

**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. 61/2021

Date of Registration : 16.08.2021

Date of Hearing : 27.08.2021

Date of Order : 27.08.2021

Before:

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

In the Matter of:

Bahia Heights,
DSB Complex, New Cloth Market,
Mall Road, Bathinda-151001

Contract Account Number: 3004858006 (NRS)
...Appellant

Versus

Additional Superintending Engineer,
DS Division, PSPCL, Bathinda.

...Respondent

Present For:

Appellant: Sh. Bikramjeet Singh,
Owner (Appellant).

Respondent : Er. Hardeep Singh,
Additional Superintending Engineer,
DS Division, PSPCL,
Bathinda.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 14.07.2021 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-173 of 2021, deciding that:

“The petitioner’s account has been overhauled correctly by the respondent as per the provisions of Supply Code Regulation 2014 clause no. 21.5.1 and the amount of Rs. 12,78,539/- charged to the petitioner vide notice no. 1399 dated 29.06.2020 is recoverable. Further, the matter be investigated by the respondent for taking remedial measures to avoid such type of deficiencies in future.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 13.08.2021 within thirty days of receipt of copy of decision of the Forum dated 14.07.2021 by the Appellant vide Memo No. 1696/CGP-173/2021 dated 15.07.2021. The Appeal was not accompanied with the requisite 40% of the disputed amount as per provisions made under Regulation 3.18 (iii) of PSERC (Forum and Ombudsman) Regulation, 2016 and as such, the Appellant was requested vide Memo No. 1127/OEP/New Appeal dated 13.08.2021 to deposit requisite 40% of the disputed amount.

Later on, the Appellant submitted copies of receipts showing payment of ₹ 49,999/- dated 01.02.2021, ₹ 49,999/- dated 03.02.2021, ₹ 49,999/- dated 05.03.2021, ₹ 49,999/- dated 09.03.2021, ₹ 49,999/- dated 12.03.2021, ₹ 49,999/- dated 15.03.2021 and ₹ 1,599/- dated 16.03.2021, No. 163730195 dated 16.08.2020 for ₹ 2,09,823/-. Thus, the Appellant deposited ₹ 5,11,416/- which was requisite 40% of the disputed amount of ₹ 12,78,539/-. Therefore, the Appeal was registered and copy of the same was sent to the Addl. Superintending Engineer/ DS Division, PSPCL, Bathinda for sending written reply/ para wise comments with a copy to the office of the CGRF, Patiala under intimation to the Appellant vide letter nos. 1136-38/OEP/A-61/2021 dated 16.08.2021.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 27.08.2021 at 01.30 PM and an intimation to this effect was sent to both the parties vide letter nos. 1151-52/OEP/A-61/2021 dated 18.08.2021. As scheduled, the hearing was held and arguments were heard of both parties.

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 submissions made by the Appellant's Representative and the Respondent along with 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 Non Residential Category Connection bearing Account No. 3004858006 with sanctioned load of 89.973 kW and Contract Demand (CD) as 90 kVA.
- (ii) The premises of the Appellant were checked by the Respondent on 24.06.2020. The Appellant received a letter on 29.06.2020 from the Respondent bearing Memo No. 1399 mentioning that due to clerical mistake of the Respondent, the multiplying factor was wrongly set at one whereas according to the CT/ PT Ratio, it should have been at 2. Therefore, the Appellant was charged ₹ 12,78,539/- for power factor difference by the Respondent .
- (iii) The Appellant had written a letter dated 06.07.2020 to the Respondent and had sought the monthly details of the amount charged. The Appellant received a letter on 06.08.2020 from the Respondent vide Memo No. 1803 containing the required

details. This unexpected amount was charged to the Appellant by the Respondent for no fault of the Appellant at the time of Covid-19 Pandemic when Hotel Industry was already running in losses. The Appellant was a layman and was totally unaware of the erroneous calculation of bills made by the Respondent. The Appellant used to make the payments of the bills regularly as raised by the Respondent.

- (iv) The Appellant was charged with the surcharge in its monthly bills for the delays on the part of the Respondent. The Appellant was willing to pay the amount since its beginning, once it stood corrected and would pay it without any further delay.
- (v) The Appellant had filed a petition before the Forum on 15.04.2021 claiming that it should not be charged for more than 24 months as per the limitation period provided under Section 52 clause 2 of the Electricity Act, 2003 and the petition of the Appellant was decided on 14.07.2021 by the Forum.
- (vi) The Appellant was asked by the Respondent vide its Memo No. 343 dated 18.01.2021 to make the payment of the amount in 15 instalments and the Appellant never contested against the instalments in the case before the Forum.

- (vii) The Appellant had approached the Respondent for compliance of Memo No. 1696/CGP-173/2021 dated 15.07.2021 of the Forum for making the payment but the Respondent had asked the Appellant to pay the due amount in one instalment with the plea that after going to the Forum, the Appellant had forfeited its right to 15 instalments.
- (viii) The Forum had not mentioned anything about the waiver of surcharge as the same was incorrectly levied on the Appellant. The delay was due to the fact that the matter was sub-judice and Lockdown was imposed by the Govt. due to Covid-19 Pandemic. The Forum while denying the claim of the Appellant referred the case titled as Surinder Kaur Versus Ombudsman Electricity Punjab & Others wherein the Court in the said case had given relief from surcharge and interest during the period when the matter was pending for consideration.
- (ix) The Appellant had prayed to this Court to direct the Respondent to allow the payment of due amount in 20 instalments as the Hotel Industry was already running in losses and unsolicited penalty had been levied on the Appellant at the time when the economy of the World had suffered due to Covid-19 Pandemic. The Appellant had also prayed for waiver off surcharge and interest on the penalty.

(b) Submission during hearing

During hearing on 27.08.2021, the Appellant's Representative reiterated the submissions made in the Appeal and prayed to allow the relief claimed in the Appeal.

(B) Submissions of the Respondent

(a) Submissions in written reply

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

- (i) The Appellant was having a Non- Residential Supply Category Connection, with sanctioned load of 89.973 kW and CD as 90 kVA for its Hotel known as Bahia Heights. The connection was released on 21.03.2018. The Appellant had made payment of ₹ 5,11,416/- towards 40% of disputed amount.
- (ii) The Appellant had been getting electricity bills with multiplying factor as one (MF=1) under SAP System. As per ECR No. 20/391 dated 09.06.2020, it was found that multiplying factor of the connection of the Appellant should be 2 instead of 1. Another checking was done by the Field Officers vide ECR No. 14/89 dated 24.06.2020 and thereafter, multiplying factor in respect of the Appellant in SAP system was corrected w.e.f. 13.05.2020. Accordingly, the account of

the Appellant was overhauled and a sum of ₹12,78,539/- was calculated for the period from 21.03.2018 to 13.05.2020 as per Regulation No. 21.5 of Supply Code , 2014. Thereafter, Notice No. 1399 dated 29.06.2020 was served upon the Appellant. The amount charged to the appellant was correct and recoverable as per Regulation No. 21.5.1 of Supply Code, 2014. As per the provisions made in the ibid Regulation, the Account of the consumer (Appellant) can be overhauled for the period the mistake continued.

- (iii) The Appellant had applied for payment of outstanding amount of ₹ 12,78,539/- in 15 instalments but the Appellant had not fulfilled the conditions mentioned in letter No. 23769 dated 23.12.2020 which was approved by SE/ DS Circle, Bathinda. In the correspondence of above letter, intimation was given to the Appellant vide letter no. 343 dated 18.01.2021 from the office of the Respondent. After this letter, the Appellant had raised some queries about payment, then letter no. 577 was issued to the Appellant on 09.02.2021. Another letter No. 1066 dated 22.03.2021 was also issued to consumer for clarification of amount. So, the payment of ₹ 12,78,539/- was recoverable from the Appellant.

- (iv) The Appellant had filed a petition against the said demand before the Forum and the Forum had also held that the account of the Appellant was overhauled correctly and the amount charged to the Appellant was recoverable. After the decision of the Forum, another letter bearing Memo No. 2755 dated 23.07.2021 was issued to the Appellant for making payment of outstanding amount of ₹ 13,37,040/-.
- (v) The Respondent had prayed to dismiss the Appeal.

(b) Submission during hearing

During hearing on 27.08.2021, the Respondent reiterated the submissions made by it in the written reply and contested the submissions of the Appellant's Representative. He had requested for dismissal of the Appeal of the Appellant.

5. Analysis and Findings

The issue requiring adjudication is legitimacy of demand of ₹ 12,78,539/- raised vide Memo No. 1399 dated 29.06.2020. The prayer of the Appellant to allow him to make payment of due amount in 20 instalments without Surcharge and Interest also needs examination.

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

- (i) The Appellant's Representative pleaded that unexpected heavy amount was charged by the Respondent for no fault of the Appellant at the time of Covid-19 Pandemic when Hotel Industry was already running in losses. The Appellant was a layman and he was totally unaware of the erroneous calculation of bills made by the Respondent. The Appellant had been making the payment of the bills raised by the Respondent regularly. The Forum had not mentioned anything about the waiver of surcharge as it was incorrectly levied on the Appellant because the delay was due to the fact that the matter was sub-judice and Lockdown was imposed by the Govt. due to outbreak of Covid-19 Pandemic. The Appellant had contended that the account should not be overhauled for more than 24 months as per limitation period provided under Section 52 (2) of the Electricity Act, 2003. The Appellant had prayed for payment of the amount due in 20 instalments and for waiver of surcharge and interest on the amount charged.
- (ii) The Respondent refuted the pleas taken by the Appellant and stated that the connection of the Appellant was checked vide ECR No. 20/391 dated 09.06.2020 and again vide ECR No. 14/89 dated 24.06.2020. It was found by the Respondent during checking that the billing of the Appellant was being done with

multiplying factor as 1 (one) instead of multiplying factor of 2 (two). The account of the Appellant was rightly overhauled as per Regulation No. 21.5.1 of Supply Code, 2014 for the period from 21.03.2018 to 13.05.2020 and the Appellant was rightly charged for ₹ 12,78,539/- vide Memo No. 1399 dated 29.06.2020. The Respondent had drawn the attention of this Court to note under Regulation No. 21.5.1 which is reproduced below:-

“Note: 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.”

- (iii) It is observed that the account of the Appellant for the period 21.03.2018 to 13.05.2020 by applying multiplication factor of two was rightly overhauled as per Note under Regulation No. 21.5.1 of Supply Code, 2014. The demand raised vide Memo No. 1399 dated 29.06.2020 is thus fully recoverable.
- (iv) The Appellant had contended in the Appeal that he should not be charged for more than 24 months as per limitation period provided under Section 52 (2) of the Electricity Act, 2003. Section 52 of the Electricity Act, 2003 is reproduced as below:-

“52. Provisions with respect to electricity trader.

(1) Without prejudice to the provisions contained in clause (c) of section 12, the Appropriate Commission may, specify the technical requirement, capital adequacy requirement and credit worthiness for being an electricity trader.

(2) Every electricity trader shall discharge such duties, in relation to supply and trading in electricity, as may be specified by the Appropriate Commission.”

The perusal of above section of the Act reveals that there is no mention about limitation period of 24 months. As such, the request of the Appellant to restrict overhauling of account for 24 months prior to date of checking (09.06.2020) cannot be acceded to.

- (v) The Appellant was charged for half consumption during the period 21.03.2018 to 13.05.2020 due to application of wrong multiplication factor by the Respondent and thus he was benefitted for about 26 months due to mistake of the Licensee. Now, the Appellant is liable to pay surcharge/ interest on delayed payments after issuance of demand vide Memo No. 1399 dated 29.06.2020. Surcharge/ interest shall be leviable as per regulations and tariff orders of PSERC. I am not inclined to

give any benefit by waiving off Surcharge/ Interest on delayed payments. The Respondent may consider the request/ prayer of the Appellant to allow the payment of due amount in instalments as per instructions of PSPCL keeping in view the hardships being faced by Hotel Industry.

- (vi) The Forum in its order dated 14.07.2021 had observed at page 5 as under :-

“Forum observed that the meter installed in the premises of petitioner has a meter ratio of 100/5A and CTs installed has a ratio of 200/5A and the overall multiplying factor comes out to be 2 but MF of 1 was being applied during the disputed period. There is a deficiency on the part of the respondents as correct bills were not issued to the petitioner from the date of release of connection on 21.03.2018. Petitioner during the course of proceedings stated that he is agreeable to levying of wrong MF but requested for overhauling of his account for a period of 24 months instead of 26 months. Petitioner also requested for waiving off surcharge levied upon him due to non-payment of disputed amount. Petitioner submitted copies of Judgment dtd 01.02.2016 of Hon'ble Punjab & Haryana High Court in CWP no.

4184 of 2012 and decision dtd 29.10.2013 of State Consumer Dispute Redressal Commission, Punjab in Appeal no. 1467/2010. Forum after going through these judgments is of the view that these decisions are not directly applicable in the instant case as Supply Code Regulation 2014 clause no. 21.5.1 relating to overhauling of consumer accounts in case of inaccurate metering states that "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".

This Court agrees with above observations of the Forum.

- (vii) The Forum had rightly decided that the account of the Appellant had been overhauled correctly by the Respondent as per provisions of Regulation No. 21.5.1 of Supply Code, 2014 and the amount was rightly charged to it. The Appeal is hereby rejected after due consideration of all the facts of the case.
- (viii) The Respondent should take appropriate measures to avoid recording of wrong multiplication factors in the future.

6. Decision

As a sequel of above discussions, the order dated 14.07.2021 of the CGRF, Patiala in Case No. CGL-173 of 2021 is 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.

August 27, 2021
S.A.S. Nagar (Mohali)

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