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

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

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

 **APPEAL NO. 71/2019**

**Date of Registration : 30.12.2019**

**Date of Hearing : 18.02.2020**

**Date of Order : 25.02.2020**

**Before:**

**Er. Gurinder Jit Singh,**

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

**In the Matter of :**

Uplesh Kumar,

B-XXX/3588,

Gali No.4,

Heera Nagar, Ludhiana

 ...Appellant

 versus

Senior Executive Engineer,

DS CMC Division (Special),

PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Appellant : 1. Sh. Kanwarjit Singh, Advocate,

 Appellant’s Counsel (AC).

 2. Sh.Uplesh Kumar,

 Appellant

Respondent : Er. Sukhbir Singh,

 Senior Executive Engineer,

DS CMC Division (Special), PSPCL, Ludhiana.

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 13.11.2019 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-248 of 2019, deciding that :

*“ The decision taken by the ZLDSC in its meeting held on 15.05.2019 is upheld”.*

**2.** **Proceedings**

A hearing in this case was held on 18.02.2020 at 12.00 Noon and was attended by the representatives of both the Appellant (including the Appellant himself) and the Respondent-PSPCL. A copy of the proceedings was sent to the Appellant and the Respondent vide Memo No.135-136/OEP/A-71/2019 dated 18.02.2020.

**3.** **Submissions made by the Appellant and the Respondent**:

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

1. **Submissions made by the Appellant**:
2. **Submissions in the Appeal**

The Appellant made the following submissions in the Appeal received on 30.12.2019 for consideration of this Court:

1. The Appellant was having a Medium Supply category connection with sanctioned load of 59.728 kW and contract demand of 60 kVA.
2. The premise, where the electric connection was installed, was given on Rent. The tenants started shifting of its goods and machinery in 08/2018 to its new premise and vacated the premise of the Appellant in 10/2018. Due to this shifting, energy consumption of the Appellant’s connection decreased considerably.
3. Suddenly, in 10/2018, the Energy Meter installed in the premise of the Appellant was burnt and the tenant orally requested several times to the concerned AAE (Junior Engineer-1) for the replacement of the burnt Energy Meter, but all in vain.
4. The Appellant submitted an application in the office of the Respondent on 28.11.2018 for replacement of burnt Energy Meter. As a result, the burnt Energy Meter was replaced on 12.02.2019.
5. The respondent raised the following energy bills with ‘R’ Code on heavy average consumption:

|  |  |  |  |
| --- | --- | --- | --- |
| Bill Dated | Period | kVAh | Amount( *₹*) |
| 26.11.2018 | 05.10.2018 to 05.11.2018 | 17,851 | 1,17,354/- |
| 20.12.2018 | 05.11.2018 to 05.12.2018 | 15,541 | 99,767/- |

1. Thereafter, the Appellant submitted a written request on 26.12.2018 to the Respondent, on the basis of which, Load Checking Report, bearing No.23/970 dated 28.12.2018, was issued by the Respondent.
2. In the Checking Report, it had been mentioned that there was

no industrial load on the Energy Meter installed at the premise of the Appellant. In spite of having knowledge of the load, the Respondent continuously issued the following energy bills with ‘R’ Code on heavy average consumption:

|  |  |  |  |
| --- | --- | --- | --- |
| Bill Dated | Period | kVAh | Amount( *₹*) |
| 23.01.2019 | 05.12.2018 to 05.01.2019 | 19,950 | 1,22,886/- |
| 20.02.2019 | 05.01.2019 to 10.02.2019 | 21,804 | 1,38,953/- |

The energy charges charged to the Appellant without the utilization of the electricity were to the tune of ₹1,17,354/-+ ₹99,767+ ₹1,22,886/- and + ₹1,38,953= ₹4,78,960/-.

1. Aggrieved with the bills issued on average basis due to ‘R’ Code, the Appellant requested the Respondent to get its case reviewed in ZLDSC.
2. The ZLDSC held its meeting on 15.05.2019 and decided that

the amount charged to the Appellant upto 28.12.2018 was in order and recoverable. It was also held that the account of the Appellant be overhauled from 28.12.2018 to the date of change of Energy Meter i.e. 12.02.2019 on the basis of consumption recorded by new Energy Meter for next two months.

1. Not satisfied with the decision of the ZLDSC, the Appellant

filed a Petition in the CGRF, Ludhiana who, vide order dated 13.11.2019, upheld the decision dated 15.05.2019 of the ZLDSC.

1. The DDL was the main issue in this case and if brought on record could easily clarify the exact position. But, the same was not made available though it could be made available at any stage. If necessary, the help of the manufacturer of the disputed Energy Meter could be sought and for this purpose, the Appellant was ready to bear the requisite expenses.
2. The Energy bill dated 26.11.2018, raised on the basis of ‘R’Code for the period 05.10.2018 to 05.11.2018, on the basis of average consumption for 17,851 units, clearly showed that the burning/defect in the Energy Meter was in the knowledge of the Respondent. The readings of Medium Supply category connection were taken by the AAE (Junior Engineer-1) as per Instruction No.55 of ESIM-2018 Instruction No.55.1 of ESIM provides as under:

**“Reporting of defective/burnt Meter by the Meter Reader:**

Meter Reader will prepare a list of defective/burnt Meter that has come to their notice while recording readings and submit the same in the office on the same day and MCO will be issued within 2 days these Meters will be replaced within 10 days of the receipt of the complaint in case of defective Meters and 5 days in case of burnt Meter as per time schedule laid down in the Standards of Performance (Annexure-5 of Supply Code-2014).”

1. To make compliance of these instructions positively, provisions existed for payment of compensation to the tune of ₹100/- for each day of default to the concerned consumer in case of violation of non replacement of burnt Meter as provided in Annexure-5( Point 3.2) of Supply Code-2014.
2. 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.
3. **Submissions in the Rejoinder to Reply of the Respondent**:

 The Appellant submitted a Rejoinder in this Court on 14.02.2020 in response to the reply/parawise comments to the Appeal given by the Respondent vide Memo no.436 dated 03.02.2020. In its rejoinder which was just a reiteration/elaboration of the submissions made in the present Appeal, the Appellant prayed that the directions may be issued to overhaul the account of the Appellant, for the period the Energy Meter remained burnt, on the basis of energy consumption recorded for next two months (i.e. from replacement of the burnt Energy Meter) since the electricity was not consumed/used in the premise in such a ratio for which, the Appellant was penalized.

1. **Submissions during Hearing**

In the hearing held in this Court on 18.02.2020, the Appellant’s Counsel reiterated the submissions already made in the Appeal as well as in the Rejoinder to the reply given by the Respondent 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 following reply/para wise comments, vide Memo No.436 dated 03.02.2020, for consideration of this Court**:**

1. The Appellant was having a Medium Supply Category connection with sanctioned load of 59.728 kW and contract demand (CD) of 60 kVA.
2. The Respondent had no knowledge as to when the Appellant had rented its premise and when the premise of the Appellant had been vacated. The Respondent-PSPCL was not a party to the mutual arrangement/understanding between the Appellant and its tenant nor was informed by the Appellant that he had parted with the terms of its agreement with the PSPCL requiring a Consumer to inform and seek permission of the Respondent-PSPCL in terms of provisions of Regulation 11.6.1 of Supply Code-2014 in this regard. In the absence of any documentary evidence, the plea of the Appellant could not be relied upon. The energy bills of the Appellant were rightly raised as per the rules and regulations of the PSPCL.
3. The Appellant was well aware about the Status of the Energy

Meter, hence, it should have submitted its complaint about the functioning of the Energy Meter immediately on becoming aware of the same, but it failed to do so.

1. The energy bill dated 26.11.2018 with old reading dated 05.10.2018 and new reading dated 05.11.2018 was generated on R Code on the basis of average consumption for 17,851 kVAh amounting to *₹* 1,37, 350/-.
2. Subsequently, the bills kept on generating with ‘R’ Code till the replacement of the Energy Meter on 12.02.2019.
3. The removed Energy Meter was sent to ME Laboratory vide Challan No.1085 dated 26.02.2019 and on checking, found burnt. The accuracy of the said Energy Meter could not be ascertained. Besides, DDL and reading on AC/ DC mode was not available.
4. The Appellant did not agree with the bill issued on average basis due to R Code as per Regulation No.21.5.2 of Supply Code-2014 and requested to get its case reviewed in ZLDSC.
5. The ZLDSC reviewed its case after giving the Appellant a proper hearing and partly decided the case vide order dated 15.05.2019.
6. The decision of ZLDSC was implemented by the Respondent and Appellant was informed accordingly vide Memo No.2614 dated 14.06.2019 forwarding therewith detailed calculation sheet. The Appellant was asked to deposit the amount of *₹* 1,49,654/-. But later on, after scrutinizing the record, it was found that the Appellant’s account was wrongly overhauled. Therefore, a revised Notice was sent vide Memo No. 3464 dated 19.08.2019, requesting the Appellant to deposit a sum of *₹* 2,42,609/- as per copy of revised calculation sheet sent.
7. The Appellant did not agree with the amount raised through revised Notice and filed a Petition in the CGRF, Ludhiana who, after hearing, upheld the decision dated 15.05.2019 of the ZLDSC
8. In view of the submissions made above, it was clear that the amount charged to the Appellant was in order as decided by the ZLDSC and upheld by the CGRF. As such, Appeal was without merit and may be dismissed.
9. **Submissions during Hearing**

During the course of hearing, the Respondent reiterated the submissions made in its written reply and contested the averments made by the Appellant in its rejoinder. The Respondent added that chances of retrieval of data by the manufacturer of disputed Energy Meter at this stage were very rare as the relevant data might have been rolled over.

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

The issue requiring adjudication is the legitimacy of

1. The amounts charged to the Appellant for the period from 05.10.2018 (the date prior to which, energy bills were issued on ‘O’ Code basis) till 12.02.2019 ( the date of replacement of the disputed Energy Meter) alongwith surcharge/interest and
2. Claim of the Appellant for award of compensation for deficiency in Service on the part of Respondent – PSPCL for not replacing the defective Energy Meter within stipulated time period as provided in Supply Code-2014.

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

 **Issue (i)**

1. The present dispute arose when the Medium Supply Category Connection of the Appellant was checked on 28.12.2018 by the AAE(Junior Engineer-1) on receipt of written request dated 26.12.2018 of the Appellant who was served with bills dated 26.11.2018 and 20.12.2018 as per following details:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Date of issue of bill | Period | Consumption ( kVAh) | Amount( *₹)* | Status Code |
| 26.11.2018 | 05.10.2018 to 05.11.2018 | 17,851 | 1,17,354/- | R  |
| 20.12.2018 | 05.11.2018 to 05.12.2018 | 15,541 | 99,767/- | R  |

As per the said checking, vide Load Checking Register No.23/970 dated 28.12.2018, it was reported that there was no Motive Load and the reading was not visible. Being a MS category connection, the Sr. Xen, DS CMC Division (Special), PSPCL, Ludhiana (Respondent) requested the Enforcement for necessary checking which was done by the Enforcement vide ECR No.15/974 dated 10.01.2019. On checking, the Enforcement reported that display of the disputed Energy Meter was defective and no machinery was found installed in the premise. The Enforcement also directed the Respondent to replace the Energy Meter and get the same checked from the M.E Laboratory. Accordingly, the disputed Energy Meter was replaced on 12.02.2019 and was checked on 26.02.2019 in M.E Laboratory which declared the Energy Meter as “Burnt”. The accuracy of the disputed Energy Meter could not be checked and reading/DDL was not available on AC/DC Mode.

1. The Appellant’s Counsel contended that the premise in which the disputed Energy Meter was installed, was given on rent from May, 2014 onwards and the tenant had started shifting its machinery in 08/2018 to the new building acquired by him. The Appellant’s premise was vacated by the tenant in 10/2018 as stated in the present Appeal. As a result, the energy consumption was less during 10/2018 and the bills issued with ‘R’ Code status in 11/2018 and 12/2018 were incorrect. The Appellant’s Counsel also stated that the Respondent was aware of the premise of the Appellant being on rent as the tenant had orally requested the AAE concerned in 10/2018 to replace the Energy Meter which was burnt.

 I observe that the act of giving its premise on rent by the Appellant without the consent of the licensee was in contravention of the provisions contained in Regulation 11.6.1 of Supply Code-2014.,

 The Appellant requested in the Appeal and also in the Rejoinder that that DDL of the disputed Energy Meter should be got done from the manufacturer to retrieve the data of the burnt Energy Meter for which, it was willing to pay the requisite charges of the firm (manufacturer).

 I observe that the Respondent apprised the Appellant during hearing that chances of retrieval of data of the disputed Energy Meter at this point of time are very bleak because Energy Meter records Daily Cumulative Energy Reading at 00.00 hrs for the last 100 days. Hence, the data of the disputed period would have been rolled over. Had the Appellant requested the Respondent for this purpose immediately after checking in M.E Laboratory, then the data could have been retrieved by the manufacturer, if the Memory Card of the Energy Meter/Real Time Clock were healthy.

 In view of the above, the Appellant felt satisfied and did not press for the said checking at its own cost from the manufacturer at this stage.

1. In the given circumstances, the ZLDSC as well as the Forum rightly decided that the amounts charged to the Appellant from 05.10.2018 (date prior to which, bills were issued on ‘O’ Code) to 28.12.2018 (date of checking of connection by the AAE) on ‘R’ Code basis are in order and recoverable from the Appellant in terms of provisions contained in Regulation 21.5.2(a) of Supply Code-2014. The legitimacy of the amounts charged is also established by the fact that the Appellant did not bring any cogent/valid evidence on record to prove that the amounts charged for the aforesaid period on ‘R’ Code basis were not justified and recoverable.

 In so far as overhauling the account of the Appellant from 28.12.2018 to 12.02.2019 (date of replacement of Energy Meter) is concerned, the ZLDSC took into consideration the evidence that no motive load was installed during checking on 28.12.2018 as required under the Regulation 21.5.3 of Supply Code-2014 which reads as under:

“*Any evidence provided by the consumer about conditions of working and/or occupancy of the concerned premises during the said period(s) which might have a bearing on computation of electricity consumption shall, however, be taken into consideration by the distribution licensee*”.

 I find that the connection of the Appellant was again checked on 11.10.2019 vide LCR No.21/1339 on the directions of the Forum and no machinery was found installed at the premise of the Appellant and electricity was being used for Transport business i.e. for non-industrial purpose.

 I also find that the consumption data reveals that the consumption after replacement of Energy Meter on 12.02.2019 was drastically reduced as compared to the consumption when the motive load was running. It means that motive load was not used by the Appellant, as also checked by different authorities of PSPCL.

 I, therefore, agree with the decision of the ZLDSC upheld by the Forum directing the Respondent to overhaul the account of the Appellant for the period 28.12.2018 to 12.02.2019 on the basis of consumption recorded by new Energy Meter during next two months.

1. It is observed that the onus for not replacing the disputed Energy Meter, within stipulated time limit on noticing the defect therein, rested with the Respondent-PSPCL. As such, the Appellant can not be made liable to be charged with surcharge/interest on the unpaid/delayed payments made, if any.
2. The Forum, in its decision, observed that if the Appellant, did not require the motive load, it should get the load reduced immediately. Moreover, as per checkings by various agencies of the Respondent, no motive load was running.
3. It has been noticed from the checking report of the

connection vide LCR No.21/1339 dated 11.10.2019 that the Appellant was using the M.S Category connection for Non-Industrial purpose,onits own, without informing the Respondent-PSPCL who had not taken any action in this regard as per law/rules/regulations. The cases relating to Unauthorised Use of Electricity do not fall in the purview of this Court. As such, no cognisance of the matter is being taken.

 **Issue (ii):**

 The Appellant’s Counsel next contended that the Respondent came to know from the issuance of very first energy bill on ‘R’ Code, for the period from 05.10.2018 to 05.11.2018, that the Energy Meter installed at the premise of the Appellant was defective. Still, the said Energy Meter was not replaced within five working days as per procedure laid down in Annexure-5 of Supply Code-2014 and was, thus, liable to pay compensation @ ₹100/- for each day of default.

 I observe that the contention of the Appellant in regard to compensation (due to deficiency in service, on the part of the PSPCL to replace the disputed Energy Meter immediately on noticing the defect in the Energy Meter) is not sustainable/maintainable as the Appellant did not raise this issue/take appropriate remedy in the ZLDSC( First Appellate Authority) or in the CGRF(Second Appellate Authority) as required under Regulation 26.5 of Supply Code-2014. Besides, the Appellant, on being asked during hearing, clarified that it did not intend to seek compensation on this account.

5. **Decision**

**As a sequel of the above discussions, the order dated 13.11.2019 of the CGRF, Ludhiana, in Petition No. CGL-248 of 2019, is partly upheld. It is held that:**

1. **The Appellant is liable to pay the amounts of energy bills**

**(excluding the amounts of surcharge /interest)**

1. **for the consumption recorded from 05.10.2018 (date prior to which, Energy Bills issued with ‘O’ Code) to 28.12.2018 (the date of checking of connection by AAE), on ‘R’ Code basis as per Regulation No.21.5.2(a) of Supply Code-2014.**
2. **Consumption recorded from 28.12.2018 (the date of checking of connection by AAE) to 12.02.2019 (the date of replacement of the disputed Energy Meter), on ‘R’ Code on the basis of consumption during next two months.**
3. **No surcharge/interest is recoverable from the Appellant as the onus for not replacing the disputed Energy Meter immediately, after noticing the defect, rested with the Respondent-PSPCL.**
4. **Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/ short after adjustment, if any, without surcharge /interest.**

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

**7.** 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 25, 2020 Lokpal (Ombudsman)

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