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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 37/2018**

**Date of Registration : 12.07.2018**

**Date of Hearing : 17.10.2018**

**Date of Order : 25.10.2018**

**Before:**

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

**In the Matter of:**

 Ms. Gayatri,

 D/O Shri Rakesh Kumar,

 Street No. 06, New Madhopuri,

Ludhiana.

 ...Petitioner

 Versus

 Sr. Executive Engineer/DS

Sunder Nagar (Special) Division,

PSPCL, Ludhiana. ...Respondent

**Present For:**

Petitioner : 1. Shri Lucky Pasricha,

 Petitioner’s Representative (PR).

2. Sh. Ravi Kumar,

 Petitioner’s Representative (PR).

 3. Sh.Shamsher Singh,

 Petitioner’s Representative (PR).

Respondent : 1. Er. Ram Paul,

 Sr. Executive Engineer.

 2.Sh.Sandeep,

 Revenue Accountant (RA).

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 13.04.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No. CG-47 of 2018, deciding :

“ *To uphold the decision of Division Dispute Settlement Committee (DDSC) office of Addl.SE, Op. Division, Sunder Nagar (Special), Ludhiana taken in its meeting held on 13.07.2017 that the amount charged by way of power factor surcharge of Rs.40,768/- is recoverable from the Petitioner*”.

**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 Representative (PR) submitted that the present Appeal could not be preferred in this Court within the stipulated period of one month of date of receipt of order of the Forum due to the reason that copy of the decision of the Forum, sent by the Secretary, CGRF, Patiala, vide memo no.1403-1404 dated 13.04.2018 by Registered Post, did not reach the Petitioner at its given address till date. The Petitioner’s Representative (PR) added that the Petitioner did not receive any notice, mentioning the amount due, till filing of the Appeal. The Petitioner took time in arranging funds for depositing the requisite fee for filing the Appeal in this Court. However, the Petitioner filed the Appeal in this Court at its own. That is why, a delay of 53 days beyond the stipulated period of one month from the date of receipt of the Order ibid of the Forum had occurred which may be condoned in the interest of justice.

 The Respondent, in its reply to the Appeal, did not offer any comments on the submissions made by the Petitioner regarding condonation of delay and also did not raise any objection in this regard during the course of hearing.

 In this connection, I have gone through Regulation 3.18(ii) of the PSERC (Forum and Ombudsman) Regulation-2016 which reads as under:

“*No representation to the Ombudsman shall lie unless the representation is made within one month of the date of receipt of order of the Forum.*

 *Provided that the Ombudsman mayentertain 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 observe that though the Petitioner has given reasons for not filing the Appeal within the stipulated period, it ought to have been vigilant and should have kept a watch on the uploading of the decision of the Forum on its website or pursued the matter with the office of the Forum/ Respondent after the case was closed on 14.03.2018 by the Forum. I also observe that non condonation of delay would deprive the Petitioner of the opportunity, required to be afforded, to seek remedy and would also not meet the ends of ultimate justice. With this in view, the delay in filing the Appeal in this Court is condoned and the Petitioner is afforded an opportunity to present the case.*

**3. Facts of the Case:**

 The relevant facts of the Case are that:

1. A Small Power (SP) Supply Category connection was released to

the Petitioner with sanctioned load of 19.840 kW on 04.07.2014 and the metering was done by providing Three Phase Four Wire, Whole Current 10-60A, Energy Meter of Mahashakti Make.

1. The Petitioner was charged Power Factor Surcharge since 08/2015. The Petitioner complained about the working of the Energy Meter

specifying that the Power Factor (PF) was not getting recorded correctly and requested that the Energy Meter installed at its premises, be replaced with that of L&T Make.

1. The Energy Meter was checked vide Load Checking Register (LCR) dated 27.08.2015 and it was reported that the Petitioner wanted to

Challenge the Energy Meter. With this in view, the Petitioner deposited the Energy Meter Challenge fee of Rs.450/- on 27.08.2015, whereafter, Device Replacement Application No.100001188848 dated 27.08.2015 was issued and the challenged Energy Meter was replaced on 06.10.2015.

1. The said challenged Energy Meter was sent on 10.10.2016 to ME

Laboratory wherein its accuracy was checked in the presence of Petitioner’s Representative and found to be within limits. DDL of the Energy Meter was taken. The readings were mentioned as 21,096 kWh and 33,153 kVAh.

1. The Petitioner was not satisfied with the levy of Power Factor (PF)

Surcharge and filed a Petition in the Divisional Dispute Settlement Committee (DDSC), which decided the matter in its meeting held on13.07.2017 in the presence of the Petitioner’s Representative that the amount charged to the Petitioner was recoverable.

1. The Petitioner was served a notice vide memo no.236 dated

18.01.2018 to deposit a sum of Rs. 36,943/-on account of Power Factor Surcharge from billing date 31.07.2015 to 05.10.2015.

1. Aggrieved with the decision of the Divisional Dispute Settlement

Committee (DDSC), the Petitioner filed a Petition in the Forum, who passed the order on 13.04.2018 (Reference: Page-2 Para 1).

**(viii)** The Petitioner was not satisfied with the decision of the Forum and preferred an Appeal in this Court and prayed to accept the Appeal in the interest of justice.

**4. 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 having Small Power (SP) Supply Category connection with sanctioned load of 19.840 kW.
2. The Petitioner was charged a sum of Rs. 40,768/- as Power Factor (PF) surcharge for the billing period from 31.07.2015 to 05.10.2015.
3. The Petitioner requested the Respondent many times regarding problem in the working of the Energy Meter and challenged it by depositing requisite fee of Rs. 450/-, on 27.08.2015. The Energy Meter was replaced on 06.10.2015.
4. After change of the Energy Meter on 06.10.2015, the new Energy Meter started recording Power Factor (PF) correctly.
5. The Petitioner was not satisfied with the charged amount of Rs. 40,768/- and filed a Petition in the Divisional Dispute Settlement Committee (DDSC), which decided on 13.07.2017 that the amount charged was recoverable.
6. Aggrieved with the decision of the DDSC, the Petitioner filed a Petition in the Forum, which upheld the decision ibid the DDSC.
7. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court with the request to accept it for the sake of justice.

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

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

1. The Petitioner challenged the amount of Rs. 40,768/- which related

to the billing period from 31.07.2015 to 05.10.2015 on account of Power Factor (PF) Surcharge, which was charged in accordance with the Instruction No. SI 4.1 and SIII.9 of ESIM. (Schedule of Tariff).

1. The Petitioner challenged the demand raised as well as the Energy

Meter by depositing the Meter Challenge fee on 27.08.2015 with the Respondent.

1. The Respondent replaced the said Energy Meter vide Device

Replacement Application No. 100001188848 dated 27.08.2015 effected on 06.10.2015 and sent the same to the ME Laboratory for its checking vide ME challan no. 416 dated 10.10.2016.

1. The Energy Meter was checked in ME Lab by the Sr. Executive

Engineer, Enforcement, PSPCL, Ludhiana and AEE, ME Lab, PSPCL, Ludhiana in the presence of Petitioner’s Representative and found the accuracy of the Energy Meter within limit. DDL was also taken.

1. The Petitioner was not satisfied with the report of ME Labortory and

approached the Divisional Dispute Settlement Committee, which, after hearing the representatives of the Petitioner and Respondent, decided that the amount of Rs. 40,768/- is recoverable.

1. The Petitioner was not satisfied with the above decision of the

Divisional Dispute Settlement Committee (DDSC) and filed a Petition in the Forum, which, after hearing, decided on 13.04.2018 that the demand raised by the Respondent – PSPCL was justified and recoverable.

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

**5. Analysis:**

 The issue requiring adjudication is the legitimacy of the amount charged to the Petitioner by way of levy of Power Factor (PF) Surcharge for the billing period from 31.07.2015 to 05.10.2015 as per applicable regulations.

 *The points emerged and deliberated are as under:*

1. The present dispute arose when the Petitioner was charged Power

Factor (PF) Surcharge from 08/2015 onwards and it complained to the Respondent that there was problem in the working of the Energy Meter. The Petitioner challenged the Energy Meter installed at its premises by depositing the requisite fee of Rs. 450/-, on 27.08.2015. The Energy Meter was checked on 27.08.2015 vide Load Checking Register (LCR) No. 97. The challenged Energy Meter was replaced on 06.10.2015, whereafter, the new Energy Meter started recording Power Factor (PF) correctly. I find that the Petitioner was charged Power Factor Surcharge billing dated 31.07.2015, but after replacement of Energy Meter on 06.10.2015, the Power Factor came to normal value, as evidenced from the consumption data placed on record of this Court. I also find that the disputed Energy Meter was checked on 10.10.2016 in M.E. Laboratory wherein its accuracy was found within limits and DDL was taken, but the Respondent could not produce the report of DDL. The readings were recorded as 21,096 kWh and 33,153 kVAh.

1. A perusal of the M.E.Laboratory Report dated 10.10.2016 also

revealed that the accuracy of the disputed Energy Meter in Active mode was taken only and found to be within limits.

 *I observe that Power Factor depends upon the kVAh & kWh consumption (P.F.=kWh/kVAh), hence, the accuracy and Dial Test shall also have been taken in Reactive Mode ( kVARh), which was not taken in ME Laboratory. On inquiry from the Sr.Xen, DS, Sunder Nagar Division (Special), PSPCL, Ludhiana, during the course of hearing, the Court was apprised that the disputed Energy Meter had since been returned to the ME laboratory, the same was not available for checking in Reactive Mode (kVARh). I also observe that the Power Factor remained low, during the period when Energy Meter of Mahashakti make was installed but after its replacement by Energy Meter of L&T Make in 11/2015, the Power Factor came in the range of 0.73 to unity. This implies that Reactive Part of Mahashakti Make Energy Meter was defective, due to which Power Factor was coming as low as 0.33 during the period of dispute.*

 From the above analysis, it is concluded that the M.E. Laboratory defaulted in taking accuracy and Dial test of the disputed Energy Meter in Reactive Mode (kVARh) as a result of which, accuracy or inaccuracy of Mahashakti Make Energy Meter and exact cause of low Power Factor during the disputed period is not ascertainable. As such, the Respondent failed to prove that levy of Power Factor Surcharge, during the period when the Mahashakti Make Energy Meter remained installed, is just and fair considering the default ibid in determining the accuracy of the Energy Meter tested in M.E. Laboratory.

**6 Decision:**

 **As a sequel of above discussions, the order dated 13.04.2018 of the Forum in Case No.CG-47 of 2018 is set aside. It is held that no Power Factor Surcharge on account of low Power Factor shall be recoverable from the Petitioner for the period, when the Energy Meter of Mahashakti Make remained installed at its premises. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, without interest/surcharge.**

7. The Appeal is disposed off accordingly.

**8**. Chief Engineer/Commercial, PSPCL, Patiala shall issue instructions to all Engineer-in-Chief/Chief Engineer, DS Zone, Chief Engineer/Enforcement and Chief Engineer/ Metering, PSPCL that the accuracy of the Energy Meters shall be checked/tested at site and / or in M.E.Laboratory in both Active (kWh) and Reactive Mode (kVARh) to determine the correctness of the Energy Meters. It also needs to be ensured that necessary provision in this regard is made by incorporating an Instructions to this effect in ESIM-2017. Compliance of this Order need to be reported within one month of date of its issuance.

**8**. 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)

October 25, 2018 LokPal (Ombudsman)

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