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

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

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

 **APPEAL NO. 01/2020**

**Date of Registration : 10.01.2020**

**Date of Hearing : 26.02.2020**

**Date of Order : 02.03.2020**

**Before:**

**Er. Gurinder Jit Singh,**

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

**In the Matter of :**

Kuldeep Kumar,

69, College Road,

161, Daler Nagar,

Ludhiana

 ...Appellant

 Versus

Additional Superintending Engineer,

 DS City West Division (Special),

 PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Appellant : Sh. Prabhjot Singh, Advocate

 Appellant’s Counsel (AC)

Respondent : Er. Shiv Kumar

Assistant Engineer/Commercial,

 DS City West Division (Special),

 PSPCL, Ludhiana

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 18.11.2019 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-237 of 2019, deciding that :

 *“The account of the Petitioner be overhauled from 01/2013 onwards to the date of change of meter on dated 05.05.2019 by taking initial reading as 9819 kWh and final reading as 31330 kWh i.e. 21511 kWh by dividing the consumption equally during the period 01/2013 to 05/2019 and applying relevant tariff as applicable from time to time.”*

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

A scrutiny of the Appeal and related documents revealed that the same was received in this Court on 10.01.2020 i.e. after more than one month from the date of receipt of the decision dated 18.11.2019 of the Forum. The Appellant had also submitted alongwith the Appeal an application for condonation of delay in filing the Appeal in this Court and submitted photocopies of receipts in token of having deposited ₹ 49,000/- on 08.01.2020 and ₹ 25,000/- on 09.01.2020. Thus, the Appellant had deposited ₹ 74,000/- which was more than 40 % (73,473/-) of the amount of ₹ 1,83,680/- i.e. amount of the disputed bill dated 21.06.2019. Thereafter, the Appeal was registered in the record of this Court on 10.01.2020 and copies of the same were forwarded to the Addl. S.E., DS City West Division (Special), PSPCL, Ludhiana for sending reply/parawise comments and also to the office of the CGRF, Ludhiana for sending the case file under intimation to the Appellant vide Memo No.20-22/OEP/A-1/2020 dated 10.02.2020.

3. **Proceedings**

A hearing to adjudicate the present dispute was held on 26.02.2020 when the representatives of the Appellant and the Respondent attended this Court. A copy of the proceedings was sent to the Appellant as well as the Respondent vide Memo No.179-180/OEP/A-01/2020 dated 26.02.2020.

4. **Condonation of Delay**

At the outset, the issue of condonation of delay in filing the Appeal in this Court was taken up. The Appellant’s Counsel stated that the Appellant had filed the Appeal in this Court which was likely to succeed on the grounds mentioned therein. He submitted that the Appellant was keen to file this Appeal against the order dated 18.11.2019, passed by the CGRF, Ludhiana. However, for filing this Appeal, the Appellant had to deposit 40% of the disputed amount assessed by the Forum and the same worked out to ₹ 73,473/. The Appellant sold Kulche Channe on road side and the amount to be deposited was very huge and the same was arranged by the Appellant with difficulty. In the process, delay of 21 days beyond the stipulated time had occurred in filing the present Appeal in this Court. The Appellant’s Counsel submitted that the delay was unintentional and bonafide and the Appellant would suffer an irreparable loss and injury if the delay of 21 days beyond the stipulated period in filing was not condoned. It was, therefore, prayed that the said delay in filing the Appeal may be condoned, in the interest of justice.

 The Respondent, in its written reply sent vide Memo No. 801 dated 06.02.2020, contested the plea of the Appellant by stating that no cogent reason had been given for condonation of the delay in filing the Appeal. As per law, delay of each day had to be explained but had not been explained in this case. The Appeal was not likely to succeed on the grounds mentioned therein. The Respondent was not aware that the Appellant sold ‘Kulche Channe’ on road side. Besides, the amount required to be deposited by the Appellant was not huge for him. It was incorrect on the part of the Appellant to state that while arranging the said amount, the delay of 21 days beyond the stipulated period of one month from the receipt of decision of the Forum had occurred in filing the present Appeal. The Appellant also incorrectly stated that the said delay was unintentional and bonafide. It was not fair on the part of the Appellant to contend that it would be put to irreparable loss and injury if the delay in filing the Appeal was not condoned. The Respondent prayed that the Application for condonation of delay in filing the present Appeal may be dismissed with costs.

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 Appellant has given reasons for not filing the Appeal within the stipulated period, the same do not appear to be much convincing.

I also observe that non condonation of delay would deprive the Appellant 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 Appellant is afforded an opportunity to present the case.

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

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

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

The Appellant made the following submissions, in its Appeal received on 10.01.2020, for consideration of this Court:

1. The Appellant was having a DS category connection with sanctioned load of 0.4 kW.
2. The Appellant challenged the working of the Energy Meter by depositing ₹ 120/- vide Receipt dated 03.05.2019 whereafter, the Energy Meter was replaced on 05.05.2019 at final reading 31,330 kWh.
3. The Appellant was issued energy bill amounting to ₹ 1,83,680/- on 21.06.2019 for the period from 30.04.2019 to 21.06.2019 showing consumption of 20,562 units (including 20,518 units of old Energy Meter and 44 units of new Energy Meter).
4. The removed Energy Meter was sent, vide Challan No.682 dated 22.08.2019, to the ME Lab which reported that accuracy of the Energy Meter was within permissible limit and ultrasonic welding was OK, it was also reported **that the Energy Meter was burnt** and the final reading was 31,330 kWh.
5. The Appellant did not agree with the bill issued on 21.06.2019 and filed a case on 18.09.2019 in the Forum, who, after hearing both the sides, passed order dated 18.11.2019.
6. The Forum failed to appreciate that the Energy Meter was damaged as a tree had fallen on it. As a result, the reading jumped and consumption of 20,518 units was shown which were never consumed by the Appellant.
7. The Appellant shifted from 161, Daler Nagar, Ludhiana in the year 2012 to 69, College Road, Ludhiana. As per meter reading data prior to 2012, the consumption of electricity was about 400 units bimonthly. After shifting to 69, College Road, Ludhiana the hired workers (labour) resided at 69, College Road, Ludhiana in the year 2018. They worked in the shop the whole day till about 11:00 PM and left the place thereafter.
8. The Forum failed to appreciate that the consumption of electricity by the Appellant in the past 7 years was very low about 1.25 units per day. As such, there was no possibility for consumption of electricity to jump to 20,518 units within two months as per the meter reading. The site checking report of the Respondent showed that consumption could be low and similar to that for the period before jumping of the meter reading. The consumption data from 2009 to 2019 was annexed to the Appeal for reference.
9. The Forum failed to appreciate that load sanctioned to Appellant was 0.4 kW and there was one bulb, one fan and few plugs. If calculated according to LDHF formula then consumption for seven years works out to be 0.4 kW x (365 x 7 years) x 8 hrs. x 30 % = 2,472 units.
10. It was pertinent to mention here that old Energy Meter was replaced on 05.05.2019 and new Energy Meter was installed which also showed that consumption of electricity was the same as before jumping of the meter reading.
11. The Forum failed to consider that in the ME Lab report the accuracy of the Energy Meter was within permissible limit, ultrasonic welding was OK although the Energy Meter was declared burnt.
12. The Forum failed to consider the letter no. 1232 dated 30.12.2019 of the office of the ASE/ME Lab, Ludhiana as per which, the disputed Energy Meter was checked vide ME Lab Challan No. 682 dated 22.08.2019 which was correct and further submitted that ME Lab did not have any equipment for testing/figure jumping of Non-DDL-Meter. It was worth mentioning here that without proper examination of defective Energy Meter (due to lack of proper equipment to check the same meter whether it jumped or not), the Appellant was served a heavy bill for huge consumption which was never consumed by the Appellant.
13. The order dated 18.11.2019, passed by the Forum may be set aside as the Forum did not appreciate the aforesaid grounds for advancing justice and not obstructing cause of justice. There was no negligence or omission on the part of the Appellant.
14. **Submission during Hearing**

The Appellant’s Counsel reiterated mainly the submission made in the Appeal and prayed to allow the same.

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

The Respondent, in its defence, submitted the following in the written reply to the Appeal, sent vide Memo No.801 dated 06.02.2020, for consideration of this Court**:**

1. The Appellant was the holder of DS Category connection, bearing Account No.3002741750, installed at its premise, with sanctioned load of 0.4 kW.
2. The Appellant challenged the working of the Energy Meter installed at its premise by depositing ₹ 120/- on 03.05.2019.
3. The said Energy Meter was replaced on 05.05.2019 at the final reading of 31,330 kWh.
4. The Appellant was issued the bill amounting to ₹ 1,83,680/- dated 21.06.2019 for the period 30.04.2019 to 21.06.2019 for consumption of 20,562 units (including 20,518 units of the old Energy Meter and 44 units of the new Energy Meter).
5. The removed Energy Meter was checked in the ME Lab vide Challan No.682 dated 22.08.2019, whereby, it was reported that accuracy of the Energy Meter was within permissible limit and ultrasonic welding was okay. It was also reported that the said Energy Meter was burnt and the final reading was 31,330 kWh.
6. The Appellant did not agree to the bill issued on 21.06.2019 and filed a case in the office of the CGRF, Ludhiana.
7. After hearing both the sides, the Forum decided the matter on 18.11.2019 and passed a well-reasoned speaking order vide which, it was held that account of the Appellant be overhauled from 01/2013 onwards to the date of replacement of Energy Meter i.e. 05.05.2019 by taking initial reading as 9819 kWh and final reading as 31,330 kWh i.e. 21,511 kWh by dividing the consumption equally during the period 01/2013 to 05/2019 and applying relevant tariff as applicable from time to time.
8. It was incorrect on the part of the Appellant to contend that the Energy Meter was damaged due to falling of tree on it and consumption jumped by 20,518 units which were never consumed by the Appellant.
9. The Appellant wrongly stated that it had shifted from 161, Daler Nagar, Ludhiana to 69, College Road, Ludhiana in the year 2012.
10. The Forum duly took into consideration the fact of the replacement of the Energy Meter(on being challenged by the Appellant) and checking in the ME Lab which rightly reported that the accuracy of the Energy Meter was within permissible limit, ultrasonic welding was found okay and Energy Meter was burnt. All these facts were considered by the Forum while passing the order.
11. It was incorrect to contend that the Forum failed to consider letter No.1232 dated 30.10.2019 of the office of the Additional S.E, ME Lab, Ludhiana. The said letter was duly considered while passing the order under Appeal.
12. The Appellant incorrectly stated in this Appeal that there was no negligence on its part.
13. There was no infirmity or illegality in the order dated 18.11.2019 passed by the Forum. The said order was a well-reasoned and speaking order. All the grounds submitted by both the parties were considered by the Forum and a legal and valid order was passed.
14. In view of the submissions made, the Appeal filed by the Appellant may be dismissed with costs.
15. **Submissions during Hearing**

During the course of hearing, the Assistant Engineer,/Commercial, DS West Division (Special), Ludhiana (Respondent) reiterated the submissions made in its written reply and specifically stated that the Appellant had not submitted any report/information (about the falling of the tree on the disputed Energy Meter) in the office of the Respondent.

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

The issue requiring adjudication is the legitimacy of the overhauling of the account of the Appellant for the period from 01/2013 to 05.05.2019 (date of replacement of the disputed Energy Meter) by dividing the energy consumption of 21,511 units (New Reading: 31,330 kWh-Old Reading: 9,819) equally during this period and charging the Appellant accordingly as per Tariff applicable from time to time.

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

1. The present dispute arose after the Appellant challenged the working of Single Phase, Two Wire, 10-40 Amp. Static Energy Meter (without Optical Port) on 03.05.2019. The connection of the Appellant was a Domestic Supply Category connection with sanctioned load of 0.4 kW. After checking, the Energy Meter was replaced on 05.05.2019 at final reading of 31,330 kWh. Subsequently, an energy bill dated 21.06.2019 with consumption of 20,562 units (including 20,518 units of old Energy Meter and 44 units of new Energy Meter) amounting to ₹ 1,83,680/- was issued to the Appellant. Thereafter, the Energy Meter was got checked on 22.08.2019 from ME Laboratory, Ludhiana which reported that accuracy of the Energy Meter was within permissible limits and Ultrasonic welding of Meter Cover was intact. However, the Energy Meter was declared “Burnt” and final reading was mentioned as 31,330 kWh. However, DDL of the disputed Energy Meter could not be taken as it had no Optical Port. Aggrieved, the Appellant filed a case bearing No. 237 of 2019 in the office of the CGRF, Ludhiana which decided, vide order dated 18.11.2019, that the account of the Appellant for the period from 01/2013 to 05.05.2019 (date of replacement of the Energy Meter) be overhauled by dividing the energy consumption of 21,511 units equally during this period and applying Tariff as applicable from time to time. The said decision of the Forum was based on the consideration of accumulation of reading of the Energy Meter by the Meter Reader as observed from the final reading recorded by the ME Laboratory, Ludhiana on 22.08.2019.
2. As per material on record, the details of the energy consumption for the years 2009 to 2019 are as under:

|  |  |
| --- | --- |
| Year | Energy Consumption (kWh) |
| 2009 | 1690 |
| 2010 | 1959 |
| 2011 | 2007 |
| 2012 | 1819 |
| 2013 | 386 |
| 2014 | 133 |
| 2015 | 75 |
| 2016 | 67 |
| 2017 | 119 |
| 2018 | 136 |
| 2019 (01/2019 to 05.05.2019) | 20,518 |
| 2019(05.05.2019 to 21.10.2019) | 202 |

I find that energy bills for the disputed period (01/2013 till 05.05.2019) showing low energy consumption were issued on ‘O’ Code. Besides, no evidence has been brought on record by the Respondent to prove that it had taken cognisance of low consumption/accumulation of the energy consumption any time during a long span of more than six years.

I also find that provision contained in Instruction No.104 of ESIM-2010/Instruction No.106 of ESIM-2018 requiring checking of connection was not complied with by the Respondent-PSPCL in the present case. Had the prescribed checking been carried out, the present dispute could have been avoided.

In this connection, I have noted the contention of the Appellant that it had shifted its premise in the year 2012 and only a few workers worked there till 11:00 PM from 2013 onwards. I have also perused the site checking report as per LCR No.46/333 dated 26.09.2019, wherein it has been stated that the site (at which the Energy Meter was installed) was being used as Godown and connected load was Light Point=3, Fan Point=1 and Plug Point=4.

I find that the Respondent, in its reply, stated that contention of the Appellant about falling of tree on the disputed Energy Meter was incorrect, as the Appellant did not give any such intimation in the office of the Respondent. Had the tree actually fallen on the disputed Energy Meter, it would have been damaged.

I observe that due to burning of the Energy Meter as declared by ME Lab, the working of the same was affected, as the Static Energy Meter was a single/compact unit comprising Meter Cover and Terminal Block. The possibility of erratic behavior of the disputed Energy Meter in the event of burning of the same cannot be ruled out.

In such a situation, there does not appear to be any likelihood of accumulation of energy consumption during the disputed period. I, therefore, agree with the observation of Member(Technical) in the decision of the Forum that even if LDHF formula is taken as the basis to work out the consumption in such an eventuality,consumption of this magnitude can never be possible with such a meagre sanctioned load of 0.4 KW under any circumstances. He also observed that consumption recorded after the replacement of the disputed Energy Meter was 44 units (06.05.2019 to 21.06.2019) & 76 units(22.06.2019 to 22.08.2019). Even with LDHF formula, the consumption comes out to 0.4x30x8x30%=29 units per month, which is nowhere near to the consumption charged per month.

I have also gone through the report dated 22.08.2019 of the ME Laboratory, Ludhiana as per which, the disputed **Energy Meter was declared “Burnt”.** Besides, DDL could not be taken to ascertain the readings on different dates during last 100 days as the disputed Energy Meter had no Optical Port.

In the given circumstances, the provisions contained in Regulation 21.5.2(a) of Supply Code-2014, reproduced below, are relevant:

*“ The accounts of a consumer shall be overhauled/billed for the period meter remained defective/dead stop and in case of burnt/stolen meter for the period of direct supply subject to maximum period of six months as per procedure given below:*

1. *On the basis of energy consumption of corresponding period of previous year.”*

I am, therefore, of the view that the account of the Appellant is required to be overhauled for six months prior to the date of replacement of disputed Energy Meter (05.05.2019) on the basis of consumption of corresponding period of previous year in terms of provisions contained in Regulation 21.5.2(a) of Supply Code-2014.

1. As per material brought on record, the connection of the Appellant was checked, vide LCR No.46/333 dated 26.09.2019, on the directions of the CGRF, Ludhiana. During the said checking, it was found that the connection was being used for Godown i.e. for commercial purpose instead of for domestic use for which, the Appellant had taken the connection.

I observe that cases involving Unauthorised Use of Electricity (UUE) do not come within the purview of this Court, hence, this Court is constrained not to take cognisance of this matter.

**7.** **Decision**

 **As a sequel of above discussions, the order dated 18.11.2019 of the CGRF, Ludhiana in Case No. CGL-237 of 2019 is set aside. It is held that the account of the Appellant shall be overhauled for six months prior to the date of replacement of disputed Energy Meter (05.05.2019) on the basis of consumption of corresponding period of previous year in terms of provisions contained in Regulation 21.5.2(a) of Supply Code-2014.**

**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)

March 02, 2020 Lokpal (Ombudsman)

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