**IN THE COURT OF OMBUDSMAN, ELECTRICITY, PUNJAB,**

**66 KV GRID SUBSTATION, PLOT NO: A-2, INDL AREA,**

**PHASE-I, S.A.S. NAGAR, MOHALI**

**APPEAL No: 13 / 2017** **Date of Order: 30 - 05 - 2017**

**M/S CAPITAL DYING,**

**176, INDUSTRIAL AREA –‘A’,**

**LUDHIANA-141003.**

**………………..** PETITIONER

**Account No. MS-31/704-K (New 3002953502)**

*Through:*

Sh. Kanwarjit Singh, Advocate

VERSUS

**PUNJAB STATE POWER CORPORATION LIMITED.**

**……………….** RESPONDENTS

*Through*

**Er. Harjit Singh Gill,**

**Addl. Superintending Engineer / Operation**

**CMC (Special) Division,**

**P.S.P.C.L, LUDHIANA.**

Petition No: 13/2017 dated 24.03.2017 was filed against order dated 17.02.2017 of the Consumers Grievances Redressal Forum (Forum), PSPCL, Patiala in case no: CG – 135 of 2016 deciding that the petitioner’s account be overhauled for meter slowness of 30.1% for the defect period of 231 days prior to 27.04.2016 in accordance with Supply Code Regulation 21.5.2. It was also decided that Chief Engineer/Operation (Central), Ludhiana may ensure to issue necessary instructions to officers under their charge to check the connections as per prevailing instructions of ESIM 104.1(ii) / any amendment thereof.

2. Arguments, discussions and evidences on record were held on 30.05.2017.

3. Sh. Kanwarjit Singh, Advocate attended the court proceedings on behalf of the petitioner. Er. Harjit Singh Gill, Addl. Superintending Engineer / Operation, CMC (Special) Division, PSPCL, Ludhiana, alongwith Sh. Vishal Revenue Accountant, appeared on behalf of the Respondent, Punjab State Power Corporation Limited (PSPCL).

4. Sh. Kanwarjit Singh, Advocate, (the petitioner’s counsel) stated that the petitioner is having an MS category Electricity connection bearing Account No: MS-31 / 704K ( New 3002953502), running under AEE (T), Unit-1 under Operation Division (Special), PSPCL, Ludhiana, since long.

The counsel further submitted that previously, the firm of the petitioner was a partnership firm and on 5th day of January, 1994, the partnership of firm was dissolved and after the dissolution of the partnership firm, there was a Proprietor concern/firm and since then the proprietor firm M/S Capital Dying is in existence to which Sh. Suresh Kumar S/O Sh. Chander Bhan is proprietor. Previously, the sanctioned load of the petitioner was 50.110 KW, which the proprietor firm got enhanced to the tune of 92.330 KW and contract Demand of 98kVA in May, 2014.

The officers of the PSPCL checked the connection on 12.07.2013 and 29.12.2015 and declared the per phase working of the meter in accurate working position. The connection of the petitioner was again checked by the Addl. S.E. / Enforcement - 2, Ludhiana on 27.04.2016 vide Enforcement Checking Register (ECR) No: 21/940, wherein it was declared that the meter was slow by 30.1% due to carbonization of the Red Phase wire and after a while himself declared the working of the meter in accurate working position. Further, the petitioner is neither a technically qualified person nor having any knowledge pertaining to the working of Electrical Meters. As such, the petitioner signed the checking report in good faith and in token of having received the copy of the checking report.

As per the above checking report dated 27.04.2016 of Addl. S.E. / Enforcement-II, Ludhiana, declaring the working of the meter as defective and 30.1% running slow due to carbonization of Red Phase but without the checking of the meter in M.E. Lab. The Respondents overhauled the account of the petitioner for the period 30 / 10 / 2014 to 27.04.2016 which is legally not correct and is against the principles of natural justice. Being not satisfied with demand raised, an appeal was filed before the Forum which decided the appeal of the petitioner by ignoring the legal as well as factual aspect involved in the appeal. Hence, the appeal is being filed before the Court of Ombudsman.

He pleaded that the amount raised by the PSPCL is liable to be quashed due to the reason that the account of the petitioner has been overhauled for the period 30.10.2014 to 27.04.2016 only on the basis of the site checking report prepared by officers of the PSPCL on 27.04.2016 and the meter of the petitioner has never been checked in the M.E. Lab nor the petitioner has ever been called for the checking of the meter in the M.E. Lab. Rather the meter in question is still lying installed to feed the premises of the petitioner. Besides this, the concerned checking officer did not consider the imparted directions in the checking report and overhauled the account for such a long period that too without the checking of the meter in the M.E. Lab when otherwise applicable provisions clearly also demand the checking of those meters, which are declared as defective at site. But in the case of the petitioner, the concerned officers have clearly violated their own provisions .

He contested that in the case of the petitioner, the Junior Engineer (JE) is only empowered to take reading of the consumers of MS connections, who is the responsible officer of PSPCL and can not be expected to ignore such type of major defect lying in the meter for a long period of more than one and half years. Had the such like defect been lying in the meter earlier, which could have been noted by naked eyes, then, the said JE might have intimated the said defect earlier also since he is bound to take monthly readings against which the consumers of MS connection is liable to make payment to the PSPCL. This proves that since earlier, no such defect was lying in the meter, as such, he was not in a position to intimate such defect. Hence, the consumption so recorded in the meter during the tenure of 30.10.2014 to 27.04.2016 was the actual consumption, which the consumer consumed at the relevant time. All the consumption bills served upon the consumer during this tenure was of ‘O’ Code which means ‘O.K.’

He further stated that a checking schedule is prescribed for periodical checking of the installed meters but the officers of the PSPCL deliberately ignored the checking report dated 29.12.2015 which they themselves conducted under the instructions prescribed in ESIM - 104. Further, in notice memo No. 3389 dated 10.10.2016 served upon the petitioner on 21.10.2016, it has not been clarified as to how the PSPCL determined exact date of occurrence of the such defect in the meter as 30.10.2014. In the case of the petitioner, sum amounting to Rs. 11,18,240/- has been charged to him on account of defect in the meter or in any manner does not pertain to the application of wrong Multiplying Factor. That the PSPCL is only empowered to overhaul the account of any consumer more than that of six months only on the basis of note appended under Regulation No. 21.5.1 of the Supply Code-2014 which is effective from 01.01.2015 and not in any other case.

The Counsel argued that the study of the language used in the notice memo No. 3389 dated 10.10.2016 clearly clarifies that it does not pertain to the levy of penalty on account of application of wrong Multiplying Factor (MF) rather it pertains to the defect in meter due to carbonization of Red Phase and if the question of accuracy of the meter is involved or one phase dead, ( which as per citation MPEB Versus Basantibai (SC) 1988 AIR (SC) 71 also comes under the definition of defective meter), in those cases, the PSPCL is not empowered to overhaul the account of any consumer more than that of six months.

Further as per the definition of the meter as recorded in the Supply Code-2014 and other related matters Regulations or as per Regulation ***“2.0 Meter”*** *means a device suitable for measuring, indicating and recording consumption of electricity or any other quantity related with electrical system and shall include, wherever applicable, other equipments such as Current Transformer, Voltage Transformer with necessary wiring & accessories or Capacitor Voltage Transformer necessary for such purpose:*

Due to above said definition of the meter, CT unit and attached wires to the CT are the part of meter and is called meter.

He contested that Hon’ble Apex Court of India has clearly decided that in the cases of defect in the meter, the concerned State Electricity Board is not empowered to charge any consumer for more than that of six months even if the meter of consumer is lying defective more than that of five years. In this connection, the citation case titled as “Y.N. Gupta V/S D.E.S.U. (1993) CPJ 27 (NC) is very much important and as such abstract of the working mentioned in this citation is given hereunder:-:

*“The maximum period for which a bill can be raised in respect of defective meter under section 26 (6) of Electricity Act-1910 is six month and no more. Therefore, even if a meter has been defective for, say, a period of five years, the revised charge can be for a period not exceeding six month. It is the duty and obligation of the licensee to maintain and check the meter. If there is default committed in this behalf by the licensee and the defective meter is not replaced, then it is obvious that the consumer should not be unduly penalized at a later point of time and a large bill raised”*

He next submitted that Regulation No. 21.5.2, nowhere allows the PSPCL to overhaul the account of related consumer more than that of six months, rather it is consonant with the earlier view point announced by the legislature, which in past were frequently adopted by the concerned. Thus, in this way, the Forum has erred in holding that the “petitioner’s account be overhauled for meter slowness of 30.1% for the defect period of 231 days prior to 27.04.2016 in accordance with the Regulation 21.5.2 of the Supply Code-2014. Otherwise as per Regulation No. 21.5.3 of Supply Code-2014, reads as under:-

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

Hence, as per the above said preposition, in the case of petitioner, the connection of the petitioner was checked by the PSPCL itself on dated 29.12.2015, when the per phase working of the meter was found within the prescribed limitations, as such, the account of the petitioner is not required to be overhauled earlier to 29.12.2015, the date when the PSPCL itself declared the working of the meter as ‘O.K.’ and in this respect, have a glance at the DDL dated 27.04.2016, which authenticate the version of the JE, since there is no irregularity in the DDL.

In the case of the petitioner, it is important to note that as per the DDL dated 27.04.2016, the meter installed to feed the premises of the petitioner never remained defective continuously for the period of 231 days rather at various occasions, it remained connected and the supply given to the premises of the petitioner was accordingly recorded in the meter.

Further, the counsel of the petitioner contended that the petitioner had been making the payment of the each consumption bill, as per the demand of the PSPCL regularly. However, the Forum, in its decision, did not appreciate the legal points raised by the consumer and ordered for overhauling of account for 231 days and did not accept the raised objections mere on the basis of several such facts, which are not admissible under the applicable rules and regulations. Hence, he prayed that the appeal filed by the petitioner be accepted and the amount so raised by the PSPCL may kindly be quashed being an illegal, null and void and as such is not recoverable from the consumer to meet the ends of justice.

5. Er. Harjit Singh Gill, Addl. Superintending Engineer, representing the respondents submitted that the consumer’s connection / premises was checked by Addl. S.E. / Enforcement-2, Ludhiana vide ECR No: 21 / 940 dated 27.04.2016 in the presence of applicant. As per this report, meter was running slow by 30.1%. Voltage on the Red Phase at the time of checking was ‘Zero’ and current was 42 Amp. It was also clearly mentioned in the site report that slowness is due to carbonization on Red Phase wire. After decarbonizing the carbon, Red phase started working properly. DDL was also scrutinized by Enforcement and it was reported that Red Phase was defective from 30.10.2014 till the date of checking i.e. 27.04.2016. As such, the account of the petitioner was overhauled with effect from 30.10.2014 to 27.04.2016 for Rs. 11,18,240 /- on the basis of slowness factor of 30.1%. Hence, amount is charged only for the consumption used by the consumer which was not recorded by the meter due to carbonization on Red Phase wire.

He pleaded that Red Phase was started working after decarbonization and meter was O.K. Now, there was no need to change this healthy meter with another meter. For the purpose of overhauling the account, the DDL report was thoroughly studied and found that ‘Red Phase’ was not working from the very first date of data available i.e. 30.10.2014. So far as Load Checking Register (LCR) No. 71/1101 dated 29.12.2015 is concerned, it is not to be taken as sole record regarding working of meter authentic as it is not mentioned in the report with which device / instrument the meter was checked. The DDL report is concrete evidence. Moreover, as per clause-12 of the Supply Code, any officer of the distribution/enforcement wing not below the rank of an AE/AEE can check the MS connection. Slowness of meter can only be judged through Electronic Reference Standard (ERS) meter. Taking monthly reading and checking of meter are different aspects. Concerned JE only takes reading for monthly billing. He does not check the working of meter. As per Regulation 21.3.5 of the Supply Code-2014, the distribution licensee shall also conduct periodical inspection, testing of the meters/metering equipment installed at the consumer premises as per following schedule:-

1. EHT-Meters - Atleast once in 1 year.
2. HT-Meters - Atleast once in 2 years.
3. LT3-Phase meter - Atleast once in 3 years.
4. LT-1-Phase meter - Atleast once in 5 years.

The meter installed in the premises of petitioner is Three Phase LT CT meter. Extension of load to 92.330KW was done in May, 2014. Inspection of connection as well as meter was done on 27.04.2016 i.e. within two years. Hence, there is no irregularity in the checking. It is unbelievable that the applicant signed the checking report without knowing its contents. The checking report was crystal clear. The petitioner never visited the office of the respondent to object the remarks mentioned in the ECR before receiving the notice of amount charged. As the account of the petitioner was overhauled as per the instruction of the Addl. SE / Enforcement - 2 to PSPCL, Ludhiana vide memo No. 211 dated 09.09.2016. However, the DDL report is complete and authentic itself. DDL report was demanded by the petitioner only on 24.10.2016. However, copy of DDL was handed over to the applicant on 09.11.2016.

The respondents contested that this is not a case of wrong multiplying factor and thus, the amount was charged for the units consumed by the consumer/applicant but could not be recorded due to carbonization of Red phase wire. In the end, he requested that the petitioner may please be directed to deposit the balance amount alongwith interest as per rules and regulations of PSPCL in the interest of justice and prayed to dismiss the appeal.

6. I have perused the written submissions made in the petition, written reply on behalf of the Respondents and other material brought on record as well as oral arguments of the Counsel as well as representative of the Respondents – PSPCL. The relevant facts of the case are that the Petitioner is having MS category connection with sanctioned load of 92.330KV / CD 9800KVA, since May, 2014. His connection was checked by the Addl. S.E. / Enforcement - 2, PSPCL, Ludhiana vide ECR 21 / 940 dated 27.04.2016 in the presence of the petitioner and copy of the report was handed over to him at the same time. As per the said report, the meter was running slow by 30.1% and voltage on the Red Phase at the time of checking was Zero volts and current was 42 Amp. It was also mentioned in the site report that slowness is due to carbonization of Red Phase wire. After cleaning the carbon from the wire, the Red phase started working properly. DDL was also taken by the Enforcement which reported that Red Phase was defective before 30.10.2014 till the date of checking i.e. 27.4.2016. So, the amount of the Petitioner was overhauled for the period from 30.10.2014 to 27.04.2016 and a sum of Rs. 11,18,240/- was charged on the basis of slowness Factor 30.1%.

The Petitioner, in his prayer, raised mainly the issue for adjudication as to whether there is any violation of applicable rules and regulations and applicable provisions of Law on the part of the Petitioner or the officers of the PSPCL (Respondents) have followed the spirit of the applicable provisions in penalizing the petitioner for overhauling his account for the period from 30.10.2014 to 27.04.2016. He argued that his account has been overhauled on the basis of site checking report prepared on 27.04.2016 by the officers of the respondent and as per DDL report, without getting the meter checked in M.E. Lab. and also stated that the said meter is still lying installed to feed the premises of the petitioner. He further argued that in the said checking report, it was mentioned that the Petitioner had shown to the Enforcement Officer / authority the checking report of dated 29.12.2015 for consideration. The imparted directions in the report of the checking authority were not considered and the account was overhauled for a long period from 30.10.2014 to 27.04.2016 by the Respondents, thus violating their own provisions. He also stated that no such defect existed in the meter earlier as the same was never noticed and pointed out by Junior Engineer taking the reading and that all the bills served during this period was of “O” Code meaning meter was O.K. He also raised an objection that the Respondents are empowered to overhaul the account of any consumer for more than six months only on the basis of note appended under instruction No. 21.5.1 of Supply Code-2014 ( i.e. in case of wrong application of Multiplying Factor) which is effective from 1.1.2015 and not in any other case. He also quoted citations DESU Versus Y.N. Gupta I 1993 CPJ27 (NC) of Hon’ble Supreme Court of India stating that if the Licensee defaults in performing its assigned duty of maintaining and checking the meter and replacing the defective meter, the consumer should not be unduly penalized at a later point of time. It was further argued that CGRF erred in deciding that the consumer’s account be overhauled for meter slowness by 30.1% for the defect period of 231 days (as per DDL report) prior to 27.04.2016 in accordance with Supply Code Regulation 21.5.2 which is meant for defective / dead stop meters and in the present case, the meter was not defective but inaccurate. The Petitioner prayed to allow the appeal.

The Respondents argued that there was no irregularity in the Three Phase Four Wire LT CT meter (alongwith connection) inspected on 27.04.2016 i.e. within 2 years of extension of load to 92.330KW in May, 2014. He also stated that copy of checking report dated 27.04.2016 was given to the Petitioner at the time of checking and he never visited the office of the respondent to object the remarks given in ECR before receiving notice of the amount charged. Besides, it was clearly mentioned in the site checking report that 30.1% slowness in the working of the meter was due to carbonization on the Red Phase wire and after decarbonizing the carbon, Red Phase started working properly. The Respondents also stated that as per report of Addl. SE / Enforcement-2, Red Phase was defective on 30.10.2014 till the date of checking i.e. 27.04.2016. So, the account of the Petitioner was correctly overhauled for the period 30.10.2014 to 27.04.2016 for Rs. 11,18,240/- on the basis of slowness factor 30.1% and the amount charged was only for the consumption used by the consumer which was not recorded by the meter due to wrong connection. He prayed to dismiss the appeal.

The issue requiring adjudication is as to whether the overhauling of Petitioner’s account for the period from 30.10.2014 to 27.04.2016, revised by CGRF for 231 days prior to 27.04.2016 in accordance with Supply Code-21.5.2, is as per applicable provisions. In this context, it is worthwhile to go through Regulation 21.5.1 of Supply Code - 2014 and note thereunder which is reproduced under:-

*”* ***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 the 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.”*

***Note:*** *Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued.*

The above Regulation is clear on the issue and requires no discussions. In the present case, the meter was found inaccurate at site during the checking dated 27.04.2016 by Enforcement with LT ERS meter, wherein the meter was found slow by 30.1% at site. In my view, there was no necessity to get the meter checked in ME Lab after decarbonization the carbon on the Red Phase wire making the meter work properly because the meter was already tested by Enforcement with LT ERS meter, in accordance with the provisions contained in instruction no. 59.4 of ESIM, especially when the Petitioner has not objected to the checking at site. I do not find any merit in the arguments of Respondents that under the provision contained in note below Regulation 21.5.1, the account of the petitioner has been rightly overhauled for the whole period of 546 days as established in the DDL print out. In my view, the note referred by Respondents is applicable only in the case of wrong application of Multiplying Factor (MF) and not in the cases of non-contribution of one or more phase for any reasons.

I agree with the contention of the Petitioner that the Forum erred in deciding that it is not case of “Inaccurate Meters” under Regulation 21.5.1 of Supply Code – 2014 but a case of Defective (other than inaccurate) / Dead Stop / Burnt / Stolen Meters as prescribed under Regulation 21.5.2 which states as follows:-

“*The account of consumer shall be overhauled/billed for the period the meter remained defective / dead stop and in case of burnt / stolen meter for the period of direct supply subject to maximum period of six months as per procedure (a) to (e)…”*

As a sequel of above, discussions, it is held that the account of the consumer should be overhauled under the provisions of Regulation 21.5.1 (a) of Supply Code - 2014, for a period of six months prior to the date of checking (27.04.2016) of defective meter by applying slowness factor of 30.1% as determined during checking dated 27.04.2016 by the Enforcement. Accordingly, the respondents are directed to recalculate the demand as per above directions and the amount excess / short, after adjustment, if any, may be recovered / refunded from / to the petitioner with interest under the provisions of ESIM-114.

7. The appeal is disposed of accordingly.

8. The Chief Engineer/ “OP” (Central), PSPCL, Ludhiana is directed to issue necessary instructions to officers under his charge to check the connections as per prevailing instructions of ESIM 104.1 (ii) / any amendments thereof as per decision dated 17.02.2017 of CGRF, Patiala.

9. In case, the Petitioner or the Respondents ( Licensee) is not satisfied with the above decision, he is at liberty to take appropriate remedy against this order by filing an Appeal before the appropriate body in accordance with Regulation 3.28 of Punjab State Electricity Regulatory Commission (Forum & Ombudsman) Regulations 2016.

(MOHINDER SINGH)

Place: S.A.S. Nagar (Mohali.) Ombudsman,

Dated: 30.05.2017. Electricity, Punjab,

S.A.S. Nagar (Mohali )