**COURT OF THE LOK PAL (OMBUDSMAN), ELECTRICITY, PUNJAB,**

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

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

 **APPEAL NO. 18/2018**

**Date of Registration : 22.02.2018**

**Date of Hearing : 16.08.2018**

**Date of Order : 27.08.2018**

**Before:**

 **Er. Virinder Singh, Lok Pal (Ombudsman) Electricity**

**In the Matter of :**

 Madan Lal S/o Chanan Ram,

 C/o Mahadev Rice Mills,

Gehle Road,Village Nangal Khurd,

 Mansa-151505.

 ...Petitioner

 Versus

Additional Superinteding Engineer,

DS Division,

PSPCL, Mansa.

 ...Respondent

**Present For:**

Petitioner : 1. Sh. Madan Lal,

 Petitioner.

 2. Sh. Mayank Malhotra, Advocate,

 Petitioner’s Counsel (PC).

Respondent : 1. Er. Parmpal Singh,

 Addl.Superintending Engineer.

 2. Sh.Raj Kumar,

 Revenue Accountant.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 20.12.2017 of the Consumer Grievances Redressal Forum (Forum) in Case No. CG-281 of 2017 deciding that:

“*The account of the Petitioner, overhauled by the Respondent from 23.12.2014 to 16.04.2015, is justified” .*

**2**. **Condonation of Delay** :

 At the outset, the issue for condonation of delay in filing the Appeal in this Court was taken up. The Petitioner’s Counsel stated that the Petitioner received the copy of order dated 20.12.2017, passed by the Forum on 25.12.2017, but from the order, it was not clear as to how much amount was required to be deposited. Petitioner’s Counsel added that the officials of the Respondent sent letter no.349 dated 08.02.2018 raising the demand based on the said decision of the Forum. The Petitioner intended to file an Appeal against the said order in this Court and for that, it had to deposit 40% of the disputed amount. Petitioner’s Counsel contended that the delay in filing of the Appeal by the Petitioner was not intentional but was due to the reasons mentioned above and prayed that the said delay be condoned in the interest of justice.

 The Respondent, in its reply to the Appeal, did not offer any comments on the request of the Petitioner for condonation of delay in filing the Appeal in this Court and also did not raise any objection to the prayer of the Petitioner’s Counsel during the course of hearing in the Court.

 I observe that the order dated 20.12.2017 of the Forum was sent, vide Regd. letter no.3920-21 dated 22.12.2017, to the Petitioner who received it on 25.12.2017. I also observe that Regulation 3.18(ii) of the PSERC (Forum and Ombudsman) Regulations-2016, provides as under:-

**“3.18** No representation to the Ombudsman shall lie unless:

 **(ii)** *The representation is made within one month from the date of receipt of the order of the Forum:*

*Provided that the Ombudsman may entertain a representation beyond one month on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of one month”.*

 I find that the Petitioner preferred the Appeal in this Court on 22.02.2018 i.e. 29 days after the expiry of stipulated period of one month. I also find that the Petitioner’s Counsel attributed the delay in filing the present Appeal to the delayed action on the part of the Respondent in raising the demand, based on the decision of the Forum, due to which, the Petitioner was not aware of the amount to be deposited (40%) for filing an Appeal in this Court.

 *I am of the view that though the Petitioner has given reason for not preferring the Appeal within stipulated period, it also ought to be vigilant and owed responsibility to pursue the matter with the Respondent for ascertaining the amount to be deposited (40%). However, non acceptance of the prayer of the Petitioner’s Counsel for condonation of delay would tantamount to denial of opportunity to the Petitioner wishing to seek remedy for the redressal of its grievance. Therefore, 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 afforded an opportunity to present its case.*

**3**. **Facts of the Case:**

 The relevant facts of the case are that:

1. The Petitioner was having a Medium Supply (MS) Category connection with sanctioned load of 88.640 kW and contract demand (CD) of 98.490 kVA, in the name of Madan Lal son of Chanan Ram for Rice Sheller purpose. Previously, this connection, bearing Account No. MS 43/124, was running in the name of Sarup Chander. On 23.12.2014, the change in the name of the holder of the connection in favour of Madan Lal son of Chanan Ram was effected and new Account No. was allotted as MS 43/231 (SAP Account No. 3002963432). However, the 11KV / 110 V, CT/PT unit and the Energy `Meter remained the same.
2. The Multiplication Factor (MF) 1was applied in the billing till 08.01.2015, as capacity of CT of the CT/PT unit was of 5/5A and that of the Energy Meter was also 5/5A.
3. Subsequently, CT/PT unit was replaced on 09.01.2015 and new CT

with capacity of 10/5A with same Energy Meter was installed, due to which, Multiplication Factor (MF) got changed to 2.

1. The Petitioner challenged the Energy Meter on 18.05.2015 whereafter,

it was got checked from ME laboratory on 03.07.2015, when the accuracy of the Energy Meter was found OK. However, the Energy Meter was not checked by the Respondent in the presence of the Petitioner.

1. The Meter Change Order (MCO) was not available in the record of the

Respondent who informed that its office record was destroyed in the floods on 30.06.2017.

1. The bill from the date of change of name i.e. 23.12.2014 to the date of

change of CT/PT unit i.e. 09.01.2015 was generated on ‘N’ Code instead of actual reading. At the time of change of CT/PT unit, reading of kWh and kVAh had been recorded.

1. Initially, the Respondent- Punjab State Power Corporation Limited

(PSPCL) issued the bills from 23.12.2014 to 16.04.2015 on Average basis, despite the fact that actual readings were available. Later, the bills for the period from 23.12.2014 to 16.04.2015 were overhauled on the basis of actual readings recorded by the Energy Meter. The Multiplication Factor (MF) was not a matter of dispute.

1. The Petitioner was served a notice, vide letter no.598 dated

18.05.2015, to deposit a sum of Rs.5,78,430/- on account of overhauling of its account for the period from 23.12.2014 to 16.04.2015.

**(ix)** Aggrieved, the Petitioner approached the Chief Engineer/DS, West Zone, PSPCL, Bathinda for redressal of its grievance, but, due to change of competency to hear the matter, the case was transferred to the CGRF without giving any information to the Petitioner in this regard.

1. When the Petitioner came to know about the said transfer of the case, it

approached the Forum on 23.10.2017. The Forum, after hearing, passed the order dated 20.12.2017 (Reference: Page-2, Para 1) upholding the amount charged by the Respondent vide notice/letter No.598 dated 18.05.2015

 **(xi)** Not satisfied with the decision of the Forum, the Petitioner preferred

an Appeal in this Court and requested that the illegal demand of Rs.5,78,430/- may be quashed in the interest of justice and the Respondent-PSPCL be directed to refund the amount deposited by the Petitioner alongwith interest.

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

 Before undertaking analysis of the case, it is necessary to go through written submissions made by the Petitioner 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**:

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

1. The Petitioner was having a Medium Supply (MS) Category

connection with sanctioned load of 88.640 kW and contract demand (CD) of 98.490 kVA, within the jurisdiction of DS, City Sub Division, Mansa , bearing Account No.3002963432.

1. The Petitioner was served a notice by the Respondent-PSPCL, vide

letter no.598 dated 18.05.2015, to deposit a sum of Rs.5,78,430/- on account of overhauling of its account for the period from 23.12.2014 to 16.04.2015.

1. The Respondent did not supply the detailed calculations and copies

of rules and regulations under which the account had been overhauled, as required in terms of Commercial Circular (CC) No.04/2008.

1. The notice issued to the Petitioner was in violation of Instruction No.

57.5 of the ESIM which provided that recovery of charges could be done only after serving show cause notice to the consumer. The calculations also did not seem to be correct.

1. The Petitioner challenged the Energy Meter (Sr.No.12466061, L&T)

by depositing necessary fee on 18.05.2015. The Energy Meter was sent for checking to the ME Laboratory which did not give any report on the checking of the same carried out therein.

1. The Respondent failed to place on record the complete DDL of the

Energy Meter challenged by the Petitioner, got checked from the ME Laboratory, including Tamper Data, Load Survey Data, Billing Data, Cumulative Readings and Analysis Report.

1. The capacity of the Rice Sheller of the Petitioner was only 1 ton. The

billing was done on the basis of the recorded consumption of the Energy Meter. The consumption depended on the shelling of Rice done by the Sheller. The total consumption for the period from December 2015 to April 2016 was comparable with the recorded consumption for the corresponding period in next year i.e. December 2016 to April 2017. From the data supplied, it appeared that consumption had been recorded by applying MF 2 even for the period for which, the account was overhauled by the Respondent-PSPCL

1. As per Regulation 21.3(d) of the Supply Code 2014, the licensee

had to conduct periodical inspection/testing of the Energy Meters installed at the consumer’s premises. There was nothing adverse on record against the Petitioner in this regard.

1. There was no allegation of any type of slowness etc. with regard to

working of the metering equipment. The bill issued to the Petitioner was under ‘O’ code and thus, the Energy Meter was OK upto that period and account could not be overhauled for the period, the status of the Energy Meter was shown as ‘O’.

1. As per Instruction No.102.2 and 102.7 of the ESIM, it was the

responsibility of the officers of the PSPCL to ensure correctness of the connections and correct working of the Energy Meter and also that Energy Variation Register was maintained in the office to watch variation in the monthly consumption of the consumers.

1. The Petitioner approached the Chief Engineer/DS, West Zone, PSPCL,

Bathinda for redressal of its grievance, but, due to change of competency to hear the matter, the case was transferred to the CGRF without giving any information to the Petitioner in this regard.

1. When the Petitioner came to know about the said transfer of the case, it

approached the Forum on 23.10.2017. The Forum, after hearing, passed the order dated 20.12.2017 and upheld the amount charged by the Respondent vide notice/letter No.598 dated 18.05.2015.

1. Aggrieved with the decision of the Forum, an Appeal was preferred

in this Court with the request that the illegal demand of Rs.5,78,430/- be quashed in the interest of justice and the Respondent-Corporation be directed to refund the amounts deposited by the Petitioner alongwith interest.

1. **Submissions of the Respondent**:

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

1. The Petitioner was having a Medium Supply Category (Seasonal) connection, bearing Account No. MS43/231, in the name of Madan Lal S/o Chanan Ram for Rice Sheller purpose. Earlier, it was in the name of Sarup Chand S/o Girdhari Lal and was running with Account No. MS 43/124. The change of name in record was effected on 23.12.2014.
2. A bill for the period from 23.12.2014 to 16.04.2015 was issued to the

Petitioner on Average basis. Thereafter, the Petitioner account was overhauled on the basis of actual consumption as per actual Meter readings. Thus, a demand of Rs. 5,78, 430/- was raised for the said period by serving a notice bearing no.598 dated 18.05.2015 and subsequently issuing notice bearing no.1514 dated 08.12.2015.

1. The Petitioner did not comply with the notice served upon it, but

challenged the accuracy of the Meter by depositing the prescribed Meter Challenge Fee.

1. The Energy Meter was checked in the ME Laboratory, Bathinda,

which reported that accuracy of the Energy Meter was within the limits.

1. The overhauling of the account was done as per provisions

contained in Supply Code-2014 and required notice was served on the Petitioner.

1. In 2015, DDL facility was not available with the ME Laboratory, thus

DDL could not be taken. MCO for replacement of the challenged Energy Meter could not be made available due to destruction of office record in the floods on 30.06.2017.

1. The demand raised for a sum of Rs.5,78,430/- was not on account of

difference of Multiplication Factor, but due to overhauling of account for the period from 23.12.2014 to 16.04.2015 on actual consumption basis. Thus, the amount, charged with interest, worked out to Rs. 6,21,625/- and was recoverable from the Petitioner.

1. Aggrieved with the demand raised, the Petitioner filed a Petition in the

Forum which, after hearing, decided that the amount raised by the Respondent-PSPCL was justified

1. In view of the above submissions, the Appeal may be dismissed.

**4. Analysis:**

 The issue requiring adjudication is the legitimacy of overhauling the account of the Petitioner for the period from 23.12.2014 to 16.04.2015 on the basis of actual consumption recorded by the Energy Meter.

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

1. Petitioner’s Counselstated that the dispute arose after thePetitioner was served a notice, vide letter no.598 dated 18.05.2015, to deposit a sum of Rs. 5,78,430/- on account of overhauling of its account for the period from 23.12.2014 to 16.04.2015.The Respondent did not supply the detailed calculations and copies of rules and regulations under which, the account had been overhauled, as required in terms of Commercial Circular (CC) No.04/2008. The Petitioner challenged the Energy Meter (Sr. No. 1246606, L&T) by depositing the requisite fee on 18.05.2015. The Energy Meter was sent for checking to the ME Laboratory which did not give any report on checking of the same carried out therein. Besides, the Respondent failed to place on record the complete DDL of the Energy Meter challenged by the Petitioner and got checked from ME Laboratory, including Tamper Data, Load Survey Data, Billing Data, Cumulative Readings. Petitioner’s Counsel also strongly objected to the consumption of 1,11,586 units as per reading recorded on 09.02.2015 and termed it as abnormal/unrealistic.

 The Respondent, in its defence, stated that the Petitioner was having a Medium Supply (MS) Category connection with sanctioned load of 88.640 kW and contract demand (CD) of 98.490 kVA, in the name of Madan Lal S/o Chanan Ram for Rice Sheller purpose. Previously, this connection, bearing Account No. MS 43/124, was running in the name of Sarup Chander. On 23.12.2014, the change in the name of the holder of the connection in favour of Madan Lal S/o Chanan Ram was effected and new Account No. was allotted as MS 43/231 (SAP Account No.3002963432). However, the CT/PT unit and the Energy Meter were not replaced. The Respondent added that the Multiplication Factor (MF) 1was applied in the billing till 08.01.2015, as capacity of CT of the 11KV /110 V, CT/PT unit was of 5/5A and that of the Energy Meter was also 5/5A. Subsequently, CT/PT unit was replaced on 09.01.2015 and new CT/PT unit of capacity 10/5A with the same Energy Meter was installed, due to which, Multiplication Factor (MF) was changed to 2. The Petitioner challenged the Energy Meter on 18.05.2015 whereafter, it was got checked from ME laboratory on 03.07.2015, when the accuracy of the Energy Meter was found within limits. The Meter Change Order (MCO) was not available in the record of the Respondent as its office record was destroyed in the floods on 30.06.2017. The bill from the date of change of name i.e. 23.12.2014 to the date of change of CT/PT unit i.e. 09.01.2015 was generated on ‘N’ Code instead of actual reading i.e. on Average basis. At the time of change of CT/PT unit, reading of kWh and kVAh had been recorded. Hence, the account of the Petitioner was required to be overhauled for consumption recorded on actual basis.

1. Petitioner’s Counsel (PC) next contended that the capacity of Rice Sheller of the Petitioner was only 1 ton. The billing was done on the basis of the recorded consumption of the Energy Meter. The consumption depended on the shelling of Rice done by the Sheller. The total consumption for the period from December 2015 to April 2016 was comparable with the recorded consumption for the corresponding period in next year i.e. December 2016 to April 2017. From the data supplied, it appeared that consumption had been recorded by applying MF 2 even for the period, for which the account was overhauled by the Respondent-PSPCL. Petitioner’s Counsel (PC) added that as per Instruction No.102.2 and 102.7 of ESIM, it was the responsibility of the officers of the PSPCL to ensure correctness of connections and correct working of the Energy Meter and also that Energy Variation Register was maintained in the office to watch variations in monthly consumption of the consumers.

 During the course of oral submissions, Petitioner’s Counsel (PC) also submitted that there was no significant variation in quantum of shelling/production of rice during the years 2013-14, 2014-15 and 2015-16, as such, overhauling the account of the Petitioner for the disputed period particularly the consumption of 1,11,586 units recorded on 09.02.2015 (for the period 09.01.2015 to 09.02.2015) was not genuine. The Petitioner, on being directed to submit documentary evidence in support of paddy **supplied and milled** from the Department(s) concerned, sent, vide email dated 23.08.2018, certificates only for the quantum of paddy stored/consigned from the sole supplier of paddy District Manager, PUNSUP, Mansa, stating as under:

***(T)*** *s;dhe ehsk iKdk j? fe w?;L wjKd/t okJh; fwZbi, ( wkbe okJh; fwZb), wkB;k, ;kb 2013 - 2014 d"okB w?;L i? Gkos okJh; fwZbi, (bhih gkoNh), wkB;k d/ Bkw s/ ubkfJnk frnk ;h i' fe gB;g B{z nbkN ;h . fi; ftZu 66885 eZN/ tIB 23409H75 e[fJzNb g?vh Gzvko ehsh rJh ;h . ;kb 2014 - 15 d"okB fJj P?bo w?;L NhHnkoH okJh; fwZbi ( bhih gkoNh), wkB;k d/ Bkw T[go ubkfJnk frnk ;h fi; ftZu gB;g tZb'A 69434 eZN/ tiB 26037H75 e[fJzNb g?vh Gzvko ehsh rJh .*

1. *s;dhe ehsk iKdk j? fe w?;L wjKd/t okJh; fwZbi, (wkbe okJh; fwZb), wkB;k, ;kb 2015 - 16 d"okB w?;L ;[Gw fJzv;NohI (bhih) gkoNh wkB;k d/ Bkw s/ ubkfJnk frnk ;h i' fe t/no jkT{; Bz{ nbkN ;h, fi; ftu 69276 eZN/ tiB 25978H50 e[fJzNb g?vh Gzvko ehsh rJh ;h . fwZbo tZb'A pDdk uktb n?c ;h nkJh B{z G[rsk eo fdZsk frnk ;h . fi; dh fvN/b Bkb BZEh gZso nB{;ko j? .*

 The Respondent stated that the demand raised for a sum of Rs.5,78,430/- was not on account of difference of Multiplication Factor, but due to overhauling of account for the period from 23.12.2014 to 16.04.2015 on actual consumption basis. Thus, the amount, charged with interest, worked out to Rs.6,21,625/- was justified and recoverable from the Petitioner.

 From the above analysis, it is concluded that:

1. *The overhauling of the account for the period from 23.12.2014 to*

*09.01.2015 on actual basis is just and fair.*

1. *In so far as overhauling of the account for the period from*

*09.01.2015 to 09.02.2015 is concerned, the energy consumption of 1,11,586 kVAh units recorded by the Energy Meter can not be treated as genuine in view of facts noted below:*

1. *Weight of paddy consigned to and certified by the PUNSUP is*

*23409.75, 26035.75 and 25978.500 quintals during 2013-14, 2014-15 and 2015-16 respectively and is quite comparable.*

1. *The Energy Meter has been tested in the ME Laboratory without taking the consent of the Petitioner who was also not present during testing.*
2. *The periodical checking of the Energy Meter has not been done*

*as per rules/regulations.*

1. *The consumption data supplied by the Respondent shows that*

***maximum consumption of 37402 kVAh units has been***

***recorded during the period from 14.12.2015 to 18.01.2016****. Besides, even if full load (88.640 kW) had been run for 24 hours, the maximum units consumed could be 38,292 with LDHF formula when expanded to 24 hours (Annexure-8 of the Supply Code-2014 refers to units consumed with LDHF formula assuming a 12 hours load cycle per day). It is, thus, not possible that the consumption during this period could be 1,11,586 kVAh units. At the same time, the Petitioner has not been able to establish as to how much paddy has been milled by it during this period (09.01.2015 to 09.02.2015). It would thus be justified to charge the Petitioner for consuming 38,292 units during the period 09.01.2015 to 09.02.2015.*

***(C)*** *Besides, the account of the Petitioner for the period*

*09.02.2015 to 16.04.2015 is required to be overhauled as per actual energy consumption recorded by the Energy Meter.*

 **5. Decision:**

 **As a sequel of above discussions, the order dated 20.12.2017 of the Forum in Case No.CG-281 of 2017 is set aside. It is held that the account of the Petitioner for the period from 23.12.2014 to 16.04.2015 shall be overhauled as per consumption tabulated below:-**

 **Period Consumption in kVAh Units**

 **23.12.2014 to 09.01.2015 16,246**

 **09.01. 2015 to 09.02.2015 38,292**

 **09.02.2015 to 09.03.2015 29150**

 **09.03.2015 to 16.04.2015 9796**

 **Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment. It is also held that no interest/surcharge shall be levied on the balance amount worked out as above since the Distribution Licensee failed to comply with its own instructions regarding periodical checking and getting tested the Energy Meter in the presence of or with the consent of the Petitioner.**

**6**. The Appeal is disposed off accordingly.

**7**. In case, the Petitioner or the Respondent 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 the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016.

 (VIRINDER SINGH)

August 27, 2018 LokPal (Ombudsman)

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