IN THE COURT OF THE LOKPAL (OMBUDSMAN),

ELECTRICITY, PUNJAB,

66 KV GRID SUB-STATION, PLOT NO. A-2,

INDUSTRIAL AREA, PHASE-1, S.A.S NAGAR (MOHALI)

Appeal No. 46 / 2017 Date of Order : 21.11.2017

Manjit Singh,

Village: Sherpur Khurd,

District Ludhiana.

Account No. 3002955538 …….Petitioner

*Through*

Shri Sukhminder Singh, Petitioner’s Representative (PR)

Versus

Punjab State Power Corporation Limited

…..Respondent

*Through*

Er.K.P.S. Sidhu,

Addl. S.E, DS,

Focal Point Division (Special)

PSPCL, Ludhiana

Petition No. 46 of 2017 dated 14.08.2017 was filed against order dated 12.07.2017 in case No. CG-52 of 2017 of the Consumer Grievances Redressal Forum (Forum) which decided that:

* *The amount charged to the Petitioner due to less billing on account of application of wrong MF, for the period from 12/2013 to 06/2016 amounting to Rs. 24,32,525/- is quite in order and recoverable.*
* *SE/OP City East Circle, PSPCL, Ludhiana, is directed to initiate disciplinary action against the delinquent officer / official who failed to check the connection of the Petitioner as prescribed in Clause 104 of ESIM.*
* *The Respondent would take necessary action for regularization of excess load found in the premises of the Petitioner as per instructions of the PSCL.*
* *The balance amount recoverable /refundable, if any, be recovered / refunded from/to the consumer along with interest / surcharge as per instructions of PSPCL.*

2. Arguments, discussions & evidence on record were held on 21.11.2017.

1. Shri Sukhminder Singh (PR), attended the Court proceedings on behalf of the Petitioner. Er. K.P.S. Sidhu Addl. S.E, DS Focal Point Division (Special), PSPCL, Ludhiana along with Shri Gursatinder Singh, AAO (Revenue), appeared on behalf of the Respondent, Punjab State Power Corporation Limited (PSPCL).

4. Presenting the case on behalf of the Petitioner, Shri Sukhminder Singh (PR) stated that the Petitioner was having a MS category connection bearing Account No. 3002955538 with sanctioned load of 79.930kW and Contract Demand as 88.810kVA under DS Focal Point Division (Special), PSPCL, Ludhiana and bills on the basis of measured consumption were being paid in due course. However, AEE, Commercial, Focal Point Division (Special), PSPCL, Ludhiana issued notice bearing memo no. 2390 dated 14.10.2016 to deposit an amount of Rs. 24,32,525/. On verbal enquiry, the Petitioner was told that, its account had been overhauled from 12/2013 to 06/2016due to billing with wrong MF of 0.5 instead of 1 (one), as checked by AEE/ Technical vide LCR no. 77/834 dated 24.6.2016. PR stated that the amount raised after a long gap and for a period of 31 months, from the date of installation of metering equipment, was unjustified. Therefore, the Petitioner approached CE/Central Zone for review of the case in ZDSC, which heard and decided the case on 22.09.2016 against the Petitioner, without considering/discussing any pleadings of the Petitioner and without going through the merits of the case.

PR stated that as the decision of ZDSC was wrong, biased and non-speaking, a Petition was filed before the Forum. But, the Forum also decided the case against the Petitioner on 12.07.2017, without discussing the submissions made by the Petitioner and without considering various judgments of Hon’ble Punjab & Haryana High Court & Hon’ble Supreme Court of India. The Petitioner was not satisfied with the above decision of the Forum. Therefore, present appeal was filed against the decision of the Forum.

PR also stated that a senior official of PSPCL was taking reading every month but never pointed out alleged wrong billing and any difference in MF. However, after a gap of about 31 months from the date of replacement of 11kV/110V, CT/PT unit, the Respondent came to know that billing was being done with MF 0.5 instead of actual MF 1, on the basis of checking conducted by AEE/Technical vide LCR no.77/834 dated 24.6.2016, which was altogether unjustified. PR stated that the metering equipment belonged to PSPCL and the Petitioner had nothing to do with the MF and the bills raised by the department were being paid within due dates. The Petitioner was burdened with a huge amount of Rs. 24,32,525/- (relating to difference in billing for more than 31 months) as per notice issued by AEE, Commercial vide memo. No. 2390 dated 14.07.2016 which was wrong and illegal.

PR further stated that the capacity of Energy Meter & CT/PT unit (bearing Sr. no. 811 Saraf make, 10/5A) had not been got checked from ME Lab before raising demand against the consumer by considering the capacity of Energy Meter as mentioned in the LCR as 10/5A but capacity of CT/PT unit had not been mentioned in the checking report. As such, the demand raised by applying MF 1 from 12/2013 to 06/2016 was liable to be withdrawn and CT/PT unit was required to be checked in ME Lab in the presence of consumer, to confirm the actual capacity of Energy Meter & CT/PT unit before taking further action as per various judgments of Hon’ble Courts. It was just not enough to rely on the name plate data of CT/PT unit as huge amount had been charged and the Petitioner was of the view that the consumption of electricity worked out by applying MF 1 was on the higher side, considering the use of supply from the connection.

PR also stated that the monthly readings were taken by a very competent officer of PSEB/PSPCLwho was supposed to report the correct consumption by applying requisite MF. Further, as per Instruction no. 104 of ESIM, checking of every MS connection was required to be done once in every six months. In such a situation, if the connection was not checked as prescribed or alleged wrong MF was not pointed out after checking as per the said instructions, then, the fault was on the part of the PSPCL (Respondent).Had the concerned officials/officers, (at the time of recording monthly readings) reported difference in MF (if any) or had checked the connection as per instructions and pointed out wrong MF (if any), the matter would have been sorted out then and there and there was no question of any dispute.

PR added that every manufacturer/service provider fixed the rate of its produce/service after considering all the input costs (including the cost of power), establishment and other expenditure. Accordingly, the Petitioner was also carrying on business and fixed the cost during the disputed period, keeping in view all the expenditure including energy bills issued by the Respondent. However, after a period of about 31 months, the Respondent raised huge demand of Rs. 24,32,525/-, but the Petitioner had not earned profit of such a magnitude during the period 12/2013 to 06/2016 (period for which the account was overhauled)*.* If the demand so raised was considered as correct, the Petitioner could not claim that amount from its customers and thus will be put to unbearable loss due to the mistake of the Respondent. As such, the unreasonable demand (if it was found to be in order) was required to be recovered from all the delinquent officials/officers instead of asking the Petitioner to deposit the same.

PR stated that Section 56 (2) of Electricity Act-2003 and Regulation 32.2 of Supply Code-2014, prescribe that *“Notwithstanding anything contained in any other law for the time being, no sum due from any consumer, under this regulation shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied”.* However, in this case, the amount related to the period from 12/2013 onwards and nothing was shown in the regular energy bills as arrears of previous period, therefore, the amount relating to previous period for more than 2½ years, could not be charged as per Supply Code-2014 and EA-2003.

PR also stated that the Forum was apprised that in the case of Tagore Public School V/S PSEB (NRS category connection under Aggar Nagar Division, PSPCL, Ludhiana), the Consumer was charged difference of billing for more than five years due to application of wrong MF. The said case, bearing CWP No. 14559 of 2007 was decided by the Hon’ble Punjab & Haryana High Court (Single Bench) on 09.11.2009 in favour of the consumer by ordering the overhauling of account only for a period of six months and PLA filed by the PSPCL before the Double Bench of the said Hon’ble High Court was dismissed. Further, the appeal filed by PSPCL in the Hon’ble Supreme Court against the decision of Hon’ble Punjab & Haryana High Court, was not admitted at all. Thus, the decision ibid of Hon’ble Punjab & Haryana High Court was also applicable in the present case of the Petitioner.

PR further stated that in the case of Park Hyundai, Sangrur V/S PSPCL (CWP No. 17699 of 2014) decided on 19.12.2015, the Hon’ble Punjab and Haryana High Court, held that the consumer could not be charged for more than six months even in case of billing with wrong MF. This case was decided against PSPCL by the Hon’ble Punjab and Haryana High Court, basically by referring to the order of Hon’ble Supreme Court in the case of Tagore Public School, wherein the appeal filed by the PSPCL against the decision of the Hon’ble Punjab & Haryana High Court, was not admitted at all.

PR contended that the issue of notice of huge amount to the consumer was totally against the provisions contained in Instructions No. 57.5 of ESIM, which provided for the recovery of charges to be effected only after serving the Consumer with a notice of show cause. Had the show cause notice been issued, then, the factual position could have been explained (as mentioned in the preceding paras) and upon verification/investigation from ME Lab and also after study of consumption pattern, by the concerned officer and position explained as above, the charges for overhauling of account, due to any wrong billing would have been levied, on study of all the objections raised by the consumer and then there would have been no question of any dispute.

PR further stated that the Respondent had tried to justify the demand raised for more than six months in case of billing with wrong MF, by referring to the Note given under Regulation 21.5.1 of Supply Code-2014. However, this referred note contravened the provisions of Electricity Act-2003, wherein for all the cases of metering defect/error (including billing with wrong MF), the period of overhauling had been restricted to six months only. Further, Regulation 44.1 of Supply Code-2014 prescribed that, *“These Regulations shall be read and construed in all respects as being subject to the provisions of the Act, Rules or regulations made under the Act and the provisions of any other law for the time being in force”.*

PR stated that it was thus clear that Note given under Regulation 21.5.1 of Supply Code-2014 could not override/contravene the provisions of Electricity Act-2003.

PR contended that decision in the case of Tagore Public School had been implemented by the Aggar Nagar Division, PSPCL, Ludhiana after obtaining advice from Sh. H.M. Singh, Advocate engaged by PSPCL as a Counsel for defending the case in Hon’ble Supreme Court as well as from the Legal Cell, PSPCL, vide memo No.19128 dated 13.4.2015. PR requested this Court to direct the Respondent to submit legal advice in this case also, as the Appeal filed by PSPCL in the Hon’ble Supreme Court against the decision of Hon’ble Punjab & Haryana High Court, was not admitted at all. Besides, Legal Cell may be asked to clarify the position with reference to Note given under Regulation 21.5.1 of Supply Code-2014 vis-a-vis relevant provisions of Electricity Act-2003 & Judgments of Hon’ble Supreme Court/High Court.

PR also referred to decision dated 29.01.2016 of this Court in Appeal No. 54/2015 titled Dr. Vinay Gupta V/S PSPCL as per which, it was decided that the “Respondent was not entitled to recover the amount on account of application of correct Multiplication Factor for the whole period from June 2010 to May 2014. However, the amount worked out by applying the correct Multiplication Factor (MF) for a period of six months, preceding 30.05.2014 (date of checking by MMTS) may be charged in accordance with the decision of Hon’ble High Court in CWP No. 17699 of 2014 decided on 19.12.2015 in the case of Park Hyundai, Sangrur V/S PSPCL.”

PR also stated that the case of the Petitioner was very much similar to the above cited case of Dr. Vinay Gupta, with the only difference that the checking in the case of Petitioner was carried after the Supply Code 2014 became applicable, whereas in the case of Dr. Vinay Gupta, the checking was conducted by Addl. S.E, MMTS on 30.05.2014 and at that time, Supply Code-2007 was applicable. There was no new regulation for charging of amount in case of difference in billing due to wrong MF except only a Note below Regulation 21.5.1 of Supply Code-2014 that ***“****Where accuracy of meter is not involved and it is a case of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued.”* PR added that there was no change, in this regard, in Electricity Act-2003 (Governing Act) and Supply Code-2014 Regulations were subordinate to provisions as per Act. Further, as provided in Regulation 44.1 of Supply Code-2014, these Regulations shall be read and construed in all respects as being subject to the provisions of the Act, Rules or Regulations made under the Act. Thus, note added below Regulation 21.5.1 of Supply Code-2014 did not, in any way, differentiate the case of the Petitioner from that of Dr. Vinay Gupta which was very rightly decided by this Court in view of judgments of the Hon’ble High Court in CWPs No. 14559 of 2007 and 17699 of 2014.

PR next submitted that the Forum may be fully aware that PSERC had given clear directions for discussing all the pleadings of the Petitioner and decision should be speaking one. As such, Forum was supposed to discuss each & every pleadings of the Petitioner and all the legal aspects before arriving at any conclusion. The Forum may have considered the fact that Hon’ble Supreme Court was the highest & final authority in deciding the matter of law & interpreting the law passed by the Parliament of India. The Forum should have referred to latest judgment of Hon’ble Punjab and Haryana High Court as explained above. But, the Forum arrived at the conclusion as per Note given below Regulation 21.5.1 of Supply Code-2014. PR stated that the said Note could not override/contravene the provisions of Electricity Act-2003. The Forum failed to consider the law point involved in the present case. The Forum did not even discuss Regulation “*44. INTERPRETATION***”** asper submission made by the Petitioner, although the same had been mentioned in judgment of the Forum also. The Forum also had the authority to seek expert views of well established Legal Cell of the Respondent PSPCL but, it did not consider seeking views of Legal Cell before deciding the case against the Petitioner. The Forum should have completely studied latest judgment of Hon’ble Punjab & Haryana High Court, in the case of Park Hyundai, Sangrur V/s PSPCL (CWP No. 17699 of 2014), wherein the Court had held that the consumer could not be charged for more than six months even in case of billing with wrong MF.

PR added that the Forum was also required to consider that PSPCL had earlier honoured the judgments of Hon’ble Punjab & Haryana High Court and had issued Commercial Circular no. 5/2012 and 28/2012 in view of decisions of Hon’ble Punjab & Haryana High Court. Thus, the decision of the Forum was not only wrong & biased but non-speaking also, as such, was liable to be set-aside.

PR prayed this Court to consider, whether account could be overhauled beyond a period of six months against the provisions of Electricity Act-2003 and various judgments of Hon’ble Punjab & Haryana High Court & Hon’ble Supreme Court. PR also stated that it was unfair to overhaul the account for a period of more than 2½ years even if, it was finally observed to be a case of wrong application of MF. PR also requested to set-aside the decision of the Forum and demand of Rs. 24,32,525/- as raised by the Respondent PSPCL and order the overhauling of account for a period of six monthsas perdecision of this Court in a similar case of Dr. Vinay Gupta V/S PSPCL (Appeal no. 54 / 2015, decided on 29.01.2016).

5. Defending the case on behalf of the Respondent, Er. K.P.S. Sidhu, Addl. S.E, Focal Point Division (Special), PSPCL, Ludhiana stated that the sanctioned load of the connection was 79.930kW and for updating the Multiplication Factor Register, AEE/Technical Unit-I checked the connection of the Petitioner vide LCR no. 77/834 dated 24.06.2016. According to the LCR, 11KV/110V, CT/PT unit of 10/5 Amp capacity and HT Energy Meter of 10/5 Amp capacity was installed at site. As per capacity of CT/PT unit and Energy Meter, billing of Petitioner’s connection was to be done with MF 1, but, billing was actually being done with MF 0.5. The connection was also checked by Addl. S.E, Enforcement, vide ECR no. 22/455 dated 20.07.2016 on the request made by AEE/Technical and as per its checking report, capacity of Energy Meter and CT/PT unit was also 10/5Amp. The Respondent then checked the records and found that CT/PT unit of capacity 5/5 Amp of the Petitioner was burnt during 12/2013 and for replacement of the CT/PT unit, the Petitioner had deposited Rs. 34,080/- vide BA 16 no. 85/8128 dated 11.12.2013. As per entry in ME-II Register at Sr. no. 444 page 47 and Sr. no. 6/38 dated 11.12.2013, CT/PT unit of capacity 10/5 Amp, make Saraf, Sr. no. SE/ME/17/811 was drawn from ME Lab and the same was installed on Petitioner’s premises vide Job Order no. 38/50354 dated 11.12.2013. CT/PT unit was sealed vide MSR no. 219/40 dated 12.12.2013 by the AAE and at that time, the capacity of Energy Meter of the Petitioner was 10/5Amp, so, MF of the consumer was 0.5 before replacement of the unit i.e. 11.12.2013. But, after replacing the CT/PT unit, MF was to be taken as 1 (10/10 = 1). The Respondent stated that since the Petitioner continued to be billed with MF 0.5 instead of being billed with MF 1 from 12/2013, its account was overhauled with MF 1, instead of MF 0.5, for the period from 12/2013 to 06/2016 and a sum of Rs. 24,32,525/- was charged and notice to the Petitioner was issued vide memo no. 2390 dated 14.07.2016 in accordance with the Note given under Regulation 21.5.1 of Electricity Supply Code-2014 effective from 01.01.2015, according to which account was to be overhauled for the full period for which billing was done with wrong MF.

The Respondent stated that the Petitioner was not satisfied with the demand raised and represented before the ZDSC, Ludhiana which, decided the case on 22.09.2016 and passed order that the amount charged was correct and recoverable.

The Respondent then issued a notice no. 476 dated 17.02.2017 for depositing Rs. 22,33,058/- in view of ZDSC’s decision dated 22.09.2016 after adjusting the amount already deposited and interest charged. The Petitioner disagreed with the decision of ZDSC and instead of depositing the amount as per the said notice, represented before the Forum against order dated 22.09.2016 of ZDSC. The Forum decided the case on dated 12.07.2017 as under:

*“The amount charged to the Petitioner due to less billing on account of application of wrong MF for the period 12/2013 to 06/2016 amounting to Rs. 24,32,525/- is quite in order and recoverable*.”

In compliance to the order ibid of the Forum, the Respondent issued a notice no. 1543 dated 01.08.2017 with due date 11.08.2017 for depositing Rs. 20,37,644/- after adjusting the amount already deposited and interest charged. But the Petitioner was not satisfied with the order of the Forum and filed an Appeal before this Court. The Respondent also stated that the Petitioner, in the present Petition, placed reliance on the judgments of Hon’ble High Court of Punjab & Haryana in the cases of Tagore Public School V/S PSEB (CWP 14559 of 2007) and Park Hyundai, Sangrur V/S PSPCL (CWP No. 17699 of 2014) and also of this Court in Appeal no. 54/2015 titled Vinay Gupta V/S PSPCL and prayed to allow its Appeal as per decisions in all the said similar cases.

The Respondent contested the contention of the Petitioner about the applicability of the decision ibid in the case of the Petitioner by referring to applicable regulation viz. Note below Regulation 21.5.1 of Supply Code-2014 and prayed to dismiss the appeal.

**DECISION**

6. The relevant facts of the case are that the Petitioner was having a MS category connection bearing Account No. 3002955538 with sanctioned load of 79.930kW and Contract Demand as 88.810kVA operating under DS Focal Point Division (Special), PSPCL, Ludhiana. The connection was checked by the AEE/Technical, Unit-I for updating Multiplication Factor Register and it was noticed that 11kV/110V CT/PT unit of 10/5 Amp capacity and HT Energy Meter of 10/5 Amp capacity was installed at site. As per capacity of CT/PT unit and Energy Meter, billing of Petitioner’s connection was required to be done by applying MF 1, but actually, billing was being done with MF 0.5. The connection was also checked by Addl. S.E, Enforcement, vide ECR no. 22/455 dated 20.07.2016 and as per checking report, capacity of CT/PT unit was also 10/5Amp. During checking of the records, it was found that CT/PT unit of capacity 5/5 Amp of the Petitioner was burnt during 12/2013 and for replacement of the CT/PT unit, the Petitioner deposited had Rs. 34,080/- vide BA 16 no. 85/8128 dated 11.12.2013. As per entry in ME-II Register at Sr. no. 444 page 47 and Sr. no. 6/38 dated 11.12.2013, CT/PT unit of capacity 10/5 Amp make Saraf, Sr. no. SE/ME/17/811 was drawn from ME Lab and same was installed at Petitioner’s premises vide Job Order no. 38/50354 dated 11.12.2013. CT/PT unit was sealed vide MSR No. 219/40 dated 12.12.2013 by the AAE and at that time, the capacity of Energy Meter of the Petitioner was 10/5Amp, so, MF was 0.5 before replacement of the unit i.e. 11.12.2013. After replacing the CT/PT unit, MF was 1 (10/10 = 1). Since the Petitioner was being billed with MF 0.5, instead of MF 1 from 12/2013, its account was overhauled with MF 1 instead of MF 0.5 for the period from 12/2013 to 06/2016 and a sum of Rs. 24,32,525/- was charged to the Petitioner vide AEE, Commercial’s notice no. 2390 dated 14.10.2016 in accordance with the Note given under Regulation 21.5.1 of Electricity Supply Code-2014,

according to which, account was to be overhauled for the full period for which billing was done with wrong MF.

The Petitioner was not satisfied with the demand raised and represented before the ZDSC which, after hearing both the parties and checking of records, decided the case on 22.09.2016 and passed order that the amount charged was correct and recoverable.

The Petitioner disagreed with the decision dated 22.09.2016 of ZDSC and represented before the Forum which decided the case on dated 12.07.2017 as under:

*“The amount charged to the Petitioner due to less billing on account of application of wrong MF for the period 12/2013 to 06/2016 amounting to Rs.24,32,525/- is quite in order and recoverable*.”

The Petitioner was not satisfied with the order of the Forum and filed an Appeal before this Court. The Petitioner has, in the present Petition placed reliance on the judgments of Hon’ble High Court of Punjab & Haryana in the cases of Tagore Public School V/S PSEB (CWP No. 14559 of 2007) and Park Hyundai, Sangur V/S PSPCL (CWP No. 17699 of 2014) and also of this Court in Appeal No. 54/2015 titled Vinay Gupta V/S PSPCL and prayed to allow its Appeal as per decisions in all the said cases which were of similar nature.

I have gone through the written submissions made in the Petition by the Petitioner and reply of the Respondent as well as oral arguments of the Representatives of the Petitioner and the Respondent along with material placed on record by both the sides.

The issue requiring adjudication is the legitimacy of the amount charged to the Petitioner as the difference of amount billed due to application of wrong MF and amount billed by application of actual MF at a belated stage for the period, the mistake continued as per applicable regulations.

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

1. I find that the cause of action in the present dispute arose

when the connection of the Petitioner was checked by AEE/Technical Unit-I, Focal Point Division (Special), PSPCL, Ludhiana on 24.06.2016 for updating the Multiplication Factor Register. The connection was checked vide LCR no. 77/834 dated 24.06.2016 as per which, capacity of both Energy Meter and 11kV/110V, CT/PT unit installed at site was 10/5 Amp. Subsequently, the connection was checked by Addl. S.E, Enforcement, vide ECR no. 22/455 dated 20.07.2016 on the telephonic request of AEE/Technical, Unit-I, Focal Point Division (Special), PSPCL, Ludhiana and as per its checking report, the capacity of Energy Meter and CT/PT unit was 10/5Amp. The Respondent then checked the records and found that CT/PT unit of capacity 5/5Amp was burnt on 11.12.2013 and in its place, CT/PT unit of capacity 10/5 Amp was installed at the Petitioner’s premises vide Job Order No. 38/50354 dated 11.12.2013. It was also noticed that the Petitioner was earlier billed with MF 0.5 whereas it should have been billed with MF 1 w.e.f. 12/2013. Accordingly, the account of the Petitioner was overhauled from 12/2013 to 06/2016 and a sum of Rs. 24,32,525/- was raised to the Petitioner vide notice dated 14.10.2016 issued by AEE/Commercial, Focal Point Division (Special), PSPCL, Ludhiana in terms of provisions contained in the Note given under Regulation 21.5.1 of Electricity Supply Code-2014,which reads as under:-

*“Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the account shall be overhauled for the period this mistake continued.*”

I find that the Petitioner was not satisfied with the notice dated 14.10.2016 and approached the ZDSC, Ludhiana which decided on 22.09.2016 that the amount charged due to wrong application of MF was correct and recoverable. I observe that the Petitioner challenged the said decision of ZDSC before the Forum which decided on 12.07.2017 that the amount charged to the Petitioner due to less billing on account of application of wrong MF for the period from 12/2013 to 06/2016 amounting to Rs. 24,32,525/- was quite in order and recoverable.

*I am of the view that Note given below Regulation 21.5.1 of Supply Code-2014 is clear and requires no explanation. It proves beyond doubt that MF was incorrectly applied while billing for the period from 11.12.2013 (date of replacement of CT/PT Unit) to 24.06.2016 (date of checking of the connection).*

*Accordingly, I agree with the Respondent that the amount charged to the Petitioner for the period from 12/2013 to 06/2016 due to less billing by application of MF 0.5 instead of MF 1, is correct and recoverable in terms of provisions contained in Note below Regulation 21.5.1 of Supply Code-2014.*

ii) I observe that the PR referred to provisions contained in Section 56 (2) of Electricity Act-2003 and Regulation 32.2 of Supply Code-2014 which provide that:

*“Notwithstanding anything contained in any other Law for the time being, no sum due from any consumer, under this regulation shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied”.*

PR argued that in the present case, the amount charged related to the period from 12/2013 onwards and nothing was shown in the regular energy bills as arrears of previous period, so, the amount relating to previous more than 2½ years could not be charged as per provisions ibid of Electricity Act-2003 and Supply Code-2014.

In this connection, I have gone through the findings of Hon’ble Punjab & Haryana High Court in LPA No. 605 of 2011 decided on 09.09.2011 as per which, “*the sum became first due*” was “*the demand first raised due to wrong billing”*.

Based on the above decision, Chief Engineer/ Commercial, PSPCL issued Commercial Circular No. 05/2012 dated 14.03.2012 and clarified that the date of sum due was the date when the demand was first raised by the Respondent.

*I find that in the present case, the demand was first raised by the Respondent on 14.7.2016, as such, the plea of the PR, contesting the validity of the amount charged is not sustainable in the eyes of Law.*

1. I find that the PR referred to the case of Tagore Public School V/S PSEB in CWP No. 14559 of 2007 decided on 09.11.2009, Hon’ble Punjab & Haryana High Court directed to overhaul the account for a period of six months under Section 26 (6) of Electricity Act-1910.

*I observe that the decision ibid is not relevant in the present context after coming into effect of Electricity Act 2003 and regulations made under Supply Code-2007 amended vide Supply Code-2014. I am of the view that any demand raised against the consumer due to wrong billing as a result of wrong application of MF is to be raised for full period as per provisions contained in Note given under Regulation 21.5.1 of Supply Code-2014.*

iv) I observe that the PR referred to the decision of Hon’ble Punjab & Haryana High Court in the case of Park Hyundai, Sangrur V/S PSPCL in CWP No. 17699 of 2014 decided on 19.12.2015 wherein it was held that the consumer could not be charged for more than six months even in the case of billing with wrong MF.

*I agree with the Respondent that the decision ibid is also not relevant in the present context as provisions of Supply Code-2014 are relevant in the present case as evidenced from perusal of the Note given under Regulation 21.5.1 of Supply Code-2014 which clearly mentions that the amount due to wrong application of MF is to be charged for the period, the mistake occurred.*

1. I find that the PR also referred to the decision of this Court in the Appeal No. 54/2015 titled ‘Dr. Vinay Gupta V/S PSPCL’ decided on 29.01.2016, wherein it was held that the Respondent was not entitled to recover the amount worked out by applying the correct MF for a period of six months preceding 30.05.2014 (date of checking by MMTS) and charge in accordance with the decision of Hon’ble Punjab & Haryana High Court in the case of Park Hyundai V/S PSPCL (CWP No. 17699 of 2014) decided on 19.12.2015.

*I do not agree with the contention of the PR that the present case was similar to the case of Dr. Vinay Gupta V/S PSPCL (Appeal No. 54/2015) with the only difference that checking in the case of the Petitioner was carried out after the Supply Code-2014 became applicable whereas in the case of Dr. Vinay Gupta, checking was done on 30.05.2014 when Supply Code-2007 was applicable.*

I observe that the PR contended that there was no new regulation (for charging of amount in case of difference in billing due to wrong MF) except a Note below Regulation 21.5.1 of Supply Code-2014.

*I am of the view that the Petitioner’s case is not similar to the case of Dr. Vijnay Gupta (Appeal No. 54 of 2015) decided by this Court on 29.01.2016 as the checking of the connection of the Petitioner was done on 24.06..2016 when Regulations of Supply Code-2014 were applicable and the Petitioner was charged accordingly as per applicable regulations notified by the PSERC till they are set-aside by the Hon’ble Punjab & Haryana High Court and Hon’ble Supreme Court of India.*

1. *I agree with the contention of the Petitioner that the checking of its connection was not done once in every six months in accordance with provisions of Instruction no. 104 of ESIM due to which difference/discrepancy in application of MF, if any, remained un-noticed for about 31 months. PR argued that if the prescribed checking of the connection had been conducted by the concerned officers/officials of the Respondent, the present dispute would not have arisen.*

*I find that the Forum, vide its decision dated 12.7.2017, directed the S.E, DS City East Circle, PSPCL, Ludhiana, to initiate disciplinary action against the officers/officials who failed to check the connection of the Petitioner as per Clause 104 of ESIM.*

1. *I have gone through the Consumption Data of the Petitioner’s connection immediately before and after 11.12.2013 (the date on which CT/PT Unit of 10/5Amp was installed/the date from which MF 1 instead of MF 0.5 was to be applied but not applied earlier) and after 24.06.2016 (the date on which the connection was checked by AEE, Technical, Unit-I, Focal Point Division (Special), PSPCL, Ludhiana) as per details given below:*

|  |  |  |  |
| --- | --- | --- | --- |
| ***Consumption immediately before & after installation of CT / PT unit of 10/5Amp on 11.12.2013*** | | ***Consumption after checking of connection on 24.06.2016 by AEE, Technical*** | |
| ***Date of reading*** | ***Consumption***  ***(in kVAh)*** | ***Date of readings*** | ***Consumption (in kVAh)*** |
| *08.06.2013* | *4286* | *11.07.2016* | *20277* |
| *08.07.2013* | *4838* | *26.7.2016*  *19.08.2016* | *2578* |
| *08.08.2013* | *7952* | *09.09.2016* | *24866* |
| *08.09.2013* | *7501* | *06.10.2016* | *26440* |
| *08.10.2013* | *10556* | *05.11.2016* | *22484* |
| *08.11.2013* | *7501* | *07.12.2016* | *22510* |
| *08.12.2013* | *8816* |  | |
| *09.01.2014* | *7131* |
| *06.01.2015* | *9778* |
| *07.01.2016* | *12476* |
| *09.06.2016* | *8779* |

*From the above study of the consumption pattern, I find that the consumption of the Petitioner’s connection immediately before and after the replacement of CT/PT unit with 10/5Amp on 11.12.2013 remained nearly in the same range despite the fact that MF 1 instead of MF 0.5 had to be applied as evidenced by perusing the consumption pattern from 07/2016 onwards (after detection of the mistake of application of wrong MF on 24.06.2016). This reveals that the consumption after application of correct MF was more than double of the consumption prior to the date of application of wrong MF on 11.12.2013.*

*I find that the Petitioner continued to pay bills after installation of CT/PT unit of 10/5 Amp capacity on 11.12.2013 and was also responsible for not bringing the fact of less billing to the notice of the Respondent. I am of the view that the consumer is expected to be sincere and honest in its dealings with the Licensee and honesty to the consumer is not the exclusive domain of the PSPCL.*

As a sequel of above discussions, it is held that the amount charged to the Petitioner due to less billing, for the period from 12/2013 to 06/2016 amounting to Rs. 24,32,525/-, on account of application of wrong MF 0.5 instead of MF 1 is in order and recoverable as per applicable regulations. However, no interest should be charged to the Petitioner as the onus for application of wrong MF and its detection at a belated stage lies with the Respondent.

7. The Appeal is disposed off accordingly.

8. In case, the Petitioner or the Respondent (Licensee) is not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate Bodies in accordance with Regulation 3.28 of Punjab State Electricity Regulatory Commission (Forum & Ombudsman) Regulations – 2016.

(VIRINDER SINGH)

LokPal (Ombudsman)

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