COURT OF THE LOKPAL (OMBUDSMAN),

 ELECTRICITY PUNJAB,

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

 S.A.S NAGAR (MOHALI)

Appeal No. 62/2017

Date of Registration: 26.09.2017

Date of Hearing : 22.02.2018 Date of Order: 27.02.2018

**In the matter of**

Arvind Gupta,

 Pensla Exports India

Ramco Colony, Sodal Road,

Preet Nagar, Jalandhar.

…….Petitioner

Versus

Additional Superintending Engineer,

DS East Division,

 PSPCL, Jalandhar.

 .….Respondent

**Present For**

Petitioner 1. Shri Mayank Malhotra, Advocate (PC)

 2. Shri Arvind Gupta, Petitioner

Respondent 1. Er. Harjinder Singh Bansal, Additional Superintending Engineer,

2. Shri Rajan Kumar, A.A.O.

 The Petitioner preferred an Appeal in this Court against the order dated 16.08.2017 in case No. CG-140 of 2017 of the Consumers Grievances Redressal Forum (Forum) deciding that:

 *“The amount charged to the Petitioner on account of overhauling the account of the Petitioner from 01.10.2015 to 12.05.2017 (date of checking) by enhancing the recorded consumption of the Petitioner with 66% slowness factor due to carbonization potential of Red and Yellow Phases resulting in non-contribution of energy to the meter on two phases, is correct and recoverable.*

 *SE/Op. Circle, Jalandhar is directed to initiate disciplinary action against the delinquent officials/officers who failed to check the connection of the Petitioner as per Clause No. 104.1 of ESIM.*

 *Forum further directs the respondent to club both the connections of the Petitioner as per instructions of the Corporation.”*

2. **Facts of the Case**

 The relevant facts of the case are that:

1. The Petitioner was having a Medium Supply Category connection, bearing Account No. 3002489680 with Sanctioned Load of 89.930kW and Contract Demand of 99.920kVA. The metering was being done by providing LT CT static Energy Meter alongwith LT CTs.
2. The connection was checked by the Senior Executive Engineer, Enforcement, PSPCL, Moga vide ECR No. 29/2023 dated 12.05.2017 as per which, it was reported as under:

*“whNo dh n?e[o/;h n?b Nh n?e[u?e whNo Bkb u?e eoB dh e'fµµ ehsh sK whNo dh n?e[o/;h u?e Bjh j' ;eh . ;hNh u+po y'be/ d/fynk sK nko Õ/; ns/ tkJh Õ/; dh g'N?Bµhnb bhv ekopB j'D ekoD fv;e[B?eN j' rJhnK jB . whNo dh fv;gb/ ;eohB T[go th nko Õ/; ns/ tkJh Õ/; dh t'bN/° °ho' j?. i' fe eozN nko 6H40 n?wghno, tkJh 7H20 n?ghno ns/ ph 7H7 n?wghno ns/ ph Õ/; dh t'bN/° 236 t'bN j? Gkc whNo B{z 2 Õ/;K dh t'bN/° Bjh fwb ojh j? .*

 *fJ; e[B?eµB d/ ;hNh u+po d/ nko ns/ tkJh Õ/; d/ g'N?Bµhnb bhv; B{z mhe eotke/ d[[pkok n?e[o/;h u?e eoB dh e'fµµ ehsh sK fco n?e[o/oh u?e Bjh j' ;eh ns/ whNo dh fv;gb/ ;eohB T[go nko ns/ ph c/; dh t'bN/° mhe eotkT[D T[gozs th iho' j? Gkt whNo nzdo fe;/ seBheh B[e; g?D dh ;zGktBk j? . whNo B{z ;w/s ;hNh° fiT[ dh fvT[ jkbs ftu g?e ;hb eoe/ n?w Jh b?p fty/ iKu gVskb bJh fbnKdk ikt/ . “*

1. On scrutinizing the DDL of the Energy Meter, Sr. Executive Engineer, Enforcement, PSPCL, Moga issued speaking orders on 15.05.2017 stating that:

*“As it is clear from the tamper data on/off and tamper potential data that potential of Red phase and Yellow phase have been missing from 01.10.2015, so, kindly overhaul the account of the consumer from that date. It is also intimated that consumer, bearing NRS account GT 62/559 for industrial usage, so, it is a case of UUE and do the needful as per PSPCL guidelines.”*

1. Based on the above checking and speaking orders of the Enforcement, Energy Meter was replaced vide Device Replacement Order dated 17.05.2017 and the account of the Petitioner was overhauled for the period 01.10.2015 to 12.05.2017 and notice bearing memo no. 2067 dated 18.05.2017 was issued to the Petitioner to deposit a sum of Rs. 12,07,834/-.
2. The Energy Meter was tested in ME Lab, Jalandhar and as per its report dated 20.07.2017, the Energy Meter was found dead at Red and Yellow Phases and slow to the extent of 66-67% when tested at different loads and Power Factors. The display of the Energy Meter was also found defective.
3. The Petitioner did not agree with the demand raised and filed a Petition in the Forum which, after hearing, decided as mentioned at Page 2.
4. Not satisfied with the decision of the Forum, the Petitioner filed an Appeal in this Court and prayed as under:

*“The bill issued vide memo no. 2067 dated 18.05.2017 amounting to Rs. 12,27,706/- ( Rs. 12,07,84/- plus Rs. 19,892/- as Surcharge) by the respondent Corporation, which has been illegally upheld by the CGRF vide its order dated 16.08.2017 may be quashed and the amount deposited by the complainant may be refunded alongwith interest”.*

**3.** **Analysis and Findings**

I have gone through submissions made by the Petitioner in the Appeal and written reply of the Respondent as well as oral submissions made by the representatives of the Petitioner and the Respondent alongwith material brought on record by both the sides.

The issue requiring adjudication is the legitimacy of the amount charged to the Petitioner due to overhauling its account for the period from 01.10.2015 to 12.05.2017 (date of checking) by enhancing the recorded consumption with 66% slowness factor due to carbonization of Potential of Red and Yellow Phases resulting in non-contribution of energy to the Energy Meter on these two phases.

*My findings, after analysis of the points, are deliberated as under:*

1. PC contended that the connection of the Petitioner was checked vide ECR No. 29/2023 dated 12.05.2017, by the Addl. S.E/Enforcement, PSPCL, Moga who reported that Red and Yellow Phase potential leads in CT chamber were disconnected due to carbonization and that the accuracy of the Energy Meter could not be checked even after correcting Red and Yellow phase potential and correcting voltage of these phases. The checking officer clearly concluded that there was technical fault in the Energy Meter. This meant that the Energy Meter was defective as was confirmed on testing the same in ME Lab on 20.07.2017.

*I have perused the report dated 20.07.2017 of the ME Lab, PSPCL, Jalandhar and observed that Energy Meter was found dead at Red and Yellow Phases and slow to the extent of 66 - 67% at different loads and Power Factors and the Dial test could not be done because of defective display. I also find that display of the Energy Meter was defective as per above report.*

1. (a) PC next contended that there was no basis of the conclusion drawn by the Addl. S.E, Enforcement, Moga, in its speaking orders, sent vide e-mail dated 15.05.2017, that the potentials of Red and Yellow Phases were missing from 01.10.2015. He further stated that the said orders were passed simply to justify the results of the checking dated 12.05.2017. PC added that the Energy Meter had been declared defective, on testing on 20.07.2017, by the ME Lab, Jalandhar. Moreover, the checking officer did not supply any authentic data in support of its findings that Potentials of Red and Yellow Phases were missing from 01.10.2015. The Forum did not give any reasoned decision and did not get any document on record.

 On the other hand, the Respondent, in its defence, stated that the connection was checked by the Enforcement on 12.05.2017 and it was reported that Red and Yellow Phase Potential leads were found disconnected due to carbonization. DDL of the Energy Meter was also done at the time of checking by the Enforcement which noticed, from DDL tamper data, that Red Phase and Yellow Phase Potentials were missing since 01.10.2015. The Respondent admitted that as per ME Lab Report, Energy Meter was found dead at Red and Yellow Phase. However, the Respondent added that the Enforcement office, Moga supplied complete DDL Report/Data which was given to the Petitioner, during the course of hearing, in the Forum.

1. PC argued that according to Regulation 21.5.2 of Supply Code-2014, in the case of defective Energy Meter, the account of the Petitioner can be overhauled / billed for a maximum period of six months on the basis of energy consumption of corresponding period of previous year. PC added that the Forum had clearly admitted, in its observations, recorded in the last para of Page 7 of the decision, that the Energy Meter remained defective/dead stop.

The Respondent admitted that Regulation 21.5.2 of Supply Code-2014 related to defective Energy Meter but added that in this case, Potentials of Red and Yellow Phases were not contributing since 01.10.2015 as it was clear from the Tamper Data. The Respondent added that the PSPCL had installed correct Energy Meter but due to carbonization, Potentials of Red and Yellow Phases did not contribute to the Energy Meter which, in turn, did not record consumption on these two phases during the period under dispute.

1. PC next contended that the consump0tion recorded by the Energy Meter before and after 12.05.2017, was comparable and there was not huge variation. The firm was Export Unit and lesser consumption of electricity was due to the reason that it purchased manufactured goods from the market ( as manufacturing them would not have been cost effective) and electricity in the unit was consumed very less in order to cover minimum charges. The Forum ignored these genuine submissions and did not give reasoned / speaking order on the pleadings of the Petitioner. However, the Forum did mention in its order that no Energy Variation Register was maintained in the office of the Respondent to watch the variations in energy consumption as prescribed in Instruction No. 102.7 of ESIM 2010. PC also stated that the consumption data was placed on record of the Forum which took due cognizance of the same.

During the course of hearing on 22.02.2018, with a view to prove its contention that lesser Power Consumption was due to not manufacturing the exportable goods and substituting them with the goods purchased from the market, PC placed on record of this Court a certificate from Aggarwal Rajesh & Associates, Chartered Accountants, Jalandhar certifying as under:

*“ This is to certify that M/s Pensla Export India proprietor of Sh. Arvind Gupta (formally known as Vinod Electroplating Works) Backside Sodal Mandir Road, Jalandhar has declared purchases against “H” Form for the year 2015-16 and 2016-17. These purchases were made in the form of Finished Goods against “H” Form and sale as such as for export purpose:*

***2015-16***

|  |  |  |
| --- | --- | --- |
| ***S. No.*** | ***Period*** | ***Amounts in INR*** |
| *1* | *01.04.2015 to 30.06.2015* | *0.00* |
| *2* | *01.07.2015 to 30.09.2015* | *0.00* |
| *3* | *01.10.2015 to 31.12.2015* | *0.00* |
| *4* | *01.01.2016 to 09 31.03.2016* | *64,67,456.00* |

***2016-17***

|  |  |  |
| --- | --- | --- |
| ***S. No.*** | ***Period*** | ***Amounts in INR*** |
| *1* | *01.04.2016 to 30.06.2016* | *84,45,609.00* |
| *2* | *01.07.2016 to 30.09.2016* | *71,62,481.00* |
| *3* | *01.10.2016 to 31.12.2016* | *16,32,300.00* |
| *4* | *01.01.2017 to 31.03.2017* | *1,13,86,538.00* |

 *I observe that the Respondent could not disprove to the contention of the PC about non-maintenance of Energy Variation Register as required and simply stated that the consumption of the previous billing period was always mentioned in the current bill. In my view, this reply is not convincing as the Register ibid is required to be maintained to enable the Respondent to keep a watch on significant energy variations and take corrective action, where necessary.* ***Besides, with the SAP System in vogue, the details of energy recorded in respect of all the electricity connections are readily available with the Additional Superintending Engineers/Senior Executive Engineers for monitoring variations in consumption of the connections within their respective jurisdiction and taking corrective action wherever required. Had this been done, the variations in consumption could have been noticed in time and appropriate action in the matter could have been taken and cause of action would not have arisen. However, the certificate submitted by the PC is not from a Government Agency and issued by the Chartered Accountant who has certified the declaration made by the Petitioner regarding purchases of finished goods against ‘H’ form for the years 2015-16 and 2016-17.***

1. a) PC also argued that as per provisions contained in Instructions No. 51.1 of ESIM, it was the responsibility of the Corporation to install a correct Energy Meter of suitable capacity. The Petitioner never interfered with the Energy Meter or its connection and there is no allegation, as such, against the Petitioner.

The Respondent, in its defence, stated that the PSPCL had installed correct Energy Meter but due to carbonization, Potentials of Red and Yellow Phases did not contribute to the Energy Meter during the period under dispute.

1. PC also referred to the provisions contained in Regulation 21.3 of Supply Code-2014 and Instruction No. 104.1 of ESIM 2010 requiring the Licensee to conduct periodical checking/testing of connections installed at consumer’s premises. But there was nothing on record to confirm as to whether the prescribed checking was actually done periodically. The Respondent was also required to place on record calibration report of Reference Meter, if any, with which, accuracy of the metering equipment was checked.

The Respondent , in its reply, submitted that previous checking of this connection was done on 27.01.2015 vide ECR No. 09/2278 by the Addl. S.E, Enforcement-2, Jalandhar and thereafter, no details about checking of the connection by the competent authority was available on record.

*I observe that the Forum, vide its order dated 16.08.2017 in this case, directed the S.E/DS Circle, Jalandhar to initiate disciplinary action against the delinquent officers/officials who failed to check the connection of the Petitioner as per Instruction No. 104.1 of ESIM-2010.*

1. PC further argued that the speaking orders conveyed by the Sr. XEN/Enforcement, PSPCL, Moga, vide e-mail dated 15.05.2017 after checking of another connection in the name of the Petitioner vide ECR No. 30/2023 dated 12.05.2017, declaring it a Unauthorized use of Electricity (UUE) case was not correct since, Sr. XEN, Enforcement was not an Assessing Officer. The Govt. of Punjab had declared Assessing Officers vide notification dated 27.12.2004, as detailed in Annexure-9 of Supply Code-2014. The Respondent had not followed the procedure, prescribed in Regulation 36 of Supply Code-2014, for declaration of the case of Unauthorized Use of Electricity (UUE). PC added that the calculations for Rs. 56,546/- made in the notice issued, vide memo no. 2068 dated 18.05.2017, were also incorrect.

*I observe from the material placed on record that two more connections, running in the name of the Petitioner, were also checked by the Enforcement. One connection, bearing Account No. J62GT62 / 559 of NRS category with Sanctioned Load of 19.620kW, was being used for Industrial purpose. So, it was a case of UUE and the Respondent had taken action and charged Rs. 56,546/- which was deposited by the Petitioner who also got the connection permanently disconnected. Another connection was also running in the same premises. I find that the Forum had already directed the Respondent to club both the connections and this fact was confirmed, during oral arguments on 22.02.2018 by the Respondent who stated that both the connections had been clubbed.*

**4.**  **Decision**

 From the above analysis, it proves beyond doubt that the Energy Meter’s display was defective and Energy Meter was dead on Red and Yellow Phases. As such, this Court is to take recourse to the provisions relevant in this regard i.e. Regulation 21.5.2 of Supply Code-2014, reproduced below, for overhauling the account of the Petitioner in the present case:

***“21.5.2: Defective (other than inaccurate)/Dead***

 ***Stop/Burnt/Stolen Meters:***

*The accounts of a consumer shall be overhauled/billed for the period meter remained defective/dead stop and in case of burnt/stolen meter for the period of direct supply subject to maximum period of six months as per procedure given below:*

1. *On the basis of energy consumption of corresponding period of previous year.*
2. *In case the consumption of corresponding period of the previous year as referred in para (a) above is not available, the average monthly consumption of previous six (6) months during which the meter was functional, shall be adopted for overhauling of accounts.*
3. *If neither the consumption of corresponding period of previous year (para-a) nor for the last six months (para-b) is available then average of the consumption for the period the meter worked correctly during the last 6 months shall be taken for overhauling the account of the consumer.*
4. *Where the consumption for the previous months/period as referred in para (a) to para (c) is not available, the consumer shall be tentatively billed on the basis of consumption assessed as per para-4 of Annexure-8 and subsequently adjusted on the basis of actual consumption recorded in the corresponding period of the succeeding year.*
5. *The energy consumption determined as per para (a) to (d) above shall be adjusted for the change of load/demand, if any, during the period of overhauling of accounts.*

 **As a sequel of above discussions, it is held that the account of the Petitioner should be overhauled, as per provisions contained in Regulation 21.5.2 (a) of Supply Code-2014, for a period of six months, prior to replacement of disputed Energy Meter, based on energy consumption recorded during the corresponding period of previous year. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment.**

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

**6.** EIC/Commercial, PSPCL, Patiala should issue instructions to all the Engineers-in-Chief / Chief Engineer of DS Zones to direct all the field officers/officials to ensure during the installation of LT CT operated Energy Meters alongwith LT CT that the Potential Wires tapped from the main cable should be of the same material as that of the main cable (directly or preferably through bi-metallic thimble) to avoid bi-metallic resistance due to which, the carbonization takes place and with the passage of time, the wires get disconnected contributing to less recording of consumption by the Energy Meter.

**7.** Engineer-in-Chief, Commercial, PSPCL, Patiala may issue instructions requiring all the Addl. Superintending Engineers/Senior Executive Engineers to keep a vigil on the variations in the energy consumption recorded and available in SAP in respect of all categories of consumers within their respective jurisdiction, analyse the cases of abnormal decrease in consumption of current vis-à-vis previous month(s) and take immediate corrective action, wherever required, with a view to protect the interests of both the Utility and the Consumers.

**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)

S.A.S. Nagar (Mohali) LokPal (Ombudsman)

February 27, 2018 Electricity, Punjab.