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

 **ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 34/2020**

**Date of Registration : 15.07.2020**

**Date of Hearing : 19.08.2020, 26.08.2020 and 09.09.2020**

**Date of Order : 14.09.2020**

**Before:**

 **Er. Gurinder Jit Singh,**

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

**In the Matter of:**

Sunil Kumar,

Chacha Sweet House,

Near Bus Stand,

Abohar.

**Contract Account No. 3002945214**

 ...Appellant

versus

Senior Executive Engineer,

DS Division, PSPCL, Abohar

 ....Respondent

**Present For:**

Appellant : 1. Sh. Ishan Khungar

 Appellant’s Representative (AR).

 2. Sh. Gurwinder Singh

 Appellant’s Representative (AR).

Respondent : 1. Er. Suresh Kumar

 Senior Executive Engineer,

 DS Division, PSPCL, Abohar.

 2. Er. Rajinder Kumar

 Asst. Executive Engineer,

 DS Division, PSPCL, Abohar.

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 18.03.2020 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-372 of 2019, deciding that:

 *“Energy bill of ₹ 19,75,720/- issued in month of 10/2019 for the period 18.09.2019 to 17.10.2019 for a consumption of 11142 units for 29 days which includes arrears of previous year ₹ 11,78,860/- and arrears of current year ₹ 7,01,521/- and also includes sundry charges of ₹ 2,689/- issued on the basis of actual consumption and due to accumulation of energy charges due to nonpayment of bills is in order and is recoverable. Respondent is at liberty to take any suitable action as per the provisions of the Supply Code for recovery of the said amount.”*

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

A scrutiny of the Appeal and related documents revealed that the same was received in this Court on 15.07.2020 i.e. more than one month after receipt of order dated 18.03.2020 of the Forum. However, the Appellant submitted an application for condoning of delay in filing the Appeal in this Court alongwith other documents. The Appellant also submitted a copy of receipt dated 24.12.2019 for ₹ 4 (four) lac on account of deposit of 20% of disputed amount. Besides, the Appellant submitted details of other amounts deposited with PSPCL but it was not clear as to whether these amounts pertained to balance 20% (of deposited amount) or of current bills. The Appeal was registered on 15.07.2020 and copy of the same was forwarded to the Sr. Xen/DS Divn., PSPCL, Abohar for sending written reply/parawise comments and also to CGRF, Patiala for sending the case file under intimation to the Appellant vide letter nos. 593-95/OEP/A-34/2020 dated 16.07.2020. Sr. Xen/DS Divn., Abohar was also requested vide aforesaid letter, to certify that the Appellant had deposited the requisite 40% of the disputed amount. In response, Sr. Xen/DS Divn., PSPCL, Abohar intimated, vide letter No. 4642/CS-34G dated 10.08.2020 (by email), that the Appellant had deposited a sum of ₹ 4 (four) lac on 24.12.2019 for filing the Appeal in the Forum. Thereafter, the matter was pursued with the Appellant vide letter nos. 700 dated 11.08.2020, 749 dated 19.08.2020 and 775 dated 26.08.2020. Finally, the Appellant deposited the balance requisite amount of ₹ 3,96,000/- with PSPCL on 07.09.2020.

**3.** **Proceedings**

(i) A pre hearing in this case was fixed for 19.08.2020 at 12.00 Noon and intimation to this effect was sent to the Appellant and Respondent vide letter nos. 695-96/OEP/A-34/2020 dated 10.08.2020. The said pre hearing was attended only by the Representatives of the Respondent (PSPCL). The Appellant’s Representative sent an e-mail dated 17.08.2020 stating that he was sick and undergoing treatment at Civil Hospital, Abohar. He also attached a copy of prescription/advice slip dated 17.08.2020 of the said Hospital advising him rest for seven days. He further requested to give him another date of hearing.With a view to meet the ends of ultimate justice, it was decided to give another opportunity to the Appellant to deposit the balance 20% of disputed amount before the next date of hearing fixed for 26.08.2020. Copies of proceedings were sent to both the sides vide letter nos.748-49/OEP/A-34/2020 dated 19.08.2020.

(ii) On 26.08.2020, Sh. Gurvinder Singh attended this Court and stated that he was working as Manager in Chacha Sweet House owned by the Appellant. But, he did not have an authorization from the Appellant to appear and defend the case in this Court. On being asked, he apprised the Court that he did not have any Identity Card in support of his contention that he was working as Manager in Appellant’s Unit. Sh. Gurvinder Singh stated that family members of the Appellant were affected by COVID-19 Pandemic. Accordingly, it was not possible to deposit the balance requisite 20% of disputed amount assessed by the Forum and requested for giving time upto 4th September, 2020 to enable the Appellant to deposit the balance amount required for registration of the Appeal. Senior Executive Engineer/DS Division, PSPCL, Abohar also confirmed that the requisite amount had not yet been deposited by the Appellant. The Court considered the request made on behalf of the Appellant, by Sh. Gurvinder Singh and decided to give another and final opportunity to deposit the balance 20% of the disputed amount with PSPCL. Accordingly, next hearing was fixed for 9th September, 2020 at 12.00 Noon. Both the Appellant and the Respondent were directed to attend this Court on the said date and time. Copies of proceedings were sent to both sides vide letter nos. 774-75/OEP/A-34/2020 dated 26.08.2020.

(iii) On 09.09.2020, the representatives of both the Appellant and the Respondent attended the Court. At the outset, Senior Executive Engineer, DS Division, PSPCL, Abohar brought on record of this Court a copy of the receipt dated 07.09.2020 for ₹ 3,96,000/- on account of deposit of requisite/balance amount deposited with PSPCL, in compliance to directions given as per details at Sr. Nos. (i) and (ii) above. Thereafter, deliberations were held and the order was reserved. Copies of the minutes of proceedings were sent to both sides vide letter nos. 832-33/OEP/A-34/2020 dated 09.09.2020.

**4.** **Condonation of Delay**:

During hearing on 09.09.2020, the issue of condoning of delay in filing the Appeal in this Court was taken up. The Appellant’s Representative stated that the copy of the decision dated 18.03.2020 of CGRF, Patiala was received by the Appellant on 30.06.2020. Due to Covid-19 Pandemic lockdown, other business problems and ill health of the Appellant, delay occurred in filing the Appeal beyond the stipulated time limit of one month. The Appellant’s Representative also submitted that the delay was due to unavoidable reasons and prayed to condone the same in the interest of justice.

I find that the Respondent did not object to the condoning of delay in filing the Appeal in this Court either in its written reply or during hearing.

In this connection, I have gone through Regulation 3.18 of PSERC (Forum and Ombudsman) Regulations, 2016 which reads as under:

*“No representation to the Ombudsman shall lie unless:*

*(iii) The representation is made within one month from the date of receipt of the 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.”*

It was observed that non condonation of delay in filing the Appeal would deprive the Appellant of the opportunity required to be afforded to present its case on merits. With a view, therefore, to meet the ends of ultimate justice, the delay in preferring the Appeal beyond stipulated period in this Court was condoned and the Appellant was afforded the opportunity to present its case.

5. **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 the sides.

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

The Appellant made the following submissions in the Appeal, received on 15.07.2020, for consideration of this Court:

1. The Forum decided to register the case and asked the Appellant to deposit current energy bills in future.
2. Due to downfall in the business leading to stoppage of manufacturing process in the beginning of 2016, the Appellant requested to get the meter tested and reporting done but all in vain. The Meter was running very fast and showed 11142 units consumption in one month. The Appellant faced some erratic behavior of the Meter due to jumping.
3. The Appellant requested the Forum to examine its previous consumption, view its pending problems and payments so that accurate payment could be made.
4. The Appellant was irregular in making payments all due to acute downfall in business, illness, bad health and high competition from other sellers in the same field.
5. The meter installed on 26.11.2015 was not correct as the data was migrated on this date into SAP system. Since 11/2015, approximately 4 lac units had been shown as consumed which was very much on higher side in four years.
6. The Respondent disconnected the Appellant’s connection due to default in payments of bills allegedly without considering its business downfall.
7. The Appellant gave an application to the Respondent thereafter, meter testing was done in the year 2020 and DDL was also done. This could have been done earlier by the Respondent to sort out the issue of consumption/billing.
8. It was prayed that the case be re-examined and exemption be allowed because due to lockdown and curfew, total business was almost nil which could be assessed by the Court. The Appellant will do whatever the Court decided.
9. The case may be reviewed in the interest of justice and the Appellant be allowed to pay the full balance amount in 60 (sixty) monthly instalments (without interest and surcharge). The Appellant agreed to pay the pending amount alongwith current energy bills and will not proceed against this Court in any other Court.

**(b) Submissions during Hearing**

During the hearing on 09.09.2020, the Appellant’s Representative reiterated the submissions already made in the Appeal. He also requested for restoration of power supply and shifting of Energy Meter installed at its premise to some other location as the existing location was not proper.

1. **Submissions of the Respondent**
2. **Submissions made in the Written Reply**

The Respondent, in its written reply/parawise comments sent vide e-mail dated 08.09.2020, submitted the following in its defence, for consideration of the Court:

1. The Appellant was having NRS Category connection, bearing Account No. 3002945214 with sanctioned load of 80.00 kW with supply voltage 415 volts and supply was being used for Sweet Shop and Restaurant.
2. The Appellant was not paying the bill since 08/2016 and remained defaulter for four years. The chronological report generated through SAP System alongwith details of energy consumption and amount paid were also annexed. It was also submitted that the consumer had not been making any payments against the energy bills raised to him from time to time in the past since long time. He had been making part payments with his own wish by pressurizing the concerned officers by using political influence.
3. The contention of the Appellant in the Appeal that the Energy Meter was installed on 26.11.2015 was not correct. This connection was 15 to 20 years old. As a matter of fact, SAP System came into effect on the said date and manually mentioned data of every consumer under this office had been uploaded in the SAP System on 26.11.2015. On this date, the Energy Meter of consumer was showing reading as under:
4. kWh migrated SAP reading 807832
5. kVAh New Reading 820103
6. The Appellant’s two Banker cheques first one dated 23.05.2018 amounting to ₹ 1,50,000/- and the second one dated 19.06.2018 amounting to ₹ 1,50,000/-were dishonoured by the concerned Bank branch. The recent and latest bill issued to the consumer during the month of 08/2020 was for ₹ 18,55,650/- which was payable on 31.08.2020.
7. The Energy Meter of the consumer was got checked on 17.01.2020 from the Senior Executive Engineer, Enforcement-cum-EA & MMTS, PSPCL, Sri Mukatsar Sahib. As per checking report no. 02/2331 dated 17.01.2020, the working of the Energy Meter was found OK.
8. All the bills issued to Appellant were on actual consumption basis. Due to irregular payments, the Appellant was charged surcharge/interest in the SAP system automatically.
9. The Appellant filed a Petition before CGRF, Patiala representing against disputed amount of ₹ 19,75,720/-. The Forum finally decided on 18.03.2020 against Appellant. Aggrieved with the order dated 18.03.2020, the Appellant had again filed the present Appeal in this Court.
10. The submissions made in the Appeal were wrong and hence denied. The Energy Meter was not installed on 26.11.2015 as stated by the Appellant. Further, for the reading recorded for the consumption during the month of 10/2015, the bill was generated amounting to ₹ 95,283/-. Approximately four lakh units were consumed during the period since 11/2015. It was easily assessed that eight lakh units would have been consumed during the past long period.
11. The Appellant was not making the payments of energy consumption bills since 08/2016 and exhausting the time by filing the Petition/Appeal in the Forum/Court of Ombudsman. It was, therefore, prayed that the present Appeal may be dismissed and the Appellant be directed to deposit the outstanding dues.

**(b) Submissions during Hearing**

During the hearing on 09.09.2020, the Respondent reiterated the submissions made in its written reply and prayed to dismiss the Appeal.

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

The issue requiring adjudication is the legitimacy of the energy bill dated 21.10.2019 amounting to ₹ 19,75,720/- for the period 18.09.2019 to 17.10.2019 for energy consumption of 11142 kVAh including arrears of previous financial years of ₹ 11,78,860/-, arrears of current financial year of ₹ 7,01,521/- and also the sundry charges of ₹ 2,689/-. This bill was issued on the basis of actual energy consumption & also included previous energy charges as a result of non-payment of the energy bills issued earlier.

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

1. In the present Appeal, the Appellant had challenged the decision dated 18.03.2020 of the Forum upholding the energy bill dated 21.10.2019 (for the period 18.09.2019 to 17.10.2019) for the energy consumption of 11142 kVAh amounting to ₹ 19,75,720/- including arrears of previous un-paid bills with surcharge/interest. The Appellant had requested to review the case and allow him to pay the balance amount in 60 (sixty) monthly instalments without surcharge and interest.
2. As per material brought on record of this Court, the Appellant was having NRS Category connection with sanctioned load of 80 kW and Contract Demand as 88.66 kVA with supply voltage 415 volts. The power supply was being used for Sweet Shop and Restaurant. The details relating to Appellant’s connection were migrated to SAP System on 26.11.2015. A perusal of the chronological report generated through SAP System by the Respondent revealed the following details:

|  |  |  |
| --- | --- | --- |
| **Date** | **Billed Amount Outstanding (₹)** | **Remarks** |
| 29.04.2016 | 61,949 |  |
| 28.03.2017 | 1,66,621 | Payment of ₹ 8,25,219/- made during 2016-17 |
| 27.03.2018 | 6,33,842 | Payment of ₹ 5 lakh was made during 2017-18 |
| 30.03.2019 | 11,83,604 | Payment of ₹ 9 lakh made during 2018-19 |
| 21.10.2019 | 18,84,686 | No Payment was made after 07.02.2019 |

From the details extracted from SAP System of PSPCL, it is evident that the energy bills issued to the Appellant from 26.11.2015 to 21.10.2019 were ₹ 40 lac approximately against which, about (roughly) half of the amount was deposited by the Appellant with the PSPCL. As a result, there remained outstanding payable amount of ₹ 19,75,720/- as per bill issued on 21.10.2019 to the Appellant.

I find that there was no dispute relating to amounts billed to the Appellant during the period from 26.11.2015 to 21.10.2019. The outstanding disputed amount was clearly accumulation of the unpaid amounts of energy bills issued from time to time along with the surcharge/interest.

I also find that the contention of the Respondent that the Appellant had been making part payments as per his own wish by pressurizing the concerned officers using political influence is irresponsible and illegal. Every officer/official is duty bound to act in accordance with the instructions of the licensee issued from time to time without any fear/favour.

1. The consumption pattern of the connection of the Appellant as submitted by the Respondent revealed the following details:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Sr. No | Billing Period | Days | Consumption | Code |
| kWh | kVAh |
| 1 | 19.12.2016 to 15.12.2017 | 362 | 103104 | 109330 | O |
| 2 | 15.12.2017 to 22.12.2018 | 365 | 99264 | 111802 | O |
| 3 | 22.12.2018 to 23.11.2019 | 336 | 86293 | 97376 | O |

I find from the perusal of the above details that energy consumption during the years 2017 to 2019 showed almost uniform pattern with average daily consumption of about 300 kVAh. The Appellant was billed on the basis of energy consumed/recorded but he did not pay the full/whole amount of the bills regularly on due dates. During all these years, the Appellant never represented to the Respondent against excess consumption or excess/wrong billing.

1. The Appellant’s Representative contended that the Respondent disconnected the Appellant’s connection due to default in payments of bills allegedly without considering its business downfall.

I find that the connection of the Appellant was disconnected on 18.11.2019 due to non-payment of defaulting dues amounting to ₹ 19,75,720/- as per bill dated 21.10.2019 payable by 31.10.2019.

 I also find that the Respondent defaulted in performing its duties by not taking timely action for disconnection of power supply in the event of non-clearance of pending dues and remained silent spectator over non-payment of pending dues for more than three years. The action of the Respondent in allowing the Appellant to make part payments of energy bills led to accumulation of pending dues amounting to ₹ 19,75,720/- which the Appellant is now finding difficult to pay in one go.

 It is observed that the Appellant deposited a sum of ₹ 4 lac on 24.12.2019 and the connection of the Appellant was reconnected vide RCO dated 01.01.2020 on the directions of the Forum given in the proceedings held on 06.12.2019. The Appellant was advised to continue depositing current energy charges after effecting RCO but the Appellant failed to comply with the directions of the Forum.

It is also observed that the connection of the Appellant was again disconnected on 07.08.2020 due to the default in payment of pending dues as intimated by Sr. Xen, DS Division, PSPCL, Abohar vide letter no. 4683 dated 18.08.2020.

Had the Respondent complied with the provisions contained in Regulation 32.1 of Supply Code-2014 regarding disconnection of supply due to defaulting dues, the litigation could have been avoided. As per record, the Respondent disconnected the power supply of the Appellant in the first instance on 18.11.2019 i.e when the Appellant was to represent to the Forum against the bill dated 21.10.2019. After restoration of the connection of the Appellant on the directions of the Forum, the connection was again disconnected on 07.08.2020 i.e when the present Appeal was pending adjudication in this Court.

1. The Appellant’s Representative submitted that due to downfall in the business leading to stoppage of manufacturing process in the beginning of 2016, the Appellant requested to get the meter tested and reporting done but all in vain. The Meter was running very fast and showed 11142 units consumption in one month. The Appellant faced some erratic behavior of the Meter due to jumping.

I find that the contention of the Appellant’s Representative is not supported by any documentary evidence. On the other hand, the consumption pattern of the connection of the Appellant discussed in para (iii) reveals that energy consumption remained more or less uniform during the disputed billed period.

 I observe that the Energy Meter of the Appellant was checked by the Senior Executive Engineer, Enforcement-cum-EA & MMTS, PSPCL, Sri Muktsar Sahib vide ECR no. 02/2331 dated 17.01.2020 and it was reported that:

* 1. “ਉਪਰੋਕਤ ਖਪਤਕਾਰ ਦਾ ਮੀਟਰ ਅਹਾਤੇ ਤੋਂ ਬਾਹਰ ਕੰਧ ਤੇ ਲੱਗਾ ਹੈ।
	2. ਮੀਟਰ Display ਤੇ 1,2,3 ਸੈਗਮੈਂਟ ਆ ਰਹੇ ਹਨ ਅਤੇ ਚਲਦੇ ਲੋਡ ਤੇ ਮੀਟਰ ਦੀ ਇੰਡੀਕੇਸ਼ਨ ਫਲਿਕਰ ਕਰ ਰਹੀ ਹੈ।
	3. ਮੌਕੇ ਤੇ 3 ਫੇਜ ਲੋਡ ਪਾ ਕੇ L.T. ERs ਮੀਟਰ ਦੀ ਮਦੱਦ ਨਾਲ ਮੀਟਰ ਦੀ ਕਾਰਜ ਕੁਸ਼ਲਤਾ ਚੈੱਕ ਕਰਨ ਤੇ ਮੀਟਰ ਨਿਰਧਾਰਤ ਸੀਮਾ ਅੰਦਰ ਚੱਲਦਾ ਪਾਇਆ ਗਿਆ।
	4. ਮੌਕੇ ਤੇ CMRI ਦੀ ਮਦੱਦ ਨਾਲ ਮੀਟਰ ਦਾ DDL ਕਰ ਲਿਆ ਹੈ।
	5. ਮੀਟਰ ਨੂੰ ਪੋਲ ਤੇ shift ਕੀਤਾ ਜਾਵੇ।
	6. ਇਹ ਕੁਨੈਕਸ਼ਨ ਉਪ ਮੰਡਲ ਅਫਸਰ ਅਬੋਹਰ ਨੰ *:*1 ਦੇ ਪੱਤਰ ਨੰ. 64 ਮਿਤੀ 15.01.2020 ਦੇ ਸੰਬੰਧ ਵਿੱਚ ਚੈੱਕ ਕੀਤਾ ਗਿਆ।
	7. ਉਪਰੋਕਤ ਖਾਤੇ ਵਿਰੁੱਧ ਖੜ੍ਹੀ ਕੁਤਾਹੀ ਰਕਮ ਸੰਬੰਧੀ ਪਾਵਰਕਾਮ ਦੀਆਂ ਹਦਾਇਤਾ ਮੁਤਾਬਿਕ ਕਾਰਵਾਈ ਕੀਤੀ ਜਾਵੇ। ”

I also observe that the contention of the Appellant’s Representative regarding erratic behaviour of the Energy Meter was not supported by the findings of the Enforcement checking report dated 17.01.2020. This checking report was signed by the Consumer or his representative without any objection.

I find that the compliance of the observation of the Enforcement regarding shifting of Energy Meter on the pole from its present location has not been done by the Respondent. This needs to be done at the earliest or before restoration of power supply to the Appellant in case the pending dues are cleared.

1. From the above analysis, the legitimacy of the energy bill dated 21.10.2019 amounting to ₹ 19,75,720/- issued to the Appellant proves beyond any doubt. The prayer of the Appellant’s Representative to allow the payment of the disputed amount in 60 (sixty) monthly instalments itself confirms that he admitted the correctness/genuineness of the amount charged to the Appellant. Surcharge/interest on delayed payments cannot be waved off and should necessarily be recovered from the Appellant who is a habitual, wilful and regular defaulter. The Respondent is also equally responsible for accumulation of defaulting amount due to non-compliance of the provisions contained in Regulation 32 of the Supply Code-2014. The Respondent may consider and decide about the request of the Appellant regarding the payment of disputed amount along with surcharge/interest in instalments as per instructions of PSPCL issued from time to time.

7. **Decision**

As a sequel of above discussions, the order dated 18.03.2020 of CGRF, Patiala in Case No. CGP-372 of 2019 is upheld.

* 1. 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)

September 14, 2020 Lokpal (Ombudsman)

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