IN THE COURT OF THE LOKPAL (OMBUDSMAN),

ELECTRICITY, PUNJAB,

66 KV GRID SUB-STATION, PLOT NO. A-2,

INDUSTRIAL AREA, PHASE-1, S.A.S NAGAR (MOHALI)

Appeal No. 40 / 2017 Date of Order : 27 .10.2017

Geeta Oil Mills

C/o Pakho Ball Bearing & Patta Store

College Road, Barnala - 148 101

…….Petitioner

Account No. 3002965239

*Through:*

Shri Pal Chand (Petitioner)

Shri S.R. Jindal, Petitioner’s Representative (PR)

Versus

Punjab State Power Corporation Limited

…..Respondent

*Through:*

Er. Pawan Kumar Garg

Addl. Superintending Engineer

DS Sub-urban Division

PSPCL, Barnala.

Petition No. 40 / 2017 dated 26.07.2017 was filed against order dated 03.07.2017 in case No. CG-56 of 2017 of the Consumer Grievances

Redressal Forum (Forum) which decided that:

*“The amount charged to the Petitioner due to billing with application of wrong Multiplying Factor (MF), for the period from 20.02.2014 to 10.04.2017amounting to Rs. 10,19,833/- is in order and recoverable*

*SE / DS Circle, Barnala is directed to initiate disciplinary action against the delinquent officer / official who failed to check the connection of the Petitioner as prescribed in Clause 104 of ESIM ”.*

2. Arguments, discussions and evidence on record were held on 27.10.2017.

3 Shri S.R. Jindal (PR) alongwith Shri Pal Chand attended the Court proceedings on behalf of the Petitioner. Er. Pawan Kumar Garg, Addl. S.E, alongwith Er. Pardeep Sharma, AEE, DS Sub-urban Sub Division, PSPCL, Barnala, appeared on behalf of the Respondent - Punjab State Power Corporation Limited (PSPCL).

4. Presenting the case on behalf of the Petitioner, Shri S.R. Jindal, PR stated that the Petitioner was having a Small Power (SP) connection with a sanctioned load of 19.830kW which was got extended to 97.749kW for Oil Mills w.e.f. 20.02.2014 coupled with change of connection to MS category connection. At the time of allowing extension, Whole Current Energy Meter was removed and HT Energy Meter of L&T Make alongwith 11kV / 110V CT / PT unit were installed. The then JE, while effecting the extension vide SJO No. 40 / 61295 dated 13.02.2014, entered the capacity of Energy Meter as 5 / 5 Amp but did not enter capacity of 11kV / 110V, CT / PT unit. Rather, the Revenue Accountant himself entered the capacity of CT/PT unit and Energy Meter as 5 / 5 Amp in Master File. Hence, billing was done with Multiplication Factor (MF) of One from the date of extension (20.02.2014).

PR stated that AEE, DS Sub-urban Sub Division, PSPCL, Barnala checked the connection of the Petitioner on 15.02.2017 and reported the capacity of CT / PT as 10 / 5 Amp and that of Energy Meter as 5 /5 Amp. Based on the directions of above checking officer, The Respondent raised the demand of Rs. 7,06,899/- with MF as Two instead of One for the period from 02 / 2014 to 02 / 2017 i.e. for thirty six months.

PR also stated that the connection of the Petitioner, being MS connection, was required to be checked by Sr. XEN / AEE / AE once in every six months as per instruction no. 104.1 of ESIM but they failed to check the same up to 14.02.2017.

PR also stated that during the proceedings of the case in the Forum , the amount as charged for Rs. 7,06,899/-, had been revised to Rs. 10,19,833/-, as it was wrongly calculated by the Sub Division. The calculated amount was still doubtful.

PR further stated that the liability of the consumer was only for six months in view of Section 26 (6) of Electricity Act-1910 and decision of the Hon'ble Punjab & Haryana High Court in case of Park-Hyundai, Sangrur V/s PSPCL and others, bearing CWP No. 17699 of 2014, decided on dated 19.12.2015 vide which the Respondent was directed to recover the amount for six months preceding the date of checking as they failed to inspect the connection once in six months, as required under its own instructions.

PR further stated that there were instructions that matching CT capacity of the Energy Meter and CT / PT unit should be installed as required under Instructions 58 of ESIM. Had the CT / PT and Energy Meter of matching capacity been installed, there would have been no question of over billing and heavy penalty, for the last three years, for which the Respondents are responsible.

PR stated that Instruction 57.5 of ESIM provides for recovery of charges to be effected after serving the Consumer with Show Cause Notice. Had the Show Cause Notice been issued, then the factual position could have been explained and upon verification / investigation by the competent authority, charges for overhauling of account, if required, could have been charged only for the period prescribed in the Regulations / Law of Court.

PR also stated that there was deficiency of service on the part of Respondent and questioned as to how the huge amount of burden could be put on the Petitioner at this stage. The charges levied were not fair and reasonable but reflected adversely on the working of officers / officials whose duty was to ensure that rules should be observed meticulously.

PR stated that this Court, in Appeal case No. 54 of 2011 decided on 23.02.2012 of Biwani Flour Mills, Biwani had reduced the period of charges to five years instead of nine years period and had given relief to the Petitioner because the deficiency of services was on the part of Respondent itself.

PR also stated that in another Case in Appeal No. 54 of 2015, where a MF of 2 was to be charged from 06 / 2010 to 05 / 2014 being CT / PT ratio of 10 / 5 Amp and Energy Meter ratio of 5 / 5 Amp, was restricted to six months as decided by Hon’ble Punjab & Haryana High Court in CWP No. 17699 of 2014, on 19.12.2015 in case of Park-Hyundai, Sangrur Versus PSPCL. In this case, the Petitioner had been charged for the period of three years whereas the instructions / rules were for only six months and the consumer had been burdened with heavy amount at this stage.

PR stated that schedules had been prescribed in the rules of the Respondent and Instruction 104.1 (ii) of ESIM required that every connection should to be checked at least once in six months period. Despite clear cut Instructions 102.10 and 102.11 of ESIM for installing matching capacity of CT / PT unit and Energy Meter. But unmatched ratio of CT / PT unit and Energy Meter were installed. If the Respondent failed to detect any discrepancies in its equipments, the department should suffer the loss arising out of such discrepancies and not the consumer who was totally innocent and ignorant about the whole affair. Thus, it was wholly unjustified, unreasonable and illegal to raise a huge sums after such a long period.

PR stated that its firm had started the Oil Factory with a small load of 19.830kW and got extended the load to 97.749kW w.e.f. 20.02.2014 and was dealing in extracting oil from cotton seeds only which was available during small period of October of a year to March of the next year and in the remaining period, the firm was paying bills for Monthly Minimum Charges for the light load only which was evident from the consumption data. PR stated that if relief as prayed was not granted, Petitioner’s business would be ruined compelling it to close the same. The Petitioner was running its factory at present on no profit and no loss basis and sold its product in the local market only. If the huge burden was put on it, it was not known as to from whom, the Petitioner shall recover the penalty levied on it. PR stated that the Respondent had charged the amount beyond limitation period as prescribed in the Instruction No. 93.2 of ESIM and Section 56 (2) of the Indian Electricity - 2003, as no sum due from any consumer shall be recoverable after a period of two years. Hence, the demand raised for a period of three years was null and void. PR prayed to allow the Appeal.

5. Defending the case on behalf of the Respondent, Er. Pawan Kumar Garg, Addl. Superintending Engineer, DS Sub-urban Division, PSPCL, Barnala stated that the Petitioner was having SP connection for a load of 19.830 kW which was got extended to 97.749 kW for Oil Mills w.e.f. 20.02.2014. At the time of allowing extension, Whole Current Energy Meter was removed and HT Energy Meter of L & T make with 11kV / 110V, CT / PT unit was installed. The Respondent stated that while effecting the extension, JE recorded the capacity of Energy Meter as 5 / 5 Amp but did not enter capacity of CT / PT Unit but Revenue Accountant sent advice of Energy Meter as well as of CT / PT Unit Capacity as 5 / 5 Amp in the Master File.

PR stated that that on 15.02.2017, AEE, Sub-urban Sub Division, PSPCL, Barnala checked the connection vide checking No. 15 / 60276 and reported that Energy Meter of Sr. No. 12477952, make L&T was installed at the premises of the Petitioner which was of 5 / 5 Amp capacity while 11kV / 110V CT/PT unit had a capacity of 10 / 5 Amp as such, a MF of 2 was required to be applied. The report of the AEE is as under:

“ygseko dk connection u?e ehsk frnk fi; T[gozs gkfJnk fe

ygseko d/ fpb nB[;ko Energy Meter and CT / PT dh

Ratio 5 / 5 A j"D ekoB MF 1 bZr fojk j? gos{z u?e eoB s/ gkfJnk frnk fe Energy Meter & CT / PT unit dh capacity 5 / 5 Amp and 10 / 5 Amp j? . fi; nB{;ko MF 2 brDk pDdk j? . foekov u?e eoe/ wfjew/ dhnk jdkfJsk w[skpe yksk ;"fXnk ikt/.”

As per report of the AEE, the account of Geeta Oil Mills, Barnala was overhauled from 2 / 2014 to 15.02.2017 by applying a MF of 2 and notice bearing No. 270 dated 17.02.2017 amounting to Rs.7,06,899/-was served to the petitioner with the direction to deposit the same within a period of 15 days .

The Respondent further submitted that due to the above said mistake, the department had initiated action against the concerned Revenue Accountant, Junior Engineer, Assistant Engineer of Sub–urban Sub Division, PSPCL, Barnala which was in progress.

The Respondent also stated that the SJO No 40 / 61295 dated 13.02.2014, effected on 20.02.2014, was issued at the time of extension in load of Geeta Oil Mills, Barnala from 19.836 kW to 97.749 kW and observed that Energy Meter bearing Sr. No. 12477982 of Make L&T having capacity 5 / 5 Amp was installed. As per store requisition bearing No. 001 / 754 dated 13.02.2014 Energy Meter of Sr. No. 12477982 of Make L &T, having Capacity 5 / 5 Amp was drawn from the store for installation of the same in the premises of the Geeta Oil Mills, Barnala. Further, as per store requisition vide No. 050/701 dated 13.02.2014, CT / PT Unit was drawn from the store having capacity of 10 / 5 Amp. So, keeping in view the capacity of CT /PT as 10/5 Amp and Energy Meter capacity as 5 / 5 Amp , a MF of 2 was required to be levied whereas a MF of 1 was applied in the bills.

The Respondent also stated that as prescribed in Instruction 104 of ESIM, in order to arrest the tendency on the part of the consumers to indulge in Unauthorized Use of Electricity (UUE) or theft of electricity or extension in load, it was essential to conduct periodical checking. Such checks must be exercised by the concerned officers as per schedule. The Respondent stated that the present case related to Multiplication Factor and account need be overhauled as per Note given under Regulation 21.5.1 of Supply Code - 2014.

The Respondent also stated that Forum, vide order dated 04.05.2017, directed the Respondent to get the calculations of the amount charged to the Petitioner pre-audited from the concerned AO (Field), and submit the same thereafter. Accordingly, the calculations were pre-audited by AO (Field) who checked the amount and found it to be Rs. 10,19,833/-.

The Respondent stated that to clear the doubts of the Petitioner, the calculations were checked by the A.O. (Field) and were sent vide letter No. 1432 dated 09.08.2017, to the Petitioner.

The Respondent further stated that the liability of the consumer was not only for six months in view of Section 26 (6) of Electricity Act-1910 and decision of Hon'ble Punjab & Haryana High Court dated 19.12.2015, in case titled Park-Hyundai, Sangrur V/S PSPCL and others, bearing CWP No. 17699 of 2014 passed judgment dated 19.12.2015 in which the Respondent was directed to recover charges for only six months preceding the date of checking as they have failed to inspect the connection after six months as required under instruction of PSPCL, which was not applicable in the present case as per detailed reply given above and note given under Regulation 21.5.1 of Supply Code-2014. The Respondent also stated that as per instruction no. 102.11 of ESIM, Energy Meter and CT / PTs of different current ratio could be installed. No heavy penalty for the last three years was imposed by the PSPCL. As a matter of fact, the billed amount was only of the energy consumed by the consumer.

The Respondent added that it was incorrect on the part of the PR to state that instruction no. 57.5 of ESIM provides for recovery of charges to be effected after serving the consumer with Notice of Show Cause because the notice was issued after the verification / investigation by competent authority. The overhauling of account had been done only for the period prescribed in the regulations and as per Law. The Respondent stated that checking was conducted on 02.06.2017 as per the directions of Forum by the A.S.E, Enforcement PSPCL, Sangrur alongwith A.S.E, DS Sub-urban Division, PSPCL, Barnala in the presence of Petitioner’s representative Paul Chand and found that: w"e/ s/ ygseko ;qh gkb uzd ror ns/ ;qh ;zi/ ror w"i{d jB . T[jBk tb" dZf;nk frnk fe nkc ;hiaB j"D ekoB :{fBN pzd j? fi; ekoB T[j b""v ubkT[D s" n;woE jB, fJ; eoe/ whfNfozr fJe{gw?N dh n?e{o;h u?e Bjh j" ;edh. T[es ekbw J/ ftZu doi whNfozr fJe{gw?N d/ gkoNhe[boi nB[;ko ygseko B{z Overall MF 2 brkT[Dk pDdk j?. w"e/ s/ connected load u?e ehsk frnk i" fe fBwB nB[;ko gkfJnk frnkL

1) Motors (without Plate) = 3 No. x 40 BHP = 120 BHP

(40 BHP as stated

by consumer)

2) Motors = 2 No. x 3 BHP = 6 BHP

3) Submersible

Motor 1 No. x 1 BHP = 1 BHP

Total 127 BHP x 0.746 = 94.792 kW

4 ) Lamp Points = 20 x40 W = 0.800 kW

5) Plug " " = 4x 60 W = 0.240 kW

6) Fan " " = 3x600 W = 0.180 kW

7) AC " " = 1x2kW = 2.000 kW

**Grand Total** = 98.012kW

**Energy Meter and 11kV / 110V CT / PT unit:**

Energy Meter L&T make bearing

S. No. 124779521 5 / 5 Amp

11kV / 110V, CT / PT Adhunik make &

Unit S. No. 17368 10 / 5 Amp

The Respondent submitted that the above report was prepared at the spot which was signed by the Petitioner himself. In view of the above said checking, it was clear that the Energy Meter and CT / PT unit were the same which were withdrawn through the Store Requisitions (SRs). Hence, no further checking or investigation /verification was required for the satisfaction of the consumer. The Respondent submitted that there was no question of deficiency is involved in the above said case. It was only question of Multiplication Factor and less billing. The Respondent further stated that dispute of this appeal was only for three years and that the decisions quoted by PR were not applicable to this appeal. The Respondent also referred to the Commercial Circular (CC) No. 5 / 2012 issued by PSPCL clarifying the limitation period of two years for charging the amount under Section 56 (2) of Electricity Act-2003 pursuant to decision dated 09.09.2011 in LPA No. 605 of 2009 by Hon’ble Punjab & Haryana High Court. As per this clarification, limitation period of two years shall start from the date of detection of mistake by the officers / officials /demand raised by the PSPCL. In the present case, the amount was first raised on 17.02.2017 which was within the limitation period. The Respondent concluded that the plea of the Petitioner was wrong and prayed to dismiss the Appeal.

**Decision :**

6. The relevant facts of the case are that the Petitioner, having a Small Power category connection with a sanctioned load of 19.830kW got the same extended to 97.749kW i.e. of a Medium Supply category, with effect from 20.02.2014. At the time of allowing extension in load, Whole Current Energy Meter was removed and CT operated Energy Meter was installed. While effecting extension on 20.02.2014 in terms of Sundry job order dated 13.02.2014, the then JE recorded the capacity of Energy Meter as 5 / 5 Amp but did not enter the capacity of 11kV / 110V CT / PT unit. However, the Revenue Accountant entered the capacity of CT / PT unit and Energy Meter as 5 / 5 Amp in Master File. Accordingly, the Multiplication Factor of 1 was applied to the Petitioner’s bills for the period from 20.02.2014 to 10.04.2017. The Petitioner’s connection was checked on 15.02.2017 by AEE, DS Sub-urban Division, PSPCL, Barnala who reported the capacity of CT / PT unit as 10 / 5 Amp. Resultantly, revised billing after applying MF as Two instead of One for the period from 02 / 2014 to 02/2017 i.e. 36 months was done and a demand of Rs. 7,06,899/- was raised vide demand notice dated 17.02.2017 in accordance with note given under Regulation 21.5.1 of Supply Code-2014.

Aggrieved by the issuance of the said Demand Notice, the Petitioner filed case no. CG-56 of 2017 on 28.03.2017, who, during the course of hearing, directed the Respondent to get the amount charged to the Petitioner pre-audited from the Accounts Officer (Field). After pre-audit, the amount charged was increased from Rs. 7,06, 899/- to Rs. 10,19,833/- for the period relating to 20.02.2014 to 10.04.2017. The Forum finally decided the case and passed order dated 03.07.2017 as per which, the amount charged for Rs. 10,19,833/- due to billing with application of wrong MF for the period from 20.02.2014 to 10.04.2017, was in order and recoverable. Not satisfied with the decision of the Forum, the Petitioner has preferred an Appeal before this Court by pin-pointing mainly the omission on the part of Junior Engineer and Revenue Accountant in making erroneous entries relating to capacity of 11kV / 110V, CT / PT unit and Energy Meter in Master File at the time of allowing extension in load which led to billing by application of a MF of one instead of two. The Petitioner has also pleaded that non-compliance of provisions of Instructions 104.1 of ESIM by the officer of Respondent PSPCL regarding checking of MS connection once in every six months. The Petitioner also placed reliance on judgment of Hon’ble High Court of Punjab & Haryana in CWP No. 14559 of 2007 decided on 09.11.2009 in case of Tagore Public School V/S PSEB, CWP No. 17699 of 2014 decided on 19.12.2015 of Park-Hyundai, Sangrur V/S PSPCL and also of this Court’s order in Appeal No. 54 of 2011 decided on 23.02.2012 of Biwani Flour Mills.

During the course of oral arguments, PR raised the issues regarding:

*a) Not giving rebate @ 3% on the plea of Energy Metering is being done on High Tension (11kV) as per Tariff order,*

*b) Not giving power Factor incentive as per Tariff Order,*

*c) Levying of Demand Surcharge.*

I have gone through the written submissions made in the Petition by the Petitioner and written reply of the Respondent as well as oral arguments made by the Petitioner’s Representative and Representative of the Respondent alongwith materials brought on record by both the sides.

The issue requiring adjudication in the present dispute is the legitimacy of the demand charged to the Petitioner due to rectification of mistake in application of MF at a belated stage by the Respondent.

My findings on the points emerged and deliberated are as under:

1. *The PR contended that at the time of allowing extension in load on 20.02.2014, the Whole Current Energy Meter was removed and HT Energy Meter of L&T Make with CT / PT unit of Adhunik make were installed. While effecting the extension vide SJO No. 40 / 61295 dated 13.02.2014, the concerned JE entered the capacity of the Energy Meter as 5 / 5 Amp but did not enter the capacity of CT / PT unit. PR further stated that the Revenue Accountant himself entered the capacity of CT / PT unit and Energy Meter as 5 / 5 Amp in Master File due to which a MF of One was applied in the bills issued to the Petitioner from the date of extension. The mistake came to the notice of AEE, DS Sub-urban Sub Division, PSPCL, Barnala while checking the connection on 15.02.2017 when capacity of CT / PT unit was found to be 10 / 5Amp. After the said checking, the demand of Rs. 7,06,899/- with MF as two instead of one for the period from 02 / 2014 to 02 / 2017 i.e. for thirty six months was raised. I find that the Petitioner did not contest the legitimacy of application of actual MF as Two while the Respondents admitted that the mistake occurred on the part of its officials but pleaded that the amount charged was correct and recoverable as also decided by the Forum in view of note given under Regulation 21.5.1 of Supply Code-2014,*
2. *I agree with the contention of the PR that its connection, under MS category, was required to be checked by SR. XEN / AEE / AE once in every six months as per instruction no. 104.1 of ESIM but the provisions ibid were not complied with by the officers of PSPCL. I noted that the departmental action had been initiated against the official (s) concerned for non-compliance of Codal Provisions,*
3. *PR also contended that the amount initially charged was Rs. 7,06,899/-, and had been later revised to Rs. 10,19,833/- due to wrong calculation made by the Sub Division and after the Forum directed the Respondent to get the calculations pre-audited from the A.O. (Field), PR argued that the calculated amount was still doubtful. However, PR did not point out any discrepancy specifically.*
4. *PR placed reliance on the judgment dated 19.12.2015 of Hon’ble Punjab & Haryana High Court, Chandigarh in CWP No. 17699 of 2014 in case titled as Park-Hyundai, Sangrur Versus PSPCL wherein directions were issued to the Respondent to recover the charges for six months preceding the date of checking. PR also referred to the decision of this Court in Appeal no. A-54 of 2011 decided on 23.02.2012 in respect of Biwani Flour Mills, Biwani in which period of charging was reduced from nine to five years. I observe that the judgments ibid are not relevant to the facts and circumstance of this case because as per provisions contained given under note of Regulation 21.5.1 of Supply Code-2014 ( applicable w.e.f. 01.01.2015), the amount due to wrong MF for the whole period of mistake was to be charged.*
5. *The Petitioner also referred to Section 56 (2) of Electricity Act - 2003, which provides that no sum due from any consumer shall be recoverable after a period of two years. I am of the view that as per Commercial Circular No. 05 / 2012 by PSPCL issued on the basis of decision taken by Hon’ble Punjab & Haryana High Court in LPA No. 605 of 2009, decided on 09.09.2014, the date of sum due was the date when the demand was first raised, hence, the plea of the Petitioner does not sustain in the eyes of the Law.*
6. *I noted the contention of PR during oral arguments that the rebate of 3% was not given as the Metering was done on HT side instead of LT side of the Distribution Transformer. In response, the Respondent stated that the said rebate would be given to the Petitioner,*
7. *I noted the contention of PR during oral arguments that the Power Factor incentive as per applicable General Schedule of Tariff was not given. The Respondent stated that incentive was due and will be given.*
8. *I noted that the Demand Surcharge was levied over and above CD of 100kVA, but, in the bill issued wherein sanctioned demand was shown as 107kVA. The Respondent argued that sanctioned CD was incorrectly fed in computer due to wrong SAP billing while as per General Schedule of Tariff, Maximum Sanctioned Demand in the case of MS connections should be taken as 100kVA. Hence, Demand Surcharge was required to be levied if demand increased over and above 100kVA which was correct. In the bill, SAP calculated sanctioned demand of MS connection converting sanctioned load divided by 0.9 (Power Factor). As such, I am of the view that the demand surcharge levied to the Petitioner is correct.*

As a sequel of above discussions, it is held that the Petitioner is liable to pay the amount charged due to billing with application of MF as two for the period from 20.02.2014 to 10.04.2017 as per provisions contained in Note given under Regulation 21.5.1 of Supply Code-2014. However, the Petitioner is entitled to get rebate of 3% on account of Transformation losses as metering is being done on HT side instead of LT side and also the Power Factor Incentive as per General Schedule of Tariff, but Demand Charge is required to be levied wherever Demand increased over and above 100 kVA as per General Schedule of Tariff. Accordingly, the Respondent is directed to recalculate the demand as per above directions, but no interest / surcharge be levied as the onus for applying wrong MF lies with the Respondent which rectified the omission on its own part after three years.

8. The Appeal is disposed off accordingly.

9. 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 & Ombudsman) Regulations – 2016.

( VIRINDER SINGH)

LokPal (Ombudsman)

Place: SAS Nagar (Mohali) Electricity, Punjab,