

**COURT OF THE LOK PAL (OMBUDSMAN),  
ELECTRICITY, PUNJAB,  
PLOT NO. A-2, INDUSTRIAL AREA, PHASE-1,  
S.A.S. NAGAR (MOHALI).**

**(Constituted under Sub Section (6) of Section 42 of  
Electricity Act, 2003)**

**APPEAL No. 10/2019**

**Date of Registration : 31.01.2019**  
**Date of Hearing : 18.04.2019/30.05.2022/02.06.2022**  
**Date of Order : 02.06.2022**

**Before:**

**Er. Gurinder Jit Singh,  
Lokpal (Ombudsman), Electricity, Punjab.**

**In the Matter of:**

M/s. Baba Bhai Roop Chand Rice Mills,  
C/o Sh. Bipan Kumar, Ghandabana Road,  
Bhai Rupa, Tehsil Rampura Phul,  
Distt. Bathinda.

**Contract Account Number:MS-66/0003(MS)**

...Appellant

Versus

Senior Executive Engineer,  
DS Division, PSPCL,  
Bhagta Bhaika.

...Respondent

**Present For:**

**Appellant:** (1) Sh. A.S.Pannu, Advocate,  
Appellant's Counsel  
(2) Sh. Bipan Kumar,  
Appellant

**Respondent :** Er. Amanpreet Singh,  
Senior Executive Engineer,  
DS Division, PSPCL,  
Bhagta Bhaika.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 07.01.2019 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CG-385 of 2018, deciding that:

*“Supplementary notices' issued to the Petitioner to deposit Rs.14,21,913/- vide Memo No. 74 dated 15.01.2018 & Memo No. 1958 dated 04.09.2018 after overhauling of the Petitioner's account from 11.09.2014 (i.e. date of replacement of meter) to 16.11.2017 by applying correct multiplying factor 2.00 instead of 1.00 as reported vide Checking No. 01/ 149 dated 20.12.2017 is justified and recoverable as per Note to Regulation 21.5.1 of Supply Code 2014. The amount be recovered in twelve equal monthly installments without charging interest along with payment of current monthly energy bills.”*

**2. Registration of the Appeal**

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 31.01.2019 i.e. within the period of thirty days of receipt of decision dated 07.01.2019 of the CGRF, Patiala in Case No. CG-385 of 2018. The Appellant deposited the requisite 40% of the disputed amount. Therefore, the Appeal was registered on 31.01.2019 and copy of the same was sent to the Sr. Executive Engineer/ DS Division, PSPCL, Bhagta Bhaika for sending written reply/

parawise comments with a copy to the office of the CGRF, Patiala under intimation to the Appellant vide letter nos. 153-55/OEP/A-10/2019 dated 31.01.2019.

### 3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 18.04.2019 at 12.30 PM and intimation to this effect was sent to both the parties vide letter nos. 394-95/OEP/A-10/2019 dated 13.03.2019. As scheduled, the hearing was held in this Court and arguments of both the parties were heard. During the course of hearing, the Appellant's Representative (AR) placed reliance on the order dated 20.09.2018 of the Hon'ble Punjab and Haryana High Court in CWP No. 2539 of 2017 (O&M) titled Surinder Kaur V/s Ombudsman, Electricity, Punjab and Others deciding as under:

*“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.”*

Further the AR added that though the order *ibid* was challenged by the PSPCL vide LPA No. 7732/2018 before the Division Bench of the Hon'ble Punjab and Haryana High Court for stay and quashing of order dated 20.09.2018, a decision on the stay application was still pending. The AR then prayed that the adjudication of the present Appeal may be deferred till the decision of the Hon'ble Punjab and Haryana High Court in the LPA No. 7732 of 2018. On request of the AR and in view of pendency of said LPA No. 7732 of 2018, the Appeal was adjourned sine die.

Now, the Respondent requested this Court vide Memo No. 3198 dated 20.05.2022 to decide the Appeal on merits in view of judgment dated 05.10.2021 of the Hon'ble Supreme Court of India in Civil Appeal No. 7235/2009 titled as M/s. Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. & Ors., as the amount involved was high. The copy of this request letter of the Respondent was sent to the Appellant through email on 24.05.2022. The next date of hearing in this case was fixed for 30.05.2022 at 12.30 PM and intimation to this effect was sent to both the parties vide letter nos. 481-82/OEP/A-10/2019 dated 23.05.2022. As scheduled, the hearing was held in this Court and the case was adjourned to 02.06.2022 at 01.00 PM on the request of the

Appellant. A copy of proceedings dated 30.05.2022 was sent to both parties vide letters nos. 501-502/OEP/A-10/2019 dated 30.05.2022. The arguments of both parties were heard on 02.06.2022.

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

Before undertaking analysis of the case, it is necessary to go through written submissions made by the Appellant and reply of the Respondent as well as oral deliberations made by the Appellant's Representative and the Respondent alongwith material brought on record by both the parties.

##### **(A) Submissions of the Appellant**

##### **(a) Submissions made in the Appeal**

The Appellant made the following submissions in its Appeal for consideration of this Court:-

- (i) The Appellant was having a Medium Supply Category Connection, bearing Account No. MS-66/0003 with sanctioned load of 93.880 kW under DS S/D, Bhai Rupa.
- (ii) The Appellant was served with a Supplementary Notice dated 15.01.2018 requiring him to deposit a sum of ₹ 14,21,913/- on account of alleged overhauling of the Appellant's account from 11.09.2014 to 16.11.2017. It was alleged therein that

multiplying factor of 2 was to be applied instead of 1 as reported vide checking no. 01/149 dated 20.12.2017. Aggrieved by the same, the Appellant challenged the accuracy/ working of the meter by depositing the required sum of ₹ 2,500/- vide receipt dated 10.01.2018.

- (iii) The meter was then sent to ME Lab. in the month of February, 2018. However, the Appellant kept on visiting the ME Lab., but the checking was not done on one pretext or the other. It was only vide letter dated 04.09.2018 that the Appellant was informed that the meter had been checked and the same had been found in order and a sum of ₹ 14,21,913/- was payable by him within a period of 15 days. Aggrieved by the same, the Appellant filed a Petition before the Forum.
- (iv) In the said Petition, notice was issued and the Respondent was directed to furnish certain record. Perusal of the proceedings dated 25.10.2018 of the Forum revealed that one of the documents which were required to be submitted were the Checking Reports carried out by the Authorities during the last 5 years.
- (v) Since the account of the Appellant was sought to be overhauled from 11.09.2014 to 16.11.2017, so it was the checking report

during the said period which was material. However, the Respondent did not place on record the said Checking Reports.

- (vi) A perusal of the reply and the documents would reveal that checking reports dated 24.01.2013 and 11.09.2014 were placed on record. However, for the period from 11.09.2014 onwards no checking Report was placed on record inspite of the fact that the meter ought to have been periodically checked during the said period.
- (vii) The meter reading record for the period from 2014 to 2017 was produced. It was obvious that it was the officials of the Respondent who had been taking the meter readings. After taking the meter readings, calculation of the bills were made. The same was checked by the officials of the Respondent and thereafter bills were prepared and sent to the consumer. The senior officials of the Respondents were involved in this process and the Appellant had been paying all the bills during the said period.
- (viii) The Forum had declined to set aside the Supplementary Demand of ₹ 14,24,913/- and had only directed that the Appellant can pay the said amount in installments.

- (ix) The Supplementary Demand dated 04.09.2018, as well as the order dated 07.01.2019 passed by the Forum suffered from patent error of law as well as facts on record.
- (x) The Appellant had challenged the accuracy of the meter and in this regard had deposited the amount for the same on 10.01.2018. As per regulations of the Corporation, the meter had to be checked within a period of one month. Not only this, the meter had to be opened in the Lab in the presence of the Consumer. Both the requirements were not complied with. The Appellant had been visiting the Lab, but his meter was not checked and the matter was put off on one pretext or the other. A perusal of the Report of the Lab. would reveal that Report was dated 09.04.2018 and the meter was shown to have been received on 15.02.2018.
- (xi) However, the supplementary bill was sent to the Appellant on 04.09.2018 and the Report of the ME Lab. was for the first time sent to the Appellant alongwith the impugned demand dated 04.09.2018. Thus, admittedly as per record of the Corporation, the meter had been received on 15.02.2018 and was not checked within 30 days. It was also not checked in the presence of the Appellant. The meter was not opened in the presence of



the Appellant. Therefore, there was clear violation of the guidelines/ regulation of the Board.

(xii) The Forum had relied upon the report of the Lab. to hold that the meter was OK and the supplementary demand had been made only on account of the fact that multiplying factor was wrongly applied. The Appellant submitted that the report of the Lab could not be relied upon in view of the above stated fact. Neither the seal of the meter was opened in the presence of the Appellant nor the checking done within the stipulated period. Such, a report had to be rejected out rightly and could not be made basis for upholding the demand dated 04.09.2018.

(xiii) There was no finding in the impugned order that during the period from 11.09.2014 to 16.11.2017, no checking was done by the officials of the Corporation. It cannot be believed that for a period of 3 years, no checking was done. The officials of the Corporation used to record the meter readings, regular bills were issued, while issuing the bills not only the readings were checked but the entire set up was seen. The officials regularly visited the spot to see that the meter and other things were in order at the site. For a period of 3 years, it could not be believed that no checking was done. In this situation, the Appellant cannot be made to suffer.

- (xiv) Even, if it was assumed for the sake of arguments that no checking was done during the aforesaid period, the Appellant could not be penalized for that. If no checking was done, it was the fault of the Corporation. The Appellant cannot be made to suffer. If the officials of the Corporation had applied wrong multiplier, the consumer cannot be made to suffer. The Appellant paid the bills whatever they were sent to him. Now, after a lapse of so many years, the Appellant cannot be penalized. If the fault was of the officials, it was the officials who were to bear the burden and not the Appellant.
- (xv) The Appellant had throughout been paying his bills regularly. If the average bills prior to 11.09.2014 are compared with the bills issued during the said period, it would be seen that there was no variation. The consumption had virtually remained the same. However, none of the authorities had compared the consumption prior to 11.09.2014 and the consumption after 11.09.2014.
- (xvi) A perusal of the order of the Forum would reveal that there was a positive direction therein that the Respondent-Corporation was to certify that there was no checking by them during the aforesaid period from 2014 to 2017. However, there was no finding that any such certificate or affidavit was filed by the

Respondent-Corporation. Thus, if no checking was done, the fault was of the Corporation. The Regulation of the Corporation required that the checking had to be done regularly. Thus, looked at from any angle, the Appellant cannot be made to suffer.

(xvii) The adjoining Mill i.e. Bipan Rice Mills had been checked on 22.12.2015, 10.02.2016 and 28.03.2017. There was absolutely no reason for not producing the checking reports of the Appellant. If checking was not done from 2014 to 2017, it was the fault of the Respondent and the Appellant cannot be asked to make payment.

(xviii) The Appellant prayed that the Appeal may be accepted and the demand of ₹ 14,21,913/- issued vide Memo No. 1958 dated 04.09.2018 as well as the order passed by the Forum dated 07.01.2019 may kindly be set aside. The Appellant further prayed that during pendency of the present Appeal, operation of the impugned order may kindly be stayed.

**(b) Submission during hearing**

During hearing on 02.06.2022, the Appellant's Counsel (AC) reiterated the submissions made in the Appeal and prayed to allow the same. He further stated that the judgment dated

05.10.2021 of the Hon'ble Supreme Court of India is not applicable in this case.

**(B) Submissions of the Respondent**

**(a) Submissions in written reply**

The Respondent submitted the following written reply for consideration of this Court:-

- (i) The challenged meter was sent to ME Lab, Bathinda for checking. The Meter Challan bore the signatures of the Appellant's Representative. He had submitted his consent to accept the result of ME Lab, Bathinda. The challenged meter was checked by Authorized Officers and checking report alongwith notice dated 04.09.2018 was served accordingly.
- (ii) The documents on record of office as desired by the Forum were submitted. The checkings made from 2013 to 2018 were also given. The Respondent submitted that checkings were done in presence of the consumer or their representative and a copy was handed over to them.
- (iii) The readings of meter were taken by the PSPCL officials and bills were made accordingly.
- (iv) The order passed by the Forum dated 07.01.2019 and supplementary demand raised dated 04.09.2018 were based on

Supply Code, 2014 Regulation No. 21.5.1 Note reproduced as under:

*“Where accuracy of the 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.”*

- (v) Delay, if any, relating to checking of challenged meter at ME Lab, Bathinda, Receipt of Report at PSPCL S/D Bhai Rupa or serving the Notice Dated 04.09.2018 did not affect the case as the consumer's account had been overhauled for the period from 11.09.2014 to 16.11.2017 i.e. for the period challenged meter was in place. The meter was checked by officers of ME Lab, Bathinda and results had proven the meter to be OK. Moreover, the Appellant while challenging the meter had submitted his consent to get the meter checked from ME Lab., Bathinda to accept its results and not to put any claims thereafter.
- (vi) As already stated, the consumer had given his consent to accept the results of ME Lab, Bathinda. After receipt of the meter checking report of ME Lab, Bathinda in the subject case, Notice was served to the consumer vide memo no. 1958/59 dated 04.09.2018.

- (vii) The Appellant was not made to pay any interests or surcharges in this case and had to pay only the amount corresponding to electricity actually consumed and overhauling of the accounts had been done as per provisions of Supply Code, 2014 Note to Regulation No. 21.5.1 and same was confirmed and judged correct as per Forum's order. Amount was to be recovered in 12 equal monthly installments along with payment of current monthly energy bills.
- (viii) The Appellant's account had been overhauled by taking monthly consumption and correct Multiplication Factor into consideration. The alleged comparison of consumption prior to and after 11.09.2014 was denied as working of challenged meter was 'OK' as determined by ME Lab, Bathinda and Supply Code, 2014 Regulation No. 21.5.1 shall be violated if any calculations based on such comparisons were made. Moreover, the consumption pattern of any consumer may depend upon several factors beyond the control of the PSPCL.
- (ix) All checkings pertaining to case for the said period, were already on record. The Appellant had not been imposed any undue charges but is required to pay only for actual consumption of electricity.

- (x) The checkings performed at other adjoining premises did not affect the case. The Appellant was asked to pay the amount pertaining to electricity actually consumed by him.

**(b) Additional Submissions made by the Respondent**

The Respondent requested this Court vide Memo No. 3198 dated 20.05.2022 to decide the Appeal on merits in view of judgment dated 05.10.2021 of the Hon'ble Supreme Court of India in Civil Appeal No. 7235/2009 titled as M/s. Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. & Ors., as the amount involved was high.

**(c) Submission during hearing**

During hearing on 02.06.2022, the Respondent reiterated the submissions made in the written reply to the Appeal/ additional submissions dated 20.05.2022 and prayed for the dismissal of the Appeal. He promised that disciplinary action shall be taken against delinquent officers/ officials who are responsible for this dispute case.

**5. Analysis and Findings**

The issue requiring adjudication is the legitimacy of the amount of ₹ 14,21,913/- charged due to overhauling of the account of the Appellant from 11.09.2014 to 16.11.2017 by applying

correct Multiplying Factor of 2 instead of 1 as reported vide Checking No. 01/149 dated 20.12.2017 of AEE/ DS Sub Division, Nathana.

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

- (i) The Appellant's Representative (AR) reiterated the submissions made in the Appeal. He pleaded that the Supplementary Demand dated 04.09.2018 as well as the order dated 07.01.2019 passed by the Forum suffered from patent error of law as well as facts on record. The Appellant had challenged the accuracy of the meter and in this regard had deposited the amount for the same on 10.01.2018. As per regulations of the Corporation, the meter had to be checked within a period of one month. Not only this, the meter had to be opened in the Lab in the presence of the Consumer. Both the requirements were not complied with. The Appellant had been visiting the Lab, but his meter was not checked and the matter was put off on one pretext or the other. A perusal of the Report of the Lab would reveal that Report was dated 09.04.2018 and the meter was shown having been received on 15.02.2018 in ME Lab. So the meter was not checked within 30 days in violation of the



regulations. Also, the meter was not checked in the presence of the Appellant. He further pleaded that the report of the Lab could not be relied upon in view of the above stated fact. But the Forum had relied upon the report of the Lab to hold that the meter was OK and the supplementary demand had been made only on account of the fact that multiplying factor was wrongly applied. He further submitted that there was no finding in the impugned order that during the period from 11.09.2014 to 16.11.2017, no checking was done by the officials of the Corporation. It cannot be believed that for a period of 3 years no checking was done. The officials of the Corporation used to record the meter readings, regular bills were issued, while issuing the bills not only the reading was checked but the entire set up was seen. The officials regularly visited the spot to see that the meter and other things were in order at the site. If no checking was done, it was the fault of the Corporation. The Appellant cannot be made to suffer. If the officials of the Corporation had applied wrong multiplier, the consumer cannot be made to suffer. The Appellant paid the bills whatever they were sent to him. Now, after a lapse of so many years, the Appellant cannot be penalized. If the average bills prior to 11.09.2014

are compared with the bills issued during the said period, it would be seen that there was no variation. The consumption had virtually remained the same. The Appellant prayed that the Appeal may be accepted and the demand of ₹ 14,21,913/- issued vide Memo No. 1958 dated 04.09.2018 as well as the order passed by the Forum dated 07.01.2019 may kindly be set aside.

- (ii) On the other hand, the Respondent controverted the pleas raised by the Appellant in its Appeal and reiterated the submissions made by the Respondent in the written reply. The Respondent argued that no undue charges had been imposed on the Appellant and the Appellant was only asked to pay the amount pertaining to the electricity actually consumed by him. He further submitted that the challenged meter was sent to ME Lab, Bathinda for checking. The Meter Challan bore the signatures of the Appellant's representative. He had submitted his consent to accept the result of ME Lab, Bathinda and not to put any claims thereafter. The challenged meter was checked by authorized officers and checking report along with notice dated 04.09.2018 was served accordingly. As per the ME Lab Test Report, the working of meter was found OK. The order

passed by the Forum dated 07.01.2019 and supplementary demand raised dated 04.09.2018 were based on Supply Code, 2014 Regulation No. 21.5.1 Note reproduced as under:

*“Where accuracy of the 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.”*

The Respondent further argued that the Appellant’s account had been overhauled by taking monthly consumption and correct Multiplication Factor into consideration. The alleged comparison of consumption prior to and after 11.09.2014 was denied as the working of challenged meter was found ‘OK’ by ME Lab, Bathinda. The consumption pattern of any consumer may depend upon several factors. He requested this Court to decide the Appeal on merits in view of judgment dated 05.10.2021 of the Hon’ble Supreme Court of India in Civil Appeal No. 7235/2009 titled as M/s. Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. & Ors. and prayed for the dismissal of the Appeal.

(iii) The Forum in its order dated 07.01.2019 observed as under:

“Forum observed that Clause 21.5 of Supply Code 2014 > Overhauling of Consumer Accounts > Note to Clause 21.5.1: Inaccurate Meters reproduced 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."

As the account of the Petitioner was overhauled after a period of 38 months and charged amount is around Rs.14,21,913/-. Accordingly, Forum was of the view that to avoid any immediate financial burden on the Petitioner the Petitioner be provided an option to pay the charged amount in reasonable monthly installments. Accordingly, Petitioner was asked to give an undertaking to pay the assessed amount in installments without charging interest. However, Petitioner did not exercise the option. In spite of this, Forum is still of the view that though the Petitioner has not opted for installments but merit of the case demands that the petitioner be given an opportunity to deposit assessed amount of Rs.14,21,913/- in twelve equal monthly installments without charging interest along with payment of current monthly energy bills.

In view of above, Forum is of the opinion that supplementary notices' issued to the Petitioner to deposit Rs.14,21,913/- vide Memo No. 74 dated 15.01.2018 & Memo No. 1958 dated 04.09.2018 after overhauling of the Petitioner's account from 11.09.2014 (i.e. date of replacement of meter) to 16.11.2017 by applying correct multiplying factor 2.00 instead of 1.00 as reported vide Checking No. 01/ 149 dated 20.12.2017 is justified and recoverable as per Note to Regulation 21.5.1 of Supply Code 2014 and amount be recovered in twelve equal monthly installments without charging interest along with payment of current monthly energy bills."

- (iv) I have gone through the written submissions made by the Appellant in the Appeal, written reply of the Respondent as well as oral arguments of both the parties during the hearing on 02.06.2022. The Appellant's account was overhauled on the basis of the Checking No. 01/149 dated 20.12.2017 of AEE, DS Sub Division Nathana and ₹ 14,21,913/- was charged to the Appellant due to overhauling of the account

of the Appellant from 11.09.2014 to 16.11.2017 by applying correct Multiplying Factor of 2 (two) instead of 1 (one) and the Appellant was given 15 days to deposit the amount vide notice no. 74 dated 15.01.2018. The Appellant challenged the working of the meter by depositing ₹ 2,500/- as meter challenge fee vide BA16 No. 328/50114 dated 10.01.2018. The meter was found OK as per the ME Lab report sent to the Respondent vide Memo No. 386 dated 09.04.2018. So, the Respondent again issued notice to the Appellant vide Memo No. 1958 dated 04.09.2018 to deposit the said amount in 15 days. The Appellant approached the Forum against this amount charged, but the Forum decided that the said amount was recoverable. Hence, the Appellant filed an Appeal in this Court.

- (v) After registration of Appeal on 31.01.2019, the hearing was held on 18.04.2019. During the hearing, the Appellant's Representative (AR) placed reliance on the order dated 20.09.2018 of the Hon'ble Punjab and Haryana High Court in CWP No. 2539 of 2017 (O&M) titled Surinder Kaur V/s Ombudsman/ Electricity Pb. and Others deciding as under:

*“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.”*

Further the AR added that though the order *ibid* was challenged by the PSPCL vide LPA No. 7732/2018 before the Division Bench of the Hon'ble Punjab and Haryana High Court for stay and quashing of order dated 20.09.2018, a decision on the stay application was still pending. The AR then prayed that the adjudication of the present Appeal may be deferred till the decision of the Hon'ble Punjab and Haryana High Court in the LPA No. 7732 of 2018. On request of the AR and in view of pendency of said LPA No. 7732 of 2018, the Appeal was adjourned sine die.

- (vi) In the LPA No. 7732 of 2018 filed by the PSPCL before the Division Bench of the Honorable Punjab and Haryana High Court, the PSPCL quoted decision of the Honorable Supreme Court in the matter of Swastic Industries V/s MSEB-1997 (9) SCC 465 with the relevant portion of the said judgment reproduced as under:-

“5. It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay

charges is another part of it. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24 to make demand for payment of the charges and on neglecting to pay the same they have the power to discontinue the supply or cut off the supply, as the case may be, when the consumer neglects to pay the charges. The intendment appears to be that the obligations are mutual. The Board would supply electrical energy and the consumer is under corresponding duty to pay the sum due towards the electricity consumed. Thus the Electricity Board, having exercised that power, since admittedly the petitioner had neglected to pay the bill for the additional sum, was right in disconnecting the supply without recourse to filing of the suit to recover the same. The National Commission, therefore, was right in following the judgment of the Bombay High Court and allowing the appeal setting aside the order of the State Commission. Moreover, there is no deficiency of service in making supplementary demand for escaped billing. There may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage to the consumers. That would be deficiency of service under the Consumer Protection Act. We do not find any illegality warranting interference.”

PSPCL further stated in the said LPA that the principle of escaped billing as has been approved by the Hon’ble Supreme Court in **Swastic Industries (Supra)**, has been accepted by various High Courts including the Hon’ble Delhi High Court, in **Jingle Bell Amusement Park Pvt Ltd. vs NDPL 2011**

**(123) DRJ447** wherein it was held as under:-

“11. I am in respectful agreement with the view taken by the High Court of Jharkhand. The case here of the respondent is that though the electricity consumed by the petitioner from 30th November, 2002 to July, 2003 was more; that the bill was raised for a lesser consumption

owing to the inadvertent application of a wrong multiplying factor. Thus, the entire electricity claimed to have been consumed by the petitioner cannot be said to have been billed by the respondent. To that part of the electricity consumed and for which no bill was raised, the dicta in *H.D. Shourie* (supra) will clearly apply. *H. D. Shourie* cannot be read in a restrictive way to hold that even if the units consumed are say 100 but bill is erroneously raised for 10 units only, the claim for the balance 90 units for which no bill has been raised would also stand barred by time.

**12.** I find that the Division Bench of the Bombay High Court in *Rototex Polyester v. Administrator, Admn. of Dadra & Nagar Haveli Electricity Dept., MANU/MH/0760/2009* in identical facts held that in case the consumer is under-billed on account of clerical mistake such as where the multiplication factor had changed, but due to oversight the department issued bills with 500 as multiplication factor instead of 1000, the bar of limitation cannot be raised by the consumer. It was held that the revised bill amount would become due when the revised bill is raised and Section 56(2) of the Act would not come in the way of recovery of the amount under the revised bills.

**13.** Having held against the petitioner on the aspect of limitation, this writ petition is not maintainable owing to the alternative remedies available under Section 42(5) or 42(6) of the Act.”

PSPCL further stated that the aforesaid disposition of law has also been approved by the Hon’ble Bombay High Court and the Hon’ble Jharkhand High Court in the following cases and reliance is placed upon the same: -

- i.* Drum Manufacturing Company Pvt. Ltd. v. The Municipal Corporation of Greater Bombay AIR 1978 Bombay 369
- ii.* H. D. Shourie v. Municipality of Delhi 32 (1987) DLT 73 : 1987 (13) DRJ 225



- iii. MCD (DESU) v. H. D. Shourie 53 (1993) DLT 1
- iv. NDPL v. Delhi Bottling Company Ltd. LPA No. 356/2007, dt. 24.04.2009
- v. Ram Kishan v. NDPL 130 (2006) DLT 549 (DB)
- vi. Rototex Polyester v. Administrator, Admn. of Dadra & Nagar Haveli Electricity Dept. MANU/MH/0760/2009
- vii. Tata Steel Ltd. v. Jharkhand State Electricity Board AIR 2008 Jhar 60

(vii) Now, the Respondent requested this Court vide Memo No. 3198 dated 20.05.2022 to decide the Appeal on merits in view of judgment dated 05.10.2021 of the Honorable Supreme Court in Civil Appeal No. 7235/2009 titled as M/s. Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. &Ors., as the amount involved was high.

(viii) I had gone through the above mentioned judgment of the Hon'ble Supreme Court of India. The Hon'ble Supreme Court had observed in its judgment dated 05.10.2021 as under: -

*“The raising of an additional demand in the form of “short assessment notice”, on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it was not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned*

*order correctly points out that it is a case of “escaped assessment” and not “deficiency in service”.*

(ix) I am of the opinion that the above judgment of the Hon’ble Supreme Court is applicable to the facts of the present case. The amount of ₹ 14,21,913/- charged to the Appellant due to overhauling of the account from 11.09.2014 to 16.11.2017 by applying correct Multiplying Factor (MF) of 2 (two) instead of 1 (one) was an “escaped assessment” which was detected by the Respondent after the checking of the Appellant’s premises vide Checking No. 01/149 dated 20.12.2017 in which it was found that the MF was 2, but the Appellant was being billed at MF = 1. Also the working meter of the Appellant was found OK in ME Lab. The Appellant was charged for the electricity actually consumed by it which was earlier not charged due to the mistake of the officials of the Respondent. Hence, the amount of ₹ 14,21,913/- charged to the Appellant is fully recoverable from the Appellant being escaped assessment.

(x) In view of the above and in light of judgment dated 05.10.2021 of the Hon’ble Supreme Court in Civil Appeal No. 7235/2009 titled as M/s. Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. & Ors., this Court is not inclined to

interfere with the decision dated 07.01.2019 of the Forum in Case No. CG-385 of 2018.

- (xi) The Respondent should conduct an inquiry into the lapses and fix responsibilities of the delinquent officials/ officers who failed to perform their duties resulting in financial loss to the Licensee and undue harassment to the Appellant.
- (xii) The Respondent had not challenged the decision of the Forum in any Competent Court till now. It means that the Respondent agrees with the decision of the Forum dated 07.01.2019 in Case No. CG-385 of 2018.
- (xiii) The Appellant had not challenged about the correctness of Multiplying Factor made applicable in the demand raised vide Memo No. 1958 dated 04.09.2018. Further, the correctness of amount charged (₹ 14,21,913/-) is not disputed by any party in this Appeal case.

## **6. Decision**

As a sequel of above discussions, the order dated 07.01.2019 of the CGRF, Patiala in Case No. CG-385 of 2018 is hereby upheld.

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

**8.** As per provisions contained in Regulation 3.26 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman)

Regulations-2016, the Licensee will comply with the award/ order within 21 days of the date of its receipt.

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.

June 02, 2022  
S.A.S. Nagar (Mohali)

(GURINDER JIT SINGH)  
Lokpal (Ombudsman)  
Electricity, Punjab.