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. 75/2018

Date of Registration : 27.12.2018
Date of Hearing : 22.02.2019/18.03.2019/09.06.2022
Date of Order : 09.06.2022

Before:

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

In the Matter of:

M/s. Deva Swimming Institute,
C/o Divisional Engineer,
PUDA, Phase-3,
Patiala.
Contract Account Number: P41GC41-0078MG (NRS)
...Appellant

Versus

Senior Executive Engineer,
DS Sub Urban Division,
PSPCL, Patiala.
...Respondent

Present For:

Appellant: Sh. Mayank Malhotra, Advocate,
Appellant's Counsel.

Respondent : Er. Preeti Kiran,
SDO/ DS Urban Estate Sub Divn.,
PSPCL, Patiala.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 21.11.2018 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CG-337 of 2018, deciding that:

> *"(a) Amount charged to the petitioner vide memo No. 562 dated 1.5.2018 amounting to Rs. 9,61,772/- due to application of wrong multiplication factor for the period 08/2009 to 02/2018 as per provisions of Supply Code, 2014 Regulation, 21.5.1 is in order and is recoverable.*
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> *(b) The above amount be recovered in 36 equal monthly installments without interest along with current energy charges in case the petitioner gives an undertaking in this regard and gives his consent to deposit the charges without approaching any other authority/ court."*

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 27.12.2018 i.e. beyond the period of thirty days of receipt of decision dated 21.11.2018 of the CGRF, Patiala in Case No. CG-337 of 2018. The Appellant deposited the requisite 40% of the disputed amount. Therefore, the Appeal was registered on 27.12.2018 and copy of the same was sent to the Senior Executive Engineer/ DS Suburban Division, PSPCL, Patiala for sending written reply/ parawise comments with a copy to the office of

the CGRF, Patiala under intimation to the Appellant vide letter nos. 1843-1845/OEP/A-75/2018 dated 27.12.2018.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 22.02.2019 at 12.00 Noon and an intimation to this effect was sent to both the parties vide letter nos. 67-68/OEP/A-75/2018 dated 18.01.2019. As scheduled, the hearing was held in this Court and arguments of both the parties were heard. During deliberations, the Appellant's Counsel (AC) emphasized that the relief applied for/ requested by the Appellant may be allowed in terms of order dated 20.09.2018 of the Hon'ble Punjab and Haryana High Court in CWP No. 2539 of 2017 filed by Smt. Surinder Kaur challenging the order dated 08.12.2016 of this Court in the Appeal No. A-52 of 2016 of incorrect Multiplication Factor (MF). The Respondent stated that the Forum had, while deciding the present case, mentioned in its order dated 21.11.2018, that LPA No. 7732 of 2018 challenging the decision dated 20.09.2018 of the Hon'ble High Court had been filed by the PSPCL before its Division Bench. The Respondent added that in the above cited LPA, the Division Bench of the Hon'ble Punjab and Haryana High Court had issued Notice of Motion, listed for 11.03.2019, to Smt.

Surinder Kaur as well as this Court regarding appearance and stay. During hearing, the grounds on which LPA ibid had been preferred by the PSPCL were also deliberated. A perusal of the LPA ibid, detailing the grounds revealed that the case titled *Swastic Industries V/s Maharashtra State Electricity Board* decided by the Hon'ble Supreme Court of India (1997) 9SCC-465 and also of the Hon'ble High Court of Delhi in WP No. 8647 of 2007 titled *Jingle Bell Amusement Park P. Ltd V/s Delhi Power Ltd,* decided on 19.04.2011, were cited in support of the demand raised due to application of incorrect Multiplication Factor (MF) by the PSPCL. The AC, then requested the Court to give more time to study the orders cited above and thereafter to argue accordingly. The said request of the AC was allowed by the Ombudsman and the next date of hearing of the matter was fixed for 18.03.2019 at 11.00 AM and intimation to this effect alongwith the copy of Proceedings dated 22.02.2019 was sent to both the parties vide letter nos. 255-256/OEP/A-75/2018 dated 22.02.2019.

As scheduled, the hearing was held in this Court on 18.03.2019. During the course of hearing, the Appellant's Counsel (AC) again 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 AC 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 AC 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 AC 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. 4533 dated 01.06.2022 to decide the Appeal on merits in view 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 VitranNigam Ltd. &Ors. The copy of this request letter of the Respondent was sent to the Appellant through e-mail on 02.06.2022. The next date of hearing in this case was fixed for 09.06.2022 at 11.30 AM and intimation to this effect was sent to both the parties vide letter nos. 537-38/OEP/A-75/2018 dated 02.06.2022. As scheduled, the hearing was held in this Court and arguments of both the parties were heard.

4. Condonation of Delay

The Appellant's Counsel (AC) stated that the Appeal should have been filed on or before 22.12.2018 but unfortunately the Appellant's father expired on 15.12.2018 and therefore, the Appellant could not contact the AC for the purpose of the filing of the Appeal. The delay was entirely unintentional and the Appellant would suffer irreparable loss and injury if this delay in filing of the Appeal was not condoned. As such, the delay may kindly be condoned and the Appeal be adjudicated on merits in the interest of justice. I find that the Respondent did not object to the condoning of the delay in filing the Appeal in this Court either in its written reply or during hearings in this Court.

In this connection, I have gone through Regulation 3.18 of PSERC (Forum and Ombudsman) Regulations, 2016 which reads as under:

> "No representation to the Ombudsman *shall lie unless:*
>
> *(ii) The representation is made within 30 days from the date of receipt of the order of the Forum.*
>
> *Provided that the Ombudsman may entertain a representation beyond 30 days on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of 30 days."*

It was observed that non condoning of delay in filing the Appeal would deprive the Appellant of the opportunity required to be afforded to defend the case on merits. Therefore, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court beyond the stipulated period was condoned and the Appellant's Counsel was allowed to present the case.

5. 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 Counsel 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 NRS Category Connection, bearing Account No. P41GC41-0078MG with sanctioned load of 43.64 kW at Swimming Pool of PUDA at Phase-III, Patiala under DS Sub Division Bahadurgarh (now DS Sub Division Urban Estate) under DS Division Suburban, Patiala.

(ii) The present Appeal was directed against the order dated 21.11.2018 passed by the Forum, which had been conveyed to the Appellant vide Memo No. 4564/65 dated 22.11.2018, received on 26.11.2018 vide which the demand on account of alleged wrong application of MF for the period 05/2009 to 10/2017 had been upheld.

(iii) The above said swimming pool, where electric connection bearing A/c No. P41GC410078MG was running was on lease with the Appellant firm since 2010-2011. The PUDA had leased out the swimming pool to the Appellant vide Lease Deed

dated 15.04.2010, Memo No. 1224 dated 29.06.2015 and Memo No. 264 dated 26.04.2016 of PUDA, Patiala.

(iv) The connection of the Appellant was allegedly checked by a team of PSPCL, Patiala vide LCR No. 01/155 dated 06.03.2018. The checking officer alleged that multiplying factor of the meter is 2 and it was being applied as 1.

(v) The Respondent issued notice vide Memo No. 561 dated 01.05.2018 amounting to ₹ 9,61,772/- for the period from 05/2009 to 10/2017. The Respondent Corporation changed the multiplying factor of the meter from 1 to 2 in the bill on alleged plea of change of CT/ meter ratio. The Respondent Corporation doubled the amount of bill as compared to previous bills.

(vi) The Appellant approached the Forum for the consideration of disputed case and deposited ₹ 1,92,500/- as 20% of the disputed amount of ₹ 9,61,772/- vide BA-16 No. 528/50416 dated 28.08.0218 in compliance of directions of the Forum. The Forum decided the case on 21.11.2018 by passing a non-speaking order and demand of ₹ 9,61,772/- raised by the Respondent Corporation was upheld.

(vii) According to ESIM Instruction No. 51.1, it was the responsibility of the Corporation to install a correct meter of suitable capacity. The Appellant never interfered with the meter

or its connection and there was no allegation as such against the Appellant.

(viii) According to Regulation No. 21.3 of Punjab State Electricity Regulatory Commission Electricity Supply Code and Related Matters Regulations-2014, the Licensee had to conduct periodical inspection/ testing of meters installed at the consumer's premises. The account had been overhauled in violation of Regulation 21.5 of "Punjab State Electricity Regulatory Commission Electricity Supply Code and Related Matters Regulations-2014". The Forum failed to take any cognizance of deficiencies of the Respondent Corporation.

(ix) According to Instruction No. 102.2 of ESIM, It was the responsibility of the engineering officer to ensure correctness of connections and correct working of the meter. The meter might also be checked by meter testing equipments and meter shall thereafter be sealed properly by the concerned officer. It was pertinent to mention here that there was no allegation of any seal tempering against the Appellant. The Forum failed to take any cognizance of deficiencies of the Respondent Corporation.

(x) Instruction No. 104.1 of ESIM provided the checking schedule for checking of connections. The Respondent Corporation failed to submit detail of any checking of connection of the

Appellant, prior to checking in dispute, before the Forum. There was no allegation of any type of slowness with regard to working of the metering equipment. The Forum failed to take any cognizance of deficiencies of the Respondent Corporation.

(xi) According to ESIM Instruction No. 102.7, an energy variation register was required to be maintained in office to watch variance in monthly consumption of consumers. There was no such allegation of any excessive or low consumption for any period (s) against the Appellant.

(xii) The Respondent Corporation had not supplied any copy of checking report of meter and CTs in ME Lab along with copy of Job Orders vide which the meter under dispute had been installed in the premises of the Appellant. The copy of challan vide which the said meter and CTs had been withdrawn from the ME Lab alongwith copy of PO containing specification for purchase of meter and CTs under dispute /question, copy of meter movement card, CA-21, CA-22 relating to meter in question had not been supplied by the Respondent Corporation to the Appellant and these were not placed before the Forum also.

(xiii) The Forum decided the case on 21.11.2018 vide a non-speaking, arbitrary, illegal order which was not sustainable in

the eyes of law and was against the instructions of the Board/ Corporation, which provided that the decision should be speaking decision, by ignoring genuine submissions of the Appellant. The decision of the Forum was wrong, illegal, arbitrary and against the law.

(xiv) The Forum failed to implement the instructions of the Board issued vide CC No. 64/05, which provided that the meter with status code OK (O) in the last cycle of billing should be treated as undisputed case. It was pertinent to mention here that the Respondent had issued the bills before date of checking i.e. 06.03.2018 as per "O" code and the presumption was there that the meter is OK upto that period and account cannot be overhauled for the period the status of meter was shown as "O". The calculations also seemed to be incorrect.

(xv) The Forum failed to appreciate that it was established fact that CT/ PT were parts of the meter itself and it cannot be said to be different component other than the meter, therefore the bill cannot be raised for a period of more than 6 months.

(xvi) The Forum failed to get the entire record relating to replaced meter placed before it and it had not taken any cognizance of same.

(xvii) The Forum failed to appreciate that the Appellant never interfered with the meter or its connection and there was no allegation as such against the Appellant. The Forum failed to appreciate that according to ESIM Instruction No. 51.1, it was the responsibility of the Corporation to install a correct meter of suitable capacity.

(xviii) The Forum failed to appreciate that according to Instruction no. 104.1 of ESIM, the Respondent Corporation failed to adhere to checking schedule for checking of connections. There was no allegation of any type of slowness etc. with regard to working of the metering equipment. The Forum failed to take any cognizance of deficiencies of the Respondent Corporation.

(xix) The Forum failed to comply with the provisions i.e. ESIM Instruction No. 59, Condition No. 19 of "Conditions of Supply", Regulation No. 21.4 of "Electricity Supply Code and Related Matters Regualtions-2007", ESR 71.4.3, which provided that the account of consumer can be overhauled for maximum period of 6 billing months. But the account of the Appellant had been overhauled for more than 102 months.

(xx) The Forum failed to appreciate the decision of Hon'ble Punjab & Haryana High Court in CWP No. 17699 of 2014 titled 'Park Hyundai V/s PSPCL' in which it had decided as under:-

"In the present case, the mistake was detected during inspection after four years of the installation of the connection at Petitioner's premises. As per instructions and regulations, inspection is required to be made every six months. In view of the mandatory instructions/ regulations, Petitioner cannot be burdened with charges for four years. However, the Respondents are entitled to recover the amount for six months preceding the date of checking i.e. 24.09.2013. The present case is squarely covered under the ratio laid down by the Division Bench of this Court in Tagore Public School (Supra) which stands affirmed by the Hon'ble Supreme Court.

Petition is partly allowed in above terms."

(xxi) The Forum failed to appreciate the Hon'ble Ombudsman, while relying on orders of Hon'ble Punjab and Haryana High Court in CWP No. 17699 of 2014 titled 'Park Hyundai V/s PSPCL ' had decided in Appeal No. 73/2017 decided on 14.12.2017 had held that the account of consumer can be overhauled for a period of 6 months only.

(xxii) The Forum failed to appreciate pleadings of the Appellant and decision dated 20.09.2018 of Hon'ble Punjab & Haryana High Court in CWP No. 2539 of 2017 titled Surinder Kaur V/s Ombudsman Electricity Punjab.

(xxiii) The Forum had observed in the decision dated 22.11.2018 that Respondent had already moved the case for filing Appeal

against the decision in CWP No. 2539 of 2017. But the Forum failed to appreciate that a decision of Hon'ble Punjab & Haryana High Court was applicable unless it had been stayed by appropriate Court. Mere any move for filing the Appeal against the decision in CWP No. 2539 of 2017 did not render the decision in admissible in law.

(xxiv) The observation of the Forum that Section 56 (2) of Electricity Act-2003 was not applicable in the case and concluding that the charged amount became due only on 01.05.2018, (i.e. the date of issue on notice vide which demand for the period 05/2009 to 10/2017 has been charged), was wrong and against the law. The demand related back to 05/2009 to 10/2017 and the same had become due during that relevant period.

(xxv) In view of the position explained above, the Appellant most humbly requested that the illegal demand of ₹ 9,61,772/- may kindly be quashed in the interest of justice. The Respondent Corporation may be directed to refund the amount deposited by the Appellant along with interest.

(b) Submission during hearing

During hearing on 09.06.2022, the Appellant's Counsel (AC) reiterated the submissions made in the Appeal and prayed to

allow the same. He pleaded that number of instalments should be increased.

(B) Submissions of the Respondent

(a) Submissions in written reply

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

(i) The connection of the Appellant was checked on 06.03.2018 vide LCR No. 01/155 and the checking officer found that the Multiplying Factor of the meter was 2 but it was being applied as 1.

(ii) The Respondent issued Notice vide Memo No. 561 dated 01.05.2018 amounting to ₹ 9,61,772/- for the period from August, 2009 to February, 2018 (i.e. billing cycle 05/2009 to 10/2017). It was wrongly alleged by the Appellant that the Respondent Corporation changed the Multiplying Factor of the meter 1 to 2 on the alleged plea of CT/ meter ratio. It was submitted that Multiplying Factor of the meter was actually 2 and it was wrongly applied as 1 and the Respondent only corrected the same and charged the short assessment.

(iii) The real facts were that the connection of the Appellant was checked on 06.03.2018 by SDO, PSPCL, Bahadurgarh, Patiala vide LCR no. 01/155 dated 06.03.2018 alongwith other

officials and it was found that wrong MF was being charged to the account of the Appellant meaning there by the Appellant was charged with MF-1, whereas his account was required to be charged as per MF-2. Thereafter, the account of the Appellant was overhauled with MF-2 from 05/2009 to 10/2017 as per Regulation 21.5.1 Note of PSERC Electricity Supply Code and Related Matters Regulations, 2014 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."

(iv) The Forum had passed a valid and speaking order. The meter of the Appellant was of suitable capacity and it was only a case of wrong application of Multiplication Factor.

(v) The account of Appellant was not overhauled in violation of Regulation 21.5 of Supply Code-2014. In fact, it was overhauled as per Note to Regulation 21.5.1 of Supply Code-2014. There was no allegation of any seal tampering or slowness of meter against the Appellant. The present case was not a case of incorrect working of the meter, rather it was a case of wrong application of the Multiplication Factor. It was not a case of excessive or low consumption.

(vi) The Respondent submitted that the documents-copy of checking report of meter and CTs in ME Lab along with copy of Job Orders vide which the meter under dispute had been installed in the premises of the Appellant, the copy of challan vide which the said meter and CTs had been withdrawn from the ME Lab along with copy of PO containing specification for purchase of meter and CTs under dispute /question, copy of meter movement card, CA-21, CA-22 relating to meter in question, were not required for the present case.

(vii) It was wrong plea of the Appellant that the order of the Forum was non-speaking, arbitrary, illegal or against the rules and Regulations of PSPCL.

(viii) It was wrong plea that the account cannot be overhauled for the period the status of the meter was shown as OK. It was also wrong plea that the bill cannot be raised for a period of more than 6 months as the present case was covered under Note to Regulation 21.5.1 of Supply Code-2014.

(ix) The Appellant's meter had not been changed as such the question of taking the same on record did not arise at all. The meter of the Appellant was of suitable capacity and it was only a case of wrong application of Multiplication Factor.

(x) The Respondent submitted that the decisions of the Hon'ble Punjab and Haryana High Court quoted by the Appellant were not applicable in the present case.

(xi) The Respondent submitted that there was no merit in the prayer clause of the Appellant and prayed that the Appeal of the Appellant may kindly be dismissed with costs.

(b) Submission during hearing

During hearing on 09.06.2022, the Respondent reiterated the submissions made in the written reply to the Appeal and prayed for the dismissal of the Appeal. It was pleaded that the case may be decided in view of latest judgment dated 05.10.2021 of Hon'ble Supreme Court of India because the amount involved in this case is very high.

6. Analysis and Findings

The issue requiring adjudication is the legitimacy of the amount of ₹ 9,61,772/- charged vide Notice No. 561 dated 01.05.2018 on account of overhauling of the account of the Appellant from 08/2009 to 02/2018 by applying correct Multiplying Factor (MF) of 2 instead of 1.

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

(i) The Appellant's Counsel (AC) reiterated the submissions made in the Appeal. He pleaded that the present Appeal was against the decision dated 21.11.2018 of the Forum, which was non-speaking, arbitrary, illegal and against the law. He pleaded that the Forum failed to take any cognizance of the deficiencies of the Respondent for not following Instructions No. 51.1, 102.2, 104.1, 102.7 of ESIM. Further, as per Regulation 21.3 of Supply Code-2014, the Licensee had to conduct periodical inspection/ testing of meters installed at the consumer's premises which was not done by the Respondent as they could not provide any checking in this regard. The Forum failed to appreciate the instructions of the PSPCL as contained in CC No. 64/05 which provided that the meter with status code OK in the last cycle of billing should be treated as undisputed case. He pleaded that the account of the Appellant was overhauled for the period of more than 102 months in clear violation of Regulation 21.5 of Supply Code-2014. The Forum also failed to consider the decision of Hon'ble Punjab & Haryana High Court in CWP No. 17699 of 2014 titled 'Park Hyundai V/s PSPCL' and decision dated 20.09.2018 of Hon'ble Punjab & Haryana High Court in CWP No. 2539 of 2017 titled 'Surinder Kaur & Ors V/s Ombudsman Electricity Punjab & Ors'. The

observation of the Forum that Section 56 (2) of Electricity Act-2003 was not applicable in the case and concluding that the charged amount became due only on 01.05.2018, (the date of issue on notice vide which demand for the period 05/2009 to 10/2017 has been charged), was wrong and against the law. He most humbly requested that the illegal demand of ₹ 9,61,772/- may kindly be quashed in the interest of justice. The Respondent Corporation may be directed to refund the amount deposited by the Appellant alongwith interest.

(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 the Forum had passed a valid and speaking order. The account of Appellant was not overhauled in violation of Regulation 21.5 of Supply Code-2014. In fact, it was overhauled as per Note to Regulation 21.5.1 of Supply Code-2014. There was no allegation of any seal tampering or slowness of meter against the Appellant. The present case was not a case of incorrect working of the meter, rather it was a case of wrong application of the Multiplication Factor. It was not a case of excessive or low consumption. He argued that the plea of the Appellant that the account cannot be overhauled for the

period the status of the meter was shown as OK was wrong. It was also wrong plea that the bill cannot be raised for a period of more than 6 months as the present case was covered under Note to Regulation 21.5.1 of Supply Code-2014. He argued that the decisions of the Hon'ble Punjab and Haryana High Court quoted by the Appellant were not applicable in the present case. He submitted that the Appellant was charged for the actual electricity consumed by the Appellant and it was only escaped assessment due to wrong application of Multiplication Factor (MF). Earlier, the Appellant was charged for half of actual consumption due to application of wrong MF by the officials/officers of the Respondent. He requested to decide the pending 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. He further argued that there was no merit in the prayer clause of the Appellant and prayed that the Appeal of the Appellant may kindly be dismissed with costs.

(iii) The Forum in its order dated 21.11.2018 observed as under:

> "**As per Note to Regulation 21.5.1 of the Supply Code 2014 effective from 01.01.2015 which states 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.*"
> Forum observed that the petitioner had relied upon on the order of the single bench in CWP No. 2539/2017 dated 20.9.2018 titled Surinder

Kaur V/s Ombudsman and others for overhauling of accounts in case of application of wrong multiplication factor. Forum further observed that the respondents had already moved the case for filing an appeal against the above said decision in CWP No. 2539/2017 dated 20.9.2018.

Forum is of the opinion that the above decision of Hon'ble Punjab and Haryana Court cannot be considered as final decision till the appeal filed against the decision by the respondents is finalized. In view of the above the notice issued to the petitioner vide memo No. 562 dated 1.5.2018 amounting to Rs.9,61,772/- due to application of wrong multiplication factor for the period 08/2009 to 02/2018 as provided under the Supply Code,2014 Regulation, 21.5.1 is in order and is recoverable.

Forum further observed that wrong multiplication factor was being applied to the petitioner since 08/2009 i.e. almost for 9 years which clearly indicates deficiency on the part of the respondents. At the same time it is also clear that the petitioner had not been billed correctly for the actual energy consumed by the petitioner all these years due to application of wrong multiplication factor. Now since notice has been served to the petitioner vide memo No. 561 dated 01.05.2018 to recover the actual energy charges consumed by the petitioner all these years and the amount had become due from the petitioner only on 01.05.2018 once the notice had been issued. As such the provision of Section 56 (2) of Electricity Act, 2003 had not been violated.

Forum further observed that the petitioner had been charged an amount which is equal to the amount already paid in the monthly bills for 8-1/2 years and petitioner may not be in a position to deposit the entire amount in one go and although the petitioner had not made any request for payment of the amount in installments and amount may be recovered in suitable equal monthly installments without interest along with current energy charges."

(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 09.06.2022. The Appellant's account was overhauled on the basis of the checking vide LCR No. 01/155 dated 06.03.2018 of SDO, DS Sub Division Bahadurgarh, Patiala and ₹ 9,61,772/- was charged to the Appellant vide Notice No. 561 dated

01.05.2018 due to overhauling of the account of the Appellant from 08/2009 to 02/2018 by applying correct Multiplying Factor of 2 (two) instead of 1 (one). The Appellant approached the Forum against this amount charged but the Forum decided that the said amount was fully recoverable. Hence, the Appellant filed an Appeal in this Court.

(v) After registration of the Appeal on 27.12.2018, the hearing was held on 22.02.2019 in this court. During the hearing, the Appellant's Counsel (AC) emphasized that the relief applied for/requested by the Appellant may be allowed in terms of order dated 20.09.2018 of the Hon'ble Punjab and Haryana High Court in CWP No. 2539 of 2017 filed by Smt. Surinder Kaur challenging the order dated 08.12.2016 of this Court in the Appeal No. A-52 of 2016 of incorrect Multiplication Factor (MF). The Respondent stated that the Forum had, while deciding the present case, mentioned in its order dated 21.11.2018, that LPA No. 7732 of 2018 challenging the decision dated 20.09.2018 of the Hon'ble High Court had been filed by the PSPCL before its Division Bench. The Respondent added that in the above cited LPA, the Division Bench of the Hon'ble Punjab and Haryana High Court had issued Notice of Motion, listed for 11.03.2019, to Smt. Surinder Kaur as well as

this Court regarding appearance and stay. During hearing, the grounds on which LPA ibid had been preferred by the PSPCL were also deliberated. A perusal of the LPA ibid, detailing the grounds revealed that the case titled *Swastic Industries V/s Maharashtra State Electricity Board* decided by the Hon'ble Supreme Court of India (1997) 0SCC-465 and also of the Hon'ble High Court of Delhi in WP No. 8647 of 2007 titled *Jingle Bell Amusement Park P. Ltd V/s Delhi Power Ltd,* decided on 19.04.2011, were cited in support of the demand raised due to application of incorrect Multiplication Factor (MF) by the PSPCL. The AC, then requested the Court to give more time to study the orders cited above and thereafter to argue accordingly. The said request of the AC was allowed by the Ombudsman and the next date of hearing of the matter was fixed for 18.03.2019 at 11.00 AM.

As scheduled, the hearing was held in this Court on 18.03.2019. During the course of hearing, the Appellant's Counsel (AC) again 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 AC 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 AC 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 AC 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 Hon'ble Punjab and Haryana High Court, the PSPCL quoted decision of the Hon'ble Supreme Court in the matter of Swastic Industries Vs 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. Municipal Corpn. 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 had requested this Court vide Memo No. 4533 dated 01.06.2022 to decide the pending 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.

(viii) I have gone through 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 of India is applicable to the facts of the present case. The amount of ₹ 9,61,772/- charged to the Appellant due

to overhauling of the account from 08/2009 to 02/2018 by applying correct Multiplying Factor of 2 (two) instead of 1 (one) is an "escaped assessment" which was detected by the Respondent after the checking of the Appellant's premises vide LCR No. 01/155 dated 06.03.2018 of SDO/ DS Sub Division Bahadurgarh, Patiala in which it was found that the MF was 2, but the Appellant was being billed at MF = 1. Earlier, the Appellant was being charged for half of actual consumption. The Appellant was now charged for the electricity actually consumed by it which could not be charged earlier due to the mistake of the officials/officers of the Respondent. Hence, the amount of ₹ 9,61,772/- charged to the Appellant is fully recoverable from the Appellant being escaped assessment.

(x) Instructions Nos. 102.2, 102.7 and 104.1 of ESIM (First Edition) quoted by the Appellant were relating to provisions regarding Theft of electricity and unauthorized Use of Electricity (UUE), so were not related to the present case.

(xi) CC No. 64/05 contained the instructions for the checking of accuracy of Electro-Mechanical meters (Single and three Phase) being replaced with Electronic Meters, in ME Labs, so this is not relevant to the present case.

(xii) The issue raised by the Appellant that the amount charged was not recoverable in view of Section 56 (2) of Electricity Act, 2003 as the demand raised to the Appellant was for the period which was more than 2 years old, has also been addressed by the 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. in which it is held that the escaped assessment can be recovered from the consumer at any time without any Limitation.

(xiii) Another issue raised by the Appellant that the account of the Appellant cannot be overhauled for a period more than 6 months as per Regulation 21.5 of the Supply Code-2014, has also been addressed by the 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. Overhauling has been done in this case for the period the mistake continued as per note under Regulation 21.5.1 of Supply Code, 2014.

(xiv) In view of the above and in the 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 21.11.2018 of the Forum in Case No. CG-337 of 2018. The amount of ₹ 9,61,772/- charged vide Notice No. 561 dated 01.05.2018 on account of overhauling of the account of the Appellant from 08/2009 to 02/2018 by applying correct Multiplying Factor of 2 instead of 1 is fully justified and hence recoverable from the Appellant.

(xv) The Respondent should conduct an inquiry into the lapses and fix the responsibilities of the delinquent officials/officers who failed to perform their duties resulting in Financial Loss to the Respondent as well as undue harassment to the Appellant.

(xvi) 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 21.11.2018.

(xvii) The Appellant had not challenged about the correctness of Multiplying Factor made applicable in the demand raised vide Notice No. 561 dated 01.05.2018. Further, the correctness of amount charged (₹ 9,61,772/-) is not disputed by any of the party in this case.

7. Decision

As a sequel of above discussions, the order dated 21.11.2018 of the CGRF, Patiala in Case No. CG-337 of 2018 is hereby upheld.

8. The Appeal is disposed of accordingly.

9. 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.

10. 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)
Lokpal (Ombudsman)
Electricity, Punjab.

June 09, 2022
S.A.S. Nagar (Mohali)