COURT OF THE LOKPAL (OMBUDSMAN),

ELECTRICITY, PUNJAB,

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

 S.A.S NAGAR (MOHALI)

**Appeal No. 66/2017**

Date of Registration : 04.10.2017

Date of Hearing : 06.03.2018

Date of Order : 15.03.2018

**Before:**

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

**In the matter of:**

Jain Shawls,

 Bhadur Ke Road,

Dana Mandi,

 Ludhiana

...Petitioner

 Versus

Additional Superintending Engineer,

 DS City West Division (Special),

 PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Petitioner Shri Sukhminder Singh,

 Petitioner’s Representative (PR)

Respondent Er.Harjinder Pal Singh,

 Asstt. Executive Engineer/Commercial

 Before me for consideration is an Appeal filed by the Petitioner against the order dated 16.08.2017 in Case No. CG-142 of 2017 of the Consumers Grievances Redressal Forum (Forum) deciding that:

*“The account of the Petitioner be overhauled for the period from 14.09.2016 to 07.02.2017 on the basis of average consumption recorded during the corresponding period of previous year as per speaking orders of ASE/MMTS-2, Ludhiana and revised calculations be got done and the Petitioner be charged accordingly.”*

**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 395.3254kW and Contract Demand (CD) of 391kVA bearing Account No. 3002812123.
2. The connection of the Petitioner was checked by the Addl. S.E, MMTS-2, PSPCL, Ludhiana on dated 02.02.2017 and again on 07.02.2017 whereafter, speaking orders dated 16.02.2017 were issued as under:

*“ygseko dk vkNk ;?g ftZu go"go Bk nkT[D eoe/ ;kJhN s/ ike/ JhH;hHnkoH BzL 22/2939 fwsh 02.02.2017 u?e ehsk. w'e/ s/ whNo dh fv;gb/n s/ pfbT{ c/° dk eozN °ho' foekov j' fojk ;h . fwsh 03H02H2017 B{z ygseko tb¯ c?eNoh dk b'v g{ok ubkT[D s/ ;{fus ehsk ns/ n'B bkJhB vkNk u?e eoB s/ th pfbT{ c/° eozN °ho' jh foekov j' fojk ;h. fco ygseko dk e[B?eµB JhH;hHnko Bz 34/2939 fwsh 07.02.2017 BPz u?e ehsk . fco th whNo fv;gb/n s/ pfbT{ c/° dk eozN °ho' jh foekov j' fojk ;h . ;hNh d/ e{PB?eµB ( pfbT{ ns/ :?b' ) nkg; ftZu fJzNou/aIi eoe/ u?e ehs/, sK fszBK jh c/°K s/ p?b/I; eozN foekov j'D br fgnk . fJ; s¸ Gkt j? fe pfbT{ c/° ;hNh d/ e{B?eµB improper/loose/carbonized j¸D eoe/ pfbT{ c/° ;hNh nzdo whNo B{z nBo°h ezNohfpT{N BjhI eo fojk ;h . vhHvhHn/?b dk fgqzN ns/ n"B bkJhB vkNk x'yD s/ gkfkJnk frnk fe fwsh 14H9H2016 s'I b?e/ fwsh 7H2H2017 sZe pfbT{ c/° dk eozN fes/ fes/ °ho' foekov eo fojk j? ns/ fes/ fes/ pkeh c/°K d/ w[ekpb/ pj[s jh xZN eozN foekov eo fojk j? . Gkt fe pfbT{ c/° dk ;hNh whNo B{z fes/ fes/ fBZb nBo°h ezNohfpT{N eo fojk j? ns/ fes/ fes/ pkeh c/°K d/ w[ekpb/ pj[s jh xZN nBo°h ezNohfpT{N eo fojk j? . fJ; bJh ygseko dk yksk fwsh 14H9H2016 s¸ b?e/ 07H12H2017 sZe n";s d/ nXko s/ ;'XDk pDdk j? . fwsh 14H9H2016 B{z e/LvpLn?u 1155379H40 ns/ e/thJ/n?u 1194070H20 foekov j¸Jh j? . fwsh 7H2H2017 B[z e/LvpLn?u 330556 ns/ ethJ/n?u 341442 foekov j¸Jh j? ( fJ; dk wbNhgbkfJzr c?eNo 4 j? ) ygseko dk yksk ;¸X e/ fJ; dcso B{z th ;{fus ehsk ikt/ .”*a

1. Based on this checking, a notice was served on the Petitioner by the AEE/Commercial, City West Division (Special), PSPCL, Ludhiana vide memo no. 286 dated 28.03.2017 with the directions to deposit a sum of Rs. 6,58,784/- on the basis of Revised Billing Statement (RBS) No. 29/2017 dated 07.03.2017 prepared by the CBC, PSPCL, Ludhiana (as per directions of the Addl. S.E/MMTS-2) for the period from 14.09.2016 to 07.02.2017.
2. The Petitioner did not agree with the notice served and filed an Appeal in the Forum which, after hearing passed order dated 16.08.2017 (Reference Para 1, Page 1 ).
3. Aggrieved with the decision of the Forum, the Petitioner filed an Appeal in this Court and prayed to quash the demand notice on account of overhauling the account, on average basis, for the period from 14.9.2016 to 07.02.2017 and instead, order the overhauling of account from 25.11.2016 to 07.02.2017, with some realistic average basis in the interest of natural justice.

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

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

**(a) Submissions of the Petitioner:**

The Petitioner’s Representative made the following submissions for consideration by this Court:

1. After Electricity Act-2003, Supply Code-2007 revised as Supply Code-2014 w.e.f. 01.01.2015, came into force, every penal action on the consumer should be supported by rules/regulations because it was the consumer who had to pay the difference due to less billing of previous period and it should be informed under which rule/regulation, the consumer was being penalized. The Chief Engineer, Commercial, vide CC No. 53/2013 and CC No.59/2014, had issued instructions on the basis of order dated 26.9.2013 passed by Hon’ble Punjab & Haryana High Court, in CWP No.10644 of 2010 that while initiating proceedings against any consumer, the competent authority of PSPCL must quote the relevant regulations of the Supply Code or any other regulations framed by the competent authority under the Electricity Act-2003. These instructions were reiterated vide Commercial Circular (CC) No.30/2015 dated 5.8.2015 for strict compliance as Hon’ble PSERC took serious view of non-compliance of these instructions. The notice of Rs. 6,58,784/- issued by the Respondent was not supported by any rule/regulation of Supply Code or Electricity Act-2003 and was liable to be quashed being illegal.
2. The supply from the connection was being used for Hosiery Unit (Jain Shawls). The consumption of the Petitioner varied from month to month, according to season and demand in the market/work in the factory. The demand was also affected/impacted with the policies of the Govt. and it could not be considered that every year, the consumption of electricity will be matching with the corresponding period of previous year. The officer of the PSPCL was recording regular readings and bills as issued on the basis of recorded consumption had been paid in due course. However, burdening the consumer with such a huge amount of Rs. 6,58,784/-, just on the basis of vague orders of ASE/MMTS, without testing the accuracy of the Energy Meter to ascertain the slowness factor and without reference to any rule/regulation of Supply Code or Electricity Act-2003, was unjustified and liable to be withdrawn. The energy consumption was commensurate with the connected load and work in the factory. The work in the hosiery industry as well of the Petitioner, depended on the demand in the market during particular season/year and accordingly, consumption of electricity was also bound to be as per work in the hosiery. Sometimes, the production in the factory was less as compared to previous year/season, as such, the account should not be overhauled on the basis of consumption of previous period, rather, it should be overhauled after determining the slowness factor on different loads. However, the account had been overhauled on the basis of average consumption of previous period as per vague orders of ASE/MMTS, which was not justified and demand raised was liable to be withdrawn.

 The Forum preferred to compare the consumption as recorded from 10/2016 to 02/2017 (disputed period) with the consumption of 10/2015 to 02/2016 (corresponding period of previous year) to arrive at the conclusion that contribution of Blue Phase CT was less during the disputed period. However, the Forum ignored the fact that consumption was not reliable evidence especially in the case of the Petitioner. Just to substantiate this point, it was worth mentioning that the consumption during all the 12 months of the year 2015 was less than the consumption as recorded during the corresponding months of the year 2014. Further, the total consumption as recorded from 01/2015 to 12/2015 was 7,05,264 units whereas the total consumption from 01/2014 to 12/2014 was 8,08,350 units showing huge difference of 1, 03,086 units. So, in such a situation, the Forum may have ordered the overhauling of account from 01/2015 onwards, if decrease in consumption was the criterion for declaring the Energy Meter as defective. Thus, the decision was liable to be set aside.

1. Before charging the amount, concerned ASE/MMTSwas required to explain as to why he could not notice the defect “current on Blue Phase was zero during some period and it was less from 14.9.2016 to 07.2.2017 as compared to current on other two phases during some other period”, before 07.02.2017 i.e. the date of report.

 The ASE/MMTS was taking DDL after every 70 days and was supposed to do the scrutiny of the printouts for finding fault in the Energy Meter, if any. PSPCL was paying huge amount as salary to these senior officers and consumers were bearing their expenditure through tariff approved by the PSERC.As such, the delinquent officers should be penalized for lapses on their part, instead of burdening the consumer by imposing huge charges relating to previous period especially **when the DDL was being taken on regular basis.**

1. As per Regulation 21.5.1 of Supply Code-2014 (applicable from 01.01.2015), the account of a consumer, whose Energy Meter was found inaccurate, could be overhauled as prescribed therein as under:

*“if a consumer meter on testing is found to be beyond limits of accuracy as prescribed hereunder, the account of the consumer shall be overhauled and the electricity charges for all the categories of consumers shall be computed in accordance with the said test results for a period not exceeding six months immediately preceding the:*

*a) 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*

*b) date the defective meter is removed for testing in the Lab of the distribution licensee”.*

 The accuracy of the Energy Meter (which included CT/PT unit) was not tested at site by the MMTS and the same was required to be tested, to ascertain the slowness factor, in view of above regulation before ordering the overhauling of the Petitioner’s account.

 The ASE/MMTS, vide letter dated 16.02.2017, had asked the ASE/CBC for overhauling of account of the consumer on average basis from 14.9.2016, as ‘*blue phase was not contributing energy properly due to improper / loose / carbonized CT connections’.* However, as per DDL print-out provided to the Petitioner, load survey data was traceable from 25.11.2016. As such, the Respondent was required to confirm as to how missing contribution on Blue Phase from 14.09.2016 had been established. If there was no evidence with the Respondent in this regard, then, account was required to be overhauled from 25.11.2016 instead of from 14.09.2016 (as per speaking orders of ASE/MMTS vide letter dated 16.02.2017). The period of six months as mentioned in Regulation 21.5.1 of Supply Code-2014, was the maximum period of overhauling of account, that too, based on test results andnot on the basis of incomplete data as per DDL Print-out.

**(b) Submissions of the Respondent:**

 The Respondent, in its defence, stated that:

1. The speaking order passed by the Additional SE, MMTS-2, PSPCL, Ludhiana was on the basis of the checking vide ECR No. 22/2939 dated 02.02.2017 and subsequent checking vide ECR No. 34/2939 dated 07.02.2017 and was legal and valid.
2. The order dated 16.08.2017, passed by the Forum, was also legal and valid and was passed after giving proper hearing to both the sides.
3. The Blue Phase of the CT was not contributing but the consumer had been using the electricity throughout that period and as such, the consumer was making less payment and the accounts were rightly asked to be overhauled on the basis of the consumption of the corresponding months of the preceding year.

(iv) The Instantaneous Values of DDL printout taken on 02.02.2017 showed that Active Current on Blue Phase was Zero Amp whereas the instantaneous Values of DDL printout taken on 07.02.2017, showed that Active Current on Blue Phase was 8.59Amp i.e. after correction of connections at site.

(v) As per directions given during the course of hearing on 06.03.2018, copy of previous DDL (Load Survey Data) is placed on record.

**4. Analysis and Decision:**

The issue requiring adjudication is the legitimacy of the demand raised on account of overhauling the account of the Petitioner, for the period from 14.09.2016 to 07.02.2017, on the basis of average consumption recorded during the corresponding period of the previous year.

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

1. I agree with the contention of the PR that compliance of codal provisions and instructions issued by the PSPCL, requiring mention of relevant regulations of Supply Code or any other rule/ regulation framed by the competent authority, while initiating proceedings against any consumer/overhauling its account, must have been ensured by the Additional Superintending Engineers/Senor Executive Engineer of the Distribution Licensee But the requisite compliance was not done.
2. A study of the consumption data tabulated below reveals that the consumption of the Petitioner has decreased during the months from 10/2016 to 02/2017:

|  |  |  |  |
| --- | --- | --- | --- |
| ***Month*** | ***Consumption in kVAh*** | ***Month*** | ***Consumption in kVAh*** |
| *10/2015* | *61300* | *10/2016* | *43264* |
| *11/2015* | *48676* | *11/2016* | *33480* |
| *12/2015* | *47852* | *12/2016* | *31872* |
| *01/2016* | *39560* | *01/2017* | *26449* |
| *02/2016* | *40012* | *02/2017* | *34428* |

Evidently, the Addl. S.E/Sr. Executive Engineer did not take care to keep a vigil on the variation in consumption from the consumption data available in the Energy Variation Register/SAP system and thus failed to analyse considerable fall in consumption during the period ibid. Had this been done, variations in consumption would have been noticed and corrective action could have been taken immediately.

**At the same time, the consumer, as a responsible citizen, should have brought to the notice of the Respondent, the abnormal fall in consumption noticed on receipt of monthly energy bills. The assertion by the Petitioner that, “consumption varied from month to month, according to season and demand in the market/work in the factory,” as a matter of routine, is not desirable and convincing.**

1. The Instantaneous Values of DDL printout taken on 02.02.2017 shows that Active Current on Blue Phase was Zero Amp whereas the Instantaneous Values of DDL print out taken on 07.02.2017, shows that Active Current on Blue Phase was 8.59Amp i.e. after correction of connections at site.

(iv) The Load Survey data of both the DDLs shows that Blue Phase was recording zero current or very less current as compared to other Phases.

1. A perusal of Printout of DDL supplied by the Respondent, on 07.03.2018 on being so directed during hearing, reveals that current on Blue Phase remained 0.00 to 0.02 Amp w.e.f. 15.09.2016 to 07.02.2017, meaning thereby that Blue Phase CT was not contributing towards consumption as confirmed in the Load Survey Data supplied.

*From the above analysis, it is concluded that the MMTS failed to check the accuracy of the Energy Meter at site from where, exact slowness factor could be determined. Therefore, this Court is to take recourse to the provisions contained in Regulation 21.5.2 (a) of Supply Code-2014.*

 **As a sequel of above discussions, it is held that the account of the Petitioner should be overhauled for the period from 15.09.2016 to 07.02.2017 (date of correction of connection), based on the consumption of corresponding period of previous year as per provisions contained in Regulation 21.5.2 (a) of Supply Code-2014.**

**5. The Appeal is disposed of accordingly.**

**6.**  Engineer-in-Chief/Commercial, PSPCL, Patiala shall issue instructions to all the Engineers-in-Chief / Chief Engineers of DS Zones to direct all the field officers/officials to ensure during the course of installation of HT HT operated Energy Meters that the wires of CTs and PTs are connected at Energy Meter terminals through ferrules already provided by the manufacturers of the Energy Meter to avoid carbonization problems.

**7.** 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 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.** Engineer-in-Chief, Commercial, PSPCL, Patiala shall also issue instructions to the officers of MMTS and Enforcement concerned that they should study the print out of the DDL of Energy Meters immediately and take corrective measures, wherever necessary, by reading each and every parameter.

**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 and Ombudsman) Regulations – 2016.

 (VIRINDER SINGH)

March 15, 2018 LokPal (Ombudsman)

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