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

**ELECTRICITY, PUNJAB,**

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

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

**Appeal No. 96/2017**

**Date of Registration : 20.12.2017**

**Date of Hearing : 24.05.2018**

**Date of Order : 31.05.2018**

**Before:**

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

**In the matter of**

M. Kay Wires,

A-23/2,Focal Point Extension,

Jalandhar.

...Petitioner

Versus

Additional Superintending Engineer

DS, East Division,

 PSPCL, Jalandhar.

 ...Respondent

**Present For :**

Petitioner **:** 1.Shri Sushil K. Vatta,

 Petitioner’s Representative, PR.

 2.Shri Punnet Khanna, PR.

Respondent **:**

1. Er. Harjinder Singh,

 Addl. Superintending Engineer.

1. Shri Anoop Jain, AAO.

 Before me for consideration is an Appeal preferred against the order dated 17.11.2017 of the Consumers Grievances Redressal Forum (Forum) in Case No. CG-218 of 2017 deciding that:

 “*Account of the Petitioner be overhauled from 08.07.2016 onwards till the date of checking i.e. 14.12.2016 by taking into consideration slowness factor as 23%.*”

**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 86.290kW and Contract Demand of 95.880kVA.
2. The connection was checked by the Addl. S.E, Enforcement-2, Jalandhar vide ECR No.14/2329 dated 14.12.2016. On checking of the Energy Meter with LT ERS Meter, it was found running slow by 23%. This was due to carbonization at Red Phase CT terminal. On the display of the Energy Meter, Segment 2 and 3 were constant while Segment 1 was blinking, meaning thereby that the Red Phase CT was not contributing towards consumption. After removing the carbonization, the accuracy of the Energy Meter was again checked and found in order. The DDL of the Energy Meter was also taken.
3. The Addl. S.E, Enforcement-2, vide Memo No. 143 dated 21.06.2017, reported that as per study of DDL Print-out, the Red Phase CT was not contributing before 09.11.2016 and issued directions to overhaul the account of the Petitioner for the six months preceding the date of checking i.e. 14.12.2016.
4. Accordingly, the Respondent, vide memo no. 943 dated 23.06.2017, issued notice to the Petitioner to deposit a sum of Rs. 3,01,478/- after overhauling of the account for the period from 08.06.2016 to 14.12.2016.
5. The Petitioner did not agree with the aforesaid notice and filed a Petition in the Forum which, after hearing, passed order dated 17.11.2017 (Reference Page 2, Para 1).
6. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court and prayed to quash the order of the Forum and provide relief by limiting the levy of the wrong and unjustified charges to the period 09.11.2016 to 14.12.2016 only.

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

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

1. **Submissions made by the Petitioner:**

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

1. The Petitioner was the manufacturer of Super Enamel Copper Wires at A-23/2, Focal Point Extension and the consumer of electricity since 1999 having Medium Supply Category connection with Sanctioned Load of 86.290kW and Contract Demand of 95.880kVA. Till date, the Petitioner never had any dispute with the Distribution Licensee in any matter whatsoever, and had paid its electricity dues regularly.
2. The Petitioner maintained daily Consumption Data Record Book showing kVAh and kWh consumption on regular basis. While recording the daily Consumption Data from the Energy Meter, it was observed on 16.11.2016 that one Phase of the Energy Meter was dead or not contributing. The Petitioner immediately contacted the concerned AAE of the PSPCL, who was regularly checking, inspecting and taking the monthly readings of the Energy Meter. The matter was followed up and on the Petitioner’s request, the Energy meter was checked by the Enforcement Unit-2, Jalandhar vide ECR No. 14/2329 dated 14.12.2016. The DDL was done.
3. During the said checking, the Enforcement observed that One Phase of the Energy Meter was blinking (i.e. not contributing towards consumption) and other two Phases were found working properly. It was also observed that the terminal lead of the Red Phase of CT was carbonized and thus, the Energy Meter was blinking on the said Phase. The Checking Officer also noticed that the Energy Meter was running slow by 23% due to the aforesaid default caused by carbonization of the terminal seal of Red Phase of CT.
4. Based on the Checking Report dated 14.12.2016 of the Enforcement, the AEE, Commercial Unit-2, East Division, PSPCL, Jalandhar arbitrarily charged and raised the demand of Rs. 3,01,478/- on the basis of average consumption of six months prior to 14.12.2016, which was absolutely, wrong and unjustified due to the reason that since the matter of default related to the Static Energy Electric Meter, the default, of non-contribution of Red Phase was required to be identified from the exact date and timing as shown in Data Down Loading Report and its print-outs, which reflected 70 days previous Data from the date of the DDL done, rather than the period from 08.06.2016 to 14.12.2016 i.e. for a period of six months on presumptions and surmises.
5. Aggrieved by the said arbitrary and unjust demand, the Petitioner requested the Respondent to supply a copy of the print-outs report of the DDL done on 14.12.2016. A perusal of the said DDL report dated 14.12.2016 revealed that the default persisted from 09.11.2016 only and therefore, charges for non-contributing of One phase form that date i.e. 09.11.2016 to 14.12.2016 only were required to be levied for the slowness of the Energy Meter by 23% and not for a period of six months as had been wrongly charged.
6. The Petitioner, the assessee on its own, suo-motu, had pointed out that one Phase of the Energy Meter was blinking as per its own daily observation and recording of the consumption while maintaining regular daily consumption data.
7. Despite the fact that the said error/default was brought to the knowledge of the concerned AAE on 16.11.2016, the requisite action was taken on 14.12.2016 to identify the fault which, in turn, was not attributable to the Petitioner.
8. If the said fault persistent over the period of six months, as had been presumed by the Respondent, then it was responsible for not noticing the same during monthly checking and reading taken by the AAE concerned.
9. The due reading of the Energy Meter was taken, for the period from 10.10.2016 to 13.11.2016, by the concerned AAE, who was a technical and responsible Officer of the Respondent but did not find any fault in the Energy Meter and also did not point-out that as on 13.11.2016, the Energy Meter was not functioning properly. Besides, the said AAE did not also care to notice the omissions and default on the part of the Respondent. Thus, an honest consumer could not be punished for no default on its part, when the consumer itself had pointed-out blinking and defect in one Phase of the Energy Meter.
10. It will be relevant to refer to the Condition No. 23 of Conditions of supply read with Sales Regulation 73.8 which read as under:

*“Where the accuracy of meter is not involved and it is a case of incorrect connection or defective CTs and PTs, genuine calculations mistakes etc. charges will be adjusted in favour of Board/consumer as the case may be, for the period the mistake/defect continued.”*

1. Aggrieved by the said arbitrary demand, the Petitioner submitted its grievance to the Forum, which, did not pass a speaking order and allowed part relief by limiting the wrong and arbitrary charges levied by the Respondent for six months, without giving reasons, and also without referring to any rules/regulations on assumptions, presumptions, surmises and conjectures without taking into account the fact and substance of the submissions, which was not permissible under the law.
2. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court for a fair and just decision.
3. The observation of the Forum that there were variations in the consumption over the previous year, were neither justified nor tenable since the officers of the Respondent, not below the rank of AAE had been taking monthly reading over the year and was aware of the fall in consumption, if any. Apparently, the Respondent was satisfied all along as to fall in comparative consumption because of no production activities taking place and seasonal nature of the Super Enamel Copper Wire for industries which itself signified the fact that the Respondent was satisfied about the fall in consumption and variation in Consumption Data.
4. **Submissions of the Respondent:**

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

1. The connection of the Petitioner was checked, in the presence of the Petitioner’s representative, on 14.12.2016 by the Addl. S.E, Enforcement-2, Jalandhar, who noticed that the Energy Meter was running slow by 23% due to carbonization of Red Phase at Energy Meter terminal.
2. The account of the consumer was overhauled from 06.06.2016 to 14.12.2016 on the basis of 23% slowness which was detected as per checking report of the Addl. S.E, Enforcement-2, Jalandhar and accordingly, a Notice to deposit Rs. 3,01,478/- was sent to the consumer as per the instructions of the PSPCL.
3. Based on the DDL of the Energy Meter taken on 14.12.2016 by the Enforcement-2, Jalandhar, the detailed instructions were given vide letter No.143 dated 21.06.2017 that the Red Phase of the Energy Meter was not contributing prior to 09.11.2016 and the account of the consumer be overhauled for the six months prior to the date of checking i.e. 14.12.2016. Accordingly, the account of the consumer was overhauled from 08.06.2016 to 14.12.2016 on the basis of 23% slowness for the period of six months as per the instructions of the PSPCL.
4. The Forum rightly decided the case after going through all the facts by affording due opportunity to the Petitioner of being heard.
5. The account of the Petitioner was overhauled from 08.07.2016 to 14.12.2016 as per the decision of the Forum and a sum of Rs. 2,85,146/- charged to the consumer was correct and recoverable as per the instructions of the PSPCL. As such, the Appeal of the Petitioner be dismissed.

**4. Analysis:**

The issue requiring adjudication is the legitimacy of the overhauling of the account of the Petitioner from 08.07.2016 to 14.12.2016 (the date of checking of the connection) with slowness factor as 23%., due to non-contribution of One Phase of CT of Energy Meter, resulting from carbonisation of CT lead at Energy Meter Terminal.

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

1. The dispute arose when the Medium Supply Category connection of the Petitioner was checked by the Addl. S.E, Enforcement-2, Jalandhar, vide ECR No. 14/2329 dated 14.12.2016 on an initiative taken by the Petitioner as claimed by it and not contested by the Respondent. On checking, the Energy Meter with LT ERS Meter, it was found running slow by 23% which was due to carbonisation of Red Phase CT at Energy Meter Terminal. On the display of the Energy Meter, Segment 2 and 3 were constant while Segment 1 was blinking implying that Red Phase CT was not contributing towards consumption. After removal of the carbonization on the spot, the accuracy of the Energy Meter was again checked and was found in order. The Addl. S.E, Enforcement-2, vide memo no. 143 dated 21.06.2017, reported that as per study of print-outs of the DDL dated 14.12.2016, the Red Phase CT was not contributing before 09.11.2016 and issued directions to overhaul the account of the Petitioner for six months preceding the date of checking i.e. 14.12.2016.

 *I find that Event Data, taken out from the DDL, shows that current on Red Phase was Zero ampere with effect from 09.11.2016 at 14 hours 32 minutes 12 seconds while the Data prior to 09.11.2016 is not available.*

1. PR contended that the Petitioner had maintained a Log Book from 01.09.2014 onwards wherein, the details of daily reading of kWh and kVAh consumption, Power Factor and blinking (if any) on the display of the Energy Meter were noted. As part of this exercise to take daily readings of the Energy Meter, the default, on account of blinking of the Red Phase of Energy Meter was observed on 16.11.2016 by the Petitioner who brought the same immediately to the notice of the AAE concerned. PR added that as per the DDL Report, the default/defect in the Energy Meter had been identified from 09.11.2016, therefore, at best, the account be overhauled for the period from 09.11.2016 to 14.12.2016 (the date of checking by the Enforcement).

 The Respondent contested the contention of the PR and stated that default in regard to blinking of Red Phase of Energy Meter was noticed by the Enforcement during checking of the Connection on 14.12.2016.

 *I observe that no documentary evidence was brought on record of this Court by the Petitioner to substantiate its contention that it had brought the fact of blinking of One Phase of Energy Meter to the notice of the AAE concerned. But at the same this claim of the Petitioner was not contested by the Respondent.*

1. PR also submitted that the Respondent failed to detect the default, regarding blinking of One Phase of the Energy Meter despite the fact that monthly readings of the Medium Supply Category connection, were taken by an Officer of the rank of the AAE who did not notice, while taking monthly reading on 13.11.2016, the Red Phase of the Energy Meter was blinking and as such, was not contributing towards consumption.

 *I agree with the PR that the Respondent defaulted in discharging its obligations by not detecting the fault which was clearly visible on the display of the Energy Meter at the time of taking monthly readings on 13.11.2016.*

1. PR next contended that the observations of the Forum that there were variations in the consumption over the previous year, were neither justified nor tenable since the officers of the Respondent, not below the rank of AAE had been taking reading every month over the year and ought to be aware of the fall in consumption, if any. Apparently, the Respondent was satisfied all along regarding comparative consumption because of less seasonal nature of the Super Enamel Copper Wire for industries which itself signified the fact that the Respondent was satisfied about the fall in consumption and variation in Consumption Data.

 I have perused the Consumption Data and found that the consumption of the Petitioner’s connection from July 2016 onwards was 20,000kVAh as compared to the consumption of 32,824kVAh during June 2016. Based on the above consumption trend, the Forum decided to overhaul the account of the Petitioner for the period from 08.07.2016 to 14.12.2016.

 *I observe that the Respondent failed to keep necessary vigil on the variations in energy consumption recorded and available in Energy Variation Register/SAP billing system, in respect of this Medium Supply Category connection, analyse the considerable decrease in the consumption of current vis-a-vis previous months and thereafter, take corrective action accordingly.*

From the above analysis, it is concluded that it is not just and fair to overhaul the account of the Petitioner for the period from 08.07.2016 to 14.12.2016 (date of checking) which is not the exact period of non-contribution of Red Phase CT default as established by the print-outs of the DDL Data which is actually from 09.11.2016.

**5. Decision:**

 **As a sequel of above discussions, the order dated 17.11.2017 of the Forum in Case No. CG-218 of 2017, is set-aside. It is held that the account of the Petitioner should be overhauled for the period from 09.11.2016 to 14.12.2016 with slowness factor of 23%. Accordingly, the Respondent is directed to re-calculate the demand and refund/recover the amount found excess/short, if any, after adjustment without interest.**

**6.** The Appeal is allowed.

**7.** Engineer-in-Chief/Commercial, PSPCL, Patiala shall issue instructions to all the Additional Superintending Engineer/Senior Executive Engineers to keep a vigil on the variations in the energy consumption recorded and available in Energy Variation Register/SAP in respect of all categories of consumers falling within their respective jurisdiction, analyse the cases of abnormal decrease in consumption of current vis-a-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.** EIC, Commercial, PSPCL, Patiala should issue instructions to all the Engineers-in-Chief / Chief Engineers 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 shall 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 and also the CT’s/PT’s leads should be connected at Energy Meter Terminal through Ferrules, which are provided by the Manufacturers.

**9.** 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 31, 2018 LokPal (Ombudsman)

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