**COURT OF THE LOKPAL (OMBUDSMAN),**

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 39/2019**

**Date of Registration : 04.07.2019**

**Date of Hearing : 12.09.2019**

**Date of Order : 23.09.2019**

**Before:**

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

**In the Matter of**

 Balwinder Singh,

 Village Dhanksu Kalan,

Rajpura.

 ...Petitioner

 Versus

 Addl. Superintending Engineer,

DS Division,

PSPCL, Rajpura .

 ...Respondent

**Present For:**

Petitioner : 1. Sh. Mayank Malhotra, Advocate,

 Petitioner’s Counsel (PC).

 2. Sh. Jasvir Singh,

 Petitioner’s Representative (PR).

Respondent : Er. A.S.Gill,

 Addl. S.E. ,DS Division ,

PSPCL, Rajpura.

Before me for consideration is an Appeal preferred by the Petitioner against the decision dated 10.06.2019 in Case No. CGP-99 of 2019 of the Consumers Grievances Redressal Forum (Forum), Patiala stating as under:

“ (a) *Account of the Petitioner be overhauled from the date of*

*release of power supply to the Petitioner i.e. 20.07.2015 to 08.02.2019 after applying correct multiplication factor as 2 as reported by SDO vide LCR No. 04/264 dated 08.02.2019 as per Note to Regulation 21.5.1 of Supply Code, 2014.*

1. *The above amount be recovered in 12 equal monthly*

*instalments without interest/surcharge along with current energy charges in case the Petitioner gives an undertaking in this regard and gives his consent to deposit the charges without approaching any other Authority/Court”.*

**2. Facts of the Case:**

 The relevant facts of the case are that:

1. The Petitioner was having a Medium Supply Category connection

with sanctioned load of 79.727 kW and contract demand (CD) of 89 kVA for which, the Metering was done by providing LT CT Operated static Energy Meter.

1. The connection was released, vide Service Connection Order (SCO)

No. 63/000059 dated 01.07.2015, affected on 20.07.2015 mentioning the C.T. Ratio (CTR) of Meter as 200/5A and that of LT CTs as 200/5A. Hence Multiplication Factor as per entries in the said SCO was 200/200=1**.** Accordingly, the billing since the release of connection was done by applying MF as 1.

1. The connection was checked by the AEE, Sub-urban Sub division,

PSPCL, Rajpura vide Load Checking Register (LCR) No. 04/264 dated 08.02.2019 whereby, it was reported that

**Readings:**

 **kWh=40,46,83**

 **kVA=42,70,85**

**CT Ratio of:**

 **Energy Meter=100/5A**

 **LT CTs =200/5A**

**Hence, MF should be 200/100=2**

1. In view of the above, the account of the Petitioner was overhauled

from the date of release of connection upto the date of checking i.e 08.02.2019 and a Notice, bearing No.493 dated 20.02.2019, was issued to the Petitioner to deposit Rs 32,31,833/-.

1. The Petitioner did not agree with the above Notice and filed a

Petition dated 29.03.2019 in the Forum, who, after hearing, passed order dated 10.06.2019. (Reference: Page-2, Para-1).

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

an Appeal in this Court and prayed that the demand of Rs 32,31,833/- for the period from 20.07.2015 to 08.02.2019 be quashed in the interest of justice and Respondent be directed to refund the excess amount deposited by the Petitioner along with interest. The Petitioner also prayed that the Respondent be directed not to disconnect the connection of the premises of the Petitioner.

**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 alongwith 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 an electricity connection, bearing Account

No. 3002967267, with sanctioned load of 79.727 kW and CD as 89 kVA under MS Category.

1. The Petitioner’s connection was checked by the AEE, Sub-

urban, Sub-division, PSPCL, Rajpura, vide Checking Report No.04/264 dated 08.02.2019.

1. The Checking Officer observed that Multiplication Factor of the

connection was 2 whereas it was being applied incorrectly as 1 since the release of the connection because Energy Meter of capacity 100/5A and CT of 200/5A capacity were installed at the premises of the Petitioner.

1. The Respondent overhauled the Petitioner’s account from

20.07.2015 to 08.02.2019 and issued Notice vide Memo No.493 dated 20.02.2019, asking the Petitioner to deposit Rs 32,31,823/- by applying Multiplication Factor 2 instead of 1 in the Energy Bill on the basis of actual LTCT and Meter ratio. The Respondent doubled the amount of the subsequent Energy Bills as compared to previous bills.

1. The said overhauling of the account and raising of demand was

illegal and was against the provisions of Law.

1. The Petitioner immediately contacted the AEE/Commercial Sub

Division, PSPCL, Rajpura to correct the bill, but the same was not corrected on the basis of Multiplication Factor of 1 being applied earlier.

1. The Petitioner was aggrieved with the Notice, hence, filed a Petition

in the Forum after depositing the requisite fee.

1. The Respondent neither supplied the details of calculation of amount

charged nor the copies of rules and regulations according to which, the account of the Petitioner was overhauled which was necessary as per Commercial Circular (CC) No.04/2008.

1. The Notice was issued in violation of Instruction No.57.5 of ESIM

which provided that recovery of charges could be done only after serving Show Cause Notice to the Petitioner, which was not done.

1. The Respondent issued the energy bill before the date of checking

 i.e. 08.02.2019 as per ‘O’ i.e O.K. Code.

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

of the Respondent to install a correct Energy Meter of suitable capacity.

1. According to Instruction No. 102.10 of ESIM, the Meter and CTs of

same current ratio were required to be installed so as to eliminate the Multiplication Factor. The Petitioner could not be penalised due to any fault/non observance of rules and regulations by the officers of the Respondent Corporation.

1. As per Instruction No.102.11 of ESIM, where Energy Meters and

CTs of different current ratio were installed due to reason of non-availability of matching CTs , the Multiplication Factor must be indicated in the red on the meter reading book and ledger so that it could be applied correctly. It should also be written in ink on the Meter and should be legible.

1. The account of the Petitioner was overhauled for a period of more

than 42 months i.e. from 20.07.2015 to 08.02.2019. This calculation was carried out in violation to the instructions of the Respondent Corporation and also of Section 56(2) of Electricity Act-2003. This Section provided that recoverable amount, if any, could not be claimed after a period of two years from the date when such amount became due.

1. The Respondent was not competent to recover the amount for more

than six months preceding the date of checking i.e. 08.02.2019 as per Law laid down by the Hon’ble Punjab and Haryana High Court in case titled *Tagore Public School Vs. PSEB* which stood affirmed by the Hon’ble Supreme Court of India.

1. The Respondent was not entitled to recover charges for more than 6

months as per Law laid down by the Punjab and Haryana High Court in *CWP No.17699 of 2014 titled M/s Park Hyundai Vs. PSPCL,* decided on 19.12.2015.

1. According to InstructionNo.102.2 of ESIM, it was the responsibility

of the Respondent to ensure correctness of connections and correct working of the Energy Meter which must be checked with Meter Testing Equipment whereafter, the Energy Meter should be sealed properly by the concerned Officer. There was no allegation of any seal tampering against the Petitioner.

1. There was no allegation of any type of slowness etc. with regard to

the working of the Metering Equipment.

1. The Respondent failed to supply copy of checking report of Energy

Meter and LTCTs in ME Laboratory and also the copy of Job Orders videwhich, Energy Meter and LTCTs under dispute were installed and removed from the premises of the Petitioner, during the course of checking by the Enforcement on 28.02.2019.

1. The order of the Forum was non speaking, arbitrary, illegal and was

not sustainable in the eyes of Law and was against the instructions of the Respondent-PSPCL.

1. The Forum failed to appreciate the fact that neither the details of

calculation of the amount charged nor the copies of rules and regulations according to which, the account was overhauled were supplied though the same was necessary as per CC No.04/2008.

1. The Forum incorrectly observed that Section 56(2) of Electricity

Act-2003 did not apply in the present case since the amount became due from the Petitioner only on 20.02.2019 (date of issuance of Notice). The Respondent charged the amount from 20.07.2015, much earlier than 20.02.2019 and was, thus, barred from recovering dues in view of statutory provisions of Law i.e. Section 56(2) of the Electricity Act-2003.

1. The Forum failed to appreciate the fact that CTs /PTs were part of

the Metering Equipment and as per Instruction No.51.1 of ESIM, it was the responsibility of the Respondent to install a correct 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. In view of the submissions made above, the illegal demand of

Rs 32,31,833/-, raised for the period from 20.07.2015 to 08.02.2019, be quashed in the interest of justice.

 (**b) Submissions of the Respondent:**

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

1. An electric connection, bearing Account No.3002967267, under Medium Supply Category was released vide SCO No. 63/000059dated 01.07.2015 and by mistake, the Energy Meter ratio was mentioned as 200/5A instead of 100/5A. The concerned Junior Engineer, then, entered it as 200/5A in ME1/ME2 Register. It happened due to the particulars of Energy Meter written by overwriting on the SR 39/9084 dated 14.07.2015.
2. Accordingly, the Multiplication Factor (MF) of 1 was applied from the date of release of connection i.e. 20.07.2015 till the date of checking i.e.08.02.2019 whereas the consumption recorded should have been multiplied by 2 which was the correct Multiplication Factor in this case.
3. The connection of the Petitioner was checked, vide LCR No.04/264 dated 08.02.2019, by the AEE, Sub division Sub-urban, Rajpura and later on vide ECRNo.09/337 dated 28.02.2019 by the Sr. Xen/ Enforcement-1,PSPCL,Patiala and it was found that Meter ratio was 100/5A whereas CT installed were having a ratio of 200/5A. Therefore, the Multiplication Factor of 2 was to be applied to the consumer while calculating the consumption. But inadvertently, the Petitioner was being charged with Multiplication Factor of 1 since the release of the connection.
4. A Notice was issued to the Petitioner, vide Memo No.493 dated 20.02.2019, for depositing the amount of difference due towards the Petitioner.
5. The Petitioner filed a Petition in the CGRF, Patiala who, after hearing, passed order dated 10.06.2019 upholding the amount charged and granted option to the Petitioner to deposit the amount in 12 equal monthly instalments.
6. The demand raised, vide Memo No.493 dated 20.02.2019 amounting to Rs.32,31,823/-, remained the same after the decision of the Forum. The initial reading as on 20.07.2015( date of release of connection) was 54.7 kWh/55.9 kVAh and the reading taken on 08.02.2019 was 4,04,683kWh/4,27,085 kVAh, thus, the Petitioner was charged on the actual consumption from the date of release of connection i.e.20.07.2015 upto the date of detection of mistake i.e. 08.02.2019.
7. The details of the calculations were supplied to the Petitioner when the case was being heard by the Forum.
8. The Status ‘O’ Code mentioned in the bills before the date of checking continued to be same even after the date of checking since the working of Energy Meter was not disputed in this case and the same was OK as per the checking of the Enforcement vide ECR No.09/337 dated 28.02.2019.
9. The slowness in recording of energy consumption during the said checking was due to Carbon deposit on joints of Phases as noticed during checking dated 28.02.2019 by the Enforcement. After removing the Carbon, the Phases again started contributing to the full. The Petitioner was having misconception about the fact for which, the amount was charged to it. Actually, it was not charged the amount for wrong working of the Energy Meter in the instant case. Rather, the amount charged was due to application of wrong Multiplication Factor during the disputed period.
10. As per Instruction No. 53 of ESIM, the Energy Meter and Metering Equipment was correctly installed and proper seals were affixed by the competent authority. Besides, connections of the Meter and Metering Equipment were also correct as the connections were never contested and were even found correct by the Sr.Xen, Enforcement, PSPCL, Patiala vide ECR No.09/337 dated 28.02.2019. So, the plea of the Petitioner that it could not be held responsible for wrong connections was not relevant as it was not being charged for wrong connections.
11. The load of the Petitioner was 79.727 kW and contract demand as 89 kVA, but LTCTs of ratio 100/5A could be installed upto the load of 70 kVA only. Therefore, the LTCTs of ratio 200/5A was installed for the sanctioned load/ contract demand of the Petitioner.
12. It was incorrect to contend that the charged amount could not be claimed. As per the provisions of CC No.05/2012, it was made clear quoting LPA No.605 of 2009 decided on 09.09.2011 that limitation period of 2 years started from the date of detection of mistake by Officer/officials or when Notice was issued for the demand and it thus became due and this Section applied only if it was shown continuously as recoverable in the last 2 years, after detection of mistake/notice for the due amount was issued. This Clause came under the Section 56 of Electricity Act-2003. The detection of wrong application of Multiplication Factor (MF) was noticed
13. on 08.02.2019 and accordingly the accounts of the Petitioner was overhauled and a Notice dated 20.02.2019 was issued to it to deposit Rs.32,31,833/-, therefore, the case was not covered within the limitation period of two years from 20.07.2015 ( Date of release of connection).
14. The Petitioner referred to the judgment of Hon’ble Supreme Court in case titled *PSEB Vs. Tagore Public School & Others* which pertained to the wrong ratio of CTs as the turns of winding were found to be missing. The said judgement was not relevant in the present context.
15. The working of the Meter had never been questioned by the Petitioner who had filed this Case only against the amount charged to it regarding application of wrong MF.
16. The Energy Variation Register was maintained to check the variation in energy consumption and it did not, in any case, tell whether the Multiplication Factor applied was correct or not, if the same MF was applied from the date of release of connection upto the date of detection of the mistake, if any.
17. In view of facts brought out above, including provisions of applicable laws, rules and regulations, the amount charged was recoverable, hence, the Petitioner be directed to deposit the same alongwith interest.
18. The order of the Forum was according to rules and regulations and the law in force and was speaking one.

**4. Analysis**

 The issue requiring adjudication is the legitimacy of the overhauling of the account of the Petitioner for the period from 20.07.2015 ( date of release of the connection) to 08.02.2019 ( date of checking of the connection) due to application of incorrect Multiplication Factor (MF) as per applicable regulations.

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

1. As per material on record, the LT CT Energy Meter alongwith LT

CTs were got issued, vide Store Requisition (SR) No.39/9084 dated 14.07.2015, as per which, Energy Meter, bearing S.No 12418144, of ratio 100/5A of HPL make and LT CTs of ratio 200/5A, Ashmore make, bearing S.No. 6563,6566 and 6568, were drawn and taken in books of ME 1/ ME 2 for installation at the premises of the consumer. The connection was released, vide Service Connection Order (SCO) No. 63/000059 dated 01.07.2015, affected on 20.07.2015 mentioning the C.T. Ratio (CTR) of the Energy Meter as 200/5A and that of LT CTs as 200/5A. Hence Multiplication Factor as per the said SCO was 200/200=1**.** Accordingly, the billing from the date of release of connection was done by applying MF as 1.

 I find that the connection of the Petitioner was checked by the AEE, Sub-urban Sub division, PSPCL, Rajpura vide Load Checking Register (LCR) No. 04/264 dated 08.02.2019 whereby, it was observed that :

**Readings:**

 **kWh=40,46,83**

 **kVA=42,70,85**

**CT Ratio of:**

 **Energy Meter=100/5A**

 **LT CTs =200/5A**

**Hence, MF should be 200/100=2**

In view of above, the account of the Petitioner was overhauled from the date of release of the connection (20.07.2015) upto the date of checking i.e 08.02.2019 and a Notice, bearing No.493 dated 20.02.2019, was issued to the Petitioner to deposit Rs 32,31,833/-.

 I have also noted the contention of the Petitioner’s Counsel (PC) pleading that bills with OK status were issued to it upto 08.02.2019, as such, the account could not be overhauled for the period for which, the status of the Energy Meter was OK.

 I observe that in the present case, there is no dispute regarding the accuracy of the Metering Equipment and account of the Petitioner was overhauled on account of application of wrong Multiplication Factor (MF) and the Petitioner has been charged for actual energy consumed as per Note given under Regulation 21.5.1 of the Supply Code-2014 which reads as under:

*“Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued”.*

At the same time, I agree with the submission of the Petitioner’s Counsel that the Respondent was responsible for not conducting periodical inspection of the connection as per checking schedule prescribed in Regulation 21.3.5 of the Supply Code-2014.

1. Petitioner’s Counsel (PC) contended that the Respondent did not

keep a watch on the variation in energy consumption through Energy Variation Register due to which, omission relating to less energy consumption on account of application of wrong Multiplication Factor remained undetected. Had necessary watch been kept on the variation in energy consumption, the amount charged to the Petitioner could not have got accumulated to huge extent as has happened in the present case.

I observe that the above contention of the Petitioner’s Counsel (PC) is not sustainable due to the reason that in this case, Multiplication Factor was entered incorrectly in the SCO dated 01.07.2015 as 1 instead of 2 leading to reflection of less energy consumption and less billing ever since release of the connection. As such, this is not a case of watching energy variation through Energy Variation Register because there was no scope for comparison of energy consumption figures.

1. Petitioner’s Counsel next contended that the Hon’ble Punjab and

Haryana High Court, in similar case, such as in *CWP No.17699 of 2014 titled Park Hyundai Vs. PSPCL and in CWP No. 14559 of 2007 titled Tagore Public School Vs. PSEB* held that arrears in such cases could not be raised for more than six months. PC added that the case of the Petitioner was squarely covered under the judgments ibid and it was entitled to get the relief as sought for.

 *I observe that the facts and circumstances in the present Appeal are not similar to those in the cases referred to above by the Petitioner’s Counsel. Hence, the contention of the PC for the grant of relief on this ground is not sustainable.*

1. Petitioner’s Counsel (PC) also referred to Section 56(2) of Electricity Act-2003, which provided that no sum due from any consumer shall be recoverable after a period of two years.

 *I observe that as per Commercial Circular No.05/2012 issued by PSPCL on the basis of decision taken by Hon’ble Punjab and Haryana High Court in LPA No.605 of 2009, decided on 09.09.2011, the date of sum due was the date when the demand was first raised as the Demand Notice was raised on 20.02.2019 in the present case, the plea of the Petitioner’s Counsel does not sustain in the eyes of Law.*

1. During the course of hearing, the order dated 20.09.2018 of the

Hon’ble Punjab and Haryana High Court in *CWP No.2539 of 2017 (O&M*) in the case titled *Surinder Kaur Vs. Ombudsman, Electricity, Punjab and Others* came up for discussion. The Order reads as under::

*“....... As against the contention of the Petitioner that demand can not be raised for more than six months, learned counsel for the Respondents relied upon Electricity Act-2003 and Regulations made thereunder in Electricity Supply Code and Related Mater Regulations-2007 and amended Supply Code-2014 (applicable from 01.01.2015) which entitles the Respondents to raise demand for any period. However, it is to be noticed that the Supply Code-2014 came to be amended with effect from 01.01.2015, therefore, the Respondents can take the advantage of Supply Code-2014 only with effect from 01.01.2015. Therefore, it is ordered that the Respondents can recover the amount from the Petitioner only from 01.01.2015 and not prior thereto.*

 *Consequently, the Civil Writ Petition is disposed of accordingly”.*

*I observe that the order ibid is not relevant to the facts and circumstances of the present dispute which has arisen from the date of release of the Petitioner’s connection on 20.07.2015 which is the date after Notification of the Supply Code-2014 applicable from 01.01.2015.*

*However, I have gone through the order ibid of the Hon’ble Punjab and Haryana High Court and observed that it has not struck down “Note” given under Regulation 21.5.1 of the Supply Code-2014. Accordingly, no relief on the basis of citation ibid is permissible.*

1. After detailed deliberations, the Petitioner’s Counsel and the

Petitioner Representative were convinced that the amount charged to the Petitioner on account of overhauling of the Petitioner’s account was due to application of incorrect Multiplication Factor ever since the release of the connection from 20.07.2015 and not due to Inaccurate/Defective/Dead Stop/Burnt/Stolen Energy Meter. The Petitioner’s Counsel and Petitioner’s Representative were also convinced that the Petitioner was charged on the basis of energy actually consumed for which, it was liable to pay. Both of them agreed that the amount charged in the present case was correct and in consonance with the provisions contained in Note given below Regulation 21.5.1 of Supply Code-2014.

 The Petitioner’s Representative, then, submitted an application (signed also by the PC) in this Court praying as under:

*“We have been penalised with Rs.32,31,833/- for wrong CT metering. We have already deposited Rs 12,92,000/- approximately. We are unable to deposit the rest of the amount.*

 *It is therefore, prayed that we are ready to deposit the amount in sixty monthly instalments”.*

I observe that the Petitioner’s prayer for recovery of the balance amount out of the balance chargeable amount in 60 (sixty) monthly instalments appears genuine considering its plight and also due to the reason that the Respondent defaulted in making wrong entries in the SCO dated 01.07.2015 leading to application of Multiplication Factor ( MF) correctly while billing and subsequently by not conducting periodical inspection of the Petitioner’s connection as mandated in the Supply Code-2014.

**5. Conclusion:**

From the above analysis, it is concluded that the order dated 10.06.2019 of the CGRF, Patiala directing the Respondent to overhaul the account of the Petitioner for the period from 20.07.2015 (date of release of connection) to 08.02.2019 ( date of checking) by application of incorrect Multiplication Factor as 2 in terms of provisions contained in Note given below Regulation 21.5.1 of Supply Code-2014 is correct and does not warrant any interference by this Court. However, the recovery of the unrecovered amount on this account be effected in 60 (Sixty) instalments (alongwith current energy bill) without interest/surcharge as requested in writing by the Petitioner at the end of hearing dated 12.09.2019.

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

 **As a sequel of above discussions, the order dated 10.06.2019 of the CGRF, Patiala in Case No. CGP-99 of 2019 is upheld. It is also held that recovery of the balance recoverable amount shall be effected in 60 (sixty) equal instalments (alongwith current energy charges) without interest/surcharge.**

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

**8**. 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)

 September 23, 2019 Lokpal (Ombudsman)

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