**COURT OF THE LOKPAL (OMBUDSMAN),**

**ELECTRICITY, PUNJAB,**

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

 **S.A.S NAGAR (MOHALI)**

**Appeal No. 68/2017**

**Date of Registration : 06.10.2017**

 **Date of Hearing : 15.03.2018 and 05.04.2018**

**Date of Order : 11.04.2018**

**Before:**

**Er. Virinder Singh, LokPal (Ombudsman) Electricity**

**In the matter of:**

Samir Polymers,

C-66/A, Sports & Surgical Complex

Kapurthala Road, Jalandhar

...Petitioner

 Versus

 Sr. Executive Engineer,

 DS City West Division (Special),

 PSPCL, Jalandhar.

 ...Respondent

**Present For:**

Petitioner 1. Shri Samir Sehgal, Petitioner

2. Shri Sukhminder Singh,

 Petitioner’s Representative (PR)

Respondent Er. Inderjit Singh

 Senior Executive Engineer

 Before me for consideration is an Appeal preferred by the Petitioner in this Court against the order dated 25.07.2017 in Case No. CG-112 of 2017 of the Forum deciding that:

 *“The account of the Petitioner be overhauled for 121 days prior to the date of DDL i.e. prior to 05.06.2015 by increasing the recorded consumption during this period by 50% due to Yellow Phase of CT/ PT not contributed for 115 days and 12 hours and Blue Phase for 5 days and 18 hours as per the speaking order of the Addl. S.E./MMTS-2, Jalandhar”*

1. **Facts of the Case:**

**The relevant facts of the case are that:**

1. The Petitioner was having a Large Supply category connection with Sanctioned Load of 429.214kW and Contract Demand of 465kVA.
2. The connection was checked by ASE, MMTS-2, Jalandhar vide ECR No. 28/42 dated 29.01.2015 and it was reported that:

*“whNo dh ;eo'b B'p yokp j?, j[D fJ; whNo B{z pdbe/ ToD/DLMS whNo brkfJnk ikt/ s/ g[okD/ whNo B{z n?w Jh b?p fty/ nzdo{Bh- - pkjoh iKu s/ ;hbK dh nE/BNhf;Nh bJh G/i fdsk ikt/ .@*

1. The site (where the connection was installed) was visited again by the Addl. S.E/MMTS-2 on 24.02.2015 to find out the cause of voltage failure existing in a particular part of metering equipment. Accordingly, the connection was checked vide ECR No. 35/29 and it was observed that:

*“Undersigned scrutinized the print out of DDL done on 29.01.2015 and observed that Yellow Phase PT was not contributing properly and Red Phase PT and Blue Phase PT were also showing traces of unbalanced voltage. CT/PT cover opened and found that Incoming Red Phase cable was punctured. All three limbs of Red, Yellow and Blue Phase PT’s were sparking, Outgoing cable was also sparking from the joint and it was without cable box. So, declared CT/PT unit defective. It was also instructed to replace the CT/ PT and meter.”*

1. The site ( where the connection was installed) was visited by the Addl. S.E. by MMTS-2, Jalandhar on 05.06.2015 on routine basis and the connection was checked vide ECR No. 7/36 dated 05.06.2016 and it was reported that:

*“ACD fpb 4/2015 nB{;ko xZN j? . ACD revised eoe/ fJ; dcso B{z ;{fus ehsk ikt/ . fJ; dcso dh u?fezr BzL 2935 fwsh 24.02.2015 Bkb ;hNh$ghNh pdbD dhnK jdkfJsK ehshnK ;B go j[D fwsh 05H06H2015 B{z d[pkok u?e ehsk frnk sK t/fynk frnk ;hNh$ghNh spark (yellow phase) j' ojh j? . ;hNh $ghNh B{z n?wJh b?p ftu G/fink ikt/ .@*

The CT/PT, unit ordered to be replaced by MMTS on 24.02.2015, was replaced vide MCO No.25/74510 dated 05.06.2015.

 **(vi)** The Addl. S.E, MMTS-2, Jalandhar issued instructions on 22.06.2015 to the Centralized Billing Cell (CBC), PSPCL, Ludhiana to prepare and issue Revised Billing Statement (RBS) after overhauling the account of the Petitioner as per DDL report and according to his observations.

**(vii)** In compliance to the directions dated 22.06.2015 of the Addl. S.E/MMTS-2, RBS amounting to Rs. 7,94,961/- was prepared and sent vide endst. dated 06.01.2016 by the CBC, PSPCL, Ludhiana after overhauling the account of the Petitioner for the period from 04.02.2015 to 05.06.2015.

1. The Energy Meter was replaced vide Device Replacement Application No. 100001540216 dated 19.01.2016, effected on 03.09.2016.
2. On receipt of RBS from the CBC, the AEE / Commercial, Maqsuda, Jalandhar vide memo. No. 92 dated 28.02.2017 issued notice to the Petitioner to deposit a sum of Rs. 7,94,961/-.
3. The Petitioner, instead of depositing the said amount, preferred to submit a Petition on 25.05.2017 before the Forum.

**(xi)** In the meantime, the Energy Meter was got tested on 17.07.2017 from M.E. Lab, Jalandhar which declared the Energy Meter as defective (RTC and Scroll Buttons defective) whereas the accuracy and Dial Test were O.K. The CT/PT unit was also checked and accuracy was not found within limits.

**(xii)** The Forum, after hearing the case, passed the order dated 25.07.2017 (Reference: Para 1, Page 2).

1. The Petitioner did not agree with the decision of the Forum and filed an Appeal in this Court stating that there may be hardly any doubt that the issue of notice of huge demand of Rs. 7,94,961/- ( revised as Rs. 6,39,239/-) after overhauling of account due to non-contribution of consumption on one phase for the period from 04.02.2015 to 05.06.2015, was unwarranted and illegal. The Petitioner further prayed to set-aside the decision of the Forum, allow the Appeal and order the overhauling of account for the period of partial missing voltage with some realistic average basis in the interest of natural justice and fairness.
2. **Submissions made by the Petitioner and Respondent :**

Before undertaking analysis, it is necessary to go through the written submissions made by the Petitioner in the Appeal and 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.

1. **Submissions of the Petitioner:**

The Petitioner made the following submissions for consideration of this Court:

1. The supply from the connection was being used for sports goods/rubber footwears. There is acute slump in the industry especially after the year-2014. The production and consequent use of supply of electricity was almost 50-60% in the year 2015 and only 30-35% in the year 2016 and 2017, when compared with the consumption of electricity in the year 2014. Further, the consumption of the Petitioner varied from month to month, according to season and demand in the market/work in the factory. The demand was also effected with the policies of the Govt. and it could not be considered that every year, the consumption of electricity will be matching with the corresponding period of previous year. The officer concerned of the PSPCL was recording regular readings and bills as issued on the basis of recorded consumption, had been paid in due course. The consumption pattern during the disputed period vis-a-vis other period (upto date), did not suggest that Energy Meter was defective during the disputed period. However, the Forum had arrived at the conclusion on the basis of vague orders of ASE/MMTS and consumption recorded during the period from 02/2015 to 06/2015, (disputed period) and corresponding period of previous year, which was absolutely wrong considering the data available as per DDL Print-out and up to date consumption pattern, of the Petitioner. Thus, burdening the consumer with such a huge amount of Rs 7,94,961/- (revised as Rs. 6,39,239/-)just on the basis of vague orders of ASE/MMTS, without testing the accuracy of the Energy Meter to ascertain the slowness factor and without reference to any rule/regulation of Supply Code or Electricity Act-2003, was unjustified and liable to be withdrawn.
2. The Addl. S.E/MMTS-2, Jalandhar, as per speaking orders conveyed vide memo no. 120 dated 22.06.2015 (as mentioned in the judgment of the Forum), pointed-out that Yellow Phase of CT/PT did not contributed for 115 days and 12 hours and Blue Phase for 5 days and 18 hours. So, the defective CT/PT unit (declared defective and instructed it to be replaced on 24.02.2015 vide ECR No. 35/29) remained in the circuit from 24.02.2015 to 05.06.2015*.* These figures had been taken from the failure status/total count/total duration, available as per DDL dated 05.06.2015. This status of failure of voltage was not continuous and total failure status. This was proved from the fact that the voltage on Yellow Phase had been shown as 12.9V to 24.7V from 31.05.2015 to 04.06.2015, as per DDL dated 05.06.2015. Similarly, as per DDL dated 24.02.2015, voltage on Yellow Phase had been indicated as 34.1V to 51.8V (almost full voltage) from 01.02.2015 to 20.02.2015. The data for the month of 03/2015 and 04/2015 and 01.05.2015 to 23.5.2015 was not available at all. Thus, it was absolutely wrong to conclude (as observed by the Forum) that the Yellow Phase of CT/PT did not contribute for 115 days and 12 hours and Blue Phase for 5 days and 18 hours, completely and continuously.
3. TheAddl. S.E/MMTS-2 was taking DDL after every 70 days and he was supposed to do the scrutiny of print-out for finding fault in the Energy Meter if any. It was not understood as to why, he did not point out defect (non- contribution from Yellow Phase, if any) after taking DDL on 24.02.2015. The PSPCL was paying huge amount as salary to these senior officers and consumers were bearing their expenditure through tariff approved by the PSERC. As such, the delinquent officers should be penalized for lapses on their part, instead of burdening the consumer by imposing huge charges relating to previous period especially when the DDL was being taken on regular basis.
4. As per the Supply Code-2014 (applicable w.e.f. 01.01.2015), the account in respect of inaccurate Energy Meter could be overhauled as prescribed in Regulation 21.5.1 as mentioned below:

*“ If a consumer meter on testing is found to be beyond limits of accuracy as prescribed hereunder, the account of the consumer shall be overhauled and the electricity charges for all the categories of consumers shall be computed in accordance with the said test results for a period not exceeding six months immediately preceding the:*

*(a) date of test in case the meter has been tested at site to the satisfaction of the consumer; or replacement of inaccurate meter, whichever is later; or*

1. *date the defective meter is removed for in the Lab of the Distribution Licensee”.*

The accuracy of the Energy Meter (which includes CT/PT unit) was not tested at site by MMTS though the same was required to be tested at site, to ascertain the slowness factor, in view of above regulation before ordering the overhauling of account. Further, as per ME Lab report, *“the RTC of meter is defective, scroll buttons defective, accuracy and dial test OK in active mode, accuracy OK in reactive mode, dial test not performed in reactive mode because of defective scroll buttons”*. Thus, the accuracy of the Energy Meter was declared OK in ME/Lab, which substantiated the fact that the Energy Meter was not defective from 04.02.2015 to 05.06.2015, as considered by the ASE/MMTS and the Forum. As such, raising of huge demand of Rs. 7,94,961/- (revised as Rs. 6,39,239/-)by overhauling the account was against the above said regulation of Supply Code and may be withdrawn.

1. The Forum totally relied on the speaking orders of Addl. S.E /

 MMTS-2, although it was pleaded before the Forum that these orders were not supported by data as per DDL Print-out. Further, the Forum preferred to compare the consumption as recorded from 02/2015 to 06/2015, (disputed period) and corresponding period of previous year as mentioned detailed below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Month** | **Consumption****in kVAh** | **Month** | **Consumption in kVAh** |
| 02/2014 | 83910 | 02/2015 | 64181 |
| 03/2014 | 61788 | 03/2015 | 52871 |
| 04/2014 | 90872 | 04/2015 | 41267 |
| 05/2014 | 55345 | 05/2015 | 23252 |
| 06/2014 | 63466 | 06/2015 | 27812 |

1. The Forum compared the consumption of the disputed period with the consumption of corresponding period of previous year to arrive at the conclusion that contribution ofYellow Phase of CT/PT did not contribute for 115 days and 12 hours and Blue Phase for 5 days and 18 hours, as per the speaking orders of the Addl. S.E/MMTS-2, Jalandhar.

 It was correct that consumption was less during the disputed period, when compared with the consumption of corresponding period of previous year. But, the Forum ignored the fact that consumption was not reliable evidence especially in the case of the Petitioner. Just to substantiate this point, it was worth mentioning that the consumption during almost all the 12 months of the year 2016 and the year 2017 was less than the consumption as recorded during the corresponding months of the year 2015. Further, the total consumption, as recoded from 01/2015 to 12/2015, was 4,16,550 units whereas the total consumption from 01/2016 to 12/2016 was only 2,36,365 units showing huge difference of 1,80,185 units. Similarly, there was further fall in consumption from 01/2017 till date. Besides, due to acute slump in the industry especially after the year 2014, the production and consequent use of supply of electricity was almost 50-60% in the year 2015 and only 30-35% in the year 2016 and 2017, when compared with consumption of electricity in the year 2014.

 So, in such a situation the Forum may have ordered the overhauling of account from 02/2015 onwards till date, if decrease in consumption was the criterion for declaring the
Energy Meter as defective. Thus, the decision of Forum did not require any further arguments about its being wrong, biased and non-speaking and the same was liable to be set -aside.

**(b) Submissions of the Respondent:**

 **The Respondent, in its defence, submitted that:**

**(i)** TheAddl. S.E/MMTS-2 concluded that the Energy Meter of the consumer was not recording correct consumption as per the DDL done on dated 05.06.2015. The Petitioner’s contention about demand for its products as per season and market conditions was denied for want of knowledge.

**(ii)** The account of the consumer was overhauled correctly and the amount was charged correctly for the disputed period. CT/PT unit was found defective on 24.02.2015 as per ECR No. 29/35 and the same was replaced on 05.06.2015.

**(iii)** The Forum decided the case after taking all the relevant facts into account after detailed deliberations and passed a balanced and judicious order. As per its order, this disputed amount was held recoverable alongwith interest. The Petitioner had also agreed that it was correct that consumption was less during the disputed period, when compared with the consumption of corresponding period of previous year. As per the decision of the Forum and instructions of the PSPCL, the consumption of the disputed period (for the year 2015) was compared with the consumption of corresponding period of previous year 2014 as base data to overhaul the account of the consumer.

**(iv)** The amount charged was correct as per the instructions of the PSPCL and was actually recoverable.

**(v)** The Petitioner be directed to deposit the balance amount alongwith interest.

1. **Analysis:**

The issue requiring adjudication is legitimacy of the overhauling of the account for 121 days prior to the date of DDL (05.06.2015) by increasing the recorded consumption during this period by 50 % due to Yellow Phase of CT/PT not contributed for 115 days and 12 hours and Blue Phase for 5 days and 18 hours as per applicable rules/regulations.

*The points emerged are analyzed and deliberated as under:*

1. I have studied the print outs of the DDL taken by the ASE/MMTS-2, Jalandhar on 29.01.2015, 24.02.2015 and 05.06.2015 and observed as under in respect of each:

|  |  |
| --- | --- |
| **DDL taken on** | **Observation** |
| 29.01.2015 | Unbalance of voltage on Red, Yellow and Blue Phase,  |
| 24.02.2015 | Yellow Phase of CT/PT unit did not contribute for last 66 days |
| 05.06.2015 | Yellow Phase voltage was not O.K for 115 days 14 hours and 12 minutes. |

1. CT/PT unit was declared defective and directions were issued for its replacement immediately by the ASE/MMTS-2, Jalandhar after checking the connection vide ECR No. 35/29 dated 24.02.2015. But the same was not replaced as observed by the ASE/MMTS-2, who visited the site on routine checking and noticed that the CT/PT unit, declared defective and ordered to be replaced immediately on 24.02.2015, was still in the circuit. As a result, the ASE / MMTS-2, Jalandhar, vide memo no. 120 dated 22.06.2015, issued with the approval of the Dy. Chief Engineer/Enforcement, Jalandhar, desired written explanation of the concerned officials for the following acts of omissions and commissions in discharging official duty:
2. Defective CT/PT units was not replaced and allowed to remain in the circuit from 24.02.2015 to 05.06.2015.
3. Under these conditions, the effect of CT/PT unit also creeped in the Red Phase as traces of voltage fall in this phase were also noticed.

 I observe that there is no evidence on record to suggest that the Petitioner represented to the Respondent pointing out the delay in replacement of disputed CT/PT during 24.02.2015 to 05.06.2015.

1. I have perused the details of consumption for the disputed period from 24.02.2015 to 05.06.2015 and observed that there had been decrease in the consumption during this period as compared to energy consumption recorded during the corresponding months of the previous year as tabulated below:

|  |  |
| --- | --- |
| **Pre-disputed Period** | **Disputed Period** |
| **Month** | **Consumption in kVAh** | **Month** | **Consumption in kVAh** |
| 02/2014 | 83,910 | 02/2015 | 64,181 |
| 03/2014 | 61,788 | 03/2015 | 52,871 |
| 04/2014 | 90,872 | 04/2015 | 41,267 |
| 05/2014 | 55,345 | 05/2015 | 23,252 |
| 06/2014 | 63,466 | 06/2015 | 27,812 |

During the course of oral submissions, the Petitioner was asked to substantiate its contention of fall in production/sales as the reason for the decrease in consumption during the disputed period. In response, the Petitioner stated that it had submitted monthly returns of the sales of the material manufactured by the unit to the Central Excise and Customs Department. On directions from this Court, the Petitioner e-mailed on 16.03.2018, copies of the said Sales Returns and the acknowledgements thereof sent by the said department. The Petitioner, vide its e-mail dated 21.03.2018, also requested to give another hearing in April 2018 to enable it to explain the position regarding production, sales etc. in details. Accordingly, a hearing in this case was given on 05.04.2018, when Shri Sameer Sehgal, Petitioner and Er. Inderjit Singh, Senior Executive Engineer appeared in this Court .

During the course of the said hearing, ,the Petitioner placed on record a comparative statement of the Sales during the disputed period ( 02/2015 to 06/2015) vis-a-vis Sales of the corresponding period of the previous year (02/2014 to 06/2014) as well as Sales of the corresponding period of subsequent year ( 02/2016 to 06/2016). The Petitioner also submitted the copies of the Sales Returns for the above cited period (pre-disputed disputed and post-disputed period), filed with the Central Board of Excise and Customs and duly acknowledged. These details are reproduced as under:

|  |  |  |
| --- | --- | --- |
| **Pre-disputed period Sales** | **Disputed period****Sales** | **Post disputed period**  |
| **Month** | **In INR** | **Month** | **In INR** | **Month** | **Sales in****INR** |
| 02/2014 | 3698879 | 02/2015 | 2906508 | 02/2016 | 342115 |
| 03/2014 | 3903034 | 03/2015 | 2057181 | 03/2016 | 151803 |
| 04/2014 | 3436437 | 04/2015 | 1569118 | 04/2016 | 0 |
| 05/2014 | 2877275 | 05/2015 | 807932 | 05/2016 | 0 |
| 06/2014 | 2839762 | 06/2015 | 331568 | 06/2016 | 0 |

A study of the above details reveals merit in the contention of the Petitioner that substantial fall in sales, due to less demand and production, contributed to decrease in energy consumption during the period from 04.02.2015 to 05.06.2015.

From the above analysis and evidences on record, it is concluded that the decrease in energy consumption during the disputed period (04.02.2015 to 05.06.2015) vis-à-vis that of the corresponding period of previous year was the result of decline in Sales due to less demand in the market and resultant less production. In view of the above, this Court is to take recourse to the provisions contained in Regulation 21.5.3 of the Supply Code-2014 which reads as under:

*“Any evidence provided by the consumer about conditions of working and / or occupancy of the concerned premises during the said period (s) which might have a bearing on computation of electricity consumption shall, however be taken into consideration by the distribution licensee.”*

1. **Decision:**

**As a sequel of above discussions, the order dated 25.07.2017 of the Forum in Case No. CG-112 of 2017 is set-aside. Accordingly, the Respondent is directed to overhaul the account of the Petitioner for the period from 04.02.2015 to 05.06.2015 and charge the petitioner, for the actual energy consumption recorded during this period and no interest/surcharge should be charged.**

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

**7.** 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)

April 11, 2018 LokPal (Ombudsman)

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