record to ascertain that any checking was done. The Respondent was also required to place on record the calibration report of reference Meter, if any, with which, accuracy of metering equipment was checked, if any.
2. According to Instruction No 102.7 of ESIM, an Energy Variation

Register was required to be maintained in the divisional office to watch variations in monthly consumption of consumers. There was no allegation of less consumption against the Petitioner.

 The CGRF, Patiala decided and dismissed the case, vide proceedings dated 11.04.2019, through a non-speaking, arbitrary and illegal order which was not sustainable in the eyes of law and was against the instruction of the PSPCL, which provided that the decision should be speaking one.

1. The decision of the Forum was wrong, arbitrary and against the law

 due to the following reasons:-

1. The Forum relied heavily on submission of the Respondent that

premises of ASHIYAAN HOSPITALITY LLP was in Khasra No 2423/127/1, Landran (Mohali) and was in the premises where the connection, bearing Account No 3003311033 in the name of Smt. Sonia Narwal (Petitioner) existed. But, Respondent had not submitted any proof regarding existence of the connection of Smt. Sonia Narwal in Khasra No 2423/127/1, Landran (Mohali). Moreover, there could be a number of premises in the same Khasra number and this was established from the fact that the document submitted by the Respondent before CGRF clearly showed that 09 other companies existed in the same address as that of ASHIYAAN HOSPITALITY LLP in Khasra No 2423/127/1 Landran (Mohali). The Forum failed to appreciate that no documentary proof had been submitted by the Respondent to establish that the load of the connection, bearing Account No 3003311033, was being used for ASHIYAAN HOSPITALITY LLP.

(b) The checking report had not been prepared by an authorised Assessing Officer as notified by the Government of Punjab. The Meter Inspector, who checked the connection on 04.07.2018, was not an authorised to check UUE and it had not mentioned details of connected load and load used unauthorisedly by the consumer in the Checking Report.

(c) The Forum failed to appreciate that according to Regulation-

36.1.8 of the Supply Code-2014, the provisional notice of Assessment was required to be served within 72 hours of inspection and final order of Assessment was required to be served within 30 days of the date of serving provisional order of Assessment But the amount had been charged in the bill dated 04.01.2019 without compliance of the above requirements.

1. The demand on account of alleged UUE had not been raised by an

authorised Assessing Officer as notified by the Government of Punjab. The Forum failed to appreciate that Internal Auditor, who had assessed the amount, vide Memo No 314 dated 31.12.2018, was not designated as an authorised Assessing Officer by the Government of Punjab.

1. In view of the position explained above, the illegal demand of Rs 2,84,920/-(which included illegal amount of Rs 2,73,740/- on account of alleged UUE) raised, vide bill dated 04.01.2019, may be quashed in the interest of justice. The Respondent may be directed to refund the amount deposited by the Petitioner along with interest.
2. **Submissions of the Respondent:**

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

1. The premises of the consumer was checked on 04.07.2018 by the

Meter Inspector, Zirakpur vide LCR No 027/227 whereby, it was reported that the electricity connection was used for Ashiyaan Hospitality despite the fact the connection was of DS category.

1. Internal Auditor, Audit Party, Zirakpur, vide letter no 314 dated

31.12.2018, asked the Respondent to raise the demand on account of UUE. Accordingly, the amount of Rs. 2,73,740/- charged to the consumer in the bill dated 04.01.2019.

**(iii**) The applicant had already been informed about the decision of the CGRF, Patiala in Case No CGP- 74 of 2019.

1. As per definition given in Clause 113.5 (g), **“Consumer**

**Grievance”** meant and included any complaint relation to any fault, shortcoming, defect or deficiency in the quality, nature and manner of service of performance in pursuance of a licence, contract, agreement or under Electricity Supply Code or in relation to Standards of Performance specified by the Commission including payment of compensation or billing disputes of any nature or recovery of charges by the licensee and matters relating to the safety of the distribution system having potential of endangering the life or property. However, the matters pertaining to Open Access granted under the Act and Section 126,127,135 to 140,142, 143,146,152 and 161 of the Act shall not form grievance under these regulations. Accordingly, as this was a case of UUE under Section 126 of the Electricity Act-2003, hence, the case was not a part of grievance which could not be heard by the Ombudsman, Electricity, Punjab.

1. The disputed bill dated 04.01.2019 included sundry charges on

account of UUE on the basis of Note Sent by the Internal Auditor, vide letter no 314 dated 31.12.2018.

1. The amount had been charged in accordance with Instruction No.93

 of ESIM.

1. When the Petitioner visited the office of the Respondent to ascertain

the reasons for the amount charges raised, it was informed accordingly.

1. The case related to Unauthorised Use Of Electricity (UUE) and

had no relation to the accuracy correctness of the Energy Meter installed at consumer’s premises where Three Phase Four Wire, Whole Current, Energy Meter of suitable capacity, according to sanctioned load of the connection, had been installed.

1. The decision of the CGRF, Patiala was based on the consideration

that the case, being of UUE under Section 126 of Electricity Act-2003, could not be heard by it (CGRF).

1. There existed a Board in the name of Ashiyaan Hospitality LLP at

the Consumer’s premises as Ashiyaan Hospitality was a partnership (registered with the Registrar of Companies Since 02.09.2016) firm in which Smt. Sonia Narwal (Petitioner) was a partner. The supply from the Petitioner’s DS category connection was used for Ashiyaan Hospitality LLP (running hotels/restaurant) for which, NRS category connection was required.

**(xi)** This Court did not have the jurisdiction to entertain the Appeal

preferred by the Petitioner, being a UUE case.

**5. Analysis:**

The issue requiring adjudication is the legitimacy of the consideration and adjudication of the present dispute due to checking of the Domestic Supply Category connection of the Petitioner by the Meter Inspector and charging the Petitioner with a sum of Rs 2,73,740/- by Internal Audit Party on the basis of Checking Report dated 04.07.2018 of the Meter Inspector.

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

1. Petitioner’s Counsel (PC) stated that the Forum, in its proceedings

dated 11.04.2019, admitted that the connection of the Petitioner was checked, vide Checking Register NO. 27/227 date 04.07.2018, by the Meter Inspector of the office of the Respondent and based on it, the Internal Auditor assessed the amounts of UUE. PC added that the above action of the Meter Inspector/Internal Auditor was not in accordance with the instructions issued by the Govt. Of Punjab, vide Notification No. 1/60-03-EB/(PR) 1186 dated 27.12.2004, as per which, Assessing officers had been designated for the purpose. PC contended that Meter Inspector/Internal Auditor was not an Assessing Officer and the Government of Punjab had not authorised any officer below the rank of Assistant Engineer as Assessing Officer. PC also referred to Regulation 36.1.3 and 36.1.4 of the Supply Code-2014 according to which, inspection was to be carried out by the Assessing Officer and the Inspection Report, duly signed by it, was to be handed over to the consumer at site. The Regulation ibid specifically provided that the Assessing Officer had to prepare an Inspection Report indicating, inter-alia, the connected load and the load being used unauthorisedly. The Inspection Report should also mention the condition of the seals/meter and give details of evidence substantiating unauthorised use of electricity.

 I find it worthwhile to reproduce the Regulations, of Supply Code-2014 referred to by the Petitioner’s Counsel, as under:

***“Regulation 36.1.1***

*An Assessing Officer, designated as such by the State Government (Annexure-9) shall suo-motu or on receipt of information/complaint regarding unauthorised use of electricity in any place or premises promptly inspect such place /premises.*

 ***36.1.3 Inspection Report***

*If on inspection of the premises/place or after inspection of the equipments, gadgets, machines, devices found connected or used or after inspection of the records maintained by the person, the Assessing Officer comes to the conclusion that such person is indulging in unauthorised use of electricity as per section 126 of the Act, he shall prepare an inspection report interalia indicating the connected load and the load being used unauthorisedly by such person. The inspection report shall also mention condition of seals / meter and give details of evidence substantiating the unauthorised use of electricity. The Assessing Officer shall wherever possible photograph/video graph the means of such unauthorized use.*

***36.1.4***

*The inspection report shall be signed by the Assessing Officer and a copy handed over to the person/consumer or his/her representative present at site. In case of refusal to accept the report, a copy of the inspection report shall be pasted at a conspicuous place in/outside the premises and another sent under registered post. The Inspection Report may also be signed by the person present at site.”*

 I find that the Govt. of Punjab, vide Notification No. 1/60/03-EB (PR)/1186 dated 27.12.2004(Annexure-9 to Supply Code-2014), designated the following as Assessing Officers under Section 126 of the Electricity Act 2003:

|  |  |
| --- | --- |
| ***“Category of Consumer*** | ***Assessing Officer*** |
| *All other LT Consumer* | *Assistant Engineer/**Assistant Executive Engineer/**Executive Engineer of the respective Distribution Sub- Division.”* |

In view of the above, I agree with the Petitioner’s Counsel that as the Meter Inspector was not designated as Assessing Officer for checking cases relating to UUE and was thus, not competent to conduct Checking vide checking Register No. 027/227 dated 04.07.2018, of the connection of the Petitioner. As such the checking ibid done by the MI does not have any locus standi/legal relevance.

1. Petitioner’s Counsel next contended that the demand on account of

UUE had been assessed/raised by the Internal Audit Party, vide Memo No. 314 date 31.12.2018 and Internal Auditor was not authorised officer to issue Provisional as well as Final Order of Assessment. PC also referred to provision contained in Regulation 36.1.6 to 36.1.8 of Supply Code-2014 which read as under:

***“36.1.6 Provisional Assessment***

*The Assessing Officer shall provisionally assess to the best of his judgment the electricity charges payable by such person or any other person benefited by the unauthorized use of electricity as per procedure specified in Annexure-8 to these Regulations.*

***36.1.7 The provisional******Assessment:***

*The Provisional Assessment order shall be issued within seventy two (72) hours of inspection and served upon the consumer /person in occupation or possession or incharge of the place. The assessment order should clearly state the date & time by which and designation & address of the Assessing Officer to whom the reply is to be submitted.*

***36.1.8***

*The consumer/person served with the order of provisional assessment may accept such assessment and deposit the assessed amount with the distribution licensee within seven (7) days of the order being served on him.”*

I observe that the during hearing in the Court, the PC placed reliance on order dated 18.07.2019 passed by the Hon’ble Punjab and Haryana High Court in LPA No.1233 0f 2019 (O&M) deciding that:

*“Ms. Monica Chibber Sharma, learned Senior Deputy Advocate General, Punjab on the basis of the instructions from Mr. Rajwinder Singh, Deputy Chief Engineer, Punjab State Power Corporation Limited, West Circle, Ludhiana, Punjab, States that it is the Deputy Chief Engineer under the Supply Code who is competent authority to pass the assessment order under section 126 of the Electricity Act, 2003.*

 *Admittedly, in the case in hand, the assessment order has been passed by the Assistant Executive Engineer. Since he is not the authority authorised to pass the order, the order impugned is rendered patently illegal and without jurisdiction. Therefore, without entering into any other aspect of the matter, the said order dated 01.04.2019 passed by the Assistant Executive Engineer is not sustainable and is liable to be quashed on this ground alone.*

*Accordingly the appeal stands allowed and the impugned order passed by the learned Single Judge as well as the order dated 01.04.2019 passed by the Assistant Executive Engineer are set aside. Civil Miscellaneous Application No. 2675-LPA of 2019 also stands disposed of.”*

I am of the view that charging the Petitioner with a sum of Rs 2,73,740/- ( on account of UUE for the period from 06.07.2017 to 05.07.2018) pursuant to checking by the Meter Inspector on 04.07.2018 and report dated 31.12.2018 of the Internal Audit under the head “Sundry Chargs” included in the bill dated 04.01.2019 issued to the Petitioner by the Respondent is not sustainable considering the applicable Regulation and the order of the Hon’ble High Court as discussed above . The Respondent has also not been able to disprove the contentions of the PC regarding non- issuance of any Notice prior to raising of demand (on account of UUE) by the designated Assessing Officer with a view to afford an opportunity to the Petitioner to make representation, if any.

1. PC also stated that the Forum relied heavily on the

submission of the Respondent that premises of ASHIYAAN HOSPITALITY LLP was in Khasra No 2423/127/1, Landran (Mohali) and was in the premises where the connection bearing Account No 3003311033 in the name of Smt. Sonia Narwal (Petitioner) existed. But, the Respondent had not submitted any proof regarding existence of the connection of Smt. Sonia Narwal in Khasra No 2423/127/1, Landran (Mohali). Moreover, there could be a number of premises in the same Khasra and this was established from the fact that the document submitted by the Respondent before CGRF clearly showed that 9 other companies existed in the same address as that of ASHIYAAN HOSPITALITY LLP in Khasra No 2423/127/1 Landran (Mohali). The Forum failed to appreciate that no documentary proof had been submitted by the Respondent to establish that the load of the connection, bearing Account No 3003311033, was being used for ASHIYAAN HOSPITALITY LLP.

The Respondent stated that there existed a Board in the name of Ashiyaan Hospitality at the consumer’s premises and Ashiyaan Hospitality was a partnership firm (registered on 02.09.2016 with the Registrar of Companies) in which Smt. Sonia Narwal was a partner. The Respondent added that electricity supply from DS category connection of the Petitioner was used for providing same further to Ashyiaan Hospitality located in the same premises for which purpose, NRS category connection was required.

I observe that the Respondent is at liberty to get the premises/connection of the Petitioner checked from the officer authorised to do so as per instructions of PSPCL/Government of Punjab and take follow up action, if necessary, as per rules since the checking dated 04.07.2018 by the Meter Inspector was not done by an officer authorised/designated for the purpose.

**6. Conclusion:**

From the above analysis, it is concluded that :

1. The checking dated 04.07.2018 of Petitioner’s connection done by the Meter Inspector is not in accordance with Regulation 36.1.1 of Supply Code-2014 read with Notification dated 27.12.2004 issued by the Government of Punjab and is authorised.
2. The demand of Rs. 2,73,740/- raised against the Petitioner. vide bill dated 04.01.2019 and shown under “Sundry Charges” is not sustainable in the eyes of law since the Respondent failed to follow the laid out procedure. The Respondent also failed to disprove the contention of the Petitioner’s Counsel regarding non compliance of statutory provisions requiring issuance of Notice of Provisional Order of Assessment by the designated officer before raising the demand.
3. Since the checking dated 04.07.2018 of the Petitioner’s connection was not done by the designated officer, the Respondent is at liberty to get the premises/connection of the Petitioner checked from the authorised/designated officer as per instructions of the PSPCL/Government of Punjab to find out if a case of UUE is made out against the Petitioner and take appropriate action, thereafter, under the relevant rules/regulations.

**7. Decision:**

As a sequel of above discussions the order dated 11.04.2019 in Case No. CGP-74 of 2019 is modified. It is held that the Respondent shall take appropriate action as per conclusions arrived at in Para 6 above.

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

**9.** 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 t he appropriate Bodies in accordance with Regulation 3.28 of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016.

(VIRINDER SINGH)

August 16, 2019 Lokpal (Ombudsman)

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