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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 25/2018**

**Date of Registration : 07.05. .2018**

**Date of Hearing : 06.09.2018**

**Date of Order : 13. 09.2018**

**Before:**

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

**In the Matter of:**

 Sadhu Singh,

C/o Sant Ishar Singh Public School,

Tehsil Sunam, Distt. Sangrur.

 ...Petitioner

 Versus

 Additional Superintending Engineer,

DS Division ,

PSPCL,

Dirba , Distt. Sangrur.

. ...Respondent

**Present For:**

Petitioner : 1. Sh. Manjit Pal Singh,

 Petitioner’s Representative (PR)

2. Sh. Amarjit Sharma,

 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 28.03.2018 in Case No. CG-40 of 2018 of the Consumers Grievances Redressal Forum (Forum) deciding as under:

 “O*verhauling account of the Petitioner by Respondent from 09.05.2014 to November, 2017 amounting to Rs.9,29,558/- vide its letter no. 10 dated 03.01.2018 by applying correct Multiplying Factor 2.00 instead of 1.00 is justified and recoverable as per Note to Clause 21.5.1 of the Supply Code-2014.”*

**2. Facts of the Case:**

 The relevant facts of the case are that:

1. The Petitioner was having a Non Residential Supply (NRS) Category connection with sanctioned load of 35 kW.
2. Earlier, The sanctioned load was 12 kW which was got extended to 35 kW on 27.08.2012, vide Sundry Job Order (SJO) dated 04.01.2012, vide which the Three Phase Four Wire, Whole Current Energy Meter of 10-60A was replaced with LT-CT operated Static Energy Meter wherein the capacity of the Energy Meter was 100/5A and that of LT-CT was 200/5A. Thus, the correct Multiplication Factor (MF) was 2.
3. The connection was checked by Addl. S.E/Enforcement-II, PSPCL, Patiala, vide ECR No.03/243 dated 04.12.2017 on a reference made by the AEE, Suburban Sub Division, Dirba, vide letter No.1449 dated 17.11.2017.
4. As per the said Checking Report, the display of the Energy Meter and Meter Scroll Button were defective and therefore, the said Addl. S.E/Enforcement directed to replace this Energy Meter immediately. A Note was also given that in the bill, MF 1 was being applied whereas the billing should have been done with MF as 2.
5. Based on the Checking Report of the Enforcement, the Energy Meter was replaced, vide Meter Change Order (MCO) No. 064/100208 dated 05.12.2017, effected on 08.12.2017.
6. The Petitioner was served a notice vide letter No.1485 dated 08.12.2017 by the Respondent to deposit Rs.14,01,148/- due to overhauling of account for the period from 27.08.2012 (Date of extension of load) to 11/2017 by applying correct Multiplication Factor (MF) as 2 instead of 1. Subsequently, a revised notice was issued by the Respondent, vide letter No.10 dated 03.01.2018, revising a demand of Rs. 9,29,558/- specifying correct Multiplication Factor (MF) already applied upto 09.05.2014. The revised amount had been calculated for the period from 09.05.2014 to 11/2017.
7. The Petitioner did not agree with the said notice and filed a Petition with the Forum, who, after hearing, passed the order dated 28.03.2018 (Reference: Page-2 Para 1).
8. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court and requested that the Respondent be restrained from the recovery of charges of Multiplication Factor for a period of more than six months as had been held in the case of Park Hyundai and as per stay orders in the case of Geeta Oil Mills by the Hon’ble Punjab & Haryana High Court, Chandigarh.
9. **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 along with material brought on record by both the sides.

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

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

1. The Petitioner was running a school in the name and title as Sant Isher Singh Public School at Village Chhahar, Tehsil Sunam and having a NRS connection for 12kW load which was got extended to 35kW on 27.08.2012.
2. At the time of extension of load, a new Energy Meter alongwith CTs was installed by the Respondent.
3. The connection was checked by the Addl. S.E/Enforcement-II, PSPCL, Patiala on 04.12.2017 vide ECR No. 03/243 and it was reported that the capacity of the Energy Meter was 100/5Amp and of CT as 200/5 Amp and Multiplication Factor (MF) 1 instead of Multiplication Factor (MF) 2 was being applied for billing purpose.
4. On the basis of the Checking Report, the Respondent, vide Notice bearing No. 1485 dated 08.12.2017 revised the bills from 27.08.2012 to November 2017 and the Petitioner was directed to deposit a sum of Rs. 14,01,148/- on account of difference of the amount due based on Multiplication Factor of 2 instead of 1.
5. The Petitioner did not agree with the amount charged and deposited Rs. 2,80,230/- i.e. the 20% of the charged amount vide BA-16 No. 398/49440 for filing a Petition in the Forum.
6. Subsequently, the Respondent vide letter No. 10 dated 03.01.2018, revised the disputed amount to Rs. 9,29,558/- for the period from 09.05.2014 to November, 2017 instead of from 27.08.2012 to November, 2017.
7. The revised demand raised by the Respondent for Rs. 9,29,558/- from 09.05.2014 to November, 2017 vide letter No. 10 dated 03.01.2018 was not in conformity with the laid down instructions of the PSPCL. The inspection/checking of the connection was mandatory after every six months by the Respondent as per instructions framed by the PSPCL under the provisions of the Act and the authorities could not go beyond the provisions of law. There was a provision under Instruction No. 104.1 of ESIM for the checking of the connections after every six months by the JE/AE depending upon the load and supply but the Respondent failed to perform its mandatory duty.
8. The Respondent admitted the lapse that it failed to perform its duty as evidenced from proceedings of the Forum dated 07.03.2018 wherein the Respondent stated that no checking, except the checking of Addl. S.E/Enforcement-II dated 04.12.2017, was ever carried out by any agency/authority. As such, there was no legality to recover the amount beyond six months in view of non compliance of mandatory instructions as per provisions contained in Instruction No. 104.1 of ESIM, as had been held in the similar case of application of incorrect Multiplication Factor of *Park Hyundai V/S PSPCL in CWP No. 17699* of 2014 by the Hon’ble Punjab and Haryana High, Chandigarh.

The case of the Petitioner was a similar case as that of Park Hyundai where the Hon’ble High Court had reduced the period of overhauling for six months instead of four years. As such, in this case also, the period of overhauling and amount charged for more than 3½ years needed to be reduced to six months as the Respondent failed to perform its mandatory duty of checking of connection after every six months.

1. Instruction No. 58 of ESIM and according to regulations notified by the CEA under Section 55 of the Electricity Act, 2003, the Energy Meter/Metering Equipment, to be installed at the consumer’s premises, should be of appropriate capacity depending upon the sanctioned load/contract demand (CD). Similarly, CTs matching the load as well as the Energy Meter needed to be installed. But the Energy Meter and CTs installed by the Respondents were not as per the instructions of the PSPCL. Thus, the Respondent failed to comply with the mandatory instruction by not installing the CTs matching with the Energy Meter as well as matching with the load.
2. The Respondent had also disregarded the Instruction No. 102.10 and 102.11 of ESIM, according to which, due to non-availability of matching CTs and the Energy Meter, the CTs of different capacity were installed, in such cases, the Multiplication Factor should be indicated in Red ink on the consumer case, Meter Reading Book and Ledger so that it could be applied correctly. Moreover, as per these instructions, the AE / AEE / XEN /Sr. XEN was also required to maintain a consolidated record for all the three phases of the connection in a Bound Register for all such connections which had Multiplication Factor and the same was required to be updated at the time of any change of Energy Meter/CTs. The Respondent failed to comply with these instructions but the Petitioner had been penalized for having no fault on its part. Had these instructions been followed in letter and spirit, the mistake could not have been committed or at least could not be prolonged for more than 3½ years. Thus, the Petitioner could not be charged the amount for a period of more than six months.
3. PSPCL had also laid down the norms/procedure for internal checking of the bills / ledgers by the UDC (Revenue) and Revenue Accountant. In addition to the internal checks by the UDC (Revenue) and Revenue Accountant, there was also a Internal Audit system under which the Internal Audit Party (IAP) performs the duty of checking of Accounts of the consumers in every Sub Division periodically. The mistake remained undetected for over 3½ years inspite of the fact that the Accounts had been checked by the UDC (Revenue) and Revenue Accountant and also had been audited quarterly / half yearly by the Internal Audit Party. Due to this lapse also, the Respondents had no moral ground to recover the amount for more than six months.
4. From the proceedings of the Forum it was very much clear that the arguments put forth by the Petitioner were accepted by the Respondent who failed to offer comment on any of the arguments. But, inspite of the said fact, the Forum, in its decision, rejected the Petitioner’s plea only on the basis of proviso to Regulation 21.5.1 of the Supply Code-2014 which did not exist in the Supply Code - 2007. The Forum observed, in its order, that in the case of Park Hyundai was related to the period prior to 2014. As a matter of fact, in the case of Park Hyundai, Hon’ble High Court had decided the case purely on the basis of Instruction No. 104.1 of ESIM i.e. due to failure on the part of the PSPCL to perform the duty of checking of the connection for a period of four years.
5. The provisions of overhauling the Accounts for the period existed in the Sales Manual, which was replaced by the Electricity Supply Regulations (ESR) updated upto 31.03.1999. According to Regulation No. 73.8 of these regulations, there was a provision of overhauling of Accounts for the period the mistake continues in case of genuine calculation mistakes which covered the wrong Multiplication Factor. Similarly, in the Condition of Supply (COS) updated upto 31.03.1999, in Condition No. 23, this provision was incorporated. At the time of replacing Electricity Supply Regulation with Supply Code-2007, applicable upto 31.12.2014, the above provision was also incorporated as in Regulation No. 73.8 of ESR.
6. At the time of formation of PSPCL, the instructions covered in the Supply Regulation and Conditions of supply relating to the Energy Meters were incorporated in the Supply Code (a new Code) as per Conditions of supply effective from April 1, 2010. According to this, the instructions relating to the Energy Meters and overhauling of accounts etc., were to be dealt with as per Regulation No. 21 of the Supply Code-2007.
7. In the Supply Code-2007, the proviso of Regulation 21 was missing, yet, the same was incorporated in the revised version of 2014 due to the inconsistency of the provisions as the same provisions existed since the time, the Sales Manual was in force and remained incorporated afterwards in the amended new Regulation and Conditions of Supply. The Conditions of Supply (COS) remained in force till 31.03.2010 when the provision of Supply Code-2007 was operative. So, the plea of the Forum that the proviso under Regulation 21.5.1 did not exist in the Supply Code-2007 at the time of decision of Park Hyundai case, was not acceptable when the decision in the said case was purely based upon Instruction No. 104.1 of ESIM.
8. Aggrieved with the decision of the Forum, an Appeal was preferred in this Court with the request that the Respondent be restrained from

recovering difference of charges of Multiplication Factor for a period of more than six months as had been held in the case of Park Hyundai and as per stay orders in the case of Geeta Oil Mills by the Hon’ble Punjab and Haryana High Court.

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

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

**(i)** The connected load of the NRS connection of the Petitioner was extended from 12 KW to 35 kW on 27.08.2012.

**(ii)** The Addl. S.E/Enforcement. PSPCL, Patiala, checked the connection on 04.12.2017 and reported, vide ECR No.03/243, that while the correct Multiplication Factor was 2, it was shown as 1 in the ledger.

**(iii)** As per Note to Regulation 21.5.1 of the Supply Code-2014, the account of the Petitioner was overhauled accordingly and a sum of Rs. 14,01,148/- was charged and Notice bearing No. 1485, dated 08.12.2017 was issued to the Petitioner, which was revised vide Notice bearing No. 10 dated 03.01.2018, to Rs. 9,29,558/-, because it was found that the Multiplication Factor applied was not wrong from 27.08.2012. It was found incorrectly applied with effect from 06/2014 till 11/2017 since Multiplication Factor was being taken as "1" instead of "2" in the ledger due to some technical / clerical error in the computer software used by the Billing Section.

**(iv)** It was incorrect on the part of the Petitioner to state that the said notice was not as per the applicable rules/regulations. The provision of Note to Regulation 21.5.1 of the Supply Code-2014 was relevant in the case requiring to charge for the entire period, for which, the mistake in application of incorrect Multiplication Factor continued.

**(v)** It was also wrong also to contend that PSPCL had no legal right to recover the charged amount beyond the period of six months in view of non compliance of the instructions as per Instruction No. 104.1 of ESIM. As per Instruction No. 104 of ESIM, the officers of the PSPCL should conduct periodical checkings of connections in order to arrest the tendency on the part of the consumers to indulge in unauthorised use of electricity or theft of electricity or extension in load. This Instruction had nothing to do with the present case because the Petitioner was charged not due to the checking of the load but due to the technical / clerical error occurred in the ledger by mentioning incorrect Multiplication Factor.

**(vi)** The Petitioner had referred to the judgments of the Hon’ble Supreme Court and Hon’ble Punjab and Haryana High Court which were not relevant in the present context as the amount charged to the consumer was in accordance with the Note to Regulation 21.5.1 of the Supply Code-2014.

**(vii)** The Petitioner wrongly stated that PSPCL had failed to comply with Regulation No. 58 of ESIM by not installing the CT matching with the Energy Meter as well as matching with the load. The Energy Meter installed in the consumer’s premises was in accordance with the provisions contained in Regulation No. 58 of ESIM, which provided that the metering equipment to be installed in the consumer’s premises should be of appropriate capacity depending upon the connected load.

**(viii)** The Petitioner had wrongly stated that PSPCL had failed to comply with Instruction No. 102.10 and 102.11 of ESIM, and therefore, should not be charged for a period more than six months. The Multiplication Factor Register was maintained in the Sub-Divisional Office. The Multiplication Factor was also shown in the bill but due to the clerical / technical error occurred in the computer software of the Billing Section, the Multiplication Factor was wrongly shown.

1. The Petitioner was wrong in stating that PSPCL had no moral ground to recover the charged amount, for the period more than six months, for not identifying the mistake in the Multiplication Factor shown in the ledger by Internal Auditors, Revenue Accountant. and UDC (Revenue). The Petitioner was liable to be charged as per rules and regulations in force.
2. In view of the above submissions, the Appeal may be dismissed.
3. **Analysis:**

The issue requiring adjudication is the legitimacy of overhauling the account of the Petitioner for the period from 09.05.2014 to November 2017 due to application of correct Multiplication Factor 2 instead of 1 as per applicable regulations.

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

1. PR contended that the Petitioner got a NRS connection for 12kW load which was got extended to 35kW on 27.08.2012. At the time of extension of load, a new LT CT operated Energy Meter having capacity of 100/5A and LT-CTs of capacity 200/5A were installed by the Respondent. The connection was checked by the Addl. S.E/Enforcement-II, PSPCL, Patiala on 04.12.2017 vide ECR No. 03/243 and it was reported that the capacity of the Energy Meter was 100/5Amp and that of LT-CTs was 200/5 Amp. As such, Multiplication Factor 2 instead of Multiplication Factor 1, should have been applied for billing purpose. On the basis of the checking report, the Respondent, vide Notice bearing No. 1485 dated 08.12.2017 revised the bills from 27.08.2012 to November 2017 and the Petitioner was directed to deposit a sum of Rs.14,01,148/- on account of difference in the amount billed by not applying Multiplication Factor of 2 instead of 1.

The Respondent, in its defence, stated that Addl. S.E / Enforcement-II. PSPCL, Patiala, checked the connection on 04.12.2017 of the Petitioner and reported vide ECR No. 03/243, that the Multiplication Factor was 2, but in the ledger, the Multiplication Factor was shown as 1 which was not correct. As per Note to Regulation 21.5.1 of the Supply Code-2014, the account of the Petitioner was overhauled accordingly and it was charged Rs. 14,01,148/- vide Notice bearing No. 1485 dated. 08.12.2017. The said amount was revised, vide Notice bearing No. 10 dated 03.01.2018, to Rs. 9,29,558/-, because it was found that the Multiplication Factor was not wrong from 27.08.2012. It was found incorrect with effect from 06/2014 till November 2017 since Multiplication Factor was being taken as "1" instead of "2" in the ledger due to some clerical/technical error in the computer software used by the Billing Section. The amount charged to the Petitioner was in accordance with the provisions contained in Note to Regulation 21.5.1 of the Supply Code-2014 that the total amount was to be charged for the entire period for which Multiplication Factor was wrongly applied.

 **(ii)** PR next submitted that the Respondent had admitted its lapse that it failed to perform its duty by its submission before the Forum that no checking, except the checking of Addl. S.E / Enforcement –II dated 04.12.2017, was ever carried out by any agency/authority in compliance to the Instruction No. 104.1 of ESIM as evidenced by perusal of its proceedings dated 07.03.2018 of the Forum. PR added that there was no legality to recover the amount beyond six months in view of non compliance of mandatory requirement as per Instruction No. 104.1 of ESIM.

The Respondent contested the contention of the PR and stated that the Petitioner had incorrectly contended that PSPCL had no legal right to recover the charged amount beyond the period of six months in view of non-compliance of the instructions as per Regulation 104.1 of ESIM. As per this instruction, PSPCL should conduct periodical checkings of connections in order to arrest the tendency on the part of the consumers to indulge in unauthorized use of electricity or theft of electricity or extension in load. This clause had nothing to do with the present case because the consumer was charged not due to the checking of the load but due to the clerical/technical error occurred in the ledger by entering incorrect Multiplication Factor.

1. PR next contended that the Respondent had also disregarded the Instruction No. 102.10 and 102.11 of ESIM, according to which, due to non-availability of matching CTs and the Energy Meter, the CTs of different capacity were installed, in such cases the Multiplication Factor should be indicated in Red ink against the consumer’s name in the Meter Reading Book and Ledger so that it could be applied correctly. Moreover, as per these Regulations, the AE / AEE / Sr. XEN of the Sub Division was also required to maintain a consolidated record for all the Three Phase connection in a Bound Register for all such connections which had Multiplication Factor and the register was required to be updated at the time of any change of Energy Meter/CTs. But, the Respondent failed to comply with these instructions due to which, the Petitioner had been penalized for having no fault on its part. Had these instructions been followed in letter and spirit, the mistake would not have been committed or at least could not be prolonged for more than 3 ½ years. Thus, the Petitioner could not be charged the amount for a period of more than six months.

The Respondent submitted that the Register ibid was maintained in the Sub Division concerned but the Petitioner was liable to pay the sum due as per rules/regulations of the PSPCL, framed by Hon’ble PSERC.

1. PR next contended that PSPCL had also laid down the norms / procedure for internal checks of the bills / ledgers by the UDC (Revenue) and Revenue Accountant. In addition to the internal checks by the UDC (Revenue) and Revenue Accountant, there was also a Internal Audit system under which, the Internal Audit Party (IAP) performed the duty of checking of Accounts of the consumers in every Sub Division. The mistake remained undetected for over 3½ years inspite of the fact that the Accounts had been checked by the UDC (Revenue) and Revenue Accountant and also had been audited quarterly/half yearly by the Internal Audit Party. Due to this lapse also, the Respondents had no moral ground to recover the amount for more than six months.

 The Respondent contested the plea of the PR and stated that occurrence of the mistake regarding entry of incorrect ratio of CTs was due to clerical/technical error and the Petitioner was liable to be charged for the disputed period as per rules and regulations in force at the relevant point of time.

 I find that though the Respondent defaulted in complying with statutory codal requirements, the Petitioner can also not escape responsibility as evidenced from the perusal of the consumption pattern of the Petitioner’s connection showing that the consumption during the disputed period of 06/2014 to 11/2017 (when Multiplication Factor was incorrectly applied as 1 instead of 2) was significantly less than that of the consumption before and after the disputed period.

 *It is very much clear that the Petitioner itself did not observe sincerity and never pin-pointed the fact of decline in consumption during the disputed period (noticeable from the bills issued) and thus can not legally and morally put the onus only on the Distribution Licensee. Had the Petitioner itself been sincere, honest and vigilant and brought the fact of fall in consumption during the disputed period and also taken up the matter, of non-conduct of periodical checking of the connection, with the Respondent, the dispute would not have arisen/prolonged. There is, however, no denying the fact that the Addl. S.E/Sr. XEN failed to keep a watch on the variations in consumption during the disputed period through SAP/Energy Variation Register due to which, the mistake in application of incorrect Multiplication Factor continued from 06/2014 to 11/2017.*

**(v)** PR also referred to the decisions of the Hon’ble Punjab and Haryana High Court in *CWP No. 14599 of 2007 titled Tagore Public School V/S PSEB*  and also in *CWP No. 17699 of 2014 of* *Park Hyundai V/S PSPCL* and argued that as per above decisions, the Petitioner should not be charged for more than six months due to application of incorrect Multiplication Factor. PR also placed reliance on a stay order in CWP No. 28728 of 2017 titled *Geeta Oil Mills V/S PSPCL* given by the Hon’ble Punjab and Haryana High Court staying the recovery (due to difference of amount charged due to incorrect Multiplication Factor) beyond a period of six months pending final decision. PR prayed that the Petitioner be given relief on the basis of the stay order ibid.

 *I observe that that both the cases of Tagore Public School and Park Hyundai 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 the Supply Code-2007 had been amended. With the coming into effect of the Supply Code-2014 effective from 01.01.2015, a Note below Clause 21.5.1 was inserted in the 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.”*

*In so far as the case of Geeta Oil Mills V/S PSPCL is concerned, grant of stay for effecting recovery of amount charged beyond six months is concerned, I am of the view that the stay order ibid was applicable to the said Petitioner (Geeta Oil Mills) pending final decision in the matter and had no relevance in the present context.*

*I am also of the view that since checking of the connection of the Petitioner was done on 04.12.2017 and the period of overhauling of the account of the Petitioner was from 19.05.2014 to 11/2017, the provisions of the Supply Code-2014 (effective from 01.01.2015) only were applicable/relevant in the instant case.*

 From the above analysis, the legitimacy of overhauling the account of the Petitioner for the period from 19.05.2014 to November 2017 and charging it with a sum of Rs. 9,29,558/-, on account of application of wrong Multiplication Factor 1 instead of 2, proves beyond doubt.

**5. Decision:**

 **As a sequel of above discussions, the order dated 28.03.2018 of the Forum in Case No. CG-40 of 2018 is upheld. It is also held that the recovery of amount shall be made by the Respondent in 10 monthly instalments and no interest and surcharge be levied since the Respondent was also responsible for lapses on its part.**

**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 13, 2018 LokPal (Ombudsman)

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