**COURT OF THE LOKPAL (OMBUDSMAN), ELECTRICITY, PUNJAB,**

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

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

 **APPEAL NO. 69/2019**

**Date of Registration : 26.12.2019**

**Date of Hearing : 05.02.2020**

**Date of Order : 07.02.2020**

**Before:**

**Er. Gurinder Jit Singh,**

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

**In the Matter of :**

Sanjeev Batra,

c/o Sant Footwears,

Chaura Bazar,

Ludhiana

 ...Appellant

 versus

Senior Executive Engineer,

DS City Central Division (Special),

PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Appellant : Sh. Sukhminder Singh,

 Appellant’s Representative (AR)

Respondent : Er. S.S.Grewal,

 Senior Executive Engineer,

DS City Central Division (Special), PSPCL, Ludhiana.

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 29.10.2019 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-233 of 2019, deciding that :

*“ The consumption has been rightly billed to the Petitioner as per reading detected in ME Lab as well as MCO. Further the account of the Petitioner for the last six months from the date of removal of meter has also been rightly overhauled as per decision of ZLDSC with slowness factor of 31.06% as detected in ME Lab. Therefore, the decision of ZLDSC is upheld”.*

**2.** **Title of the Appellant to prefer the Appeal**

The present Appeal was submitted for registration in this Court on 26.12.2019 by Sh. Sukhminder Singh, mentioning the name of the consumer as Sh. Puran Chand c/o Standard Hotel, Chaura Bazar, Ludhiana in whose name, the disputed connection existed as per records. From the perusal of record of CGRF, it was noticed that the said premise (property) was purchased by Sh. Anil Batra and Sh. Sanjeev Batra and further given on lease on 10.12.2009 to Sant Footwears (P) Ltd. through Sh. Sarabjit Singh Kakkar and the period of lease was upto 30.11.2018 which was extended upto 31.3.2025.

After perusal of the Appeal and related documents, a reference was made to Sh. Sarabjit Singh, ( who signed the Appeal on behalf of Sh.Puran Chand) c/o Sant Footwears, Chaura Bazar, Ludhiana, vide this office Memo No.33/OEP/A-69/2019 dated 16.01.2020, informing him that the premise at which the Electricity connection was installed, was in the name of Sh. Puran Chand c/o Standard Hotel, Chaura Bazar, Ludhiana, hence, he was not a consumer of the Licensee and was thus not eligible to prefer the present Appeal. Accordingly, Sh. Sarabjit Singh (Appellant) was requested to get the change of name effected by signing the Application and Agreement with the licensee for sanction of electricity connection in his favour at the earliest and before the date of hearing in this Court scheduled for 05.02.2020. A copy of the Memo referred to above was endorsed to the Sr. Executive Engineer, DS City Central Division (Special), PSPCL, Ludhiana for information.

A hearing was held in this Court on 05.02.2020 which was attended by the representative of both the Appellant and the Respondent. At the outset, the Respondent submitted an Application and Agreement dated 04.02.2020 duly signed by Sh. Sanjeev Batra (consumer) who purchased the property from Sh. Puran Chand and Sr.Xen, DS City Central Division (Special) Ludhiana as evidence of change of name of the holder of the connection in compliance to the observations/directions of this Court vide Memo No.33/OEP/A-69/2019 dated 16.01.2020. As a result, Account Number of the disputed connection was changed from 3002804066 to 3005380273 in the records of PSPCL. Besides, Appellant’s Representative submitted an authorisation from Sh. Sanjeev Batra to presnt/defend the case on behalf of the Appellant.

**3. Proceedings**

A hearing in this case was held on 05.02.2020 at 12:00 Hrs which was attended by the representatives of both the Appellant and the Respondent-PSPCL. A copy of proceeding of the hearing was sent to both the parties vide Memo No.90/91 dated 05.02.2020.

**4.** **Condonation of Dela**y

At the outset, the issue for condonation of delay in filing the Appeal in this Court was taken up. The Appellant’s Representative (AR) submitted that order dated 29.10.2019 of the CGRF, Ludhiana sent by Registered Post, vide Memo No.1820/21 dated 04.11.2019, was received by the Appellant on 08.11.2019. However, the Appellant did not receive any revised Notice from the Respondent asking the Appellant to deposit the disputed amount as per decision of the Forum. The Appellant also took some time in arranging the funds to deposit the requisite amount for filing the Appeal in this Court. Finally, the Appellant deposited the requisite 20% of the original disputed amount of ₹2,38,166/- i.e. ₹47,633/- on its own on 11.12.2019. Thereafter, the Appellant linked up the relevant papers and filed the present Appeal on 26.12.2019 i.e. after a period of 48 days of receipt of the decision dated 29.10.2019 of the Forum. Appellant’s Representative (AR) prayed that delay of 18 days beyond the stipulated period of one month in filing the Appeal in this Court was due to reasons beyond its control and may be condoned in the interest of justice.

I find that the Respondent did not object to the request of the Appellant for condonation of delay either in its written reply to the Appeal or during the course of hearing.

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, it ought to have been vigilant and should have taken up and pursued the matter with the Respondent for issuance of revised Notice. Besides, the Appellant was expected to make earnest efforts well in time to arrange funds for deposit of the requisite fee in the office of the Respondent.

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 matter, 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 representatives of the Appellant and the Respondent along with material brought on record by both the sides.

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

The Appellant made the following submissions in the Appeal received on 26.12.2019 for consideration of this Court:

1. The Appellant was having a NRS category connection with

sanctioned load of 19 kW .

1. The reading of the Energy Meter was taken every month and

the bills as raised by the department from time to time, on the basis of measured consumption (except the disputed bill), were duly paid.

1. The bills for the period from 05.10.2018 to 29.10.2018 and

29.10.2018 to 29.11.2018 were issued on ‘P’ code for *₹*35,670 and *₹*23,500/- respectively and the same were paid in due course.

1. Thereafter, the energy bill of the Appellant for the

period from 01.12.2018 to 29.12.2018 was issued for *₹*2,88,530/- including arrears of *₹*272093/-(without any details). After receiving the abnormal bill, the Appellant approached the Chief Engineer/Central Zone, PSPCL, Ludhiana for Registration and Review of disputed case by the Zonal Dispute Settlement Committee (ZDSC). Accordingly, the case was registered after deposit of *₹*47,633/- as 20% of the disputed amount of *₹*2,38,166/-. However, ZDSC did not discuss any of the genuine pleadings of the Appellant and decided that ***“*** the amount charged to the consumer was in order and recoverable in accordance with the report issued by ME/Lab Ludhiana vide Challan No.2292 dated 22.11.2018***”.*** Further, the Committee directed the Respondent to take necessary action on the M.E. Laboratory Report regarding 31.06% slowness of the Energy Meter as per PSPCL instructions. On the basis of wrong and biased decision of the ZDSC, the AEE/Commercial, DS, City Central Division (Special), Ludhiana, vide Notice, bearing memo No.3304 dated 11.7.2019, further increased the disputed amount to *₹*4,97,134/- and after adjusting *₹*47,633/- (already paid) asked the Appellant to deposit *₹*4,49,501/-. The Appellant was not satisfied with the decision of the ZDSC, as such, filed a Petition No.CGL-233/2019 in the office of the CGRF, Ludhiana.

1. The Forum did not provide any relief to the Appellant in the

disputed amount as admissible on merit and upheld the decision of the ZDSC.

1. The normal monthly consumption of the Appellant was in

the range of 1000-3000 units and there may be some variation in the recorded consumption due to billing period being more than one month or due to some extra use of Air Conditioner for a particular period in summer.

1. The consumption was according to load used and was very

consistent. The consumption of 56,058 units from 05.10.2018 to 01.12.2018 as mentioned by the ZDSC in its decision and considered in order, (whereas the Respondent in its reply, mentioned the consumption as 29,505 units (26,893 units from old Energy Meter and 2612 units from new Energy Meter) was apparently abnormal/very much on the higher side (when compared with normal consumption pattern of the consumer) and the same was definitely due to some defect in the Energy Meter or sudden jumping of reading of the Energy Meter*.* The erratic behavior of the Energy Meter could also be authenticated from the consumption as recorded after the replacement of the Energy Meter in 11/2018. Moreover, the erratic behavior of the Energy Meter and recording of abnormal consumption could be ascertained from DDL and examination/analysis of DDL print-out. Thus, issuance of bill for the period 01.12.2018 to 29.12.2018 for *₹*2,88,530/- including arrears of *₹*2,72,093/- was unwarranted and unjustified and liable to be quashed.

1. It was not understood as to how, the ZDSC and the Forum

considered the consumption of 29,505 units from 05.10.2018 to 01.12.2018 as normal. The ZDSC did not mention anything in this regard. However, the Forum had wrongly concluded (without any evidence/basis) that the Appellant concealed the consumption of previous period.

1. Needless to mention here that jumping of reading of the Energy Meter could not be always established with checking of accuracy on Test Bench in M.E. Laboratory. However, the jumping of reading of the Energy Meter on a particular date/period could be ascertained after analysis of DDL print-out and consumption pattern of the consumer. In the case of the Appellant, DDL print-out was not available but jumping of reading/erratic behavior of the Energy Meter was evident from the consumption pattern, as explained above. This Court may consider to order taking of DDL print-out (if feasible) for analyzing the abnormal consumption or the actual consumption pattern before and after replacement of the Energy Meter may be considered while arriving at any conclusion in the case.
2. Although sanctioned load of the Appellant’s connection was

19 KW but normal use of load was only 3.5 kW at different time interval (especially in winter season) during the day. For the sake of arguments only, by considering sanctioned load of 19 kW and by applying the approved LDHF formula of PSPCL, the resultant consumption came to 2280 units (19 kW x 25 days x 12 hours x 0.40 Demand Factor). However, it was brought out that normal use of load was only 3.5 kW at different time intervals and during summer period, the use of load was 5.7 kW for a minimum time during the day. Therefore, by taking into consideration all these facts and figures, there may be hardly any doubt that consumption of 29,505 units as billed for the period 5.10.2018 to 1.12.2018, was definitely due to some defect in the old Energy Meter or sudden jumping of reading of the Energy Meter.

1. It was relevant to mention here that abnormal consumption

recorded during the period 05.10.2018 to 10.11.2018 (date of replacement of Energy Meter), was due to jumping of reading of the Energy Meter which was further increased by 31.06%**.** The ZDSC/CGRF should have considered the Energy Meter as erratic/defective and ordered the overhauling of account for the period 05.10.2018 to 10.11.2018, with consumption as recorded during corresponding period of previous year or on the basis of average of consumption as recorded after the replacement of the Energy Meter instead of on conjectures and surmises that the Appellant had concealed the consumption during the previous period.

1. The consumption recorded before 05.10.2018 of the Appellant’s connection was comparable with consumption of corresponding previous/succeeding period. As per calculation sheet provided by the Respondent, the consumption for the period 05.10.2018 to 09.11.2018 (35 days) had been considered as 26,893 units. After applying slowness factor of 31.06%, the resultant consumption worked out to 39,009 units for the period 05.10.2018 to 09.11.2018 (35 days).
2. Further, it was also brought out that the disputed consumption related to the period from 05.10.2018 to 09.11.2018 which was winter season period when Air Conditioner load was not in use. Needless to mention here that jumping of reading or the Energy Meter reading running without load could not be ruled out although the Energy Meter was alleged to be slow in M.E. Laboratory. Moreover, it was also mentioned in the LCR dated 29.10.2018 that working of the Energy Meter was checked after removing the grip/main switch, and pulse of the Energy Meter was found moving/blinking. This was also an evidence of the higher consumption for the period from 05.10.2018 to 09.11.2018.
3. The reading as per Load Checking Register (LCR) dated 29.10.2018 had been mentioned as 1,41,111 kWh whereas the reading at the time of replacement of the Energy Meter on 10.11.2018 was 1,53,584 kWh, which meant consumption of 12,473 units in a period of only 11 days i.e. per day consumption of 1,134 units, with connected load of less than 5 kW (excluding Air Conditioner’s load), which was next to impossible with accurate Energy Meter.
4. The Respondent, on one hand, had overhauled the account from 05/2018 to 11/2018 by considering slowness of 31.06%, but while comparing the consumption of 07/2018 (2,490 units as mentioned in the reply submitted to the Forum) with 07/2019 (3,231 units), alleged slowness factor had not been considered. If the consumption of 2,490 units (07/2018) was enhanced with slowness factor of 31.06%, then, it worked out to 3,612 units, which was more than the consumption of 07/2019.
5. The Forum had twisted the figures of consumption data/pattern to arrive at pre-determined conclusion that Meter Reader was not recording correct readings in the past and was probably not recording correct readings and accumulating the consumption. It was also mentioned that Forum was of the opinion that concealed consumption was rightly billed to the Appellant.

 The consumption of the Appellant for the 5 months of 2015 was 8519 units, for the year 2016 was 9,746 units, for 2017 was 11,544 units, for 2018 was 42,315 units including disputed consumption of 26,553 units and for 10 months of 2019 was 18,865 units. Further, when the consumption 42,315 units for 2018 was further enhanced by slowness factor of 31.06%, then, for 5 months, the consumption worked out to 61,380 units, which was more than 325% of consumption of even for 10 months as recorded in the year 2019. Further, consumption during 05/2018 to 10/2018 i.e. 6 months came to 9,562 units and after enhancement by slowness factor of 31.06%, it worked out to 13,870 units which was almost matching with the consumption of 13,943 units as recorded for the same period of the year 2019. Thus, the consumption from old Energy Meter for the period from 05.10.2018 to 09.11.2018 (35 days) as 26,893 units was definitely due to some erratic behaviour of the Energy Meter.

1. In view of the submissions made above, the order of the Forum be set aside and Appeal may be allowed in the interest of natural justice and fairness.
2. **Submissions during Hearing**

The Appellant’s Representative reiterated the submissions already made in the Appeal and prayed for allowing the same.

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

The Respondent, in its defence, submitted the reply/para wise comments, vide Memo No.306 dated 22.01.2020 for consideration of this Court**:**

1. The Appellant was having a NRS Category connection with

sanctioned load of 19 kW for which, the Metering was being done by providing Three Phase Four Wire, Whole Current Static Energy Meter of capacity 10-40 Ampere.

1. The working of the Energy Meter was checked by the Junior Engineer on the request of the Appellant vide Load Checking Register (LCR) No.84/1609 dated 29.10.2018 and found that the Connected Load (CL) was 18.920 kW and reading of the Energy Meter as 1,41,111 kWh. The Junior Engineer also reported that the Energy Meter’s pulse was blinking even after removing the Grips/switching off the Main Switch. As a result, the Junior Engineer directed the Appellant to challenge the Energy Meter and get it checked from M.E. Laboratory.
2. Accordingly, the Energy Meter was challenged by the Appellant and the same was replaced vide Device Replacement Application No.100006849038 dated 30.10.2018, affected on 10.11.2018. The removed Energy Meter was checked on 22.11.2018 in M.E. Laboratory which declared the same burnt and found it running slow by 31.06%. The reading was noted as 1,53,584 kWh. The DDL of the Energy Meter was not taken because the Energy Meter was not having Optical Port i.e the Energy Meter was of old version.
3. The Appellant was issued Bill dated 29.10.2018 for the period from 05.10.2018 to 29.12.2018 for 340 units, amounting to ₹ 35,670/- in which Arrear of current Financial Year was added, amounting to ₹28,842/- .
4. As per the report of M.E. laboratory, a bill-cum- Notice to deposit ₹2,38,166/- was issued to the Appellant as per final reading of the Energy Meter.
5. Aggrieved with the above Notice, the Appellant filed a Petition on 28.03.2019 in the Zonal Dispute Settlement Committee (ZDSC) who, after hearing, decided the case on 15.05.2019 that the amount charged to the consumer was in order and recoverable in accordance with the result issued by M.E Lab, Ludhiana vide Challan No.2292 dated 22.11.2018. Further, the Committee directed the Presenting Officer (PO) to take necessary action on M.E Lab report regarding 31.06% slowness of Energy Meter as per PSPCL instructions.
6. As per the above decision of ZDSC, a Notice dated 21.07.2019 was issued to the Appellant to deposit ₹ 4,49,501/-. Subsequently, this amount was revised to ₹ 3,94,976/- due to calculation mistake**.**
7. Not satisfied with the decision of the ZDSC, the Appellant filed an Appeal dated 11.09.2019 in the CGRF, Ludhiana who, after hearing, decided that the consumption had been rightly billed to the Appellant as per reading detected in M.E laboratory as well as in Device Application Replacement. The Forum observed that account of the Appellant for the last six months from the date of removal of Energy Meter had also been rightly overhauled as per decision of ZDSC with slowness factor of 31.06% as detected in M.E laboratory and upheld the decision of ZDSC.
8. The readings of the Energy Meter of the Appellant were recorded every month. The Forum studied the consumption pattern and observed in its decision that the consumption, after replacement of the Energy Meter, from 08/2019 to 10/2019 had increased appreciably and consumption in the year 2015 during these months was quite high. So, the Forum observed that the Meter Reader was not recording correct reading in the past and probably accumulated the consumption. The averments of the Appellant regarding erratic behavior of the Energy Meter and abnormal consumption were deliberated by the Forum in its decision. The Energy Meter was not having Optical Port, hence, DDL could not be taken.
9. The Forum had explained properly as to how it arrived at the decision of accumulation of the previous consumption. The ME Lab report dated 22.11.2018 was correct.
10. The consumption recorded during the period in the month of 08/2019 was 3,232 units & in 09/2019 was 4,486 units and in 10/2019 was 4,743 units which was above than worked out as per the LDHF formula. So, the contention of the Appellant that it was using load of 5.7 kW was wrong and denied. The contention of consumption of 29,505 units for the period from 05.10.2018 to 01.12.2018 was wrong, it was actually accumulated consumption.
11. The Forum observed that Junior Engineer has not given correct report regarding working of Energy Meter. So, the Junior Engineer’s report could not be relied upon. The Appellant was billed according to recorded consumption and ME Lab report of slowness of Energy Meter to the extent of 31.06%.
12. The consumption after levying slowness factor in the month of 07/2018 came to 3,612 units, which was comparable with the consumption for 07/2019 i.e. 3,231 units.
13. In view of the submissions made above, the Appeal was without merit and may be dismissed.
14. **Submissions during Hearing**

During the course of hearing, the Respondent reiterated the submissions made in its written reply. In addition, he emphasized that the present case was of inaccurate Energy Meter. As such, the account of the Appellant was required to be overhauled on the basis of energy consumption of corresponding period of previous year with slowness factor of 31.06 % in terms of provisions contained in Regulation No. 21.5.1 of Supply Code-2014.

**4.** **Analysis and Findings**

The issue requiring adjudication is the legitimacy of the overhauling of the account of the Appellant for six months prior to the replacement of the Energy Meter dated 10.11.2018 and charging it with the slowness factor of 31.06% as per applicable Regulations.

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

1. The dispute arose after the connection of the Appellantwas checked was by the Junior Engineer on the request of the Appellant vide Load Checking Register (LCR) No.84/1609 dated 29.10.2018 as per which, it was reported that the Connected Load (CL) was 18.920 kW and reading of the Energy Meter as 1,41,111 kWh. The said Junior Engineer also reported that the Energy Meter’s pulse was blinking even after removing the Grips/switching off the Main Switch. Thereafter, the Energy Meter was challenged by the Appellant and the same was replaced on 10.11.2018. The removed Energy Meter was checked on 22.11.2018 in the M.E. Laboratory which declared the same burnt and found it running slow by 31.06%. As per M.E Lab. Report, the Energy Meter was dead on Blue Phase and the reading noted as 1,53,584 kWh. The DDL of the Energy Meter was not taken because the Energy Meter was not having Optical Port i.e the Energy Meter was of old version.
2. A perusal of the consumption data placed on record reveals that the bills for reading taken on 05.10.2018, was issued on ‘O’ Code for the consumption of 931 units, for the reading taken on 29.10.2018, the bill was issued for 340 units on ‘P’ Code and for reading taken on 09.11.2018, it was issued on ‘E’ Code for the consumption of 26,553 units.

 I observe that the ZDSC as well as the Forum erred in giving its findings on the plea of accumulation of consumption by the Meter Reader instead of considering the M.E. Laboratory Report declaring the disputed Energy Meter as burnt. It is also observed that the reading of the Energy Meter at the time of checking of connection at site on 29.10.2018 by the Junior Engineer was 1,41,111 kWh while in the M.E. laboratory, the reading noted was 1,53,584 kWh on the date of removal of the Energy Meter i.e. 10.11.2018. This implied that the Energy Meter recorded 12,473 units in 12 days giving an average of 1049.41 units per day, which was due to creeping of Energy Meter as noted by the Junior Engineer during the checking. Even with the LDHF formula, the consumption per month works out to 2280 units (19 kW x 25days x 12 hours x 0.40 Demand Factor). This shows that the Energy Meter was defective/burnt as declared by the M.E Laboratory.

I find that the Respondent pleaded during hearing in this Court on 05.02.2020 that the disputed Energy Meter was inaccurate as it was found slow in the M.E. Laboratory by 31.06% i.e. the Energy Meter was dead on Blue Phase. The Respondent emphasized that the decision of ZDSC upheld by the Forum to overhaul the account of the Appellant for six months prior to replacement of disputed Energy Meter on 10.11.2018 with the application of slowness factor of 31.06 % was correct in terms of provisions of Regulation 21.5.1 of Supply Code-2014. I observe that burning of Blue Phase CT/Lead inside the disputed Energy Meter implied that the disputed Energy Meter was burnt. Hence, the Energy Meter was not inaccurate but it was burnt out for which the provisions contained in Regulation 21.5.2(a) of Supply Code-2014 are relevant/applicable. Hence, the account of the Appellant be overhauled as per provisions contained in Regulation 21.5.2(a) of Supply Code-2014.

6. **Decision**

**As a sequel of the above discussions, the order dated 29.10.2019 of the CGRF, Ludhiana, in Petition No. CGL-233 of 2019, is set aside. It is held that the account of the Appellant shall be overhauled as per provisions contained in Regulation 21.5.2(a) of Supply Code-2014. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short after adjustment, if any, without surcharge/interest.**

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

**8.** 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)

February 07, 2020 Lokpal (Ombudsman)

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