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

**ELECTRICITY, PUNJAB,**

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

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

 **APPEAL NO. 06/2020**

**Date of Registration : 23.01.2020**

**Date of Hearing : 18.03.2020**

**Date of Order : 12.05.2020**

**Before:**

**Er. Gurinder Jit Singh,**

 **Lokpal (Ombudsman), Electricity, Punjab**.

**In the Matter of :**

M/s Gill Agro Tech,

Village-Rattian,

Tehsil & District Moga.

**Contact Account Number: 3002309448**

 ...Appellant

Versus

Additional Superintending Engineer,

DS Sub-urban Division ,

PSPCL, Moga.

 ...Respondent

**Present For:**

Appellant : 1. Sh. Navtej Dhingra Advocate

 Appellant’s Counsel (AC).

 2. Sh. Hardev Singh

 Appellant’s Representative (AR).

Respondent : 1. Er. Kuldip Singh Dhanju

 Additional Superintending Engineer,

 DS Sub-urban Division,

 PSPCL, Moga.

 2. Sh. Jagdish Singh

 Revenue Accountant (RA)

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 17.12.2019 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-283 of 2019, deciding that :

*“The account of the Petitioner when the Meter and CT PT unit of the Petitioner had gone defective i.e. for the period 25.11.2018 to 01.01.2019 i.e. the date of checking by MMTS when the supply to the Petitioner was disconnected be overhauled on the basis of the consumption of 25088 kVAh units have been recorded by the Petitioner from 19.01.2019 to 31.01.2019 for a period of 13 days at an average of 1930 units per day.*

*Further account of the Petitioner for the period direct supply was given to the Petitioner from 08.01.2019 to 18.01.2019 i.e. the date of replacement of Meter and CT PT unit be overhauled on the basis of the consumption of 25088 kVAh units have been recorded by the Petitioner from 19.01.2019 to 31.01.2019 for a period of 13 days at an average of 1930 units per day.”*

***2.* Registration of the Appeal**

A perusal of the Appeal and related documents received in this Court on 23.01.2020 revealed that the Appeal was preferred within one month of receipt by the Appellant (on 04.01.2020) of the decision dated 17.12.2019 of the CGRF, Patiala. Besides, the Appellant had deposited the requisite 40% amount (₹ 4,08,062/-) of the disputed amount of ₹ 10,20,156/- assessed by the Forum and submitted photo copies of receipts in token of having deposited the said amount. A copy of the Partnership Deed of the Appellant’s Unit was also received with the Appeal. Accordingly, the Appeal was registered in this Court and photo copy of the same was forwarded to the Addl. S. E. DS Sub-Urban Division, PSPCL, Moga for sending written reply/parawise comments as well as to the office of the CGRF, Patiala for sending the Case file under intimation to the Appellant vide Memo No. 61-63/OEP/A-06/2020 dated 23.01.2020.

**3.** **Proceedings**

A hearing in the case was fixed for 18.03.2020 and intimation to this effect was sent to both the Appellant and the Respondent vide Memo No. 145-146/OEP/A-06/2020 dated 18.02.2020. Accordingly, on the date of hearing i.e. 18.03.2020, the representatives of both the sides attended the Court and presented their respective points of view. Copies of the proceedings were sent to the Appellant and Respondent vide Memo No. 278-279/OEP/A-06/2020 dated 18.03.2020.

**4.** **Submissions made by the Appellant and the Respondent**

With a view to adjudicate the dispute, it is necessary to go through written submissions made in the Appeal by the Appellant and reply of the Respondent as well as oral submissions made by their respective representatives along with material brought on record by both parties.

1. **Submissions of the Appellant**
2. **Submissions made in the Appeal**

The Appellant made the following submissions in the Appeal, received on 23.01.2020, for consideration of this Court:

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

connection with sanctioned load of 406.510 kW and contract demand of 380 kVA.

1. The Appellant had filed a Case in the Forum challenging

exorbitant energy bill issued on 28.03.2019 for the period from 26.11.2018 to 18.01.2019 (54 days) based on average of 1,82,508 kVAh consumed during the corresponding period of the previous year, i.e. the seasonal period of the year 2017 - 18, Besides, this, refund of ₹ 39,960/- was sought which was wrongly got deposited by the Respondent from the Appellant on 03.01.2019 on account of cost of CT/PT unit.

1. After hearing both sides and perusing the MDI and

consumption pattern of the Appellant, the Forum observed that the shelling done by the Appellant during the seasonal year 2018-19 was less as compared to shelling done during the seasonal year 2017-18.

1. Resultantly, in view of the said changed circumstances

and Regulation 21.5.3 of the Supply Code-2014, the Forum discarded the average of 1,82,508 kVAh imposed by the Respondent and instead, directed to overhaul the account of the Appellant on the basis of consumption of 25,088 kVAh units of energy consumption of the Appellant from 19.01.2019 to 31.01.2019, i.e. for a period of 13 days at an average of 1930 units per day. Regarding the refund of cost of CT/PT unit, the Forum choose to remain silent for no cogent reasons.

1. The order of the Forum was not sustainable in the eyes of

law. The same was whimsical & arbitrary and was, therefore, liable to be set aside & further deserved to be modified in the interest of justice.

1. For no reasons whatsoever, the Forum had not given to the

Appellant refund of ₹ 39,960/- on account of cost of CT/PT unit which was wrongly got deposited from the Appellant by the Respondent. In the report dated 01.01.2019 of MMTS, no fault of the Appellant was found in the matter of burning of the CT/PT unit. Resultantly, as per Instruction No. 56.2 of ESIM read with Regulation 21.4.1 of Supply Code-2014, the cost of replacement of burnt CT/PT unit was not recoverable from the Appellant. The Appellant was, therefore, entitled to the refund of ₹ 39,960/-.

1. In its order, the Forum had not discussed and discarded

the said contention raised during the course of arguments. After, the issuance of the said order of the Forum, the Respondent issued a Demand Notice, bearing Memo No. 17 dated 09.01.2020, calling upon the Appellant to deposit ₹ 9,19,638/- inclusive of the amount of current bill. The total amount of current bill issued on 24.12.2019 to the Appellant was ₹ 2,53,574/- (₹ 2,49,722 + ₹ 3852= ₹ 2,53,574/-).

1. By deducting this amount of ₹ 2,53,574/- from the aforesaid

amount of Demand Notice for ₹ 9,19,638/-, the amount assessed by the Forum came to ₹ 6,66,064/-.

1. Subsequent to issuance of the order of the Forum, the

Respondent was threatening to disconnect the aforesaid LS Category electric connection of the Appellant in case the amount of ₹ 6,66,064/- as per its Demand Notice was not deposited forthwith.

1. In case, the Respondent succeeded in carrying out these

threats, irreparable loss immeasurable in terms of money shall occur to the Appellant. Under the circumstances, therefore, it will be just and equitable to restrain the Respondent from disconnecting of the LS Category electric connection of the Appellant during the pendency of this Appeal.

 In view of the submissions made, the Appeal may be allowed with costs. Besides allowing refund of ₹ 39,960/- as the same was wrongly got deposited on 03.01.2019 by the Respondent from the Appellant, overhauling of the account of the Appellant on the basis of 1011 units per day instead of 1930 unit per day for the period from 26.11.2018 to 01.01.2019 and 08.01.2019 to 18.01.2019 may also be done. Further the Respondent may be restrained from disconnecting the LS electric connection of the Appellant during the pendency of this Appeal.

1. **Submissions during Hearing**

In addition, the Appellant’s Counsel stated that the decision of the Forum was not just and fair as it had taken into consideration the consumption for the period from 19.01.2019 to 31.01.2019 (13 days) as the basis for overhauling the account of the Appellant from 25.11.2018 to 31.12.2018 and 08.01.2019 to 18.01.2019 instead, the consumption for the period from 19.01.2019 (after the replacement of the Metering Equipment) to 30.06.2019 (the date of closure of season for Rice Sheller) may be considered as the basis for overhauling the account of the Appellant for the disputed period.

1. **Submissions of the Respondent**
2. **Submissions in the written Reply to the Appeal**

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

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

connection bearing Account No. 3002309448 with sanctioned load of 406.510 kW and Contract Demand of 380 kVA.

1. The connection of the Appellant was checked by the Addl.

SE/MMTS, PSPCL, Moga vide ECR checking No. 48/373 dated 01.01.2019, as per which, the CT/PT unit of the connection was found burnt. DDL was not taken due to dead battery of the Energy Meter. It was also reported that meter is internally defective/burnt and no parameters were on display unit.

1. The Appellant was provided the direct supply of electricity

w.e.f. 08.01.2019 vide S.J.O No. 13/001 dated 08.01.2019 and continued the same till 18.01.2019 due to non availability of the CT/PT unit.

1. The Energy Meter and CT/PT unit were replaced vide

Device Replacement Application No. 100007320057 dated 02.01.2019 effected on 18.01.2019. Thus, direct supply period was from 08.01.2019 to 18.01.2019 .

1. The Energy Meter was checked in M.E. Lab which reported

vide ME Challan No. 08 dated 11.04.2019 that the display of the Energy Meter was burnt.

1. The account of the Appellant was overhauled from

25.11.2018 to 18.01.2019 on the basis of consumption of corresponding period of the previous year.

(vii) As per above calculations, energy consumption of 1,90,263 kVAh was recoverable from 25.11.2018 to 18.01.2019 but total consumption as per SAP system was recorded 1,82,508 in kVAh units during that period. The balance energy consumption units i.e. 7755 in kVAh with energy charges of ₹ 46,530/- was also recoverable. But, the Appellant did not agree with energy bill of ₹ 21,67,989/- issued in the month of 03/2019 for the period 25.11.2018 to 31.01.2019 for 67 days for a consumption of 18,508 kVAh. So, the Appellant filed a case in the Forum who decided the same vide order dated 17.12.2019. As per the said decision, a Notice bearing Memo No. 201 dated 14.02.2020 was issued requesting the Appellant to deposit a sum of ₹ 10,20,156/- with the PSPCL.

1. **Submissions during Hearing**

The Respondent, on being asked during hearing, stated that the Accuracy Class of the newly installed Energy Meter and 11 kV/110V, CT/PT unit was of 0.2S. He also stated that the Appellant’s unit was a purely Rice Sheller and its seasonal period was from 1st October to 30th June of the following year.

**6.** **Analysis and Findings**

The issues requiring adjudication are the legitimacy of the

1. Overhauling of the Account of the Appellant for the period

25.11.2018 to 01.01.2019 (the date of checking of the connection) and 08.01.2019 to 18.01.2019 (date of replacement of the Metering Equipment)

(ii) Levy of surcharge and interest on the amount so found recoverable after overhauling the amount for the disputed period

1. Recovery of Cost of replacement of damaged Metering

 Equipment on 18.01.2019.

 *My findings on the points emerged, deliberated and analysed are as under:*

* 1. In the present dispute case, the reading of the Energy

Meter installed at Appellant’s premise was being taken through Modem i.e. Automatic Meter Reading (AMR), being connected with SAP billing system. After taking the last reading through AMR, the Energy bill was prepared on actual reading on 25.11.2018 but the bill dated 25.12.2018 was not issued as the reading was not available on SAP system. As a result, the DS office requested the Addl. S.E, MMTS, Moga, vide Memo No. 2172 dated 28.12.2018, to check the connection installed at the premise of the Appellant. Accordingly, the Addl. S.E, MMTS, Moga checked the said connection vide ECR No.48/373 dated 01.01.2019  and reported as under:

*“ਉਪ-ਮੰਡਲ ਅਫਸਰ ਸ/ਡ ਉਤਰੀ ਮੋਗਾ ਦੇ ਪੱਤਰ ਨੰਬਰ 2172 ਮਿਤੀ 28.12.2018 ਦੇ ਮੁਤਾਬਿਕ ਮੀਟਰ ਅਤੇ ਸੀ.ਟੀ/ਪੀ.ਟੀ ਯੂਨਿਟ ਚੈਕ ਕੀਤਾ ਗਿਆ ਹੈ। ਚੈਕਿੰਗ ਸਮੇਂ ਦੇਖਿਆ ਗਿਆ ਕਿ ਸੀ.ਟੀ/ਪੀ.ਟੀ ਯੂਨਿਟ ਬਹੁਤ ਜਿਆਦਾ ਆਵਾਜ ਕਰਦਾ ਸੀ ਅਤੇ ਮੀਟਰ ਦੀ ਡਿਸਪਲੇ ਉਪਰ ਕੋਈ ਵੀ ਪੈਰਾਮੀਟਰ ਨਹੀ ਆ ਰਿਹਾ ਸੀ । ਉਸ ਸਮੇਂ ਬਿਜਲੀ ਸਪਲਾਈ ਬੰਦ ਕਰਵਾ ਕੇ ਸੀ.ਟੀ ਚੈਂਬਰ ਖੋਲ੍ਹ ਕੇ ਦੇਖਿਆ ਗਿਆ ਕਿ Red ਫੇਸ ਦਾ ਪੀ.ਟੀ ਸੜ ਕੇ ਫਟ ਗਿਆ ਹੈ । ਸੀ.ਟੀ/ਪੀ.ਟੀ ਯੂਨਿਟ ਤੁਰੰਤ ਬਦਲੀ ਕੀਤਾ ਜਾਵੇ । ਮੀਟਰ ਖਰਾਬ/ਸੜ ਗਿਆ ਹੈ । ਮੀਟਰ ਤੁਰੰਤ ਬਦਲੀ ਕੀਤਾ ਜਾਵੇ । ਮੀਟਰ ਦੀ ਬੈਟਰੀ dead ਹੋਣ ਕਾਰਣ DDL ਨਹੀ ਹੋ ਸਕਿਆ । ਮੀਟਰ ਦਾ DDL ME ਲੈਬ ਤੋਂ ਕਰਵਾਇਆ ਜਾਵੇ । ਖਪਤਕਾਰ ਦਾ ਖਾਤਾ ਕਾਰਪੋਰੇਸਨ ਦੇ ਨਿਯਮਾਂ ਅਨੁਸਾਰ ਸੋਧਿਆ ਜਾਵੇ ।“*

The Addl. S.E, MMTS also reported that the Energy Meter was defective internally/burnt and no parameters were coming on its display unit but, the Power Supply to the said premise was not restored. As per request of the Appellant, direct supply was provided, vide Sundry Job order No.13/001 dated 08.01.2019, w.e.f. 08.01.2019 at 16:12 hours. The direct supply was given as the Metering Equipment was not available with the Respondent. Subsequently, on availability of the Metering Equipment (Energy Meter and 11 kV/110 V, CT/PT unit) were installed vide Device Replacement Application No.1000073200957 dated 02.01.2019, effected on 18.01.2019 and Power Supply was restored through Energy Meter. The disputed Energy Meter was got checked on 11.04.2019 from ME Lab and it was reported that DDL could not be taken and display of Energy Meter was found burnt. However, the Appellant was charged ₹ 39,960/- on account of cost of new Energy Meter and CT/PT unit which was deposited by the Appellant. On the basis of report of MMTS, the account of the Appellant was overhauled from 25.11.2018 to 18.01.2019 (except for the period 01.01.2019 to 07.01.2019, when the supply remained disconnected) as per consumption recorded in corresponding period of previous year as per details given by the Respondent as under:

|  |
| --- |
|  *ਸੈਪ ਸਿਸਟਮ ਵਿੱਚ ਬਣਿਆ ਬਿਲ:-* |
| Date | Units | SOP (₹) | MR (₹) | ED (₹) | Total (₹) |
| 25.11.2018 to18.01.2019 | 182508 | 1306662 | 1153 | 261332 | 1569147 |
| 18.01.2019 to 31.01.2019 | 25088 |
| Total Units | 207596 |  |  |  |  |

|  |
| --- |
|  ਪਿਛਲੇ ਸਾਲ ਦੀ ਖਪਤ ਅਨੁਸਾਰ :- |
| Date | Units | Units to be Charged |
| 31.10.2017 to 30.11.2017 | 78368 (30 days) | 25.11.2018 to 30.11.2018=13061 (5 days) |
| 30.11.2017 to 31.12.2017 | 142104 (31 days) | 30.11.2018 to 31.12.2018=142104 (31 days) |
| 31.12.2017 to 31.01.2018 | 108804 (31 days) | 08.01.2019 to 18.01.2019 =35098(10 days) |
| Total | 329276 (92 days) | 190263 (46 days) |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Date | Units to be Charged | Units already Charged | Diff.(kVAh) | SOP (₹) | ED (₹) | Total (₹) |
| 25.11.2018 to 18.01.2019 | 190263 | 182508 | 7755 | 38775 | 7755 | 46530 |

 I find merit in the observation of the Forum that at the time of the checking by MMTS on 01.01.2019, the CT/PT unit of the Appellant was in circuit and was giving a loud noise. Besides, the disputed connection was checked after getting the supply disconnected. This clearly indicates that CT/PT unit of the Appellant was in circuit and supply to the premise of the Appellant was never disconnected. Moreover, during the checking, R-Phase PT was found to be damaged and all the CTs were found to be healthy and in circuit. As such, there is no question of Power Supply having got disconnected due to damage caused to the PT. The disputed Energy Meter was not working as it was damaged and its display unit was blank.

A perusal of the material on record also reveals that as per statement of the concerned JE, no complaint was received regarding the failure of supply of the Appellant from 25.11.2018 to 25.12.2018 and no such complaint was registered with the Nodal Complaint Center. The connection of the Appellant was checked by ASE/MMTS, in the presence of Appellant’s Representative on 01.01.2019 and Three Phase Supply of the Appellant’s connection was in circuit at the time of checking which was disconnected after removing all the three jumpers of the three phases. Thus, in the view of above, Three Phase Supply to the connection was available from 25.11.2018 to 01.01.2019 when the Three Phase Supply was disconnected after the checking by MMTS, Moga.

* 1. The Forum, vide its order dated 17.12.2019, gave relief

to the Appellant on the basis of consumption pattern as per evidence provided by the Appellant showing that Rice shelling done during the year 2018-19 was much less as compared to shelling done during the year 2017-18 and decided to direct the Respondent to overhaul the account from 25.11.2018 to 01.01.2019 and 08.01.2019 to 18.01.2019 on the basis of consumption recorded from 19.01.2019 to 31.01.2019 (25,088 units) i.e. at an average of 1930 units per day. However, the Appellant had requested to overhaul the account by taking average 1011 units per day which were calculated as under:

*“Consumption during 01.10.2018 to 25.11.2018 (56 days) and 19.01.2019 to 30.06.2019 (163 days) [Seasoned Period for the year 2018-19] was 221476 units i.e. per day consumption was 221476/219=1011 units.*

I find that the Appellant’s Counsel stated during hearing on 18.03.2020 in this Court that the decision of the Forum was not just and fair as it had taken into consideration the consumption for the period from 19.01.2019 to 31.01.2019 (13 days) as the basis for overhauling the account of the Appellant from 25.11.2018 to 31.12.2018 and 08.01.2019 to 18.01.2019. The Appellant’s Counsel contended that the consumption for the period from 19.01.2019 (after the replacement of the Metering Equipment) to 30.06.2019 (the date of closure of season for Rice Sheller) may be considered as the basis for overhauling the account of the Appellant for the disputed period.

The Respondent, on being asked during hearing, stated that the Accuracy Class of the newly installed Energy Meter and 11 kV/110V, CT/PT unit was of 0.2S. He also stated that the Appellant’s unit was purely a Rice Sheller and its seasonal period was from 1st October to 30th June of the following year.

I observed that both the Appellant and Respondent agreed that supply of electricity remained disconnected from

 01.01.2019 to 07.01.2019 and there was no dispute relating to this period.

In view of the above, I find merit in the contention of the Appellant’s Counsel during hearing that the account of the Appellant for the disputed period be overhauled on the basis of average of consumption recorded during the period 19.01.2019(after the replacement of the Metering Equipment) to 30.06.2019 ( date of close of the seasonal period). I observe that 13 days period (19.01.2019 to 31.01.2019) taken into consideration for working out average consumption by the Forum to overhaul the account, is a very small period.

* 1. The Appellant is liable to pay surcharge and interest on

the amount recoverable after overhauling its account for the disputed period because it failed to deposit the billed amount as per instructions of the PSPCL.

* 1. The Appellant has, in the present Appeal, prayed for refund

of cost recovered from it by the Respondent for replacement of the burnt Energy Meter and CT/PT unit on 18.01.2019.

I find that the Respondent failed to comply with the provisions contained in regulation 21.4 of Supply Code – 2014 and did not furnish the Investigation Report to the Appellant but I also find from the material available on record that maximum demand (MDI), on many times, was more than the sanctioned demand, meaning thereby that excess load ran on many occasion which might have attributed to damage of Metering Equipment. Hence, the cost of replacement of damaged Metering Equipment is required to be recovered from the Appellant as per instructions of the PSPCL in force at that time.

7. **Decision**

**As a sequel of the above discussions, the order dated 17.12.2019 of the CGRF, Patiala, in Case No. CGP-283 of 2019, is set aside. It is held that:**

1. **The account of the Appellant shall be overhauled for the**

**period from 25.11.2018 to 01.01.2019 (date of checking by MMTS) and 08.01.2019 to 18.01.2019(date of replacement of the Metering Equipment) on the basis of average energy consumption for the period from 18.01.2019 to 30.06.2019 (date of close of the seasonal period of Rice Sheller)**

1. **The Appellant shall also be charged surcharge and**

**interest on the amount worked out as recoverable due to overhauling of its account for the disputed period as decided above.**

1. **The Cost of the replacement of the damaged Metering**

**Equipment (Energy Meter and CT/PT Unit) is recoverable from the Appellant as per prevailing instructions of the PSPCL at that time.**

**Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short after adjustment, if any, with surcharge and interest as per instructions of the PSPCL.**

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

**9.** In case, the Appellant 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.

 (GURINDER JIT SINGH)

May 12, 2020 Lokpal (Ombudsman)

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