COURT OF THE LOKPAL (OMBUDSMAN),

ELECTRICITY, PUNJAB,

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

 S.A.S NAGAR (MOHALI)

**Appeal No. 90/2017**

Date of Registration : 12.12.2017

Date of Hearing : 26.04.2018

Date of Order : 01.05.2018

**Before:**

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

**In the matter of**

 Durga Concast Pvt. Ltd,

 V&P.O. Jaspal Bangar,

 Ludhiana.

...Petitioner

Versus

Additional Superintending Engineer/DS,

Estate Division (Spepcial),

 PSPCL, Ludhiana.

 ...Respondent

**Present For**

Petitioner 1. Shri Sukhminder Singh,

Petitioner’s Representative (PR),

Respondent Er. Daljeet Singh,

 Addl. Superintending Engineer,

Before me for consideration is an Appeal preferred against the order dated 31.10.2017 of the Consumers Grievances Redressal Forum (Forum) Case No. CG-200 of 2017 deciding that:

*“The overhauling of consumer's account from 10.11.2016 to 15.11.2016 for an amount of Rs. 6,70,582/- by CBC vide its Memo No. 3231 dated 25.10.2017 is correct & recoverable from the Consumer.”*

**2. 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 2250kW and Contract Demand (CD) as 2490kVA.
2. The Petitioner informed the Respondent on 13.11.2016 about sudden blast in the 11kV/110V, CT/PT unit installed at its premises whereafter, the connection was checked by the MMTS on 14.11.2016 .
3. During the checking, MMTS noticed that the jumpers of Yellow and Blue Phases of CTs were burnt due to blast and issued directions to replace the CT/PT unit.
4. The CT/PT unit was replaced vide Device Replacement Application dated 15.11.2016. Only CT/PT unit was replaced, while the Energy Meter remained the same.
5. The CT/PT unit was got checked/tested from ME Lab on dated 03.03.2017 and the accuracy of the CTs were found out of permissible limits. PTs were found burnt, hence, results could not be taken.
6. A supplementary bill dated 14.06.2017 for Rs. 11,96,377/- was served to him, as per RBS No. 66/2017 dated 26.05.2017 of Centralised Billing Cell (CBC), in view of directions issued by the MMTS vide Memo No. 1308 dated 08.05.2017.
7. The Petitioner did not agree with the Supplementary Bill, and filed a Petition in the Forum which after hearing passed the order dated 31.10.2017 (Reference: Page 2 Para 1).
8. Not satisfied with the decision of the Forum, the Petitioner filed an Appeal in this Court with the prayer to set-aside the decision of the Forum, and waive off the entire amount or to order the overhauling of account only for the period from 10.11.2016 to 13.11.2016 (up to 11.00 hrs) in the interest of justice.

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

Before undertaking analysis of the case, it is necessary to go through written submissions made 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.

**(a) Submissions of the Petitioner:**

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

1. The Petitioner was having a Large Supply Category connection with Sanctioned Load as 2250kW/Contract Demand (CD) of 2490kVA.
2. Due to a sudden blast on 13.11.2014 in CT/PT Unit and there was no electricity supply. The Petitioner immediately informed the concerned office, whereafter, the connection was checked at site by the Addl.S.E/MMTS-3 Ludhiana, on 14.11.2016.
3. The Addl. S.E/MMTS-3, vide ECR No.28/2891, reported that :

 “*The connection was checked on the telephone message of SDO/Estate-II and found that jumper of Yellow & Blue Phase PT of CT/PT Unit were burnt and due to blast, the door of CT/PT Unit was opened. As such the CT/PT Unit was found burnt. The cost may be got deposited and CT/PT Unit may be replaced. The old CT/PT Unit be brought to ME/Lab for testing”.*

1. Accordingly, CT/PT Unit was replaced on 15.11.2016 and supply was restored. The bills were continued to be issued on the basis of measured consumption. However, after a period of seven months, the AEE/Estate issued supplementary bill dated 14.6.2017 for Rs. 11,96,377/- (with due date as 26.6.2017) on the basis of RBS No. 66/2017, dated 26.5.2017 of Sr Xen/CBC as per directions issued vide Memo No. 1308 dated 08.05.2017 by Addl. S.E/MMTS-3 Ludhiana, for overhauling the account from 10.11.2016.
2. The amount was charged without providing copy of testing report of ME Lab, DDL report & speaking orders of MMTS etc. after a period of seven months.
3. The Petitioner did not agree with the amount charged and moved the Forum which did not consider the pleadings of the Petitioner at all, just got the calculation error corrected and obtained revised RBS of CBC, from the Respondent and decidedthat the overhauling of consumer’s account from 10.11.2016 to 15.11.2016 for an amount of Rs. 6,70,582/- by CBC vide its Memo No.3231 dated 25.10.2017, was correct and recoverable from the consumer.
4. The Forum did not even deliberate or recorded its observations on the various submissions of the Petitioner, simply relied on the revised calculations of the Centralised Billing Cell (CBC). The Petitioner was not satisfied with the decision of the Forum, therefore, the present Appeal was being filed.
5. The electricity supply remained off from 13.11.2016, the time when there was blast in the CT/PT Unit, and the same was restored after the replacement of CT/PT Unit on 15.11.2016.
6. The consumption, recorded from 31.10.2016 to 05.12.2016 (35 days) as 3,31,530 kVAh (as per bill issued on 17.12.2016), was normal, keeping in view use of supply from the connection, as such, the bill already issued by the PSPCL was in order and was paid by the Petitioner. However, the account for the period from 10.11.2016 to 05.12.2016 (26 days) was overhauled on the basis of Memo. No. 1308 dated 08.05.2017 of Addl. S.E/MMTS, Ludhiana, reporting that “current contribution of three phases remained low.” It was not clear as to how and on the basis of which document, the Addl. S.E/MMTS arrived at the conclusion that the current contribution of three phases remained low during the period from 10.11.2016 to 05.12.2016 (26days).
7. Further, the reasons as to why the Addl. S.E /MMTS-3, Ludhiana had given the order after about six months from the date of checking conducted on 14.11.2016 were not understood. Therefore, the entire demand, as raised by the Respondent, was liable to be quashed by the Forum. However, the Forum reduced the period of overhauling 10.11.2016 to 15.11.2016 (date of replacement of CT/PT Unit). In the first instance, the account was wrongly overhauled upto 05.12.2016, even after the replacement of the CT/PT Unit on 15.11.2016
8. Only theCT/PT Unit was replaced as Yellow and Blue phase PT of CT/PT Unit were burnt due to blast and existing Energy Meter was not replaced. Further, burning of CT/PT Unit was sudden due to which, there was no supply which was restored only after the replacement of CT/PT Unit. **No direct supply was given during the intervening period.** So, there was no necessity to overhaul the account even from 10.11.2016 to 15.11.2016. As such, overhauling of account was unwarranted and revised demand of Rs.6,70,582/- as per decision of the Forum was required to be quashed.

 **(xii)** After the coming into force of Electricity Act-2003 & Supply Code 2007, every penal action on the consumer should be supported by rules / regulations because it was the consumer who had to bear the liability and had every right to know under which regulation, it was being penalized. The Chief Engineer/ Commercial, vide CC No. 53/2013 and CC No.59/2014 issued instructions (on the basis of order dated 26.09.2013 passed by the Hon’ble Punjab & Haryana High Court, in CWP No.10644 of 2010) that while initiating proceedings against any consumer, the competent authority of the PSPCL must quote the relevant regulations of the Supply Code or any other regulations framed by the competent authority under the Electricity Act-2003. These instructions had been reiterated vide CC No. 30/2015 dated 5.8.2015 for strict compliance as PSERC had taken serious view of non-compliance of these instructions.

**(xiii)** The,notice of Rs. 11,96,377/- was issued to the Petitioner by the concerned office, (revised to Rs.6,70,582/- as per decision of the Forum) without mentioning any rule/regulation of Supply Code under which it has been raised. Thus, the notice was liable to be withdrawn being illegal since it is not supported by any rule / regulation of Supply Code or Electricity Act-2003.

**(xiv)** There was no supply from 13.11.2016 (after 11.30 hrs) to 15.11.2016 (up to 18.00 hrs) due to burning of CT/PT Unit, which was also evident from the print-out supplied by the Respondent. Further, Addl. S. .E/MMTS after scrutiny of DDL print-out, ecorded remarks that the voltage on all the three phases from 13.11.2016 (after 11.30 hrs. - 12.00 hrs) to 15.11.2016 up to 18.30 hrs remained zero and thereafter, the voltage on all the three phases was normal. From the report of ASE/MMTS, it was also clear that there was no supply from 13.11.2016 (after 11.30 hrs.) to 15.11.2016 (up to 18.00hrs). Furthermore, Addl. S.E/Op Estate Division, vide Memo No.2960 dated 25.10.2017, informed Addl. S.E/CBC that CT/PT unit of the consumer was replaced on 15.11.2016 and as per DDL, LT/PT contribution for this period (13.11.2016 after 11.30 hrs to 15.11.2016 up to 18.00 hrs) was zero, the RBS may be revised accordingly.The letter of the ASE/ DS Estate also confirmed that there was no supply (due to burning of CT/PT Unit) from 13.11.2016 to 15.11.2016. However, inspite of clear evidence, CBC calculated the amount as chargeable from 10.11.2016 to 15.11.2016 (sixdays). Besides, there was less use of load from 10.11.2016 to 13.11.2016 (up to 11.30 hrs), as supply was tripping on full load, which was the reason of less current as per print-out. It was thus, clear that there is no reason to overhaul the account at all.

**(xv)** The CBC initially calculated the recoverable amount for the period 10.11.2016 to 05.12.2016 (26 days), although the CT/PT Unit was replaced on 15.11.2016. When the matter was brought to the notice of the Forum, the period of overhauling was reduced as 10.11.2016 to 15.11.2016 (date of replacement of CT/PT Unit). However, once again, the CBC deliberately did not work out the amount properly while revising the amount as Rs.6,70,582/- intimated vide Memo No. 3231 dated 25.10.2017. First of all, the CBC had taken the period of overhauling as 10.11.2016 to 15.11.2016 (6 days), as the CT/PT unit was replaced on 15.11.2016 (after 18.00 hrs) and supply was restored accordingly. Thus, number of days works out to be 5 days whereas the CBC had taken the period as 6 days, and taking the proportionate consumption on the basis of the same period of previous year as 92,325 units. Even the method of working out consumption for the period 10.11.2016 to 15.11.2016 (6 days) was also wrong, as the CBC had taken into account the reading of 5,48,089kVAh for dated 9.11.2016, as per DDL print-out (the reading data as per DDL which was not made available to the Petitioner) and reading of 15.11.2016 as 5,48,121kVAh (as supplied by the Respondent) and worked out consumption from 10.11.2016 to 15.11.2016 as 960 units (5,48,121 kVAh - 5,48,089kVAh x 30 MF). This method of working out already billed units was wrong as the CBC should have either taken both the readings i.e. for dated 09.11.2016 and 15.11.2016 only as per DDL print-out or proportionate consumption for 6 days from the consumption of 3,31,530kVAh actually recorded for the period 31.10.2016 to 05.12.2016 for 35 days (as taken in RBS No.66/2017 dated 26.05.2017 for Rs.11,96,377/-), which came to 56,833 units (3,31,530/35 x 6days). Accordingly, chargeable units would have been 35,492 units (92,325 units-56,833 units) instead of 91,365 units (92,325 units - 960 units).

**(xxi)** Further, the average was required to be charged only for four days i.e. from 10.11.2016 to 13.11.2016 (up to 11.00 hrs) as explained above. Thus chargeable units worked out to be 17,746 units (i.e. half of 35,492 units for 6 days)..

**(xvii)** From the above position, there may be hardly any doubt that the amount of Rs.6,70,582/- revised as per order of the Forum,after overhauling of account from 10.11.2016 to 15.11.2016, was unwarranted, unjustified and illegal. As such, the decision of the Forum, may be set-aside and the entire amount charged may be waived off or the account be overhauled only for the period from 10.11.2016 to 13.11.2016 (up to11.00 hrs) as per submissions made above in the interest of natural justice and fairness.

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

 **The Respondent, in its defence, submitted the following for consideration of this Court:**

1. The consumer was having Large Supply connection with sanctioned load of 2250 kW with Contract Demand of 2490kVA .
2. The connection was checked by the Addl. S.E MMTS-3 Ludhiana on 14.11.2016 vide ECR No 28/2891 and reported as under:

*“The connection was checked on the telephone message of SDO Estate-2 and found that jumpers of Yellow and Blue Phase PT of CT/PT unit were burnt and due to blast the door of CT/PT unit was opened. As such the CT/PT unit was found burnt. The cost may be got deposited and CT/PT UNIT may be replaced. The old unit be brought to ME LAB for testing"*

1. The consumer deposited the cost of CT/PT amounting to Rs. 36,540/- vide BA16- No. 176/48443 dated 15.11.2016 and the same was replaced vide Job Order No. 100002854506 dated 15.11.2016, effected on 15.11.2016.
2. The removed CT/PT unit was sent to ME Lab, Ludhiana vide Store Challan No. 405 dated 03.03.2017 and the test results are stated as under:

*"Results of CT’S are out of permissible limits as per relevant ISS. PT burnt , so results cannot be taken"*

1. The account of the consumer was overhauled by the CBC Ludhiana, vide RBS No 66/2007dated 26.05.2017 as per speaking order of the Addl. S.E/MMTS -3 Ludhiana, issued vide Memo No 1308 dated 08.05.2017 and an amount of Rs. 11,96,377/- was charged for difference of units 1,63,003 as under:

SOP=166003\*6.22 = 10,13,879-00

ED and Other Charges = 1,82,498-00

Total = 11,96,377-00

1. The AEE (Commercial) Estate Division (Special), PSPCL, Ludhiana, issued supplementary bill dated 14.06.2017 (payable by due date 26.06.2017) for Rs. 11,96,377 + Surcharge Rs. 23,928/- = Total Rs. 12,20,305/-.
2. The consumer did not agree with the amount so charged and filed a Petition in the Forum.
3. The Petitioner stated that the consumption as recorded from 31.10.2016 to 05.12.2016 (35 days) was normal and the entire demand, as raised by the Respondent, was liable to quashed by the Forum. In fact, the demand of Rs. 11,96,377- was raised vide CBC’s RBS No. 66/2007 dated 26.05.2017 for the period from 10.11.2016 to 05.12.2016 (26 days) as per the MMTS-3 speaking order issued vide Memo No. 1308 dated 08.05.2017. The CBC overhauled the account till 05.12.2016 instead of 15.11.2016 (date of replacement of CT/PT). The matter was taken up with the CBC, Ludhiana during the pendency of the case in the Forum and the CBC corrected the recoverable amount by restricting the period from 10.11.2016 to 15.11.21016 (6 days) as Rs. 6,70,582/- vide letter No. 3231 dated 25.10.2017. This letter was placed before the Forum and copy given to the Petitioner in the Forum’s proceedings.
4. The consumption recorded for the disputed period from 30.10.2016 to 05.12.2016 (35 days) was 3,31,530 units, which was too less than the previous month’s consumption as shown in the Consumption Data as detailed below:

 **Month** **Consumption in Units**

05/2016 4,52,640

06/2016 7,45,500

07/2016 4,82,400

08/2016 8,43,150

09/2016 6,88,830

10/2016 6,37,560

1. The Forum rightly decided the case on the basis of revised calculations done by the CBC, PSPCL, Ludhiana as detailed in letter No. 3231 dated 25.10.2017.

**(xi)** The account was correctly overhauled as per Regulation 21.5 of Supply Code-2014. The CT/PT unit was checked at site by MMTS-3, PSPCL, Ludhiana, vide ECR No. 28/2591 dated 14.112016 in the presence of the consumer and was declared as **Burnt** and the CT/PT was changed on 15.11.2016 and was tested in ME Lab, Ludhiana, vide Store Challan No 405 dated 03.03.2017 as per which the accuracy of the CTs were out of permissible limit and PT was found burnt, so, results could not be taken.

1. The revised calculations for the period from 10.11.2016 to 15.11.2016 (6days) for Rs.6,70,582/-vide letter No. 3231 dated 25.10.2017 were correctly done by the CBC, PSPCL, Ludhiana per Regulation 21.5 of Supply Code-2014 by taking basis of the consumption of the corresponding period of previous year i.e. from 10.11.2015 to 15.11.2015 as 92,325 units. The Forum rightly decided the case, as such, the Petition may be dismissed.

**4. Analysis:**

 The issue requiring adjudication is the legitimacy of the amount of
Rs. 6,70,582/-, charged to the Petitioner, after overhauling its account for the period from 10.11.2016 to 15.11.2016, as per re-calculations done by the Centralised Billing Cell, PSPCL, Ludhiana and sent vide Memo. No. 3231 dated 25.10.2017.

 T*he points emerged are deliberated and analysed as under:*

1. The dispute arose after a blast on 13.11.2014 in CT/PT unit of the electric connection installed at the premises of the Petitioner as a result of which, there was no electricity supply to the premises. The Petitioner immediately informed the concerned office i.e. SDO/Estate-II, whereafter, the connection was checked at site on 14.11.2016 by the Addl. S.E, MMTS-3, PSPCL, Ludhiana who noticed that the jumpers of Yellow and Blue Phase PT of CT/PT unit were burnt and due to blast, the door of CT/PT unit got opened, as such, the CT/PT unit was found burnt. The MMTS issued directions for replacement of CT/PT unit and also for testing of the removed unit in ME Lab.

 I find that the burnt CT/PT unit was replaced on 15.11.2016 and tested vide Challan dated 03.03.2017 in ME Lab which reported as under:

*“Results of CTs are out of permissible limits as per relevant ISS. PT burnt, so, results can not be taken.”*

I observe from the perusal of the Checking Report of MMTS-3 that the current was contributing correctly upto 09.11.2016 while contribution from 10.11.2016 to 15.11.2016 was less. However, there was no contribution of current on 16.11.2016 as evident from the DDL print-out. The contribution from 17.11.2016 onwards was noticed from the DDL print-out. I have also perused the order dated 31.10.2017 of the Forum in this case deciding that the overhauling done for the period from 10.11.2016 to 05.12.2016 was not justified and that the overhauling of the Petitioner’s account for the period from 10.11.2016 to 15.11.2016 for an amount of Rs. 6,70,582/- as per re-calculations done by the CBC vide memo. No. 3231 dated 25.10.2017, was correct and recoverable.

In this connection, the PR during the hearing dated 26.04.2018, referred to Memo. No. 2960 dated 25.10.2017 from Addl. S.E./DS Estate Division (Special), informing the Addl. S.E/CBC, Ludhiana as under:

 *“ygseko dk CT/PT fwsh 13-11-16 B{z ;V frnk ;h . ns/ fJj whNo MMTS tZb'A fwsh 14-11-16 Bz{ ECR No. 28/2891/14.11.16 B{z u?e ehsk ns/ fJj CT/PT Unit SJO No. 100002854506 fwsh 15.11.16 okjhA fwsh 15.11.16 B{z pdb fdZsk ;h . ygseko B/ CT/PT dh ehws 36,540 o[gJ/ BA-16-No. 48443 fwsh 15-11-16 B{z IwkQ eotkJh . ygseko w[skfpe T[;dh ;gbkJh 13-11-16 After 11-30 s'A 15-11-16 upto 18 Hr sZe CT/PT ;V/ j'D eoe/ pzd ojh . DDL w[skfpe th fJ; period dh CT/PT contribution Zero j? . fJ; bJh fJ; w[skfpe RBS ohtkJhI eoB dh feqgkbsk ehsh ikt/ .”*

I find that the provisions for overhauling the account of a consumer, whose Energy Meter (including CT/PT Unit) gets burnt and to whom, direct supply was given, exists in Regulation 21.5.2 of Supply Code-2014. In the present case, no direct supply was given and simply on the basis of DDL Report (Less current), the account can not be overhauled because there are no such provisions in the Regulations.

1. There is merit in the contention of the Petitioner that the action of the Respondent in raising the demand for Rs. 11,96,377/- revised to Rs. 6,70,5982/- without referring to any rules/regulations of the Distribution Licensee/Electricity Act-2003 was violative of the instructions issued vide Commercial Circular (CC) No. 53/2013 and 59/2014, which were reiterated vide CC No. 30/2015 dated 02.08.2015 stating as under:

 *“While initiating proceedings against any consumer, the competent authority of PSPCL must quote the relevant regulations of the Supply Code or any other regulation framed by the competent authority under the Electricity Act-2003.”*

 From the above analysis, it proves beyond doubt that overhauling the account of the Petitioner for the period from 10.11.2016 to 15.11.2016, and resultant raising of revised demand for Rs. 6,70,582/- by the Respondent, is un-warranted.

**5. Decision:**

 **As a sequel of above discussions, the order dated 31.10.2017 of the Forum in Case No. CG-200 of 2017 is set-aside. The Respondent is directed to recover/refund the amount found excess/short, if any, after adjustment as per rules of the PSPCL, without any interest.**

**6.** The Appeal is allowed.

**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)

May 01, 2018 LokPal (Ombudsman)

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