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. 53 / 2017 Date of Order : 18.01.2018

Senior DEE/TRD/UMB,

Northern Railways,

Kharar.

 ....Petitioner

Account No. R65/KL-02-00001

*Through:*

Shri Jaideep Verma, Petitioner’s Counsel (PC)

Versus

Punjab State Power Corporation Limited

 ...Respondent

*Through:*

Er.Surinder Singh,

Senior Executive Engineer,

DS Division,

PSPCL, Kharar.

Appeal No. 53/2017 dated 28.08.08.2017 was filed against order dated 28.07.2017 in case no. CG-36 of 2017 of the Consumer Grievances Redressel Forum (Forum) which decided that:

*“The amount of Rs. 98,12,822/- charged to the Petitioner, vide memo no. 16330 dated 30.12.2016, on account of surcharge levied for short payment of bills, is as per the instructions of the Corporation and is correct and recoverable. However, PF allowance/surcharge, charged in the bills of the Petitioner for the months of 11/2005 & 12/2005, is to be refunded/charged as per Clause 81.18 of ESR 2005.”*

2. Arguments, discussions and evidence on record were held on 04.01.2018 and 18.01.2018.

3 Shri Jaideep Verma, Petitioner’s Counsel (PC) alongwith Shri Gurmeet Singh, Section Officer, attended the Court on behalf of the Petitioner (Northern Railways) and Er. Gurinder Singh, AEE,/DS Sub Division, PSPCL, Kurali alongwith Shri S.P. Soi, Advocate, appeared on behalf of the Respondent – PSPCL, on 04.01.2018. On 18.01.2018, Shri Jaideep Verma, Petitioner’s Counsel (PC) alongwith Shri Ish Kumar, DEE and Shri Satnam Singh, SSE, attended the Court proceedings on behalf of the Petitioner (Northern Railways). Er. Surinder Singh, Senior Executive Engineer/DS Division, Kharar alongwith Er. Harvinder Pal Singh, Senior Executive Engineer, CBC, Ludhiana and Shri S.P. Soi, Advocate, appeared on behalf of the Respondent - Punjab State Power Corporation Limited.

4. Presenting the case on behalf of the Petitioner, Shri Jaideep Verma, Petitioner’s Counsel (PC) stated that the order dated 28.07.2017 passed by the Forum, was apparently unjust, improper, illogical, cryptic, erroneous, biased and illegal and thus, liable to be set aside.

 PC stated that the Petitioner was having Railway Traction category connection with Sanctioned Load of 7040kW and Contract Demand of 8000kVA operating under DS/Sub Division, PSPCL, Kurali, within the jurisdiction of DS Division, PSPCL, Kharar. PC also stated that the Kurali Railway Traction Sub Station, was located in the section of KRLI-MRND (Kuralai-Morinda) and was fed from 132 KV Grid Sub-station, Ropar. The said connection was running smoothly. But, all of a sudden, PT fuse of HT side was blown on 24.11.2005 at 10:25 hours due to which, Energy Meter stopped to work. The AEE/DS Sub Division, PSPCL, Kurali provided fuse on 28.12.2005 at 03:54 hours and prepared the electricity bill for 12/2005, by taking the reading of the same month of the previous year i.e. 12/2004), amounting to Rs. 45,11,220/- without assessing the Power Factor rebate to which the Petitioner was entitled as per law. The bill prepared by the Respondents was contrary to the Commercial Circular (CC) no. 11/1990 which read as under:-

*“So far as charging the consumer for the period, the meter remained inoperative, is concerned, the average consumption of last 03 or 06 months or the average of same months of the previous year, whichever is higher, should be charged.”*

 PC further stated that the Respondent mis-interpreted the aforesaid circular as per which, the average consumption should be charged as per the average consumption of last three or six months or average of same month of the previous year, whichever was higher. However, the Respondent, instead of taking the consumption of the same month of the previous year, directly took the consumption of the same month of the previous year. Hence, the bill amounting to Rs. 45,11,220/- was apparently erroneous.

 PC submitted that the Petitioner had deposited Rs. 41,76,640/- i.e. average of last three months bills i.e. 08/2005, 09/2005 and 10/2005 by assessing the Power Factor rebate. However, in 01/2006, the Respondent prepared the bill amounting to Rs. 50,07,940/- which included current energy consumption charges, arrears of previous month (Rs. 3,34,580/-) and surcharge. But, the Petitioner paid Rs. 46,73,360/- only for the energy consumption. Further, in the next month 02/2006, the Respondent again prepared bill amounting to Rs. 51,63,461/- which included current energy consumption charges, arrears of previous month and surcharge. Surprisingly, current energy consumption charges were Rs. 39,18,670/-, while the rest of the amount of Rs. 12,44,791/- was claimed as arrears of previous months and surcharge. But, the Petitioner again deposited the current energy consumption charges. The Respondent illegally kept on adding surcharge over surcharge without giving any justification and surcharge levied amounted to Rs. 98,12,822/- upto 10/2007. PC added that, interestingly, since 11/2007 till date, no surcharge amount was ever claimed by the Respondent in any of the energy consumption bills. When the Petitioner visited the office of the Respondent for obtaining ‘H’ Form (NOC) for Open Access, it was told that an amount of Rs. 98,12,822/- was outstanding and was accordingly shown in ‘H’ Form which was not correct and recoverable and liable to be set aside.

 PC further stated that the Assistant Executive Engineer, DS Sub Division, Kurali, vide memo no. 387 dated 16.03.2006, informed the Petitioner that overhauling of account on the basis of MMTS report was under process. The said overhauling was done by the Respondent on 19.06.2006, when it sent the calculation sheet of Energy Bill with Revised Billing Statement (RBS). The revised energy units assessed were 970653 units for 11/2005 and 1054214 units for 12/2005 for which, the Respondent demanded Rs. 4,09,752/-. The Respondent never took care of Power Factor rebate even in revised bill issued. Still, the Petitioner, in order to resolve the controversy, was ready to deposit Rs. 3,34,580/- (previous arrears) and Rs. 4,09,752/- (revised amount) by deducting Power Factor rebate. Accordingly, the Petitioner deposited Rs. 7,25,780/- and deducted Rs. 18,852/- being Power Factor rebate. After that, the Petitioner paid all bills in time except Surcharge which was incorrectly levied upon it. However, the Petitioner applied for the Open Access and accordingly, Staste Load Despatch Centre required ‘H’ Form (NOC) to be obtained from the Assistant Executive Engineer/DS Sub Division, PSPCL, Kurali. Surprisingly, in the ‘H’ Form, AEE/DS Sub Division, PSPCL, Kurali mentioned that a sum of Rs. 98,12,822/- was outstanding and recoverable as surcharge amount from the Petitioner.

 PC also stated that the Petitioner kept on monitoring and maintaining PF above 0.95 and as such, PF rebate should have been assessed by the Respondent while preparing energy bills. But, in energy bill of 12/2005, no PF rebate was assessed. Even, the same was not assessed in the revised calculation of energy bill for 11/2005 and 12/2005. In such circumstances, the assessment of PF rebate was not taken care of whereas, the Petitioner was eligible for PF rebate assuming PF @ 0.99 because the Respondent, in its calculation, considered 12/2004 as highest energy consumption month, so, in that eventuality, the PF of the same month had to be considered.

 PC contended that the Respondent, in its revised calculation, considered December 2004 as base month for calculation, units of energy consumption ignoring Power Factor of December 2004 i.e. 0.99. In such circumstances if energy consumption units of December 2004 considered as a base for calculation of average consumption, then, PF of that month only should be considered. However, when the Respondent revised its calculation of November 2005, it again did not consider PF rebate for the revised units, as the Petitioner had already taken PF rebate on Energy units of November 2005 @ PF 0.96 i.e about Rs.10,237/-. Thus, there was difference of Rs. 513/- to be paid to the Petitioner for units difference. Total PF rebate for the month of 12/2005 plus PF rebate on difference of units paid for 11/2004 was Rs. 47,215/**-**, So, a sum of Rs. 28,663/- was pending towards the Respondent after deduction of Rs 18,552/- as claimed by the Respondent.

 PC stated that the Petitioner had paid all monthly energy bills and revised energy bills of 11/2005 and 12/2005 as soon as the same were received from the Respondent, so, no outstanding amount as alleged surcharge could be claimed towards the Petitioner by the Respondent.

 PC also stated that the accumulated surcharged amount of Rs. 98,12,822/- was liable to be ordered as illegal and should be waived off and an amount of Rs. 28,663/- with interest was pending towards the Respondent since the year 2006, the same was liable to be refunded.

 PC also stated that the Interest on amount of Rs. 28,663/- (PF rebate Rs. 47,215/- minus difference of payments claimed by the Respondent i.e. Rs. 18,552/-) worked out to Rs. 64398/- and the same was liable to be paid to the Petitioner from the year 2006 till date as per provisions contained in Regulation 35.1.3 of Supply Code-2014 which provided as under:-

 “*If on examination of a complaint, the distribution licensee finds a bill to be erroneous, a revised bill shall be issued to the consumer indicating a revised due date of payment, which shall not be earlier than seven days from the date of delivery of the revised bill to the consumer. If the amount paid by the consumer under Regulation 35.1.1 is in excess of the revised bill, such excess amount shall be refunded through adjustment first against any outstanding amount due to the distribution licensee and then against the amount becoming due to the distribution licensee immediately thereafter. The distribution licensee shall pay to such consumer interest on the excess amount at SBI’s Base Rate prevalent on first of April of the relevant year plus 2% from the date of payment till such time the excess amount is adjusted.”*

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| --- |
|  Accordingly, interest on PF rebate of 11/2005 and 12/2005 worked out as under: |
| **Year** | **Base Rate of SBI****(in %)** | **Rate of Interest @ Base Rate + 2%** | **Principal Amount****(in Rs.)** | **Compounded****Amount (in Rs.)** |
| 2006 | 9.30 | 11.30 | 28663 | 31902 |
| 2007 | 9.30 | 11.30 | 31902 | 35507 |
| 2008 | 9.30 | 11.30 | 35507 | 39519 |
| 2009 | 9.30 | 11.30 | 39519 | 43985 |
| 2010 | 9.30 | 11.30 | 43985 | 48955 |
| 2011 | 9.30 | 11.30 | 48955 | 54487 |
| 2012 | 9.30 | 11.30 | 54487 | 60644 |
| 2013 | 9.30 | 11.30 | 60644 | 67497 |
| 2014 | 9.30 | 11.30 | 67497 | 75124 |
| 2015 | 9.30 | 11.30 | 75124 | 83613 |
| 2016 | 9.30 | 11.30 | 83613 | 93061 |
|  |  |  |  |  |

 Total Interest: Rs. 64,398/-

 PC stated that the Petitioner took up the matter repeatedly with the PSPCL intimating that the Petitioner was regularly paying bills as per consumption without any delay and PSPCL had wrongly been levying surcharges over surcharge since December 2005. Hence, PSPCL should waive off this unjustified surcharge over surcharge. In this regard, last communication was made to the PSPCL vide letter No. 230-Elect / TRD /Bill/ 620/ KRLI dated 06.01.2008. The said amount of Rs. 98,12,822/- was apparently illegally charged from the Petitioner. This was despite the fact that the Petitioner was duly entitled to PF rebate which was apparently ignored by the CBC, Ludhiana without any justification.

 PC stated that in the present dispute, the issue was that whether the Petitioner was entitled for the PF rebate as per the rules. However, the Forum did not give any finding regarding the same. Thus, the Forum passed an impugned order which was unjust and illegal and hence, was liable to be set aside.

PC contended that admittedly, the Respondent - PSPCL was silent for the last nine years as the last communication between the Respondent and the Petitioner was on 06.01.2008. Thus, the claim of the Respondent was hopelessly time barred under Section 56 (2) of Indian Electricity Act, 2003. However, the Forum had not considered this legal aspect.

PC prayed that order dated 28.07.2017 passed by the Forum and the demand raised illegally by the Respondent be set-aside in the interest of justice and fair play.

 Defending the case on behalf of the Respondent, Er. Surinder Singh, Senior Executive Engineer/DS Division, PSPCL, Kharar stated that the Petitioner was having a Railway Traction connection in the name of DRM/TRD, Northern Railway Traction, Kurali, bearing Account no. RS65/KL02-00001 with Sanctioned Load 7040kW and Contract Demand 8000kVA at 132 KV supply voltage. The Respondent stated that the DDL of the Energy Meter was done by Addl. S.E/MMTS, Mohali on 21.12.2005 and it was found that Blue Phase of PT supply was missing on the Energy Meter display. The site was again visited on 28.12.2005 by Addl. SE/MMTS, Mohali alongwith AEE/DS Sub Division, Kurali. The connection was thoroughly checked and during the checking, it was detected that fuse of Blue Phase had blown off from the Marshalling Box inside the yard. The same was set right and missing PT of Blue Phase PT again appeared on the display.

 The Respondent stated that based on the above checking, the bill for the month of December 2005 was prepared by Centralized Billing Cell (CBC), PSPCL, Ludhiana on average basis, by taking the consumption of same month of previous year for Rs. 45,11,220/-. The CBC also intimated that the final overhauling of the bill will be carried out after receipt of speaking orders of Addl. S.E/MMTS, Mohali. The payment of the bill for the month of December 2005 was deposited by the Petitioner for Rs. 41,76,640/- by making calculations on its own on the basis of average of consumption of August 2005 to October 2005. In this way, the Petitioner made less payment amounting to Rs. 3,34,580/-, so, the surcharge of Rs. 4,47,087/- was levied on actual amount of Rs. 45,11,220/-. After this, all the current bills, except for the month of February 2006, were paid by the Petitioner. The due date of bill for February 2006 was 03.04.2006. When the employee from the Petitioner’s office came to Sub Divisional Office to deposit the bill, AEE/DS Sub Division, PSPCL, Kurali advised it to deposit the whole amount of bill i.e. current bill with arrear of pervious bill and surcharge, otherwise, surcharge of current bill will also be levied. But, instead of depositing the full amount of bill, the Petitioner sent a Demand Draft for payment by speed-post and the same was received in the Sub Divisional Office on 10.04.2006 i.e. late by seven days from the due date. The bill for the months of 11/2005 and 12/2005 was finally overhauled/revised by CBC, PSPCL, Ludhiana, on the basis of letter no 557/60 dated 13.02.2006 from Addl. SE/MMTS, PSPCL, Mohali, vide RBS No. 94 dated 19.05.2006 vide which, additional amount of Rs. 4,09,752/- was due against the Petitioner. The AEE/DS Sub Division, PSPCL, Kurali informed the Petitioner accordingly with the directions to deposit the due amount with pending arrear and surcharge for five months. But, the Petitioner deposited only Rs.7,25,780/- as per its own calculations which was short of Rs. 18,552/- than the actual amount i.e. Rs. 3,34,580/- plus Rs. 4,09,752/-. The Petitioner also did not pay any of surcharge charged to it and deposited the current bill only and same was adjusted against the previous balance as per Clause no. 95 of ESR-2005. Thus, the surcharge on every bill continued to be levied till 10/2007. In this regard, the Petitioner was requested several times by the AEE/DS Sub Division, PSPCL, Kurali, but the railway authorities neither paid full amount of bill nor tried to contact higher authorities of PSPCL about the discrepancy, if any.

 The Respondent stated that it was very much clear that the outstanding amount of Rs. 98,12,822/- had accumulated due to levy of surcharge because the Petitioner never paid the billed amount in full. So, this amount was recoverable from the Petitioner.

**Decision:**

6. The relevant facts of the case are that the Petitioner was having Railway Traction category connection with Sanctioned Load of 7040kW and Contract Demand of 8000kVA, in the name of DRM/TRD, Northern Railway Traction, Kurali, operating under DS Sub Division, PSPCL, Kurali within the jurisdiction of DS Division, PSPCL, Kharar. The Kurali Railway Traction Sub-station was located in the Section of KRLI-MRND and was fed from 132kV Grid Sub-station, Ropar. The DDL of the Energy Meter was done on 21.12.2005 by Addl. S.E/MMTS, Mohali who noticed that the Blue Phase of PT Supply was missing on Energy Meter display. The site was again visited on 28.12.2005 by the Addl. S.E/MMTS, PSPCL, Mohali alongwith AEE/DS Sub Division, PSPCL, Kurali who checked the connection and noticed that fuse of Blue Phase had blown off from the Marshalling Box inside the yard. The same was set right and missing PT of Blue Phase again appeared on the display of the Energy Meter. Due to this, the Centralized Billing Cell (CBC), PSPCL, Ludhiana prepared the bill for the month of 12/2005, amounting to Rs. 45,11,220/- on average basis taking into consideration the consumption of corresponding month of previous year i.e. 12/2004 (pending receipt of speaking orders of MMTS) statedly as per Commercial Circular (CC) No. 11/1990 and 42/2005 and as per Clause no. 81.18 of ESR 2005. But the Petitioner deposited Rs. 41,86,600/- (under protest) based on the average of bills for previous three months i.e. August 2005, September 2005 and October 2005 by assessing Power Factor Allowance by interpreting, on its own, as per the provisions ibid. The payment for bill of December 2005, was made less by the Petitioner, amounting to Rs. 3,34,580/-. In January 2006, the bill was issued for Rs. 50,07,940/- which included the current energy consumption charges, arrear of Rs. 3,34,580/- (December 2015) and surcharge. Against this billed amount, the Petitioner paid Rs. 46,73,360/- only for current energy consumption. Again, the bill for February 2006 was issued amounting to Rs. 51,63,461/- which included current energy consumption charges amounting to Rs. 39,18,670/-, arrears for December 2005 and January 2006 and Surcharge of Rs. 12,44,791/-). The Petitioner again deposited only Rs. 39,18,670/- on account of current energy consumption through Demand Draft sent by Speed Post which was received in the Sub Divisional Office late by seven days (on 10.04.2016) after the due date (03.04.2006). The above payment was remitted through Demand draft as the Respondent refused to accept payment less than the billed amount.

 In the meantime, the AEE, DS Sub Division, PSPCL, Kurali, vide memo no. 387 dated 06.03.2006, informed the Petitioner that final overhauling of the account as per the checking by MMTS was under process. Accordingly, RBS No. 94/2006 dated 19.05.2006 was generated by CBC, PSPCL, Ludhiana, based on letter no. 557-60 dated 13.02.2006 of Addl. S.E/MMTS, Mohali. As per the said RBS, revised energy units for 11/2005 and 12/2005 assessed as 970653 and 1054214 respectively, based on which, the Petitioner was directed to deposit a sum of Rs. 4,09,752/- without allowing Power Factor Allowance as admissible. Thereafter, the Petitioner deposited, in 06/2006, a sum of Rs.7,25,780/- after deducting Rs. 18,852/- (Power Factor Rebate) from Rs. 7,44332/- (previous Arrear Rs. 3,34,580/- plus RBS amount Rs. 4,09,752/-). Thereafter, the Petitioner continued to pay for current consumption only in the subsequent bills and did not pay the surcharge levied therein with the result that Surcharge levied in the bills reached to Rs. 98,12,822/- upto 10/2007. The aforesaid amount was not shown recoverable in the bills issued after October 2007 but was shown recoverable in ‘H’ Form (NOC) by the AEE/DS Sub Division, PSPCL, Kurali to whom a request was made by the Petitioner who required ‘H’ Form for applying for Open Access.

 The AEE/DS Sub Division, PSPCL, Kurali, vide letter no. 2135 dated 19.12.2017, asked the Petitioner to approach ZDSC regarding the disputed amount of Rs. 98,12,622/- while the Petitioner, vide letter dated 06.11.2008, requested the AEE/Kurali to waive off the said amount by stating that the said amount was a result of accumulation of surcharge due to not allowing PF rebate of Rs. 18,552/- in the month of November 2005 and December 2005. Finally, the Respondent, vide letter no. 16330 dated 30.12.2016, informed the Petitioner that due to less deposition of the bill amount for the months of November 2005 and December 2005 and subsequent bills, a sum of Rs. 98,12,622/- was outstanding against the Petitioner, as such, as per Section 56 (2) of the Electricity Act-2003, limitation period started from 30.12.2016. The Petitioner did not agree with the amount of Rs. 98,12,622/- charged to it and approached the Forum, which, vide order dated 28.07.2017, decided that:

* *The amount of Rs. 98,12,822/- charged to the Petitioner vide memo No. 16330 dated 30.12.2016 on account of surcharge levied for short payment of bills is as per the instructions of the Corporation and is correct and recoverable. However, PF allowance /surcharge charged in the bills of the Petitioner for the months of 11/2005 and 12/2005 is to be refunded/charged as per Clause 81.18 of ESR 2005.*
* *SE/Operation Circle, Roop-Nagar is directed to initiate disciplinary action against the delinquent officers/officials who failed to include the arrears of amount recoverable from the Petitioner in the bills issued after Oct. 2007.”*

Aggrieved with the said decision of the Forum, the Petitioner has filed an Appeal in this Court with the prayer to set aside the order dated 28.07.2017 of the Forum and grant relief in regard to accumulated surcharge due to delayed payment, refund of Power Factor Allowance/Surcharge and interest on Power Factor rebate.

After hearing both sides on 04.01.2018, another hearing was fixed for 18.01.2018 when the DEE and SSE, Northern Railways, Senior Executive Engineer/DS Division, PSPCL, Kharar and Senior Executive Engineer, CBC, PSPCL, Ludhiana brought on record of this Court, the requisite details in support of not allowing PF rebate while preparing the disputed bills.

 I have gone through the written submissions made in the Petition by the Petitioner and written reply of the Respondent as well as oral arguments of the Representatives of the Petitioner and the Respondent alongwith the material brought on record by both the sides. The issue requiring adjudication is the legitimacy of the amount of Rs. 98,12,622/- charged to the Petitioner on account of accumulated short payment of bills, including Surcharge on less/delayed payment as per applicable instructions/regulations.

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

1. PC contended that the dispute arose when PT fuse of HT side of the Energy Meter blew off 24.11.2005 at 10:25 hours due to which the Energy Meter stopped working on one Phase. The DDL of the Energy Meter was done by Addl. S.E/MMTS, Mohali on 21.12.2005 when it was noticed that Blue Phase of PT supply was missing on Energy Meter display. The connection was again checked on 28.12.2005 by the Addl. S.E./MMTS, Mohali in the presence of AEE/DS Sub Division, PSPCL, Kurali and it was detected that fuse of Blue Phase had blown off from the Marshalling Box inside the yard. The same was set right and missing PT of the Blue Phase again appeared on the display of the Energy Meter. Due to this, the bill for the month of 12/2005 was prepared by the CBC, PSPCL, Ludhiana, for Rs. 45,11,220/-, on average basis by taking the consumption of the corresponding month of the previous year. PC argued that the bill was prepared by the CBC, Ludhiana, by misinterpreting the instructions contained in CC No. 11/1990 which reads as under:

 *“So far as charging the consumer for the period, the Meter remained inoperative, is concerned, the average consumption of last 03 or 06 months or the average of same month(s) of the previous year, whichever is higher, should be charged.”*

 The Respondent stated that the CBC, Ludhiana had also intimated that final overhauling of the bill for the month of 12/2005 will be done on receipt of speaking orders of Addl. S.E/MMTS, Ludhiana. But the Petitioner deposited Rs.41,76,640/-, as per its own calculation/ interpretation, on the basis of average of consumption for the months of 08/2005 to 10/2005 and after deduction of the Power Factor Allowance/rebate. As a matter of fact, the Petitioner, while calculating the amount payable, did not follow the provisions of CC No. 11/1990 quoted by it wherein comparison of average consumption of last three or six months or average of the consumption of the same months of previous year was prescribed. Due to this, the Petitioner made less payment to the tune of Rs. 3,34,580/- by misunderstanding/misinterpreting the provisions contained in CC No. 11/1990, 42/2005 and Clause 81.18 of ESR-2005. So, the surcharge of Rs. 4,47,087/- was levied on the billed amount of Rs. 45,11,220/-.

 I also observe that the Senior Executive Engineer, CBC, Ludhiana, on being directed to bring the relevant record in this Court on 18.01.2018 stated that the CBC, Ludhiana adopted the consumption (935700kWh units) and PF 0.95 adopted. I find that the Petitioner had already deposited Rs. 41,76,640/- i.e. Rs. 3,34,580/- less than the billed amount based on its own calculations and the payment was accepted by the Respondent.

1. PC further contended that in January 2006, the Respondent issued the bill amounting to Rs. 50,07,940/- which included the current energy consumption charges, arrear of previous month (Rs. 3,34,580/-) and surcharge. But the Petitioner paid Rs. 46,73,360/- for the current energy consumption only. Further, in the next month i.e. 02/2006, the Respondent again issued bill amounting to Rs. 51,63,461/- which included current energy consumption charges, arrear of previous month and surcharge. The current energy charges claimed were Rs. 39,18,670/- while the remaining amount claimed was arrear of previous months and surcharge. The due date of bill for February 2006 was 03.04.2006 but the Petitioner sent a Demand Draft (for the current consumption charges) by Speed Post which was received in the office of AEE/DS Sub Division, PSPCL, Kurali on 10.04.2016 i.e. late by seven days after the due date.

The Respondent, in its defence, stated that when the employee of the Petitioner’s department visited the office of the AEE/DS Sub Division, PSPCL, Kurali to deposit the payment of the bill for 02/2006, it was advised to deposit the whole amount billed instead of making the payment after deducting the surcharge/arrears charged. But the Petitioner sent the payment, only for the current consumption charges, by means of a Bank Draft through Speed Post and the same was received in Sub Divisional Office on 10.04.2006 i.e. seven days after from the due date. As a result, the surcharge due to late payment, apart from less payment, also became due and was levied in the next bill.

*I observe that the Petitioner, instead of making short payment as per its own calculation, should have considered to take appropriate remedy such as, sorting out the matter by having meetings with the senior functionaries of the PSPCL or approaching the ZDSC/CGRF, for resolving the dispute, if any. At the same time, the Respondent should also have tried to take up the matter with the Petitioner (Railway Department) at higher level to resolve the matter and also make them aware of the implications of accumulation of surcharge due to less/delayed payment. It is a sad spectacle that the State government and Central government bodies failed to talk to each other and believed more in paper exercise.*

1. PC further stated that the Assistant Executive Engineer, DS Sub Division, Kurali, vide memo no. 387 dated 16.03.2006, informed the Petitioner that overhauling of account on the basis of MMTS report was under process. The results of the said overhauling was done by the Respondent on 19.05.2006, when it sent the calculation sheet of Energy Bill with Revised Billing Statement (RBS). The revised energy units assessed were 970653kWh for 11/2005 and 1054214kWh for 12/2005 for which, the Respondent charged Rs. 4,09,752/-. The Respondent never took care of Power Factor rebate even in revised bill issued. Still, the Petitioner, in order to resolve the controversy, was ready to deposit Rs. 3,34,580/- (previous arrears) and Rs.4,09,752/- (revised amount) by deducting Power Factor rebate. Hence, the Petitioner deposited Rs.7,25,780/- and deducted Rs.18,852/- being Power Factor rebate. After that the Petitioner paid all bills (except Surcharge which was incorrectly levied upon it), in time. However, the Petitioner applied for the Open Access and accordingly State Load Dispatch Centre (SLDC) required ‘H’ Form (NOC) to be obtained from the Assistant Executive Engineer/DS Sub Division, PSPCL, Kurali. In the ‘H’ Form, AEE/DS Sub Division, PSPCL, Kurali mentioned that a sum of Rs.98,12,822/- was outstanding and recoverable as surcharge amount from the Petitioner.

PC further argued that the Petitioner continued to deposit the subsequent bills in time, as issued, except surcharge which was incorrectly levied/charged by the Respondent. However, the Petitioner applied for ‘Open Access’, and SLDC required ‘H’ Form (NOC) which was required to be given by the AEE/DS/ Sub Division, PSPCL, Kurali. In the Form ‘H’, AEE/DS Sub Division, PSPCL, Kurali showed outstanding dues of Rs. 98,12,622/- which were recoverable from the Petitioner on account of Surcharge. PC also argued that the said amount was a result of accumulation of Surcharge due to non-payment of PF rebate of Rs. 18,552/- by the Petitioner, for the month of 11/2005 and 12/2005, to which it was entitled as per Clause 81.18 of ESR-2005.

I also observe that during the course of oral arguments on 18.01.2018, Addl. S.E/CBC, PSPCL, Ludhiana informed that the PF rebate was not given and PF 0.91 of the inaccurate Energy Meter was taken while preparing the bill for 12/2005 while the consumption was taken of corresponding month of previous year i.e. 12/2004.

 *In my view, PF in the bill for 12/2005 has been taken incorrectly as 0.91 (inaccurate Energy Meter) whereas the PF is required to be taken in terms of provisions contained in Clause 81.18 of ESR-2005. I also find that RBS has been prepared by the CBC, Ludhiana on 19.05.2006 without taking into consideration the PF aspect but, the Petitioner (Railways) has deposited the billed amount after deducting the PF incentive of Rs. 18,552/-.*

I have perused the copies of the documents submitted by the Petitioner during hearing on 18.01.2018 and found that they had requested, vide letters dated 15.11.2006 and 06.01.2008, the AEE/DS Sub Division, Kurali that PF assessment was not taken in the RBS, as such, surcharge be waived off but no response was given to the Petitioner.

In view of the above, it is concluded that the Respondent did not take corrective action promptly, after setting right the fault ( blown off Blue Phase PT fuse) on 28.12.2005, in the preparation of RBS which, in turn, ,was also not prepared correctly as the admissible PF rebate was not given. I also find that all the disputes regarding short payment of bills from 11/2005 onwards were settled, except of the PF rebate for Rs. 18,552/- after preparation and issuance of RBS on 19.05.2006. As a result, accumulated short payment, due to levy of surcharge on less payment, became Rs. 98,12,822/- upto 10/2007 whereafter, this amount was not shown in any bill issued to the Petitioner.

**As a sequel of above discussions, it is held that the amount of Rs. 98,12,822/-, charged to the Petitioner on account of surcharge levied for the short payment of the bills, is not recoverable. Accordingly, the Respondent is directed to refund the same without interest as the Petitioner, on its part, also did not act responsibly and also defaulted in exercising necessary prudence and vigilance to get the matter resolved promptly by seeking the remedies available from the appropriate Bodies in terms of provisions contained in Section 42 (5) of Electricity Act-2003.**

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 and Ombudsman) Regulations – 2016.

 ( VIRINDER SINGH)

 LokPal (Ombudsman)

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