COURT OF THE LOKPAL (OMBUDSMAN),

ELECTRICITY, PUNJAB,

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

 S.A.S NAGAR (MOHALI)

**Appeal No. 70/2017**

Date of Registration : 17.10.2017

Date of Hearing : 22.03.2018

Date of Order : 27.03.2018

**Before:**

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

**In the matter of:**

 Garish Manchanda,

 Street No.3, Hargobindpura,

 Opposite Truck Union, Ludhiana.

...Petitioner

Versus

Additional Superintending Engineer/DS

 CMC Division (Special),

 PSPCL, Ludhiana.

 ...Respondent

**Present For**

Petitioner: Sanjeev Manchanda,

 Petitioner’s Representative (PR)

Respondent : Er. Raminderjit Singh,

 Addl. Superintending Engineer.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 07.09.2017 in Case No. CG-182 of 2017 of the Consumers Grievances Redressal Forum (Forum) deciding that:

 *“The account of the Petitioner be overhauled for 453 days prior to the date of DDL i.e. prior to 11.04.2016 on the basis of consumption recorded during the corresponding period of previous year.”*

**2. Facts of the case:**

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

1. The Petitioner was having a Medium Supply Category connection with sanctioned Load of 98.490kW. The Metering was being done through LT CT operated Static Energy Meter.
2. The connection was checked by the Addl. S.E, Enforcement-2, Ludhiana vide ECR No. 2/940 dated 11.04.2016. It was reported that the Energy Meter, on being checked, was found running slow by 30.60% due to carbonization of blue phase. The voltage on red, yellow and blue phase was 241.0 volts, 243.1 volts and 0.00 volts respectively while the current on the said phases was 68.1 Amp, 70.00 Amp and 65.2Amp respectively. As per report, after removing the carbon from blue phase potential wire, Energy Meter started working properly and voltage on blue phase was found to be 241 volts. DDL of the Energy Meter was also taken after removing the carbon from the wire.
3. Based on the above checking, the ASE, Enforcement-2 issued speaking order dated 09.09.2016 as under:

“fJj e[B?e;aB fJ; dcso tZb' Jh;hnko BzL 2$940 fwsh 11H4H2016 okjhA u?e ehsk s/ gkfJnk fe w"e/ s/ whNo d/ ph c/I T[go t'bN/i iho' ;h . ph c/I ezN?eN s/ n'e;hv/;aB ekoB ekopB nkT[D eoe/ ph c/I Bz{ t'bN/i Bjh fwb ojh ;h fi;dh tikQ ekoB whNo 30H6# ;b' ;h . whNo dk vhHvhHn?bH x'fynk frnk ns/ gkfJnk fe whNo Bz{ ph c/I T[go e[Zb 453 fdB t'bN/ia fBoXkos t'bN/ia s"A xZN fwbh j? iK fpbe[b Bjh fwbh . vhHvhHn?bH dk N?Ago vkNk fwsh 19H3H16 s"A gfjbK dk T[gbpX Bjh j? . N?Ago vkNk d/ gzBk Bzl 10 bVh BzL 64 nB[;ko fJj th gkfJnk fe ph c/I T[go fwsh 29H9H15 s' 187 fdBK bJh t'bNi xZN fwbh j? . gqzs{ N?Ago fog'oN d/ gzBk BzL 4 nB[;ko fJj ;g;aN j? fe ph c/I T[go e[Zb 453 fdB fBoXkos t'bN/i Bjh fwbh . fJ; bJh yggseko dk vkNk 453 fdBK bJh wfjew/ dhnK jdkfJsK nB[;ko n?to/i d/ nXko s/ ;'XDk pDdk j?.”

1. On the basis of the above speaking orders of the Addl. S.E, Enforcement-2, the account of the Petitioner was overhauled from 15.01.2015 to 11.04.2016 by increasing the consumption with slowness factor as 30.60% and a sum of Rs. 1,85,766/- was charged to the Petitioner by the Respondent vide memo no. 3387 dated 10.10.2016.
2. The Petitioner did not agree with the amount charged and represented to the Zonal Dispute Settlement Committee (ZDSC) which, after hearing the matter, decided on 05.05.2017 that the amount charged for the period overhauled was correct and recoverable.
3. Not satisfied with the decision of the ZDSC, the Petitioner filed a Petition in the Forum which passed order dated 07.09.2017 (Reference: Para 1, Page 2).
4. Aggrieved with the decision of the Forum, the Petitioner preferred an Appeal in this Court with the prayer to direct the Respondent to withdraw the demand notice issued vide memo no. 3387 dated 10.10.2016, charging an amount of Rs. 1,85,766/- and also vide no. 2934 dated 09.10.2017 charging enhanced amount of Rs. 2,79,116/- based on the decision of the Forum.

**3. Submissions made by the Petitioner and the Respondent:**

I have gone through the submissions made by the Petitioner in the Appeal and written reply of the Respondent as well as the 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’s Representative made the following submissions for the consideration of this Court:

1. The Petitioner was not at fault in any manner as it had not consumed the electricity as reported by the Addl. S.E./ Enforcement-2, PSPCL, Ludhiana.
2. The objections raised by the Petitioner were not considered by the ZDSC and the Forum. Moreover, no reason to overrule the objections was mentioned in the impugned order.
3. The impugned demand had been raised, without affording any opportunity of being heard, straight away after inspection by Addl. S.E./Enforcement-2 on 11.04.2016. Besides, no Show Cause Notice was served. Giving opportunity of hearing was a must. Even, the Respondent did not comply with its own instructions issued vide ÇC No. 59/14. The Honble Supreme Court, in the case of *Municipal Committee, Hoshiarpur V/S PSEB 2011 (1) SCC,*  set- aside the penalty levied by the erstwhile PSEB on the ground of non grant of opportunity of hearing and non observance of principle of natural justice.
4. *The judgment of ‘Hon’ble High Court of Delhi in AIR 1987 Delhi 218 H D Shourie V/S Municipal Corporation of Delhi and NCR and 1991 Rajdhani Law Reporter 312 Major Zorawar Singh V/S MCD, the Hon’ble High Court held that:*

***“The maximum period for which a bill can be raised in respect of defective meter under section 26(6) EA- 1910 is six months and no more.”***

Therefore, even if, an Energy Meter had been defective for say a period of five years, the consumer could be charged for the period not exceeding six months.

1. In a similar case, this Court in Appeal No. 2/2017 dated 12.04.2017 titled: *M/s Satpal Banarasi Dass, Mirch Mandi V/S PSPCL* clearly ordered for charging the amount only for six months against 37.5 months.
2. As per CC No. 35/2013 and CC No. 59/2014, instructions were issued to intimate the consumer about the relevant regulations under which amount was chargeable but in this case, no such intimation was given.
3. The connection of the Petitioner was checked by the Addl. S.E./Enforcement, PSPCL, Ludhiana, on 11.04.2016 vide ECR No. 2/940 as per which, the Energy Meter was working slow by 30.6% and on display, one phase i.e Segment No. 3 was not blinking and voltage on blue phase was zero. It was also reported by the Addl. S.E./Enforcement-2 vide his letter no. 208 dated 09.09.2016 that blue phase was not contributing for the last 453 days.

Although it was not correct, for the time being, it may be presumed that blue phase was not contributing for 453 days, even then, the account could not be overhauled for more than 180 days as per the provisions contained in Regulation 21.5.1 of Supply Code-2014.

As per calculation sheet provided by the Respondent, it seems that the account was overhauled, as per Regulation 21.5.2 of Supply Code-2014, on average basis which was not correct. This clause was applicable for the defective/burnt meters but not ín the case of Energy Meter where only accuracy of the Energy Meter was concerned as decided by the Forum itself in many cases.

1. As per bills issued by the Respondent the reading of this connection was taken by the authorized officer of CMC Division on 09.04.16 as kWh 3,21,967 and kVAh 3,57,302 with consumption of 2,239 kWh and 2,373 kVAh with `O` Code. So, it was clear that upto 09.04.2016, the Energy Meter was O.K. AAE/Technical did not inform that one Phase (Blue phase) was not contributing. Blinking of all 3 phases on the Energy Meter could be seen easily as 1, 2 and 3. On 09.04.2016, all the segments were blinking but Enforcement report was contrary to the above fact.
2. The fall in consumption was only due to slump in the market. Consumption depended upon the orders received from the dealers. There was less work as compared to that of previous years due to slump. Consumption could be compared with that of the similar kind of industries working in Ludhiana.
3. As per Instructions No. 104.1 (ii) of ESIM, the officials of the PSPCL were duty bound to check the Medium Supply connections atleast once in every six months but they failed to check the connection within the mandatory period, hence, they had no right to charge beyond a period of six months in case of any default pointed out at a later stage.
4. Regulation 21.4.1 of Supply Code-2014, provides as under:

*“In case, a consumer`s meter becomes defective / dead stop or gets burnt, a new tested meter shall be installed within the time period prescribed in Standards of Performance on receipt of complaint.”*

 In the case of the Petitioner, the Energy Meter was not changed because it was not defective or burnt but it was inaccurate and not contributing on one phase due to carbonization and after de-carbonization of the wire, the Energy Meter started working properly and the accuracy of the Energy Meter was within limits as per ECR No. 2/940 dated 11.04.2016. Therefore, this Energy Meter could not be put in the category of defective Energy Meters. It was a clear case of inaccurate Energy Meter as per ECR no. 2/940 dt.11.04.2016.

1. In case of inaccurate Energy Meters, Regulation 21.5.1 of Supply Code-2014 was applicable providing as under:

***“21.5.1 Inaccurate Meters:***

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

1. *date of test in case of meter has been tested at site to the satisfaction of the consumer or replacement of inaccurate meter whichever is later; or*
2. *date the defective meter is removed for testing in the laboratory of the distribution licensee.”*

**(xiv)** Keeping in view the above submissions, PSPCL may be directed to withdraw the notices issued vide Memo No. 3387 dated 10.10.2016 and memo No. 2934 dated 09.10.2017.

1. On the other hand, the Forum ordered to overhaul the account as per Regulation 21.5.2 of Supply Code-2014 which was applicable to Defective (other than inaccurate) / Dead Stop / Burnt / Stolen meters, which was totally wrong as per provision ibid of Supply Code-2014.

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

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

1. The connection of the Petitioner was checked by the Addl. S.E./Enforcement-2, PSPCL, Ludhiana vide ECR No. 2/940 dated 11.04.2016. As per the checking report, the Energy Meter was running slow by 30.6% due to carbonization on blue phase. Voltage on red phase was 241volts, on yellow phase 243.1volts and on blue phase Zero volts. After de-carbonization of the blue phase potential wire, Energy Meter started working properly. Thereafter, voltage on this phase was 241 volts. The checking was done in the presence of the consumer who signed on the ECR in token of acceptance of the findings. One copy of the checking report was handed over to the consumer at site.
2. After scrutinizing the DDL report, Addl. S.E. Enforcement, Ludhiana, vide Memo No. 208 dated 09.09.2016, directed to overhaul the Petitioner’s account for 453 days as blue phase was not getting the desired voltage. Accordingly, the account of the consumer was overhauled and an amount of Rs. 1,85,766/- was charged vide Memo. No. 3387 dated 10.10.2016.
3. The Petitioner did not agree with the amount charged and represented to the ZDSC which decided on 05.05.2017 that the amount was recoverable. Not satisfied with the decision of the ZDSC, the consumer filed a Petition in the Forum which passed order dated 07.09.2017 that the account should be overhauled on the basis of average consumption for the corresponding months of previous year. After overhauling the Petitioner’s account as per decision of the Forum, the recoverable amount worked out to be Rs. 2,79,116/-.
4. The Petitioner was given due opportunity of making its submissions and being heard by the ZDSC as well as by the Forum.
5. Since the blue phase got either Zero voltage or less than defined voltage during 453 days due to carbonization of its lead, hence, the account was correctly overhauled in terms of the provisions of Regulation 21.5.2 (a) of Supply Code-2014 i.e. by taking the consumption of corresponding months of previous year, for 453 days, prior to date of DDL (11.04.2016) by the Forum.

**4. Analysis:**

 The issue requiring adjudication is the legitimacy of overhauling the account of the Petitioner for 453 days prior to the date of DDL(11.4.2016), of the Energy Meter running slow by 30.60% as per applicable regulations.

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

1. As per Enforcement’s checking report, the LED on phase 1 and 2 were blinking, whereas there was no such indication on phase 3 on display of the Energy Meter, giving an impression that the blue phase was missing .
2. The monthly readings were taken by the AAE (JE-I), who failed to take cognizance of the fault in the display of the Energy Meter. Moreover, in L&T Make Energy Meters, “STAR” appears on the display of the Energy Meter in such like situations which can easily be noticed by the official taking the readings.
3. The DDL report (Tamper Data) shows under the Head “Failure Type / Status /Count / Durations”, that the Voltage failure on blue phase was for 453 days 3 hours 40 Minutes.
4. There has been inordinate delay on the part of the Enforcement Wing in issuing speaking order on 09.09.2016 after checking of the connection of the Petitioner on 11.04.2016.

 *This should be avoided in future and it should be ensured henceforth that speaking orders are issued as expeditiously as possible.*

1. A perusal of the Consumption Data, reveals that the Petitioner consumed 86,453 kVAh units during 10.01.2014 to 10.01.2015 and monthly average is 7,204 kVAh units. There is a fall in consumption recorded during the period 10.01.2015 onwards as the Petitioner consumed 66,102 kVAh during the period from 10.01.2015 to 09.04.2016 and monthly average for the same is 4,407 kVAh units.

**I observe that 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.**

 **At the same time, the consumer, as a responsible citizen, should have brought to the notice of the Respondent, the abnormal fall in consumption noticed on receipt of monthly energy bills. The assertion by the Petitioner that consumption varied from month to month, according to the demand from the dealers and declined due to slump in the market, as a matter of routine, is not convincing.**

1. The Forum decided to overhaul the account in terms of the provisions of Regulation 21.5.2 of Supply Code-2014 i.e. on the basis of consumption recorded during corresponding period of previous year, assuming the Energy Meter as defective (other than inaccurate). Actually, the Energy Meter was found inaccurate at the time of checking at site by the Addl. S.E/ Enforcement-2.

 *It is, therefore, concluded that the account of the Petitioner is required to be overhauled in terms of provisions contained Regulation 21.5.1 of Supply Code-2014 for a maximum period of six months prior to date of checking i.e. 11.04.2016 with slowness factor of 30.60%.*

**5. Decision:**

 **As a sequel of above discussions, the order dated 07.09.2017 of the Forum in CG-182 of 2017 is set-aside. It is held that the account of the Petitioner should be overhauled for the period of six months prior to the date of checking of connection (11.04.2016) with slowness factor of 30.6% as per provisions contained in Regulation 21.5.1 of Supply Code-2014. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment without any interest.**

**6. T**he Appeal is allowed.

**7.** 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.

**8.** Engineer-in-Chief, Commercial, PSPCL, Patiala, should also 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.

**9.** Chief Engineer/Energy Audit & Enforcement, PSPCL, Patiala should issue instructions requiring all Additional Superintending Engineers/Senior Executive Engineers, Enforcement/MMTS to ensure that speaking orders, after checking the connections, are issued to the concerned DS Divisions promptly as per the instructions of PSPCL so that consumers aggrieved, with the results of checking of connections can seek appropriate remedies, if they so desire, from the appropriate Bodies expeditiously.

**10.** 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)

March 27, 2018 LokPal (Ombudsman) S.A.S. Nagar (Mohali) Electricity, Punjab.