

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

APPEAL No. 94/2021

Date of Registration : 26.11.2021

Date of Hearing : 22.12.2021

Date of Order : 22.12.2021

Before:

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

In the Matter of:

Pawan Kumar,
Shri Guru Charan Prakash Oil Mills,
Dhulkot Road, Ahmedgarh.

Contract Account Number: U51AH1100024(LS)
...Appellant

Versus

Addl. Superintending Engineer,
DS Division, PSPCL,
Ahmedgarh.

...Respondent

Present For:

Appellant: Sh. Jivtesh Singh Nagi,
Advocate,
Appellant's Counsel.

Respondent : Er. Gagandeep Kumar,
AE/ DS City S/D,
PSPCL, Ahmedgarh.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 13.10.2021 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-260 of 2021, deciding that:

“The notice issued vide memo no. 204 dated 05.05.2021 of AE/ Op., City, Ahmedgarh to deposit Rs. 674995/- for slowness of meter by 45.916% for the billing period 30.06.2020 to 16.01.2021 is correct and recoverable.”

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 26.11.2021 i.e. beyond the period of thirty days of receipt of copy of the decision dated 13.10.2021 of the CGRF, Ludhiana in Case No. CGL-260 of 2021. The Appellant also submitted copies of Receipt No. 161208303 dated 25.06.2021 for ₹ 1,35,000/- and Receipt No. 168638816 dated 24.11.2021 for ₹ 1,35,000/- on account of requisite 40% of the disputed amount of ₹ 6,74,995/-. Therefore, the Appeal was registered and copy of the same was sent to the Addl. SE/ DS Division, PSPCL, Ahmedgarh for sending written reply/ parawise comments with a copy to the office of the CGRF, Ludhiana under intimation to the Appellant vide letter nos. 1658-1660/OEP/A-94/2021 dated 26.11.2021.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 15.12.2021 at 12.00 Noon and an intimation to this effect was sent to both the parties vide letter nos. 1732-1733/ OEP/ A-94/2021 dated 10.12.2021. Later on, the hearing was fixed on 22.12.2021 at 12.30 PM as per request of the Appellant's Counsel conveyed to both parties vide letter nos. 1746-47/ OEP/ A-94/ 2021 dated 15.12.2021. As scheduled, the hearing was held in this Court on 22.12.2021 and arguments of both parties were heard.

4. Condonation of Delay

At the start of hearing on 22.12.2021, the issue of condoning of delay in filing the Appeal in this Court was taken up. The Appellant's Counsel submitted that the Appellant had received the copy of decision of the Forum on 26.10.2021 through Memo No. 654 dated 26.10.2021 of AE/ DS City S/D, Ahmedgarh and not earlier to 26.10.2021. The Appellant's Counsel prayed that the delay in filing the Appeal be condoned and accordingly, the Appeal be registered. 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 hearing of the case 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.”

The Court observed that order dated 13.10.2021 was sent to the Appellant by the Forum vide its Memo No. 3512/13 dated 13.10.2021. It was also 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 submissions made by the Appellant's Counsel and the Respondent alongwith material brought on record by both 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 Large Supply Category connection, bearing Account No. U51AH1100024, with sanctioned load of 150.00 kW/166.66 kVA running under DS Division, PSPCL, Ahmedgarh.
- (ii) The Appellant got his load extended from MS to LS Category. The connection of the Appeal was checked by the Respondent and his meter was taken to ME Lab for proper checking. As such, the meter was first checked by ASE/ Enf. cum EA&MMTS-6, Ludhiana vide ECR No. 06/3248 dated 07.01.2021 and later checked in ME Lab vide Challan No. 100

dated 22.01.2021 wherein it was wrongly observed by the Respondent that the meter was running slow by 45.916%.

- (iii) Consequently a notice was served on the Appellant for payment of ₹ 6,74,995/- vide Memo No. 204 dated 05.05.2021 in furtherance to the ME Lab report dated 22.01.2021.
- (iv) The Appellant further submitted that the aforementioned report dated 22.01.2021 was wrong and incorrect. The Report was in contravention with the consumption data of the Appellant from which it can be ascertained that since year 2018, when the meter of the Appellant was changed and corrected, the MDI of the Appellant had mostly increased consistently over the foregoing period from 2018 and therefore, it was not possible that the meter was running slow. The consumption data cannot be overlooked while ascertaining the fact that whether or not the meter was running inaccurately. Furthermore, the meter was taken from the Appellant's premises to the ME Lab. for testing and therefore the possibility that the meter and allied equipment taken for checking could have damaged or CT/ PT connections in the equipment could have loosened during transit, be ruled out.
- (v) The Appellant challenged the aforesaid report and Demand Notice before the Forum. The Forum wrongly upheld the report

and Demand Notice without scrutinizing the report and making any attempt to ascertain the correctness of the report. Also, the Forum overlooked the MDI and consumption data of the Appellant for the disputed period which would suggest that there was no decrease in the MDI. On the contrary, the MDI had consistently increased and that could not have been possible had the meter been running slow, that too by a substantial 46% approximately. The Forum did not take into consideration the fact that the meter and allied equipment was fragile and had to be handled with utmost care and when it was taken from the Appellant's premises to the ME Lab for testing, there was a possibility that during transit, the metering equipment could have damaged or the connections inside the metering equipment could have loosened and under such circumstances, the Forum should have been cautious while placing reliance upon such report.

- (vi) The connection of the Appellant was first checked vide ECR No. 06/3248 dated 07.01.2021 and then subsequently on 22.01.2021 in the ME Lab. Therefore, the data recorded in the former checking dated 07.01.2021 should also have been compared with the subsequently report dated 22.01.2021 to

ascertain the correctness of the said report before issuing a Demand Notice to the Appellant.

- (vii) The order passed by the Forum indicated the fact that the meter was running slow because of oxidation on potential wires from the main cable joint. Although the inaccuracy in the meter was expressly denied, but even if it was running inaccurately, it was because of oxidation on the potential wire. Maintaining the meter and allied equipment, was the responsibility of the Respondent. As such, preventing the meter from oxidation and any other form of maintenance issue was the responsibility of the Respondent and if the meter was not maintained properly and that resulted in inaccuracy of meter, the Appellant cannot be held accountable for that and no amount can be recovered from the Appellant.
- (viii) Due to strike in the Respondent's office, the Appellant could not manage to get the relevant reports and documents but the Appellant was not limited to the reports dated 07.01.2021 and dated 22.01.2021. Therefore, the Appellant reserves his right to make further submissions, if necessary, and take any other ground if made out upon the Respondent producing them in the Court.

- (ix) The Appellant prayed that the Respondent be directed to produce all the relevant record and document of the case, including report (and DDL recorded therein) dated 07.01.2021 and Report (and DDL recorded therein) dated 22.01.2021.
- (x) The Appellant prayed that the report dated 22.01.2021 be quashed and the order dated 13.10.2021 passed by the Forum be set aside in view of the aforementioned facts and circumstances and in interest of justice, equity and fair play.

(b) Submission during hearing

During hearing on 22.12.2021, the Appellant's Counsel reiterated the submission made in the Appeal and prayed for quashing the order of the Forum dated 13.10.2021.

(B) Submissions of the Respondent

(a) Submissions in written reply

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

- (i) The Appellant was having LS Category connection, bearing Account No. U51AH1100024 with sanctioned load of 150.00 kW/ 166.66 kVA.
- (ii) The dispute was for the period when this connection was running under MS category bearing Account No. U51MS510056H and sanctioned load was 86.26 kW/ 95.84

kVA. This connection was checked in view of AE/ DS City S/D, Ahmedgarh Memo No. 1778 dated 29.12.2020 due to extension of load from MS to LS category.

- (iii) The connection of the Appellant was checked by ASE/ Enf. cum EA&MMTS-6, Ludhiana vide ECR No. 06/3248 dated 07.01.2021 and it was observed that due to huge variation in load of the consumer, there was lot of difference in results of accuracy. So, it was directed that whole LT-CT metering equipment should be brought to ME Lab, Ludhiana by disconnecting the incoming and outgoing cables. The metering equipment was checked in ME Lab, Ludhiana vide Challan No. 100 dated 22.01.2021. ASE/ Enf. cum EA&MMTS-6, Ludhiana rendered speaking order in this case vide Memo No. 1465 dated 09.04.2021 and directed that the meter was slow by 45.916% and account should be overhauled as per prevalent instructions of PSPCL. The reason was that the potential wires were found oxidized from the main cable joint.
- (iv) In line with speaking order, account of the Appellant was overhauled by applying slowness factor of 45.916% for the period 30.05.2020 to 16.01.2021 as per ESIM, Regulation 21.5.1 and an amount of ₹6,74,995/- was charged to the Appellant vide Notice No. 204 dated 05.05.2021 of AE/ DS

City S/D, Ahmedgarh. The Appellant deposited 20% of disputed amount and filed a Petition in the Forum instead of depositing the entire amount. The Forum vide its order dated 13.10.2021 in Case No. CGL-260/2021 decided that “the notice issued vide memo no. 264 dated 05.05.2021 of AE/ DS City S/D, Ahmedgarh to deposit amount ₹ 6,74,995/- for slowness of meter by 45.916% for the billing period 30.06.2020 to 16.01.2021 was correct and recoverable.”

- (v) The Appellant had filed this Appeal in this Court against the decision of the Forum in Case No. CGL-260 of 2021.
- (vi) The DDL of the Meter was recorded in ME Lab, Ludhiana and after observing the DDL, it was found that the behavior of metering equipment was erratic and results could not be taken as such. To obtain the accuracy of CTs/, CTs were tested on bench separately and it was observed that the potential wires were oxidized. DDL report shows that the voltage on all three phases of metering equipment was not fully contributing from 28.08.2018 (when the meter was installed). Load survey report recorded for last 70 days showed that the average voltage for this metering equipment was only 129.8 V during this period of 70 days as compared to standard voltage 240 V which meant

metering equipment was $((240-129.8)/240)*100=45.916\%$ slow.

- (vii) The meter under dispute was installed by the office of AE/ DS City S/D, Ahmedgarh vide MCO No. 99/2006 dated 13.08.2018 as the previously installed meter was unable to obtain ToD readings on display. The connection of CT chamber was not disturbed/ changed at the time of replacement of the meter. There were chances that the voltage was also not contributing fully at that time when the meter was previously replaced on 28.08.2018. There were also chances that the Appellant increased its load with time without any information to PSPCL which led to increase in consumption. Therefore, to rely on only consumption data to decide the meter was slow or not was not right as DDL report and tamper report of metering equipment was available. The DDL report of the meter could not change during transit.
- (viii) The connection of the Appellant was first checked by ASE/ Enf. cum EA&MMTS-6 on 07.01.2021 and at that it was observed that voltage V1 was 140V, V2 was 45V and V3 was 218 V. Due to variation in load, the results of meter were not recorded at that time and it was decided to check the meter in ME Lab, Ludhiana. In ME Lab, Ludhiana, this metering

equipment was checked vide Challan No. 100 dated 22.01.2021. During checking at ME Lab, Ludhiana, it was observed that the behavior of metering equipment was erratic and results could not be taken as such. To obtain accuracy of CTs, CTs were tested on bench separately and it was also observed that the potential wires were oxidized.

- (ix) The account of the Appellant was overhauled as per Regulation 21.5.1. The Appellant had all the documents related with this case as delivered by the Forum. In view of above, the amount charged to the Appellant was correct and was fully recoverable.

(b) Submission during hearing

During hearing on 22.12.2021, the Respondent reiterated the submissions made in its written reply to the Appeal and prayed for the dismissal of the Appeal. The Respondent could not explain how the Regulation No. 21.5.1 of Supply Code, 2014 was applied when the accuracy of meter in dispute was not determined at site and ME Lab? The Respondent admitted during hearing that accuracy of meter cannot be determined on the basis of average voltage calculated from DDL report. The Respondent admitted that the meter in dispute was not 'Inaccurate' rather it was to be treated as 'defective' on the basis of documents submitted in the Court by both parties. The

regulation applicable for 'defective' meter shall be applicable in this case.

6. Analysis and Findings

After going through the written and oral submissions made by the Appellant and the Respondent alongwith the perusal of the record produced by them, the issue requiring adjudication is the legitimacy of the amount of ₹ 6,74,995/- charged vide Notice No. 264 dated 05.05.2021 for the slowness of meter by 45.916% for the billing period from 30.06.2020 to 16.01.2021.

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

- (i) The connection of the Appellant was checked by ASE/ Enf. cum EA&MMTS-6, Ludhiana vide ECR No. 06/3248 dated 07.01.2021 and it was observed that due to huge variation in load of the consumer, there was lot of difference in results of accuracy. So, it was directed by Enforcement that whole LT-CT metering equipment should be brought to ME Lab by disconnecting the incoming and outgoing cables. The metering equipment was replaced on 16.01.2021 and was again checked in ME Lab, Ludhiana vide Challan No. 100 dated 22.01.2021. ASE/ Enf. cum EA&MMTS-6, Ludhiana rendered speaking

order in this case vide Memo No. 1465 dated 09.04.2021 that as per temper data on all the three phases, i.e., R, Y & B, Voltage was not being contributed properly from 28.08.2018 (i.e., make/ break was occurring) and the meter was found slow by 45.916%. The Forum in its decision had relied on the speaking order, considering the fixed percentage of slowness as correct. The Forum further observed that the account of the Appellant was required to be overhauled for maximum six months immediately preceding the date of removal of meter i.e., 16.01.2021 as per provision of Supply Code, 2014 and the Respondent had already overhauled the account for six months. After considering all written and verbal submissions by the Appellant and the Respondent and scrutiny of record produced, the Forum decided that:

“The notice issued vide memo no. 204 dated 05.05.2021 of AE/Op., City, Ahmedgarh to deposit Rs. 674995/- for slowness of meter by 45.916% for the billing period 30.06.2020 to 16.01.2021 is correct and recoverable.”

- (ii) It was observed that the accuracy of the meter was not detected as slow by 45.916% either at site or in the ME Lab. Mere theoretical calculation of slowness of the meter for billing purpose on the basis of parameters recorded in DDL/ Temper Report was not correct. It was not based on any regulations/

instructions of PSPCL/ PSERC. The Voltage never remains constant when make/ break occurs, so calculating of slowness at a particular percentage on the basis of calculated average voltage was not reliable for whole period of six months. The Forum erred in deciding that the meter was slow by a fixed percentage of slowness throughout the period and the account of the Appellant should be overhauled as per Regulation 21.5.1 of the Supply Code-2014. The account of the meter in dispute cannot overhauled as per Regulation No. 21.5.1 of Supply Code, 2014 because the exact accuracy could not be determined at site and also in ME lab. Since the slowness of the meter was not determined at site and ME Lab as per record produced in the Court, the meter shall be treated as defective. The ASE/ Enf. cum EA&MMTS-6, Ludhiana in its speaking orders as per Memo No. 1465 dated 09.04.2021 stated that as per temper data of all the three phases (R, Y & B), Voltages were not contributing properly from 28.08.2018 onwards (i.e. make/ break was occurring). So, the consumption data after 28.08.2018 till 16.01.2021 was not reliable for overhauling the account of the Appellant. The account of the Appellant shall be overhauled for a period from 17.07.2020 to 16.01.2021 (six months immediately preceding the date of removal of disputed

meter on 16.01.2021) as per consumption recorded during the period from 17.07.2017 to 16.01.2018.

- (iii) In view of the above, this court is not inclined to agree with the decision dated 13.10.2021 of the Forum in case no. CGL-260 of 2021. The account of the Appellant shall be overhauled for the period from 17.07.2020 to 16.01.2021 on the basis of consumption recorded during the period 17.07.2017 to 16.01.2018 by treating the meter as defective instead of inaccurate meter. It is established beyond doubt that the accuracy of the meter in dispute was not determined at site or in ME lab.

7. Decision

As a sequel of above discussions, it is decided that:

- a) The order dated 13.10.2021 of the CGRF, Ludhiana in Case No. CGL-260 of 2021 is hereby quashed.
- b) The account of the Appellant shall be overhauled for the period from 17.07.2020 to 16.01.2021 on the basis of consumption recorded during the period 17.07.2017 to 16.01.2018 because the consumption during the period 28.08.2018 to 16.01.2021 is not reliable as admitted by the Respondent.

c) Accordingly, the Respondent is directed to refund/ recover the amount found excess/ short after adjustment, if any, with surcharge/ interest as per instructions of PSPCL.

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.

December 22, 2021
S.A.S. Nagar (Mohali)

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