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

 **ELECTRICITY, PUNJAB,**

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

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

**Appeal No. 85/2017**

**Date of Registration : 14.11.2017**

**Date of Hearing : 05.04.2018**

**Date of Order : 11.04.2018**

**Before:**

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

**In the matter of:**

 Shiv Rice Mill,

 Aspal Kalan Road,

 Bugran, District Sangrur.

...Petitioner

Versus

 Additional Superintending Engineer,

 DS Division,

 PSPCL, Sunam,

 District Sangrur.

 ...Respondent

**Present For:**

Petitioner: Sh. R.S. Dhiman,

 Petitioner's Representative (PR)

Respondent : Er. R.K. Goyal,

 Addl. Superintending Engineer.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 20.09.2017 in Case No. CG- 176 of 2017 of the Consumers Grievances Redressal Forum (Forum) deciding that:

 *“The bill dated 08.05.2017 issued to the Petitioner covering the period from 31.03.2017 to 29.04.2017 for 7712kVAh units and the bill dated 06.06.2017 from 29.04.2017 to 31.05.2017 for 7182kVAh units are on actual energy in kVAh consumed by the Petitioner and is correct and recoverable.”*

**2. Condonation of delay in filing the Appeal:**

At the outset of the proceedings on 05.04.2018, the issue of condoning the delay in filing the Appeal was taken up.

 PR stated that the decision of the Forum in the case was dispatched by it on 25.09.2017 and was received by the Petitioner on 03.10.2017. Filing of the Appeal against this decision was kept pending by the Petitioner knowingly as it was awaiting the decision of the Forum in an identical case of the Petitioner’s sister concern, Ganga Rice Mill (Case No. CG-177 of 2017). Both the cases were filed in the Forum on the same date. The Petitioner wanted to bring the findings of the Forum in the case of Ganga Rice Mill to the notice of this Court. PR added that after the receipt of the decision of the Forum in the case of Ganga Rice Mill on 30.10.2017, the Petitioner filed this Appeal and more details on the subject cited shall be brought forth at the time of hearing of the case. PR requested that the delay in filing the Appeal may be condoned, being a necessity for the Petitioner.

 The Respondent, in its written reply to the Appeal filed by the Petitioner, did not offer any comment on the request for condoning the delay in filing the Appeal. However, during the course of oral discussions, the Respondent did not object to the request of the PR for codoning the delay in filing the Appeal.

 I observe that Regulation 3.18 (ii) of the PSERC (Forum and Ombudsman) Regulations-2016 provides for a period of one month for filing an Appeal in the Court of the Ombudsman. In the present case, order dated 20.09.2017 of the Forum was dispatched on 25.09.2017 and received by the Petitioner statedly on 03.10.2017. Accordingly, the Appeal was required to be filed by 03.11.2017 but was actually filed on 14.11.2017 i.e. after 11 days from the stipulated date.

 I also observe that though the reasons given for the delay are not sufficient but not condoning the delay would not meet the ends of ultimate justice and deprive the Petitioner of the opportunity required to be afforded, to present its case on merits. Thus, taking a lenient view, delay of 11 days in filing the Appeal is condoned and the Petitioner is allowed to present the case.

**3. The relevant facts of the Case:**

The relevant facts of the case are that:

1. The Petitioner was running a Rice Sheller (Seasonal Industry) in the name of Shiv Rice Mill at Aspal Kalan Road and having a Large Supply Category connection, bearing Account No. S53-LG01-0003, with Sanctioned Load of 134.847kW and Contract Demand (CD) of 150kVA.
2. The Energy Meter of the Petitioner was replaced with ToD Energy Meter at the start of Milling Season in 10/2016.
3. The Petitioner received bill dated 08.05.2017 for the period from 31.03.2017 to 29.04.2017 amounting to Rs. 50,040/- for 7712kVAh and 800kWh consumption. Again, the Petitioner received bill dated 06.06.2017 amounting to Rs. 48,490/- for 7182kVAh and 672kWh units for the period from 29.04.2017 to 31.05.2017.
4. The Petitioner considered the above bill abnormal due to mismatch of kWh and kVAh readings and with abnormal readings of the Energy Meter and filed a Petition in the Forum with the request to set-right the inflated bills.
5. The Forum decided on 20.09.2017 that the bills dated 08.05.2017 and 06.06.2017 were on actual energy in kVAh consumed by the Petitioner and thus, correct and recoverable.
6. Aggrieved with the decision of the Forum, the Petitioner filed an Appeal in this Court praying for justice.

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

Before undertaking analysis of the case, it is necessary togo 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:

1. **Submissions of the Petitioner:**
2. The Petitioner was having an electricity connection for the Rice

 Sheller, bearing Account No S53-LG01-00003 with Sanctioned Load of 134.847kW with a Contract Demand of 150kKVA.

1. Energy Meter of the Petitioner was replaced with a ToD Energy Meter at the start of Milling Season in 10/2016. There was no problem during the milling period up to the end of March 2017. But, during closure of the Mill for off season, the Petitioner received bills of abnormal consumption as compared to the actual use of electricity. This happened on account of very high kVAh consumption as compared to kWh consumption. The kVAh consumption shown by the Energy Meter from 31.03.2017 to 29.04.2017 was 7712kVAh against 800kWh, resulting in PF = 0.10. Similarly, the kVAh consumption from 29.04.2017 to 31.05.2017 was 7182kVAh against 672kWh during this period, thus resulting in PF = 0.09. This resulted in undue burden on the Petitioner.
2. Rice Sheller was a seasonal industry which remained closed from April to September every year, due to off season. There was no consumption of electricity during these months except lighting etc for watch and ward. Small kWh consumption of the Petitioner during the above mentioned period proved that there was, in fact, no production in the factory.
3. The scenario of disproportionate consumption was a result of leading kVARh having been taken into account while computing kVAh consumption by the newly installed Energy Meter. These new Energy Meters of changed specifications had been installed by the PSPCL without any prior information and advice to the consumers for proper devices to control their Power Factor (PF). No information in this regard was given to the Petitioner. As a result, the Petitioner’s PF was as low as 0.10 from 31.03.2017 to 29.04.2017, and 0.09 from 29.04.2017 to 31.05.2017. As a matter of fact, injection of leading kVARh by the Petitioner should be welcomed by the Respondents as it helped in improving the overall PF of the supplier’s system. But, on the contrary, the Petitioner had been penalized by raising huge bills even during off season. This anomalous situation arose only after the installation of the present ToD Energy Meter.
4. A look at the Petitioner’s consumption pattern of previous off-seasons would reveal that kVAh consumption was not so high during the year 2015 and 2016. The anomalous situation was only due to changed specifications of the present Energy Meter and consumers running seasonal industry were suffering.
5. On the complaints of the consumers, directions were issued to the PSPCL by Hon’ble PSERC to maintain status quo regarding billing of the consumers under kVAh tariff regime. PSERC office Memo No 17/PSERC/DTJ-75A dated 06.04.2017, addressed to CE/ARR & TR PSPCL, Patiala may be referred to in this regard. Besides, CE/Metering Memo dated 11.04.2017 addressed to the Chief Engineer/Commercial, PCPCL, Patiala on the same subject was also relevant in this regard.
6. Relying on this initiative of the Hon’ble PSERC, the Petitioner approached the Forum which, in utter disregard of the instructions of Hon’ble PSERC, turned down the Petitioner’s plea citing frivolous grounds. The Petitioner was not satisfied with the findings of the Forum and was thus, constrained to file the present Appeal.
7. An identical case of Ganga Rice Mill (CG-177 / 2017), a sister concern of the Petitioner, was also filed in the Forum on the same day. But, the same was decided later. Utter disregard of the Commission’s instructions was again pointed out to the Forum by the Petitioner during arguments in the case of Ganga Rice Mill. On this, the case of Ganga Rice Mill was decided in accordance to the instructions of the Hon’ble PSERC.

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

 **The Respondent, in is defence, stated as under:**

1. The Energy Meter of the Petitioner was replaced with ToD Energy Meter at the start of milling season in 09/2016. But, there was no problem upto the end of March 2017, because during the months of 10/2016, 11/2016, 12/2016 and 01/2017, Power Factor came to 0.38, 0.68, 0.83 and 0.86 respectively which indicated that the consumer did not maintain proper Power Factor (0.90) up to the end of March 2017. It was incorrect that this was effecting the Petitioner adversely since billing on kVAh consumption was already done from 01.04.2014 as per Commercial Circular (CC) No. 21/2014 of Chief Engineer/Commercial.
2. It was wrong that the seasonal industries remained closed from April to September. Rather, these industries had season period from 1st October to 30th June as per PSPCL rules and regulations. It was wrong that the new Energy Meter was installed without any prior intimation because the Energy Meter had been changed due to ToD Tariff rebate from Non-Device Language Message Specification (Non-DLMS) to Device Language Message Specification (DLMS) Energy Meter. The consumer was duly intimated at the time of installing new Energy Meter.
3. The present case was decided by the Forum after hearing and viewing the documents of both the parties and decided in the favour of the PSPCL. The Respondent had no information regarding the case of Ganga Rice Mill which was not related to the Respondent’s office.

**5. Analysis:**

The issue requiring adjudication is the legitimacy of the amount charged on account of kVAh consumption for the period from 31.03.2017 to 31.05.2017 as per instructions of the Hon’ble PSERC/PSPCL.

 T*he points emerged are deliberated and analysed as under:*

1. I have noted the contention of the PR that the Energy Meter of the Petitioner was replaced with the ToD Energy Meter at the start of the Milling Season in 10/2016 and there was no problem during the Milling Season period upto the end of March 2017. But, during the closure of the mill for the off-season period, the Petitioner received inflated bills dated 08.05.2017 and 06.06.2017 for the period from 31.03.2017 to 29.04.2017 and 29.04.2017 to 31.05.2017 respectively on account of very high kVAh consumption as compared to kWh consumption. The kVAh consumption shown by the Energy Meter from 31.03.2017 to 29.04.2017 was 7712kVAh against 800kWh, resulting in Power Factor= 0.10 while kVAh consumption from 29.04.2017 to 31.05.2017 was 7182kVAh against 682kWh, resulting in PF= 0.09.

I find that the Respondent, in its written reply, admitted that the Energy Meter of the Petitioner was replaced with ToD
Energy Meter at the start of Milling Season in 09/2016, but denied the Petitioner’s contention that there was no problem upto the end of March 2017 because, Power Factor during the months of 10/2016, 11/2016, 12/2016 and 01/2017 came to 0.38, 0.68, 0.83 and 0.86 respectively, which indicated that the consumer did not maintain the required Power Factor of 0.90 upto the month of March 2017. The Respondent also termed the contention of the Petitioner as incorrect that this had affected the Petitioner adversely since billing as per kVAh consumption was done from 01.04.2014 as per Commercial Circular (CC) No. 21/2014 issued by the PSPCL.

1. I have perused the averment of the Petitioner that the Rice Sheller was a Seasonal Industry which remained closed from about April to September every year, due to off-season and there was no consumption of electricity, except Lighting Load for watch and ward, during this period. PR added that the scenario of disproportionate consumption changed as a result of kVAh (Lag + Lead) having been taken into account while computing kVAh consumption by the newly installed Energy Meters of changed specifications which were installed by the PSPCL without any prior intimation to the consumers for installing proper devices to control their Power Factor. As no information in this regard was given to the Petitioner, its PF was as low as 0.10 from 31.03.2017 to 29.04.2017 and 0.09 from 29.04.2017 to 31.05.2017.

I find that the Respondent, in its defence, stated that it was incorrect on the part of the Petitioner to contend that seasonal industries remained closed from April to September. Rather, these industries had season period from 1st October to 30th June as per current rules of the PSPCL. The Respondent added that the Petitioner had wrongly pleaded that new Energy Meter was installed without prior intimation to it (Petitioner) because the Energy Meter had been changed due to ToD Tariff Rebate for Non-DLMS to DLMS Energy Meter and the Petitioner was duly informed at the time of its installation.

1. I observe that the Hon’ble PSERC introduced the kVAh based tariff for certain categories of the consumers with connected Load more than 100 kW as per Tariff Order FY 2014-15. For recording of Reactive Energy (kVAh), Lag and Lead Power Factor was being taken as per newly procured Energy Meters by PSPCL on its own without getting the approval of the Hon’ble PSERC which, vide its Memo No. 17/PSERC/DTJ-75A dated 06.04.2017,decided as under:

*"The matter has been examined by the Commission. It has been observed that PSPCL has changed the Tariff Protocol of ToD Energy Meters from LAG only to LAG+LEAD Protocol through specification No. MQ-95 without any approval from the Commission and prior intimation to the concerned consumers. This has resulted in avoidable harassment to consumers covered under KVAh tariff regime due to huge electricity bills on account of power factor surcharge.*

*Accordingly, PSPCL is directed to file a Petition in case, the distribution licensee intends to change the Tariff Protocol of ToD meters and further directs that till the decision of the Commission on this issue, the status quo regarding billing of consumers under KVAh tariff regime existing prior to installation of meters with changed specification, should be maintained.*

*Strict compliance of the above directions of the Commission be ensured."*

1. I also observe that the Hon’ble PSERC decided the Petition No. 47 of 2017, vide order dated 28.02.2018 and directed the PSPCL to ensure that no consumer is charged extra for leading PF recorded with LAG+LEAD Tariff Protocol Energy Meters already installed on the consumers’ premises and in such cases, the PF shall be taken as Unity besides ensuring that the amount, already charged on account of leading PF, may be refunded.
2. I find that the Petitioner has cited an identical case titled ‘Ganga Rice Mill V/s PSPCL (CG-177 of 2017) of its sister concern, wherein the Forum, vide order dated 18.10.2017, decided the case in accordance to the order dated 28.02.2018 of the Hon’ble PSERC.

*I have perused the order ibid of the Forum and of the view that the Petitioner’s contention is correct. As the facts and circumstances of both the cases are similar, the present case deserves similar consideration for decision.*

From the above analysis, it is concluded that the Petitioner’s kVAh consumption for the period from 31.03.2017 to 29.04.2017 and 29.04.2017 to 31.05.2017 be revised suitably as per directions issued by the Hon’ble PSERC vide its order dated 28.02.2018 in Petition No. 47.

**6. Decision:**

 **As a sequel of above discussions, the order dated 20.09.2017 of the Forum in case No. CG-176 of 2017 is set-aside. The Respondent is directed to revise the bill dated 08.05.2017 (from 31.03.2017 to 29.04.2017) and also dated 06.06.2017 (from 29.04.2017 to 31.05.2017) after working out kVAh consumption by converting kWh consumption into kVAh with Power Factor as 0.90. Accordingly, the Respondent should re-calculate the demand and recover/refund the amount found excess/short, after adjustment, if any. It is also held that no interest/surcharge should be charged to Petitioner the on this account.**

**7.** The Appeal is allowed.

**8.** 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)

April 11, 2018 LokPal (Ombudsman)

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