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

 **ELECTRICITY, PUNJAB,**

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

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

 **APPEAL NO. 35/2018**

**Date of Registration : 11.07.2018**

**Date of Hearing : 11.10.2018 and 15.11.2018**

**Date of Order : 22.11.2018**

**Before:**

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

**In the Matter of :**

 Modern Rice Mills,

 Village Ghanaur,

Distt.Patiala.

 ...Petitioner

 Versus

Additional Superintending Engineer,

DS Sub-urban Division,

PSPCL, Patiala

 ...Respondent

**Present For:**

Petitioner : 1. Sh. Sukhdarshan,

 Petitioner.

 2. Sh. Karamjeet Singh, Advocate,

 Petitioner’s Counsel (PC).

Respondent : 1. Er. Manmohan Lal,

 Addl. Superintending Engineer.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 13.06.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-138 of 2018 deciding as under:

“*Overhauling account of the Petitioner by Respondent from 16.02.2017 to 19.02.2018 by applying correct multiplying factor 2.00 instead of 1.00 as per Note to Regulation 21.5.1 of Supply Code 2014 is justified and amount is recoverable from the Petitioner ”.*

**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 95.800 kW and contract demand (CD) of 100 kVA, bearing Account No.P43MS430001W. The metering was done by providing HT Energy Meter.

1. The connection of the Petitioner was checked by the Addl.SE,

Enforcement-1, PSPCL, Patiala vide ECR No.20/296 dated 09.02.2017, on a reference made by the AEE, Ghanaur-1, Sub-division. The Checking Officer reported that Energy Meter’s Scroll button was defective and directed that the Energy Meter be replaced. As per this report, the capacity of the Energy Meter was 5/5 Amp and that of 11 kV/ 110 V, CT/PT Unit was of 10/5 Amp. Hence Multiplication Factor (MF) was 1.

1. As directed by the Enforcement, the Energy Meter was replaced

vide MCO no. 156/106003 dated 13.02.2017, effected on 16.02.2017and the Energy Meter of capacity 10/5 Amp was replaced with that of 5/5 Amp capacity leading to change in Multiplication Factor (MF) was changed from 1 to 2. But the energy bills continued to be issued by taking Multiplication Factor as 1 and the omission was noticed, when the connection was checked by the AEE, Ghanaur-1, Sub-division on 17.02.2018 vide Load Checking Register (LCR) No.04/157 dated 17.02.2018. At that time, it was observed that wrong Multiplication Factor (MF) was being applied in the billing for the Petitioner’s connection.

1. In view of the said checking, the Petitioner was served next energy

bill dated 06.03.2018 for Rs.4,17,720/- against the consumption of 47,736 kWh and 55,020 kVAh for the period from 16.01.2018 to 19.02.2018 with Multiplication Factor (MF) as 2.

1. Thereafter, the Petitioner account was overhauled from the date of

replacement of Energy Meter i.e. 16.02.2017 to 19.02.2018. Accordingly, notice vide memo no.445 dated 19.03.2018 was issued to the Petitioner asking for deposit of Rs.10,64,707/-

1. The Petitioner did not agree with the aforesaid energy bill and filed a

Petition dated 17.04.2018 in the Forum, who, after hearing, passed the order dated 13.06.2018 (Reference Page-2, Para-2) upholding raising of the disputed bill by the Respondent.

1. Aggrieved with the decision of the Forum, the Petitioner preferred

an Appeal in this Court and requested to set-aside the decision of the Forum.

**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 95.800 kW and contract demand (CD) of 100 kVA, bearing Account No.P43MS430001W. The metering was done by providing HT Energy Meter.

1. The connection of the Petitioner was checked on 09.02.2017 by

theAddl.SE,Enforcement-1, PSPCL, Patiala, who found the Scroll button of the Energy Meter defective and directed the Petitioner to replace the Energy Meter. Accordingly, the same was replaced on 16.02.2017.

1. The Petitioner was served energy bill dated 06.03.2018 for a sum of

Rs.4,17,220/- against additional consumption of 47,736 kWh and 55,020 kVAh for the period from 16.01.2018 to 19.02.2018 with Multiplication Factor (MF) as 2.

1. The Petitioner did not agree with the above energy bill and filed a

Petition dated 17.04.2018 in the Forum, who, after hearing, passed the order dated 13.06.2018.

1. The Petitioner protested being served an excessive bills of heavy

amount and deposited an amount of Rs.2 Lac to avoid disconnection. The Petitioner requested the Respondent to correct the bill, but it did not correct the same and issued another exorbitant bill dated 04.04.2018 for the period 19.02.2018 to 19.03.2018 for 53,732 kVAh units for a sum of Rs.6,25, 150/- (which included an amount of Rs.2,19,156/- as arrear) payable by 16.04.2018.

1. The Respondent issued notice vide letter no.445 dated 19.03.2018 to

deposit Rs.10,64,707/- as difference for the period from 19.03.2017 till the date of replacement of the Energy Meter on account of application of wrong Multiplication Factor (MF).

1. The Respondent did not supply the details of the calculations and

rules/regulations according to which, the account of the Petitioner had been overhauled which was necessary as per CC No.04/2008.

1. The notice issued was in violation of Instruction No. 57.5 of

ESIM which provided that recovery of charges could be done only after serving show cause notice to the consumer. But no such notice had been issued to the Petitioner.

1. The Petitioner had already deposited an amount of Rs.2,09,000/- in

respect of disputed bill issued on 06.03.2018 which was in excess of 20% of the disputed amount. Furthermore, the Petitioner had deposited Rs. 2 Lac vide receipt no.24 dated 16.04.2018.

1. The account of the Petitioner had been overhauled from March 2017

to February 2018 and subsequent bills for the month of March 2018 and April 2018 had been issued by applying Multiplication Factor of 2 which was in violation of Instruction No.54.6 of ESIM which stipulated overhauling of the account for a maximum period of six months.

1. As per Instruction No.102.7 of ESIM, an Energy Variation Register

was maintained in the Divisional office to watch the variations in the monthly consumption of the consumers. The bill dated 22.6.2017 was abnormal, unrealistic and contained imaginary amount and was not sustainable and was against the instructions of the Respondent- PSPCL.

1. Accordingly, an Appeal was preferred in this Court with the

request to set aside the order dated 13.06.2018 passed by the Forum.

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

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

1. The connection of the Petitioner was checked by the Addl.SE,

Enforcement-1, PSPCL, Patiala, vide ECR No.20/296 dated 09.02.2017. The said Checking Officer found that the scroll button of the Energy Meter was defective and issued directions to replace it. Accordingly, the Energy Meter of the petitioner was changed on 16.02.2017 vide MCO No.156/106003 dated 13.02.2017

1. Thereafter, AEE, Ghanaur-1, Sub Division checked the connection

on 17.2.2018 vide Load Checking Register (LCR) No.04/157 dated 17.02.2018 and found that wrong Multiplication Factor (MF) 1, instead of 2, was being applied for billing of the Petitioner’s connection.

1. In view of the above checking, next energy bill for the month of

03/2018 was generated with correct Multiplication Factor of 2 instead of 1.

1. The Petitioner’s account was then overhauled with correct

Multiplication Factor 2 from the date of replacement of the Energy Meter i.e. from 16.02.2017 to 19.02.2018 as per Note to Regulation 21.5.1 of the Supply Code and a Notice bearing no.445 dated 19.03.2018 was issued to the Petitioner , for depositing a sum of Rs.10,64,707/-.

1. The Respondent issued a bill dated 06.03.2018 for 55,020 kVAh

units amounting to Rs.4,17,220/- payable by 16.03.2018, with the changed Multiplication Factor of Energy Meter from 1 to 2, in the bill due to change of capacity of Energy Meter.

1. The Petitioner deposited only a sum of Rs.2 Lac against the said

bill. A bill dated 04.04.2018 for 53,732 kVAh units amounting to Rs.6,25,150/- was issued, which included arrear of previous bill.

1. Note to Regulation 21.5.1 of the Supply Code-2014 provided that

*“where accuracy of the meter is not involved and it is a case of application of wrong multiplication factor, the account shall be overhauled for the period this mistake continued*”. Thus, the account of the Petitioner was overhauled for the period of mistake i.e. from 16.02.2017 to 19.02.2018.

1. Instruction no.54.6 of ESIM deals with the cases where the Energy

Meter was found running slow more than 3%, whereas the present case related to the application of wrong Multiplication Factor, as such, the account had been overhauled as per Regulation 21.5.1 of the Supply Code-2014.

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

**4. Analysis:**

 The issue requiring adjudication is the legitimacy of the overhauling of the account of the Petitioner for the period from 16.02.2017 to 19.02.2018, due to application of incorrect Multiplication Factor (MF) 1 instead of 2, as per applicable regulations.

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

1. In the present dispute, the Petitioner’s Counsel (PC) contended that

overhauling of the account of the Petitioner for the period from 16.02.2017 to 19.02.2018 by application of Multiplication Factor 2 instead of 1 was unjustified and illegal. Petitioner’s Counsel argued that the Respondent did not supply the details of the calculations of the amount charged to the Petitioner as required in terms of provisions contained in CC No.04/2008 and also did not serve a Show Cause Notice before recovery of the amount charged as provided in Instruction No.57.5 of ESIM. Petitioner’s Counsel added that overhauling of the Petitioner’s account for the period from 16.02.2017 to 19.02.2018 was violative of Instruction 54.6 of ESIM which stipulated that the account of the consumer could be overhauled for a maximum period of six months.

 I observe that the action of the Respondent in overhauling the account of the Petitioner for the period from 16.02.2017 to 19.02.2018, upheld by the Forum in its order dated 13.06.2018, is justified, being in accordance with Note to Regulation 21.5.1(a) of Supply Code-2014 which reads as under:

 *“****21.5 : Overhauling of consumer Accounts***

*21.5.1 : Inaccurate Meters*

*If a consumer meter on testing is found to be beyond the limits of accuracy as prescribed hereunder, the account of the consumer shall be overhauled and the electricity charges for all categories of consumers shall be computed in accordance with the said test results for a period of not exceeding six months immediately preceding the:*

1. *date of test in case the meter has been tested at site to*

*the satisfaction of the consumer or replacement of inaccurate meter whichever is later;*

***Note****:* ***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 observe from the material available on record, that the connection of the Petitioner was checked by the Addl.SE, Enforcement-1, PSPCL, Patiala, vide ECR No.20/296 dated 09.02.2017, on a reference made by the AEE, Ghanaur-1, Sub-division. The Checking Officer reported that Energy Meter’s Scroll button was defective and directed to replace the Energy Meter. As per this report, the capacity of Energy Meter was 5/5 Amp and that of 11 kV/ 110 V, CT/PT Unit was of 10/5 Amp. Hence Multiplying Factor (MF) was 1. As per directions of the Enforcement, the Energy Meter of capacity 10/5 Amp was replaced on 16.02.2017 with Energy Meter of 5/5 Amp capacity. Hence, Multiplication Factor (MF) got changed from 1 to 2. But the energy bills continued to be issued by taking Multiplication Factor as 1. The mistake in application of incorrect Multiplication Factor (MF) was noticed when the connection was checked by the AEE, Ghanaur-1, Sub-division on 17.02.2018 vide Load Checking Register (LCR) No.04/157 dated 17.02.2018 and it was observed that wrong Multiplication Factor (MF) was being applied in the billing for the Petitioner’s connection. In view of the said checking, the Petitioner was served next energy bill dated 06.03.2018 for Rs.4,17,720/- against the consumption of 47,736 kWh and 55,020 kVAh for the period from 16.01.2018 to 19.02.2018 with Multiplication Factor (MF) as 2. Thereafter, the Petitioner account was overhauled from the date of replacement of Energy Meter i.e. 16.02.2017 to 19.02.2018 and supplementary notice, vide memo no.445 dated 19.03.2018 was issued to the Petitioner, asking for deposit of Rs.10,64,707/-

I have perused Consumption Data of the Petitioner’s connection and observed that there was a decrease in consumption after replacement of the Energy Meter, as compared to the previous year’s consumption, but the Respondent failed to notice the energy variation and take corrective action as required under the provisions of Instruction No.102.7 of ESIM. At the same time, the Petitioner also did not act sincerely and responsibly by bringing to notice of the Respondent the decline in consumption and less billing after replacement of the Energy Meter.

(ii) Petitioner’s Counsel next contended that as per Instruction No.102.7 of ESIM, an Energy Variation Register was maintained in the Divisional office to watch the variations in the monthly consumption of the consumers. The bill dated 22.6.2017 was abnormal, unrealistic and contained imaginary amount and was not sustainable and was against the instructions of the Respondent- PSPCL.

 *I agree with the Respondent that as per consumption data, there was a decrease in consumption after replacement of disputed Energy Meter, as compared to the previous year consumption, but the Respondent failed to notice the energy variation as required under the provisions of Instruction No.102.7 of ESIM.*

 *In so far as the contention of the Petitioner’s Counsel in regard to Instruction No.54.6 of ESIM is concerned, the Respondent has correctly stated that it related to the cases where the Energy Meter was found running slow more than 3%, whereas the present case related to the application of wrong Multiplication Factor, as such, the account had been overhauled as per Regulation 21.5.1 of the Supply Code-2014.*

**(iii)** During the course of hearing on 15.11.2018, the PC emphasised that the Petitioner was not liable to be charged interest / surcharge due to application of incorrect Multiplication Factor (MF) as the onus for the lapse on this account rested with the Respondent. Petitioner’s Counsel (PC) also argued that levy of Demand Surcharge on the Petitioner was not justified as it had not exceeded the Maximum Demand displayed on the Energy Meter. Petitioner’s Counsel ( PC) added that the consumption pattern of the Petitioner’s connection was commensurate with the paddy procured from Govt. Agency and crushed during the said period. However, neither the PC nor the Petitioner produced any documentary evidence to this effect during the hearing. Accordingly, the Respondent was directed, vide letter no. 1675/OEP/A-35/2018 dated 16.11.2018 to send the following information through e-mail:

1. Amount of interest/surcharge levied on the petitioner on account

 of M.F for the disputed period.

1. Capacity of distribution transformer installed at the premises of

the Petitioner.

1. Quantity of the Paddy received from the government

 Agency during the disputed period duly verified by that Agency.

In response, the Respondent intimated, vide e-mail dated 16.11.2018, that the capacity of distribution transformer was 200 kVA and also sent details of the interest/surcharge levied the amount of difference between the MF charges due and paid by the Petitioner as verified from the records. However, the Respondent did not furnish the requisite details about Paddy received etc. from Government Agency during disputed period.

I observe that the Petitioner’s Counsel (PC) has pleaded that the Demand Surcharge was levied incorrectly as its connected demand remained within the sanctioned limit. Since the Respondent was exclusively responsible for readings recorded on the Energy Meter and the consumer had no access to any alternative measure except the Meter with Multiplication Factor of 2 to know whether his maximum demand has exceeded the sanctioned limit. Thus while its Maximum Demand went as high as 145 kVA, the Meter recorded it as 72.5 kVA. Since the distribution transformer was of a capacity of 200 kVA, it could bear actual Maximum Demand of 145 kVA (against recorded 72.5 kVA), thereby **leading a imaginary conclusion to the consumer that its Maximum Demand was within sanctioned limit otherwise the distribution transformer would have been damaged with the demand of 145 kVA . Thus it will not be fair to charge the demand surcharge from a hapless consumer left to the mercy of the Meter with Multiplying Factor of 2 as he had no other/parallel means for knowing its Maximum Demand. In view of this, Demand Surcharge is not leviable to the Petitioner who did not know the factual position.**

**I am of the view that it will not be fair to charge interest/surcharge on the amount less paid by the Petitioner due to levy of application of incorrect MF as the Respondent defaulted in ensuring application of actual MF in the bills raised from the date from which due**.

 From the above analysis, the legitimacy of the overhauling of the account of the Petitioner for the period from the date of replacement of the Energy Meter (i.e. 16.02.2017) till the date upto which incorrect Multiplication Factor 1 instead of 2 was applied proves beyond doubt in terms of provisions contained in Note to Regulation 21.5.1 of the Supply Code-2014.

**5. Decision:**

 **As a sequel of above discussions, the order dated 13.06.2018 of the Forum in Case No.CG-138 of 2018 is partly upheld. However, it is held that no Demand Surcharge shall be levied as per my findings in para-4 above. It is also held that the charges on account of wrong application of Multiplying Factor shall be paid by the Petitioner in ten instalments. However, no interest/surcharge shall be levied on the basic amount as the Respondent failed to check the connection as per regulation/instructions and apply correct MF in the billing.**

**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)

November 22, 2018 LokPal (Ombudsman)

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