COURT OF THE LOKPAL (OMBUDSMAN),

ELECTRICITY PUNJAB,

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

S.A.S NAGAR (MOHALI).

Appeal No. 64/2017

Date of Registration 08.10.2017

Date of Hearing 27.02.2018

Date of Order 07.03.2018

**In the matter of**

Aggarwal Poultry Farm

Village Burj littan, Raikot Road,

Near Kale Chowk,

Distt Ludhiana.

…….Petitioner

Versus

Additional Superintending Engineer,

DS Sub-Urban Division,

PSPCL, Lalton kalan.

Ludhiana.

.….Respondent

**Present For**

Petitioner Shri Sukhminder Singh,

Petitioner’s Representative (PR)

Respondent Er. J.S. Jandu, Additional Superintending Engineer.

The Petitioner preferred an Appeal in this Court against the order dated 08.08.2017 in Case No. CG-150 of 2017 of the Consumers Grievances Redressal Forum (Forum) deciding that:

*“The account of the Petitioner be overhauled for the period from 03.03.2016 to 02.09.2016 with 15362kVAh units per month.”*

1. **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 150kW and Contract Demand (CD) of 150kVA. The connection was released on 05.09.2015.
2. The Petitioner received the bill dated 18.07.2016 for the period from 02.06.2016 to 15.07.2016 amounting to Rs.1,73,928/- for the consumption of 23902kVAh units.
3. The Petitioner considered the consumption, shown in the said bill, as abnormal and challenged the Energy Meter on 27.07.2016.
4. The Petitioner was not satisfied with the bill and represented on 27.07.2016 before Circle Dispute Settlement Committee (CDSC) by depositing the 50% of the billed amount. The CDSC, in its meeting dated 24.08.2016, issued directions for replacing the disputed Energy Meter, taking DDL, getting the same checked in ME Lab and thereafter submitted the results to the CDSC in its next meeting.
5. The Energy Meter was checked by the ASE, MMTS-3, Ludhiana vide ECR No. 26/2887 dated 27.07.2016 and reported that Energy Meter was showing C-open on display and circuit showing ‘Ctr’ instead of ‘Good’, and directed to get it checked from Enforcement with LT ERS Meter before replacement. The DDL was also taken.
6. Accordingly, the Energy Meter was checked by the ASE, Enforcement-1, Ludhiana vide ECR No. 44/457 dated 23.08.2016, and it was reported that accuracy of the Energy Meter was within limits, C-open was coming on display of Energy Meter and its software was defective. The ASE, Enforcement-1, also directed to replace the Energy Meter.
7. The Energy Meter was replaced vide Meter Change Order (MCO) dated 23.08.2016, effected on 02.09.2016 and got checked/tested from ME Lab on 08.09.2016. As per ME Lab Report, the accuracy of Energy Meter was found within limits.
8. The ASE, MMTS-3 then issued speaking orders on dated 15.09.2016, to the ASE, CBC, PSPCL, Ludhiana directing to overhaul the account of the Petitioner on average basis for six months prior to the date of removal of the Energy Meter i.e. for the period from 03.03.2016 to 02.09.2016, during which the disputed Energy Meter remained installed.
9. On the basis of above speaking orders, the ASE CBC, Ludhiana issued the RBS No. 47/2016 dated 23.09.2016 vide endst. no 2754 dated 23.09.2016 for refund of Rs. 5,13,055/- to the Petitioner, based on average consumption of 3842 kVAh units per month from 03.03.2016 to 02.09.2016. This RBS was held in abeyance by the Respondent as the case was pending in the CDSC for decision.
10. The CDSC, Ludhiana passed orders on dated 22.03.2017 to overhaul the disputed bill on the basis of LDHF formula. In compliance to this decision, calculations were revised and a Supplementary Bill dated 15.05.2017 for Rs. 93,593/- (difference of revised amount due for Rs 2,66,911/- and pervious billed amount of Rs 1,73,218/-) was issued.
11. The Petitioner did not agree with the amount charged and filed a Petition in the Forum who after hearing, passed order dated 08.08.2017 (refer Para 1 Page 2)
12. Not satisfied with the decision of the Forum, the Petitioner filed an Appeal in this Court and prayed as under:

*“It is clear that amount of Rs. 5,13,055/- as per RBS is refundable to the Petitioner. As such, Hon’ble Ombudsman may kindly set aside the decision of the Forum, allow the Appeal and may kindly order the overhauling of account from 03.03.2016 to 02.09.2016, with average of consumption as taken in RBS. Keeping in view findings of ASE/MMTS Data as per DDL print out and submissions as made above, in the interest of natural justice and fairness.”*

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

I have gone through submissions made by the Petitioner in the Appeal and written 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.

* + 1. **Submissions of the Petitioner:**

The PR made the following submissions for consideration by this Court:

1. The connection was released on 05.09.2015 and correct consumption was being recorded up to February/March, 2016. During the first one year or so, the Poultry Farm of the Petitioner was in the process of getting established. The use of supply from the connection was less and consumption was in the range of 3000-4000 units per month as per use of supply. However, during March/April, there was sudden increase in consumption by about 50-70%. Later on, the consumption further increased by about 5 to 7 times. The consumption in 4/2016, 5/2016, 6/2016,7/2016,8/2016 and 9/2016 was recorded as 5774 units, 8410 units, 16757 units, 23902 units, 19784 units & 23920 units respectively as against normal consumption of 3000-4000 units per month. The defect in the Energy Meter was established during site checking by the ASE, MMTS-3, Ludhiana on 27.7.2016. Further, after study of DDL Print-out of the Energy Meter, the ASE, MMTS-3, Ludhiana, vide letter addressed to the ASE, CBC, Ludhiana with endorsements to other offices, vide No. 849/853 dated 15.09.2016, gave speaking orders as under:-

*“It is intimated that the HT meter make Secure Sr. No. PBB-35181 presently installed at the premises of aforesaid consumer whose software has become defective & continuously showing C-Open on meter display. The delinquent officer(s) / official(s) who have not replaced the meter till 02.09.2016 are asked to give their statement vide this office memo no. 8343/47 dated 15.09.2016.*

*From the perusal of the DDL printout of this Energy Meter PBB-35181, the Energy Meter was registering voltage on Yellow Phase 8266 Volt against voltage 6351 Volt (11KV/√3). As highlighted the voltage on different phases as remained above 6732 Volt on printout against 6351 volts i.e. more than 6% voltage allowed by voltage regulation the standard of performance of Supply Code Regulation w.e.f. Ist January, 2015.*

*From the foregoing para(s) study of the printout and ECR report of this Energy Meter, the undersigned is of the considered view that the software of the meter remained defective and registering higher voltage and Energy than the specified voltage due to defective software and cover Open indicated on display.*

*Therefore, the consumer should be charged an average for the meter remained installed till 02.09.2016 preceding six months i.e. consumer should be charged an average w.e.f. 03.03.2016 to 02.09.2016 (6 months) period the meter remained installed at consumer premises”.*

On the basis of very clear orders of the ASE, MMTS-3, Ludhiana, ASE, CBC issued RBS dated 23.09.2016 for refund of Rs.513055/-. As per this RBS, the account of the Petitioner was overhauled from 3/2016 to 8/2016 , with average consumption of 3842 units per month (based on consumption as recorded during the period before 3/2016). However, the Forum did not give much weightage to the clear speaking orders of the ASE MMTS-3, Ludhiana, based on scrutiny of DDL Print-out and decided to overhaul the account from 03.03.2016 to 02.9.2016 with 15362 KVAh units per month, which was altogether unjustified.

1. The DDL of the Energy Meter in question was taken by the ASE, MMTS on 28.7.2016. The parameters of Current/Voltage were available from 17.5.2016 to 27.7.2016. As per the data, voltage on R,Y&B phases was between 6410V to 8266V against normal voltage between 6200V to 6350V. From the data as per DDL Print-out it was clear that software of the Energy Meter was defective due to which abnormal high consumption was being recorded with the Energy Meter. Further, the ASE, MMTS-3, Ludhiana, very rightly issued speaking orders to the ASE, CBC, who issued RBS dated 23.9.2016 for refund of Rs. 5,13,055/-after overhauling the account of the Petitioner from 3/2016 to 8/2016.
2. From the orders of the Forum, it was not clear as to how the total consumption of 1,53,616 kVAh units had been worked out by the Forum. From the consumption data, these figures were not matching in any way. Further, the period of total consumption of 10 months i.e. 02.09.2016 to 07/2016, taken by the Forum, was not understandable. Moreover, the Forum had taken the period of 10 months which was not actually the period corresponding to the period overhauled and Forum had taken this period on the observation that “the consumption of the Petitioner during the corresponding period of previous year i.e. 03/2015 to 02.09.2015 was not available as the connection of the Petitioner was released on 05.9.2015”. It is very interesting to point out that on the one hand, the Forum had not considered the consumption of previous period of six months for overhauling the account from 03.03.2016 to 02.09.2016 (as taken by the ASE, CBC in the RBS), just because, consumption of corresponding period of previous year was not available, whereas, the Forum had taken the period of 10 months which was also not the period corresponding to the period overhauled. Further, the Forum had agreed that Energy Meter was defective and recording abnormal/high consumption (as per speaking orders of the ASE, MMTS) but the Forum failed to consider the fact that during the month of March/April and April/May, consumption of 5774 units and 8410 units respectively was recorded (which had been considered higher due to defective meter) but account for this period had also been ordered to be overhauled with consumption of 15362 kVAh units per month. Thus, the decision of the Forum did not require any further arguments about its being wrong, biased and non-speaking and the same was liable to be set aside.
   * 1. **Submissions of the Respondent:**

The Respondent, in its written reply and also during the course of oral submissions, stated that:

1. The Forum gave a speaking and detailed judgment. As the software of the Energy Meter was defective and its accuracy was within limits, therefore, the decision to overhaul the account of the Petitioner, on average basis, for six months prior to removal/ replacement of the disputed Energy Meter (from 03.03.2016 to 02.09.2016) was justified.
2. The consumption for six months prior to 03.03.2016 could not be taken as the basis for overhauling obviously due to two reasons. Firstly, the connection of the Petitioner was released on 05.09.2015 whereafter, the production of the Poultry Farm started and gradually picked up, Subsequently, there was steady increase in the consumption pattern. Secondly, there was variation in consumption pattern corresponding to change in season as was evident from the consumption recorded in the year 2017. Therefore, the decision of the Forum was correct because on the date of decision i.e. 08.08.2017, the actual consumption of only about eleven months, after the date of change of Energy Meter (02.09.2016), was available. Thus, taking the average of these eleven months and overhauling the account for six months period, prior to the date of change of Energy Meter, was absolutely correct and justified.
3. **Analysis and Decision:**

The issue requiring adjudication is the legitimacy of the amount charged to the Petitioner due to overhauling of its account for the period from 03.03.2016 to 02.09.2016 with 15362kVAh units of consumption per month.

I observe that the Energy Meter was checked at site on 27.07.2016 by the ASE, MMTS-3, Ludhiana, who reported that there was C-open showing on Energy Meter display and the circuit indication was showing “Ctr” instead of “Good”. The MMTS, then, referred the matter to the Enforcement for further checking before replacement of the Energy Meter. Accordingly, the ASE, Enforcement-1, Ludhiana checked the Energy Meter on 23.08.2016 and reported that accuracy of the Energy Meter was within limits but due to “C-open” indication on its display Software of the Energy Meter was declared defective. The disputed Energy Meter was replaced on 02.09.2016 and tested on 08.09.2016 in ME Lab where its accuracy was found within limits.

*From the above analysis, it proves beyond doubt that the Software of the Energy Meter of the Petitioner was defective for which purpose, provisions contained in Regulation 21.5.2 of Supply Code 2014, are relevant and are reproduced as under:*

***“21.5.2: Defective (other than inaccurate)/Dead***

***Stop/Burnt/Stolen Meters:***

*The accounts of a consumer shall be overhauled/billed for the period 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 given below:*

* + 1. *On the basis of energy consumption of corresponding period of previous year.*
    2. *In case the consumption of corresponding period of the previous year as referred in para (a) above is not available, the average monthly consumption of previous six (6) months during which the meter was functional, shall be adopted for overhauling of accounts.*
    3. *If neither the consumption of corresponding period of previous year (para-a) nor for the last six months (para-b) is available then average of the consumption for the period the meter worked correctly during the last 6 months shall be taken for overhauling the account of the consumer.*
    4. *Where the consumption for the previous months/period as referred in para (a) to para (c) is not available, the consumer shall be tentatively billed on the basis of consumption assessed as per para-4 of Annexure-8 and subsequently adjusted on the basis of actual consumption recorded in the corresponding period of the succeeding year.*
    5. *The energy consumption determined as per para (a) to (d) above shall be adjusted for the change of load/demand, if any, during the period of overhauling of accounts.”*

Though, in view of above analysis, the account of the Petitioner is required to be over hauled in terms of the of provisions contained in Regulation 21.5.2 (a) of Supply Code-2014 i.e. on the basis of energy consumption of corresponding period of previous year, the same is not available because the connection was released on 05.09.2015. Hence, the account of the Petitioner is required to be overhauled as per provisions ibid by taking average monthly consumption of previous six months during which, the connection remained functional i.e. average consumption of the period 12/2015 to 05/2016 as per provisions contained in Regulation 21.5.2(b) of Supply Code 2014

**As a sequel of above discussions, it is held that the account of the Petitioner should be overhauled, taking into consideration average monthly consumption as discussed above, for the period 03.03.2016 to 02.09.2016. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment.**

1. The Appeal is disposed of accordingly.
2. Engineer-in-Chief, Commercial, PSPCL, Patiala shall issue instructions requiring all the Addl. Superintending Engineers/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 within their respective jurisdiction, analyse the cases of abnormal change in the consumption of power during current vis-à-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.
3. 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)

S.A.S. Nagar (Mohali) LokPal (Ombudsman)

March 07, 2018 Electricity, Punjab.