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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 22/2018**

**Date of Registration : 20.03 .2018**

**Date of Hearing : 30.08.2018**

**Date of Order : 04.09.2018**

**Before:**

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

**In the Matter of:**

 Gian Rice Mills,

 Narwana Road,

 Patran.

 ...Petitioner

 Versus

 Additional Superintending Engineer,

DS Division ,

PSPCL,

Patran.

. ...Respondent

**Present For:**

Petitioner : Sh. R.S. Dhiman,

 Petitioner’s Representative (PR).

Respondent : Er. Sukhminder Singh Bhattal,

 Addl. Superintending Engineer.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 28.02.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No. CG-327 of 2017 deciding that:

*“Overhauling of the Petitioner’s account from the period April 2016 to August 2017 due to wrong application of multiplying factor one instead of two as per Note to Clause 21.5.1 of Supply Code-2014 effective from dated 01.01.2015 determined by Audit party through Half Margin No. 41 dated 17.10.2017 is justified and recoverable from the petitioner. Since charges pertain to seventeen (17) months period and were claimed in one go. Therefore, Forum directs the Respondent to accept recoverable amount in ten (10) equal monthly installments without charging any interest.”*

2. **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 94.120kW and contract demand (CD) of 100kVA. The Metering was done by providing HT Energy Meter and 11KV/110V CT/PT unit.
2. The connection was checked, vide ECR No. 29/222 dated 11.03.2016, by the Addl. S.E/Enforcement, PSPCL, Patiala, who reported as under:

*“ygseko dh HT ;gbkJh d/ izgo T[sko/ j'J/ ;B . CT/PT :{fBN u?e ehsk sK gkfJnk frnk fe Red PT v?w/i j? pdb fdZsk ikt/ . ;gbkJh Bk j'D ekoB whNo fv;gb/ Bjh ;h . whNo Seal Pack eoe/ nzdo{Bh iKu bJh ns/ DDL bJh ME Lab G/fink ikt/. whNo pdb fdZsk ikt/ .”*

1. In compliance to directions given in the said report, the Energy Meter and CT/PT units were replaced vide MCO No. 90/100009 dated 14.03.2016 and SJO No. 94/89806 dated 18.03.2016, effected on 23.03.2016. The capacity of the Energy Meter was 5/5A and that of CT/PT unit was 10/5A.
2. Subsequently, the connection was checked by the SDO (AE), DS Sub Division on dated 20.09.2017 vide Checking Register No. 1632/153. As per the said checking, the capacity of HT Meter was 5/5A and that of 11kV/110V, CT/PT unit was 10/5A. Hence, while the actual overall Multiplication Factor (MF) was 10/5 = 2, the billing was being done with MF as 1.
3. The Respondent sent necessary advice to the Computer Cell for application of correct MF of 2 with immediate effect in the bill and also issued notice to the Petitioner bearing no. 4068 dated 13.10.2017 with the direction to deposit a sum of Rs. 3,38,122/- on account of short assessment.
4. At the time of Audit, the Revenue Audit Party (RAP) issued Half Margin No. 41 dated 17.10.2017 raising observation to charge a sum of Rs. 3,38,122/- to the Petitioner for the period from 04/2016 to 08/2017 due to application of wrong Multiplication Factor.
5. Based on the Audit observation, the Respondent again issued notice to the Petitioner, vide Memo No. 4413 dated 27.11.2017, to deposit the amount of Rs. 3,38,122/- .
6. The Petitioner did not comply with the said notice and filed a Petition on 22.12.2017 in the Forum, who, after hearing, passed the order dated 28.02.2018 upholding the demand raised by the Respondent ( Reference Page 2, Para 1).
7. Aggrieved with the decision of the Forum, the Petitioner preferred an Appeal, in this Court praying for setting aside the undue charges raised against the Petitioner in the interest of justice.

**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 94.120kW and contract demand (CD) of 100kVA. The Metering was done by providing HT Energy Meter and CT/PT unit.

**(ii)** The connection was checked vide ECR No. 29/222 dated 11.03.2016 by the Addl. S.E/Enforcement, PSPCL, Patiala, who directed that the Energy Meter and CT/PT unit be replaced as the Red PT was damaged.

In compliance to the directions given in the said Checking Report by the Addl. S.E, Enforcement, the Energy Meter and CT/PT units were replaced vide MCO No. 90/100009 dated 14.03.2016 and SJO No. 94/89806 dated 18.03.2016, effected on 23.03.2016. The capacity of Energy Meter was 5/5A and that of CT/PT unit was 10/5A.

**(iii)** Subsequently, the connection was checked by the SDO (AE) of the DS Division, Patran on dated 20.09.2017 vide Checking Register No. 1632/153. As per the said checking, the capacity of HT Meter was 5/5A and that of 11kV/110V, CT/PT unit was 10/5A. Hence, while the actual overall Multiplication Factor (MF) was 10/5 = 2, the billing was found being done with MF as 1.

1. The Revenue Audit Party, vide Half Margin No. 41 dated 17.10.2017, overhauled the Account of the Petitioner for the period 04/2016 to 08/2017 due to application of wrong Multiplication Factor and charged a sum of Rs. 3,38,122/-, on account of short assessment.
2. The Respondent issued notice to the Petitioner, vide Memo No. 4413 dated 27.11.2017, to deposit the said amount of Rs. 3,38,122/-.
3. The Petitioner did not agree for depositing the above amount and filed a Petition on 22.12.2017 in the Forum who, after hearing, passed order dated 28.02.2018 that overhauling of the Petitioner’s account for the period from April 2016 to August 2017 due to application of incorrect Multiplication Factor one instead of two, vide RAP’s Half Margin No. 41 dated 17.10.2017, as per Note given under Regulation 21.5.1 of Supply Code-2014 (effective from 01.01.2015), was justified and recoverable from the Petitioner. The Forum also decided that since the charges pertained to seventeen (17) months period and were claimed in one go, the same should be recovered in 10 equal monthly installments without interest.
4. The Multiplication Factor came into the picture due to mismatch of capacity of CT/PT unit and Energy Meter. Since all the metering equipment, including the Energy Meter and CT belonged to the PSPCL and had been installed by its own employees, the Petitioner had no role in the matter except safe custody of equipment. The Petitioner was never found defaulted in any manner so far as safe custody of the equipment was concerned. Instruction No. 102.10 and 102.11 of ESIM were clear, specifically in the matter of installation of the Energy Meters and CTs of matching ratio. The Distribution Licensee itself failed to complying with its own instructions. Therefore, the Petitioner could not be made to pay for the lapses on the part of the Distribution Licensee.
5. As per Instruction No. 104.1 (i) of ESIM, the Petitioner’s connection was required to be checked by Junior Engineer Incharge of the area at least once every six months. The Petitioner could not be held responsible in case, the officials of the PSPCL failed to perform their duty in this regard according to these schedules. Had these instructions been complied with, the discrepancy of mismatch of the capacity of Energy Meter and CT/PT unit would have come to the notice within six months of installation, and the Petitioner would have been saved from accumulation of arrears for more than 18 months.
6. Raising arrears of more than 18 months was no less than a harsh punishment for the Petitioner who had been selling its products at rates based on cost of raw material, electricity and labour etc. Now, after 18 months, it was not possible for the Petitioner to recover this loss from its customers. It was a rude shock to the Petitioner.
7. Taking cognizance of the blatant non-compliance of the Instruction No. 104.1 (i) of ESIM, Hon’ble Punjab and Haryana High Court decided in an identical case of *Tagore Public School, Ludhiana V/s PSEB in CWP No. 14559 of 2007* that the Petitioner could not be charged for more than 6 months. This decision of the Hon’ble High Court had been upheld by the Hon’ble Supreme Court of India. A similar order had been passed by the same High Court in CWP No. 17699 of 2014 titled  *Park Hyundai, Sangrur Vs PSPCL*. These two judgments were squarely applicable in the present case and hence, the Petitioner was entitled to the same relief.
8. Keeping in view the submissions made, the undue charges raised against the Petitioner may be set-aside in the interest of justice.
9. **Submissions of the Respondent:**

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

1. The connection of the Petitioner, bearing Account No. MS15/0049 was running in the name of Gian Rice Mills.
2. The connection was checked by the Enforcement on 11.03.2016 vide ECR No. 29/222 whereafter, the Energy Meter was replaced vide MCO No. 90/100009 dated 14.03.2016 and the CT/PT unit was also replaced vide SJO No. 94/89806 dated 18.03.2016 effected on 23.03.2016. The capacity of new Energy Meter was 5/5A and that of new CT/PT unit was 10/5A.
3. Subsequently, the connection of the Petitioner was checked by the SDO (AE) in the month of 09/2017 vide LCR No. 16332/153 dated 20.09.2017 and it was noticed that Multiplication Factor was being applied incorrectly as 1 instead of 2. Therefore, necessary advice for application of correct Multiplication Factor as 2 with immediate effect in the bill was sent to the Computer Cell and Notice, bearing No. 4068 dated 13.10.2017, was issued to the Petitioner after overhauling its account with the directions to deposit the amount of Rs. 3,38,122/-, but the Petitioner refused to accept the notice.
4. At the time of audit, the Revenue Audit Party prepared and issued the Half Margin No. 41 charging Rs. 3,38,122/- and a Notice No. 4413 dated 27.11.2017 was sent through Registered Post to the Petitioner, but the Petitioner refused to accept this notice also. Instead of depositing the amount, the Petitioner challenged the notice and preferred to file a Petition in the Forum.
5. The Forum decided the case on 28.02.2018 in favour of the Respondent – PSPCL with the direction to recover the charged amount in 10 (ten) equal monthly installments without interest. The Petitioner was informed accordingly, vide letter No. 583 dated 13.04.2018, but the Petitioner deposited the 20% of the charged amount i.e. 67,625/- vide B.A.-16 No. 221/91084 dated 16.04.2018 and filed the Appeal in this Court.
6. As per note given under Regulation 21.5.1 of the Supply Code-2014, the amount charged was recoverable from the Petitioner. So, the Appeal deserved to be dismissed.

**5. Analysis:**

 The issue requiring adjudication is the legitimacy of the amount of Rs. 3,38,122/- charged to the Petitioner after overhauling of the account of the Petitioner for the period from 04/2016 to 08/2017, on account of application of incorrect Multiplication Factor 1 instead of 2 as per applicable regulations.

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

1. PR submitted that the Energy Meter installed at the premises of the Petitioner was checked on 11.03.2016 by the Enforcement which observed that Red Phase PT was damaged, as such, the Energy Meter was replaced vide MCO dated 14.03.2016 of capacity 5/5A and CT/PT of ratio 10/5A was installed vide SJO dated 18.03.2016. Subsequently, the connection of the Petitioner was checked during 09/2017 (after about 1½ year) by the SDO (AE) who observed that the capacity of the Energy Meter was 5/5A and that of CT/PT was 10/5A but the MF was being incorrectly applied as 1 instead of 2 (10/5) in the bills issued to the Petitioner.As a result, the Respondent charged a sum of Rs. 3,38,122/- to the Petitioner for the period April 2016 to August 2017 due to short assessment. PR added that the MF came into the picture due to mismatch of capacity of CT/PT unit and Energy Meter. Since all the metering equipment, including the Energy Meter and CT/PT belonged to the PSPCL and had been installed by its own employees, the Petitioner had no role in the matter except safe custody of equipment. The Petitioner was never found defaulted in any manner so far as safe custody of the equipment was concerned. Instruction No. 102.10 and 102.11 of ESIM were clear, specifically in the matter of installation of the Energy Meters and CTs of matching ratio. The Distribution Licensee itself failed to comply with its own instructions. Therefore, the Petitioner could not be made to pay for the lapses on the part of the Distribution Licensee.

The Respondent, in its defence, stated that after the replacement of the Energy Meter and CT/PT unit in 03/2016, MF inadvertently continued to be taken as 1 instead of 2 for billing and this mistake in billing was rectified immediately by sending necessary advice, on being noticed by the SDO (AE) after checking the connection on 20.09.2017. A notice, bearing no. 4068 dated 13.10.2017, was accordingly issued to the Petitioner asking it to deposit a sum of Rs. 3,38,122/- on account of short assessment for the period from April 2016 to August 2017. The Respondent added that the said amount charged to the Petitioner was justified and recoverable from the Petitioner and was also upheld by the Forum vide its order dated 28.02.2018.

1. PR next contended that as per Instruction No. 104.1 (i) of ESIM, the Petitioner’s connection was required to be checked by the Junior Engineer Incharge of the area at least once every six months. The Petitioner could not be held responsible in case, the officials of the PSPCL failed to perform their duty in this regard according to the prescribed schedule. Had these instructions been complied with, the discrepancy of mismatch of the capacity of the Energy Meter and CT/PT unit, would have come to the notice within six months of the installation, and the Petitioner would have been saved from accumulation of arrears for more than 18 months.

 *While agreeing with the above contention of the PR, I am also of the view that the Petitioner, being a Medium Supply Category consumer, ought to be responsible, prudent and vigilant in keeping a watch over its billing and the consumption mentioned therein particularly after its Energy Meter and CT/PT unit was replaced in March 2016. Besides, a consumer can also bring to the notice of*

 *the Divisional/Sub Divisional Officer concerned, the fact of non-conduct of periodical checking of the connection at the relevant point of time.*

*I have studied the consumption pattern prior to and after replacement of the Energy Meter and CT/PT unit on 18.03.2016 (date from which MF 2 was to be applied) and found that neither the Petitioner nor the Respondent took cognizance of the fact that energy consumption was recorded on a lower side after the installation of CT/PT unit of capacity 10/5A with MF2 becoming applicable.*

1. PR also contended that **t**aking cognizance of the blatant non-compliance of the Instruction No. 104.1 (i) of ESIM, Hon’ble Punjab and Haryana High Court decided in an identical case in CWP No. 14559 of 2007 titled *Tagore Public School, Ludhiana V/s PSEB* that the Petitioner could not be charged for more than 6 months. This decision of the Hon’ble High Court was upheld by the Hon’ble Supreme Court of India. A similar order was passed by the said High Court in CWP No. 17699 of 2014 of *Park Hyundai, Sangrur Versus PSPCL*. These two judgments were squarely applicable in the present case, hence, the Petitioner was entitled to the same relief.

 *I find that the Forum rightly observed, in its order dated 28.02.2018, that both the cases referred to above by the PR were decided by the Hon’ble High Court when the Supply Code-2007 was in vogue and that Clause 21.4 (g) (i) of Supply Code-2007 had been amended, with the coming into effect of the Supply Code-2014 effective from 01.01.2015, by inserting Note below Clause 21.5.1 of Supply Code-2014 , which reads as under:*

*“Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued.”*

*I also find merit in the justification given by the Forum, in its order dated 28.02.2018, that since checking of the connection of the Petitioner was done on 11.03.2016 and 20.09.2017 and the period of overhauling of the account of the Petitioner was from April 2016 to August 2017, the provisions of the Supply Code-2014 (effective from 01.01.2015) only were applicable in the instant case.*

 From the above analysis, the legitimacy of overhauling the account of the Petitioner for the period from April 2016 to August 2017 and charging it with a sum of Rs. 3,38,122/-, on account of application of wrong Multiplication Factor 1 instead of 2, proves beyond doubt. The relief given by the Forum, in its order dated 28.02.2018, to the Petitioner to deposit the recoverable amount in 10 equal monthly installment without any interest is also fair and reasonable.

**5. Decision:**

 **As a sequel of above discussions, the order dated 28.02.2018 of the Forum in Case No. CG-327 of 2017 is upheld.**

**6.** The Appeal is dismissed.

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

 (VIRINDER SINGH)

 September 04, 2018 LokPal (Ombudsman)

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