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

**ELECTRICITY, PUNJAB,**

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

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

**Appeal No. 95/2017**

**Date of Registration : 19.12.2017**

**Date of Hearing : 18.12.2018**

**Date of Order : 24.05.2018**

**Before:**

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

**In the matter of**

Dhuri Cold Store (P) Ltd,

M.S. Road, Bhasaur,

Dhuri.

...Petitioner

Versus

Additional Superintending Engineer

DS Division,

 PSPCL, Dhuri.

 ...Respondent

**Present For :**

Petitioner **:** 1.Shri Khem Chand, Petitioner,

 2.Shri Amarjit Sharma.

 Petitioner’s Representative (PR).

Respondent **:** . Er. Tarsem Chand Jindal,

 Addl. Superintending Engineer.

 Before me for consideration is an Appeal preferred against the order dated 02.11.2017 of the Consumers Grievances Redressal Forum (Forum) in Case No. CG-190 of 2017 deciding that:

*“The account of the Petitioner be overhauled from 11.02.2017 to 01.06.2017 (due to Nil current on R-Phase as per AMR report) by taking slowness factor as 33.33*%.”

**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 149.518kW and Contract Demand (CD) of 162kVA.
2. The connection was checked on 23.05.2017 by the Addl. S.E, MMTS and found that the current on Red Phase was NIL and there were wrong connections. The Addl. S.E./MMTS, then issued directions to get the connection checked from the Enforcement.
3. The Addl. S.E, Enforcement, Sangrur checked the connection vide ECR No.34/3824 on 23.05.2017. The accuracy of the Energy Meter was checked with LT ERS Meter. The Enforcement, in its Checking Report, observed that the Energy Meter was running slow by *33*⅓% and issued directions to replace the 11kV/110V, CT/PT Unit.
4. The CT/PT Unit was replaced vide Device Replacement Application dated 02.06.2017.
5. The removed CT/PT Unit was got tested, on 05.09.2017, from ME Lab, wherein accuracy of the CT/PT Unit was not within limits.
6. The Addl. S.E, MMTS, Patiala, vide Memo. No. 874 dated 01.06.2017, issued directions to overhaul the account of the Petitioner as per Checking Report dated 23.05.2017 of the Addl. S.E/Enforcement, as current on Red Phase was Nil from 11.02.2017.
7. The Respondent overhauled the Account of the Petitioner from 11.02.2017 to 31.05.2017 and issued notice to the Petitioner on 12.06.2017 to deposit a sum of Rs. 3,55,756/- The said demand was revised to Rs. 3,41,739/- for the period from 11.02.2017 to 01.06.2017 and notice for the same was issued on dated 20.07.2017.
8. The Petitioner did not agree with the above notice and filed a Petition in the Forum, which, after hearing, passed the order dated 02.11.2017 (Reference: Page 2, Para 1).
9. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court and prayed to set-aside the unjust demand raised and refund, with interest, the amount already recovered.

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

Before undertaking analysis of the case, it is necessary to go through the written submissions made by the Petitioner and reply of the Respondent as well as oral submissions made by the Petitioner and the Respondent alongwith material brought on record by both the sides.

1. **Submissions of the Petitioner:**

The Petitioner submitted the following for consideration of this Court:

1. The Petitioner was having a Large Supply Category connection, bearing Account No. 3002309970 within the jurisdiction of DS Division, PSPCL, Dhuri.
2. The connection was checked by the ASE/MMTS and the DDL was taken vide ECR No. 02/483 dated 23.05.2017.
3. As per the Checking Report, directions were issued to get the accuracy of the Energy Meter checked from the Addl. S.E., Enforcement with LT ERS Meter.
4. The Addl. S.E., Enforcement, vide ECR No. 34/3824 dated 23.05.2017 checked the connection and reported that the Energy Meter was slow by *33*⅓%. In the said report the Addl. S.E., Enforcement also issued directions to replace the 11kV/110V, CT/PT Unit of the Petitioner and get the removed Unit tested from the ME Lab.
5. The Addl. S.E., Enforcement vide Memo. No. 874 dated 01.06.2017, directed that the account of the Petitioner be overhauled as per the checking dated 23.05.2017 by the Addl. S.E., Enforcement. Accordingly, the AEE, City Sub Division, Dhuri overhauled the account as per the said letter treating One Phase dead from 11.02.2017.
6. The AEE, City Sub Division, PSPCL, Dhuri, vide its office letter No. 633 dated 12.06.2017, sent a notice for deposit of Rs.3,55,756/- which was revised to Rs.3,41,739/- vide letter No. 789 dated 20.07.2017.
7. The AEE, City, Sub Division, PSPCL, Dhuri also got tested the 11kV/110V CT/PT Unit from the ME Lab on 05.09.2017 as per directions of the Addl. S.E., Enforcement, PSPCL, Sangrur.
8. There was no decreasing trend in the Petitioner’s consumption during the months, for which its account was overhauled. The consumption was accurate as per working of the Cold Store as compared to the previous period when the accuracy of the Energy Meter was not checked. The amount charged by the AEE, City Sub Division, PSPCL, Dhuri was unjust and not recoverable.
9. The Petitioner, therefore, filed a Petition in the Forum which heard the case and decided the same on 02.11.2017 in favour of the Respondent - PSPCL by ignoring the pleas of the Petitioner.
10. Aggrieved by the decision of the Forum, an Appeal had been preferred in this Court in the interest of justice.
11. The DDL taken did not show any occurance of event of continuous failure of current/voltage from 11.02.2017. The cumulative events although showed current missing on L-2 and L-3 for shorter duration with its restoration yet the report on L-1 was not there.
12. Again, the Continuous Data Report on different dates showed the current of Phase-I as Zero yet the snap shots were of different timings. Permanent failure of current in Phase L-1 had nowhere been shown in the DDL Report.
13. The failure of the current of Red Phase had been considered from 11.02.2017 to 01.06.2017 and the Petitioner’s account had been overhauled by increasing the recorded consumption by Fifty percent. The consumption recorded in the month of 04/2017 and 05/2017 did not give any indication of such defect of the Energy Meter. During these months, the consumption was even more than the consumption recorded during the corresponding months of previous year when the Energy Meter’s working was correct as may be seen from the following details:

|  |  |  |  |
| --- | --- | --- | --- |
| Month | Consumption(in kVAh) | Month  | Consumption(in kVAh) |
| 4/2017 | 36966 | 4/2016 | 33624 |
| 05/2017 | 34624 | 05/2016 | 32281 |

1. The consumption during the month of 02/2017 and 03/2017 was on lower side due to late start of the season i.e. due to late arrival of the material for placing it in the Cold Store. The Petitioner did not receive any material before 20.02.2017. The arrival of the material was started only after 20.02.2017 due to which, it could be possible to start only one chamber at the end of February 2017 and the second chamber was started only during the month of March, 2017. Due to this reason, the consumption during February 2017 and March 2017 was very low as compared to the corresponding months of previous year.
2. During the month of March 2017 there were power cuts of long durations which could be verified from the record of the PSPCL due to which, the Machinery had to be run with the help of a DG Set.
3. The defective period of Metering Equipment had been considered as 11.02.2017 to 01.06.2017. But, the Energy Meter recorded the consumption of 98,960kVAh during this period against the consumption of correct Energy Meter during the corresponding months of previous year was 1,07,604kVAh. Thus, the consumption recorded by the Energy Meter during the disputed period was correct and comparable with the consumption for the period, the Metering Equipment had been reported as defective. When the consumption recorded from 11.02.2017 to 01.06.2017 was enhanced as per checking report, then, it worked out as 1,48,441kVAh which was even more than the consumption worked out as per LDHF formula (worked out in the theft of energy cases) which was 1,34,565kVAh. In case of theft of energy, the consumer was penalized by charging the amount on the basis of consumption worked out as per LDHF formula but in this case, the Petitioner had been penalized harshly without any case of theft of energy.
4. The ME Lab, in its report of checking of CT/PT Unit, reported that the Red Phase CT was dead, while, the Yellow and Blue Phase CTs were showing inaccurate results. Even the Red and Yellow PTs were not working and Blue Phase PT was also not O.K. According to this report, the Metering Equipment was defective. In case, the Metering equipment was found defective, the amount was to be recovered on the basis of average consumption as per Regulation 21.5.2 (a) of Supply Code-2014. Besides, as per the Supply Code-2014, the definition of Meter is as under:

*"The term Energy Meter shall also include wherever applicable, other Energy Metering equipment such as current transformer, voltage transformer, with wiring and accessories etc. essentially required for measuring / recording consumption of electricity and shall hereinafter called Energy Meter.”*

Thus, as per the above definition of the Meter, the CT/PT was part of the Energy Meter and according to the report of the ME Lab, it was declared as defective which had effected the correct measuring/recording of consumption of electricity. Therefore, the Metering Equipment needed to have been considered as defective. According to Instruction No. 3.1 (xxiv) of the ESIM, for the period of failure of the Energy Meter, the billing was required to be done as per Regulation No. 21.5.2 of Supply Code-2014. As per this regulation, the consumer was to be billed on the basis of consumption of corresponding months of the previous year for the period, the CT/PT Unit was defective. Thus, the account of the Petitioner was required to be overhauled according to the consumption of corresponding months of previous year when working of the Energy Meter was O.K. i.e. 11.02.2016 to 01.05.2016 as per Regulation 21.5.2 (a) of Supply Code-2014.

1. The Appeal may be allowed accordingly.
2. **Submissions of the Respondent:**

The Respondent, in its defence, made the following submissions for consideration by this Court:

1. The connection of the Petitioner, bearing Account No. 3002309970,was checked by the Additional S.E., MMTS and Additional S.E., Enforcement. During the checking, it was found that the Energy Meter was *33*⅓% slow. The checking was conducted in the presence of the consumer who signed the checking report after admitting the same as correct.
2. The account of the Petitioner was overhauled from 11.02.2017 to 01.06.2017 after increasing the consumption recorded by 50% as per the reports and also as per letter no.874 dated 01.06.2017 issued by the Additional S.E, MMTS Patiala.
3. The Petitioner admitted the checking and also accepted the report dated 05.09.2017 of the M.E. Lab, Patiala. The CT/PT was tested in the presence of the consumer who signed the M.E. Lab report thereby admitting the same as correct. Now, the Petitioner could not back out from the admissions so made. Besides, there was rust on the CT/PT Unit and the report dated 05.09.2017 did not declare the CT/PT Unit as dead/defective one.
4. The demand of Rs.3,55,756/- was initially raised and was subsequently revised as Rs.3,41,739/-, which was legal and valid.
5. A perusal of the detailed events reports, clearly proved that Active current on L1 was missing continuously from 11.02.2017. The Energy Meter was replaced vide DRA No. 100004021163 dated 02.06.2017, effected on 02.06.2017.
6. In the given circumstances, the order dated 02.11.2017 passed by the Forum was just and fair.
7. The Appeal of the Petitioner may be dismissed with special costs.

 **4. Analysis:**

The issue requiring adjudication is the legitimacy of the overhauling of the account of the Petitioner, for the period from 11.02.2017 to 01.06.2017 (due to Nil current on Red Phase) by taking slowness factor as *33*⅓% as per applicable regulations.

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

1. The dispute in this case arose after the connection of the Petitioner was checked vide ECR No. 02/483 dated 23.05.2017 by the Addl. S.E., MMTS, Patiala who noticed that the current on Red Phase was missing and there were wrong connections. The Addl. S.E., MMTS, then, issued directions to get the connection checked from Enforcement. Accordingly, the connection was checked by the Addl. S.E., Enforcement, Sangrur vide ECR No. 34/3824 dated 23.05.2017. The accuracy of the Energy Meter was also checked with the help of LT ERS Meter and it was reported that the Energy Meter was running slow by *33*⅓% and that CT/PT Unit was required to be replaced. Accordingly, the CT/PT Unit was replaced on 02.06.2017 and tested on 05.09.2017 in ME Lab wherein the accuracy of the CT/PT Unit was not within limits. In the meantime, the Addl. S.E., MMTS vide Memo No. 874 dated 01.06.2017, issued directions to overhaul the account of the Petitioner as per checking dated 23.05.2017 by the Addl. S.E/Enforcement, Sangrur, as current on Red Phase was Nil from 11.02.2017.

I have perused the DDL Report dated 23.05.2017 as per which instantaneous value on Red Phase was Zero ampere and reverse current started on Blue Phase on 13.08.2016 at 17:06 hours as per Cumulative Events which was not restored. However, current on Red Phase was Zero ampere from 11.02.2017.

 *I find that 11kV/110V, CT/PT Unit, which is a part of the Energy Meter, was tested on 05.09.2017 in ME Lab and it was found that the accuracy of the CT/PT Unit was not within the normal range. There is, thus, merit in the contention of the PR that in the event of the Metering Equipment being found defective, the provisions contained in Regulation 21.5.2 (a) of the Supply Code-2014, are relevant*.

 From the above analysis, it is concluded that the CT/PT Unit of the Petitioner’s connection was defective, hence, the account of the Petitioner is required to be overhauled, on the basis of energy consumption of the corresponding period of previous year for the period from 11.02.2017 (the date from which the current on Red Phase was Zero ampere as per DDL Report) upto 02.06.2017 ( the date of replacement of CT/PT Unit) in terms of provisions contained in Regulation 21.5.2 (a) of the Supply Code-2014.

**5. Decision:**

**As a sequel of above discussions, the order dated 02.11.2017 in Case No. CG-190 of 2017 of the Forum is set-aside. It is held that the account of the Petitioner be overhauled for the period from 11.02.2017 to 02.06.2017, on the basis of energy consumption of the corresponding period of previous year, in terms of provisions contained in Regulation 21.5.2 (a) of Supply Code-2014. It is also held that no interest be paid to the Petitioner on this account. Accordingly, the Respondent is directed to re-calculate the demand and refund/recover the amount found excess/short, if any, after adjustment, as per rules of the PSPCL.**

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

**7.** In case, the Petitioner or the Respondent (Licensee) is not satisfied with the above decision, it is 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 24, 2018 LokPal (Ombudsman)

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