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

**ELECTRICITY, PUNJAB,**

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

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

**Appeal No. 93/2017**

**Date of Registration : 15.12.2017**

**Date of Hearing : 03.05.2018 and 14.06.2018**

**Date of Order : 20.06.2018**

**Before:**

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

**In the matter of**

Idea Cellular Limited,

C-105, Industrial Area, Phase-VII,

S.A.S. Nagar (Mohali).

...Petitioner

Versus

Senior Executive Engineer,

DS Division ,

 PSPCL, Bathinda.

 ...Respondent

**Present For :**

Petitioner **:** 1. Ms. Rameet Bakshi, Advocate

 Petitioner’s Counsel (PC).

 2. Shri Gagandeep Singh Sidhu,

 Petitioner’s Representative (PR).

Respondent **:** Er. Gagan Deep Singla,

 Sr. Executive Engineer.

 Before me for consideration is an Appeal preferred against the order dated 26.10.2017 of the Consumers Grievances Redressal Forum (Forum) in Case No. CG-202 of 2017 deciding that:

 *“The Petitioner’s A/C be overhauled from the period 15.04.2014 by considering the meter running slow by 62.40% as it is well established that the meter was running slow by 62.40% from 15.04.2014.”*

 The hearing in the Appeal initially fixed for 03.05.2018 and was adjourned to 14.06.2018 on the requests of both the parties.

2. **Condonationof Delay:**

At the outset, the issue of Condonation of delay in filing the Appeal in this Court was taken up. PC contedned that order dated 26.10.2017, sent by the CGRF, Patiala, vide its registered letter No. 3084-85 dated 27.10.2017, was not received in the Petitioner’s office which was collected from the office of the CGRF, Patiala on 08.12.2017. Thereafter, the Appeal was got registered in this Court on 15.12.2017 after deepositing the requisite 40% of the disputed amount. PC prayed that filing of the Appeal in this Court got delayed due to the reason stated above and prayed to condone the same.

 *I find that the Respondnet did not offer its comments in this regard in the written reply and also did not object to the comdonation during the course of oral submissions. I also find that Regulation 3.18 (ii) of PSERC (Forum and Ombudsman) Regulations, 2016 provides an opportunity to the consumer, aggrieved by the order of the Forum, to make representatiion to the Ombudsman within one month of the date of receipt of the order of the Forum. I observe that in the instant case, the Petitioner statedly did not receive a copy of order dated 26.10.2017 sent by registered post, rather, the Petitioner arranged it to be collected from the office of the CGRF, Patiala on 08.12.2017. I also observe that had the Petitioner been vigilant and kept a track on the uploading of decisions on the website or approached the Forum earlier, it could receive the copy of the order earlier. However, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court is condoned and the Petitioner is allowed to present its case on merits.*

3. Facts of the Case:

 The relevant facts of the case are that:

1. The Petitioner - Idea Cellular Limited was a company registered under the Companies Act 1956 with its Zonal Office at Bathinda, having a Non Residential Supply (NRS) Category connection with sanctioned Load of 67 kW.
2. The connection was checked on 07.07.2017 by the Enforcement which noticed that the Energy Meter was running slow by 32.96% when checked with LT ERS Meter.
3. As per Report of the Enforcement, there were wrong connections at the Energy Meter Terminals and the consumer was charged upto 15.04.2014 with a slowness factor of 32.96% due to inaccurate connections and thereafter ( from 15.04.2014), with the slowness of 62.40% due to carbonization of Blue Phase and due to inaccurate connection which was established from the DDL report.
4. The Respondnet issued notice to the Petitioner vide Memo No. 1369 dated 11.07.2017 asking it to deposit a sum of Rs. 17,30,834/- after overhauling its account based on the Checking Report of the Enforcement**.**
5. The Petitioner did not agree with the notice and filed the Petition in the Forum, who, after hearing, passed the order dated 26.10.2017 (Reference: Page 2, Para 1).
6. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court and prayed that the Appeal may be accepted and the order of the Forum may be modified to the extent that the account of the Petitioner be overhauled subject to maximum period of six months prior to 07.07.2017 in the interest of justice. Besides, the Respondent be levied punitive damages and/or any other suitable action as deemed fit by this Court.

4. Submissions made by the Petitioner and the Respondent:

Before undertaking analysis of the case, it is necessary to go through the written submissions made by the Petitioner and reply of the Respondent as well as oral submissions of the Representatives of the Petitioner and the Respondent alongwith material brought on record by both the sides.

1. **Submissions of the Petitioner:**

The Petitioner made the following submissions for consideration of this Court:

1. The Petitioner was a company incorporated under the Companies Act, 1956 and was a License holder from the Department of Telecommunicaitons, Government of India in Punjab Circle in the field of Telecommunication, both for voice and data and had its Circle office for Punjab at C-105, Industrial Area, Phase-7, Mohali-160055.
2. The Zonal office of Idea Cellular Limited, having billing address as “Cloth Market, The Mall, Bathinda – 151001” was operational since 2009 and availing the electricity supply services from PSPCL since then. The Petitioner was having NRS category connection with Sanctioned Load of 67kW operating under Tech-2 Sub Division, PSPCL, Bathinda.

**(iii)** On 07.07.2017, a team from the PSPCL visited the Bathinda office of the Petitioner’s Company and inspected the electricity connection installed in the office premises. One of the Company’s representative at Bathinda namely Mr. Anil Garg was handed over the Checking Reports which were not legible, and his signatures were obtained on the same without giving him an opportunity to read or understand the same.

**(iv) A** Memo bearing No.1369 dated 11.07.2017 was issued by the AEE, Commercial-II, Sub Division, PSPCL, Bathinda, forwarding therewith a Calculation Sheet for showing an amount of Rs.17,30,834/- due towards the Petitioner.

**(v)** The relevant reports were forwarded by the concerned AEE (SDO) City, Sub Division, PSPCL, Bathinda through their official e-mail on 25.07.2017 to local Company Representative at 5:38 PM after much delay on the part of the Respondent.

**(vi)** The Petitioner protested, vide its representation dated 31.07.2017 to the Respondent who, instead of considering the aforesaid representation, disconnected the electricity connection of the Petitioner’s office at Bathinda arbitrarily.

1. The authorized representative of the Petitioner visited the Respondent’s office at Bathinda ón 02.08.2017 and requested them to restore the connection and submitted another representation to the Respondent for redressal of is grievance, but, the connection was not restored/reconnected. The Petitioner then filed a Petition CG-202 of 2017 (Date of Registration 21.08.2017) before the Forum for setting aside the notice issued vide Memo No. 1369 dated 11.07.2017 raising demand of Rs.17, 30,834/- relating to Account No. GC-13-0049 issued by the AEE, Commercial-II, Sub Division, PSPCL, Bathinda,
2. The Petitioner did not agree with the amount charged and filed a Petition on 21.08.2017 in the Forum which decided the same on 26.10.2017 with the order that “*the Petitioner’s Account be overhauled for the period from 15.04.2014 by considering the Energy Meter running slow by 62.40% as it was well established that the Energy Meter was running slow by 62.40% from 15.04.2014.”*
3. Based on the decision of the Forum, the AEE, Commercial-II Bathinda issued Memo No. 2280 dated 29.11.2017 asking it to deposit a sum of Rs. 8,38,922/- as per decision of the Forum without mentioning any rule/regulation of the Supply Code/Electricity Act-2003 under which the demand had been raised.
4. The Petitioner relied upon Regulation 21.5.1 of the Supply Code-2014 while pleading its case in the Forum but the Respondnet contested and denied the applicability of the same in its reply to this Appeal without referring to the relevant rules/regulations of the Supply Code-2014 or Electricity Act-2003.
5. The Forum, while passing its order, relied on Regulation 21.5.1 of Supply Code-2014 partially, but, not in totality.
6. It was the duty of the Respondent to install a correct Energy Meter in the premsies of the Petitioner as per Regulation 21.1 of the Supply Code-2014 and CEA (Installation and Operationof Meters) Regulations, 2006, as amended from time to time. As per the said provisions, “The term meter shall also incldue, wherever applicable, other metering equipment such as current transformer, voltage transformer with wiring and accessories etc essentially required for measuring/recording consumption of electricity and shall hereinafter, called “Meter”.
7. It was the responsibility of the Respondent to satisfy itself regarding the accuracy of the Energy Meter before it was installed outside the premises of the Petitioner.
8. The Respondent was also responsible for the periodical checking of the installed Energy Meter. In the present case, the Respondent had admitted before the Forum that no checking was done by their representative after 2011. Besides, the Energy Meter installed in 2011, continued to be the same till date. Also no checking was done even prior to 2011 and the checking of the Energy Meter installed at the premsies of the Petitioner was done for the first time on 07.07.2017.
9. The Petitioner’s Company had regularly been paying the bills generated by the PSPCL based on actual Energy Meter reading every month without any default and the status of the Energy Meter on every bill issued by the Respondent was “O” which meant that “Meter theek hai” The Respondnet failed to explain the basis /reason of its accuracy after checking dated 07.07.2017 when its status was “OK”, as per bills issued.
10. The checking of the Energy Meter was not done to the satisfaction of the Petitioner as per the rules. The fact that the Forum, while hearing the case on 13.09.2017 directed the Respondnent to provide, “Readable copies of ECR dated 07.07.2017” itself showed that the reports were not legible and could not be read and understood by the Company’s representative while signing it on the date of checking of the connection 07.07.2017.
11. The DDL reports provided did not relate to the Energy Meter of the Petitioner as its Energy Meter’s number was “1544135” whereas the Energy Meter number mentioned in the Checking Report was “10544135”.
12. The Electricity Conneciton of the Petitioner was illegally / arbitrarily disconnected by the Respondent on 01.08.2017, which was against the law and principle of natural justice. The Petitioer suffered heavily as it had to use Diesel Generator Sets to keep the office running. The Telecom Services, being provided by the Petitioner’s Company comes under Essential Services as per the provisions of Essential Services Act and also as per Regulation 2 (za) of the Supply Code-2014, and thus any hindrance in such services was not only against the provisions of the Act but also against the interest of the General Public who were benefitted with the services. Therefore, disciplinary proceedings should be initiated against the delinquent officers/officials in accordance with the Service Rules for non-observance of codal requirements for checking of Electricity Conenctions and the Petitioner should be duly compensated for the said negligence and deficiency in the services of the Respondent.
13. The Appeal be accepted and the Memo bearing No. 1369 dated 11.07.2017 issued initially and thereforeafter Memo No. 2280 dated 29.11.2017 issued as per the decision of the Forum may be set-aside being illegal and arbitrary. Alternatively, the order of the Forum may be modified to the extent that the account of the Petitioner may be overhauled subject to the maximum period of six months prior to 07.07.2017 in the interest of justice. Besides, appropriate action against the officers of the Respondent be taken as deemed fit by this Court.
14. **Submisisons of the Respondent:**

The Respondent in its defence, submitted the following for consideration of this Court:

1. The connection of the Petitioner was checked on 07.07.2017 by the Enforcement which noticed that the Energy Meter was running slow by 32.96% when checked with LT ERS Meter.
2. As per Checking Report of the Enforcement, there were wrong

connections at the Energy Meter Terminals and the consumer was charged upto15.04.2014 with slowness factor of 32.96% due to inaccurate connections and thereafter (from 15.04.2014), with the slowness of 62.40% due to carbonization of Blue Phase and due to inaccurate connection which was established from the DDL report.

**(iv)** The Forum rightly passed the order to overhaul the account of the Petitioner for the period from 15.04.2014 by considering the Energy Meter running slow by 62.40% as it was very well established from the DDL that the Energy Meter was running slow by 62.40% from 15.04.2014.

**(v)** The Petitioner incorrectly contended that its case was covered under Regulation 21.5.1 of Supply Code-2014. Actually, it was not the case of inaccurate Energy Meter, but it was a case of inaccurate connection of the Energy Meter and one Phase out of three Phases of the connections to the Energy Meter was carbonized. It was established from the DDL that ‘Blue’ Phase was not contributing since 15.04.2014 due to its carbonization and there were wrong connections also. Hence, the Energy Meter was slow by 62.40% from 15.04.2014. The Petitioner’s account was overhauled from 15.04.2014 after considering the reading of 155211kWh and not from Zero as it was very well established from the DDL that the reading on 15.04.2014 was 155211kWh. Moreover, no penalty was levied in this case. Rather, energy charges based on the energy actually consumed by the consumer were charged.

1. It was correct that according to Regulation 21.5.1 of Supply Code-2014, overhaualing the Petitoner’s account /inaccurate Energy Meter could not go beyond a period of six months, but this case was not a case of inaccurate Energy Meter but was actually a case of inaccurate connection and one Phase carbonized due to which, the Energy Meter recored 62.40% less consumption, which was very well established from the DDL Report. Every bill issued to the Petitioner was of “O” Code which meant that the status of the Energy Meter was OK.
2. It was correct that PSPCL was responsible for the safety of the Petitioner’s Energy Meter, located outside the premises of the Petitioner but this was not the case of seal breakage of the Energy Meter or Meter Box or Lock of Pillar Box. It was a case of slowness of Energy Meter due to wrong connections and Carbonization of Blue Phase.
3. It was not correct that the Petitoner’s Representaive at Bathinda namely Mr. Anil Garg was forced to sign the report without giving him an oportunity to read and understand the same. Besides, it was also not correct that the said Checking Report was not legible.
4. An amount of Rs. 8,38,922/- was charged to the Petitioner vide Memo. No. 2280 dated 29.11.2017 in compliance to the decision dated 26.10.2017 of the Forum, was correct and recoverable.

**5. Analysis:**

The issue requiring adjudicaiton is the legitimacy of the overhauling the account of the Petitioner from 15.04.2014 with slowness of 62.40%.

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

1. PC contended that the Energy Meter installed outside the premsies of the Petitioner’s Company office - Idea Cellular Limited, Bathinda was working satisfactorily since its installation and had never been replaced till date. PC added that the connection was checked on 07.07.2017 by the Enforcement Wing of the PSPCL and a copy of the Checking Report, which was not legible, was handed over to the Company’s Represenative at Bathinda, namely Shri Anil Garg whose signatures were obtained without giving him an opportunity to read and understand the Checking Report. Thereafter, a Memo bearing No. 1369 dated 11.07.2017, alongwith Calculation Sheet was issued by the AEE, Commercial, PSPCL, Bathinda to the Respondent asking it to deposit a sum of Rs. 17,30,834/- based on the said Checking Report. The Petitioner protested, vide representation dated 31.07.2017, to the Respondent who, instead of considering the representation, disconnected the electricity connection of the Petitioner. The Authorised Representative of Company’s office at Bathinda visited the ofice of the Respondent on 02.08.2017 and submitted a representation requesting for restoration of the conneciton, but in vain. Aggrieved, the Petitioner filed a Petition on 17.08.2017 in the Forum for setting aside the demand raised by the Respondent vide Memo dated 11.07.2017. But the Forum’s order dated 26.10.2017, directing to overhaul the account of the Petitioner from 15.04.2014 considering the slowness as 62.40%, was not based on the facts and also not supported by Regulations of Supply Code-2014.

 The Respoondnet, in its defence, contested the plea of the Petitioner that its case was not covered under Regulation 21.5.1 of Supply Code-2014 by stating that the Petitioner’s case was not of inaccurate Energy Meter but of inaccurate connection with Blue Phase found carbonized on the date of checking. The Respondent added that it was established from the DDL that the Blue Phase was not contributing since 15.04.2014 and there were wrong connections also. Thus, the account of the Petitioner was correctly overhauled from 15.04.2014 with slowness of 62.40% and no penalty was levied on the consumer who was charged for the actual energy consumed.

1. PC argued that the Distribution Licensee was responsible for not ensuring the periodical checking of the Energy Meter installed at the premises of the Petitioner. In the present case, the Respondent had admitted, during hearing in the Forum that no checking of the connection was done since 2011. PC added that the checking of the conenciton was not done even before 2011 and the connection was checked for the first time on 07.07.2017.

*I agree with the contention of the PC that the Distribution Licensee defaulted in ensuring compliance of its own instrcutions regarding periodical checking of this NRS Category conenciton. Even, the AAE, who took monthly readings, failed to see the noticeable fault in the Energy Mete, as in such cases, the “Star” comes on the display of the Energy Meter. Had the officers/officials of the PSPCL discharged their respective responsibility sincerely and efficiently, the inaccuracy of the Energy Meter could have been noticed earlier and the litigation could have been avoided.*

1. During the course of oral submissions, the isue of fall in consumpton during the disputed period also came up for discussion. In response to a querry as to why, the Petitioner did not take the cognizance of the fall in consumption for bringing the same to the notice of the Respondent, PC stated that the energy bills, as received, were paid in normal course irrespecitve of the amount of the bill or the consumption recorded for the billing period. The Respondent, on being asked, also did not offer any satisfactory reply about not noticing the declining trend of the consumption of the Petitioner during the disputed period.

*I observe that the Petitioner, being a MNC and a large size NRS Category consumer, defaulted in discharging its obligation as a good consumer by not pin-pointing the fall in consumption during the disputed period and bringing the same to the notice of the Distribution Licensee for taking corrective action. At the same time, the Respondent failed to keep a vigil on the variaiton in the consumption available in Energy Variation Register/SAP in respect of this connecion, analyse the reasons for considerable decrease in consumption of energy vis-a-vis previous months and thereafter, take corrective acion in time.*

From the above analysis it is concluded that the Energy Meter of the Petitioner was inaccurate as per DDL dated 07.07.2017 taken by the Addl. S.E/Enforcement, PSPCL, Sri Mukatsar Sahib. Accordingly, the account of the Petitioner is required to be overhauled for a period of six months prior to the correction of the connection on 07.07.2017 as per provisions contained in Regulation 21.5.1 of Supply Code-2014.

**6. Decision:**

 **As a sequel of the above discussion, the decision dated 26.10.2017 of CGRF in Case No. CG-202 of 2017 is set-aside. The Respondent is directed to overhaul the Acocunt of the Petitioner as per provisions contained in Regulation 21.5.1 of Supply Code-2014 for a period of six months prior to the date of correction of the connections (07.07.2017) with the slowness factor of 32.96% as determined by the Enforcement at site. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, after adjustment, if any, without interest/surcharge in view of the fact that the Respondent failed to discharge its responsibilty and made lapses as pointed out above.**

**7.** The Appeal is allowed.

8. Engineer-in-Chief, Commercial, PSPCL, Patiala shall issue instructions to all the Additional Superintending Engineer/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 falling 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 and avoid unnecessary litigation.

**9.** 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 installation of LT CT operated Energy Meters alongwith LT CT that the Potential Wires tapped from the main cable shall be of the same material as that of the main cable (directly or preferably through bi-metallic thimble) to avoid bi-metallic resistance due to which, the carbonization takes place and with the passage of time, the wires get disconnected contributing to less recording of consumption by the Energy Meter and leads of the CTs and PTs should be connected at Meter Terminal through Ferrules provided by the Manufacturer.

**10.** In case, the Petitioner or the Respondent (Licensee) is not satisfied with the above decision, it is 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)

June 20, 2018 LokPal (Ombudsman)

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