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

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 38/2018**

**Date of Registration : 12.07.2018**

**Date of Hearing : 25.10.2018**

**Date of Order : 29.10.2018**

**Before:**

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

**In the Matter of:**

 Sunny Baweja,

S/o Ashok Kumar,

Street No. 4/5, New Madhopuri,

Ludhiana.

...Petitioner

 Versus

 Senior Executive Engineer,

DS Sunder Nagar (Special) Division,

PSPCL, Luhiana.

 ...Respondent

**Present For:**

Petitioner : 1. Sh. Shamsher Singh,

 Petitioner’s Representative (PR).

2. Sh. Ashish Pasricha,

 Petitioner’s Representative (PR).

Respondent : 1. Er. Rampaul,

 Sr. Executive Engineer.

 2. Sh. Sandeep,

 Revenue Accountant.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 13.04.2018 in Case No. CG-49 of 2018 of the Consumers Grievances Redressal Forum (Forum) 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. 37,950/- 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. 1407-1408 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 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 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 13.04.2018 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:

**(i)** The Petitioner was having a Small Power Supply Category connection with sanctioned load of 19.840 kW and the metering was done by providing Three Phase Four Wire, Whole Current, 0-60A, Energy Meter of **Mahashakti make**.

**(ii)** The Petitioner complained about the working of the Energy Meter on 25.08.2015 specifying that Power Factor (PF) was not being recorded correctly and the Power Factor surcharge was being charged, so, the Energy Meter be replaced with that of L&T Make.

1. The Energy Meter was checked vide Load Checking Register (LCR) dated 27.08.2015, as per which, it was reported that the Petitioner wanted to challenge the Energy Meter. Accordingly, the Petitioner deposited the Energy Meter Challenge fee of Rs. 450/- on 27.08.2015, whereafter, Device Replacement Application No.100001186437 dated 27.08.2015 was issued and Energy Meter was replaced on 06.10.2015 with L&T make Energy Meter.

**(iv)** The challenged Energy Meter was sent on 10.10.2016 for checking to ME Laboratory wherein the accuracy of Energy Meter was found to be within limits in the presence of the Petitioner’s Representative. However, DDL of the Energy Meter could not be taken after trying again and again. The readings taken were mentioned as kWh 20543 and kVAh 62219.

**(v)** Not satisfied with the report of ME Lab and levy of Power Factor Surcharge, the Petitioner filed a Petition in Divisional Dispute Settlement Committee (DDSC), which decided, in its meeting, on 13.07.2017, in the presence of the Petitioner’s Representative despite its reservations that the Power Factor surcharge was recoverable.

**(vi)** Accordingly, the Petitioner was served notice vide Memo No. 234 dated 18.01.2018, to deposit a sum of Rs. 37,950/-.

**(vii)** Aggrieved, the Petitioner filed a Petition in the Forum who, after hearing, passed the order dated 13.04.2018 (Reference: Page 2, Para 1).

**(viii)** Not satisfied with the decision of the Forum, the Petitioner filed an Appeal in this Court and prayed to accept the same.

**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 charged Rs. 37,950/- on account of Power Factor surcharge for the period from 09/2015 to 12/2015 due to which, a Petition was filed before the Divisional Dispute Settlement Committee, Sundar Nagar (Special) Division, PSPCL, Ludhiana which decided on 13.07.2017 that the amount charged was recoverable.
2. The Energy Meter installed at the premises of the Petitioner recorded reading of Power Factor i.e. kVAh 51308 in the bill of dated 02.09.2015, for the first time. Prior to that, kVAh reading was never recorded by the Respondent – PSPCL.
3. The Respondent never informed the Petitioner about the starting of reading of the Energy Meter in kVAh. So, it could not be believed that the consumption recorded in the first instance in kVAh was correct or not. As such, the Power Factor surcharge was levied for the first time amounting to Rs. 13,051/- which was not at all justified.
4. The Petitioner challenged the Energy Meter by depositing the requisite fee of Rs. 450/- on 27.08.2015. The Energy Meter was changed on 06.10.2015 whereafter the Power Factor did not decrease. Rather, the Petitioner was allowed Power Factor incentive.
5. The connection of the Petitioner was released in 07/2014. The Respondent never informed the Petitioner the initial reading of kVAh at the time of installation of the Energy Meter.
6. The Energy Meter was checked at the site by the Respondent on 27.08.2015 and as per Checking Report, the Power Factor was low which meant that the Energy Meter was defective. Due to defect in the Energy Meter, the Power Factor was recorded on lower side. Due to this, the Petitioner was charged Power Factor surcharge whereas, after replacement of the challenged Energy Meter, the new Energy Meter started recording correct healthy Power Factor (PF) because previous Energy Meter was defective.
7. The Petitioner prayed to allow the Appeal.

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

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

1. The Petitioner was having electric connection, bearing Account No. 3002455998 with Sanctioned Load of 19.840 kW under Small Power Category.
2. The Petitioner challenged the amount of Rs. 37,950/- which related to the period from 09/2015 to 12/2015 on account of Power Factor surcharge which was charged in accordance with the Instruction No. SI 4.1 and SIII 9 of ESIM (Tariff Order).
3. The Petitioner, apart from challenging the above demand, also challenged the Energy Meter by depositing the Energy Meter Challenge fee with the Respondent. Accordingly, the Energy Meter was replaced vide DRA No. 100001186437 dated 27.08.2015 and sent to the ME Lab, for its checking vide ME Lab Challan No. 1379 dated 10.10.2016. The said challenged Energy Meter was checked by the Senior Executive Engineer, Enforcement, PSPCL, Ludhiana and AEE, ME Lab, Ludhiana as per rules and regulations of the PSPCL. During checking, it was reported that the accuracy of the Energy Meter was within limit.
4. The consumer was aggrieved with the report of ME Lab and approached the Divisional Dispute Settlement Committee which passed the order on 13.07.2017, after going through the records and also after hearing Ravi Kumar representative of the Petitioner, deciding that the charged amount of Rs. 37,950/- was recoverable.
5. The Petitioner challenged the said decision in the Forum, who upheld the decision of the DDSC.
6. The present Appeal was devoid of merit as the amount was rightly charged on account of levy of the Power Factor surcharge for the period from 09/2015 to 12/2015.
7. In view of the above submissions, the Appeal may be dismissed.

**5. Analysis:**

The issue requiring adjudication is the legitimacy of the amount of Rs. 37,950/-charged to the Petitioner by way of levy of Power Factor (PF) surcharge for the period from 09/2015 to 12/2015 as per applicable regulations.

 *The points emerged and deliberated are as under:*

1. The present dispute arose when the Petitioner complained about the working of the Energy Meter on 25.08.2015 specifying that Power Factor (PF) was not being recorded correctly and the Power Factor surcharge was being charged, so, the Energy Meter be replaced with that of L&T Make. The Energy Meter was checked, vide Load Checking Register (LCR) dated 27.08.2015, as per which, it was reported that the Petitioner wanted to challenge the Energy Meter. Accordingly, the Petitioner deposited the Energy Meter Challenge fee of Rs. 450/- on 27.08.2015, whereafter, Device Replacement Application No.100001186437 dated 27.08.2015 was issued and Energy Meter was replaced on 06.10.2015 with L&T make Energy Meter.

I find that the Petitioner was charged Power Factor surcharge for the first time in the bill dated 02.09.2015 but after replacement of the Energy Meter on 06.10.2015, the Power Factor came within the range in the bill dated 28.12.2015 and subsequent bills as evidenced from the details give in 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 in the presence of the Petitioner’s Representative. Though, its accuracy was found within limits but the DDL could not be taken after trying again and again. The readings taken were recorded as 20,543 kWh and 62,219 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 and found to be within limits. However, the accuracy and dial test of the said Meter was not checked in Reactive mode.

 *I observe that Power Factor depends upon the kVAh & kWh consumption (P.F = kWh/kVAh), hence, the accuracy and Dial test should also have been taken Active mode ( kWh) and in Reactive mode (kVARh). The ME Lab of the Respondent did not take the accuracy and Dial test in Reactive mode. On inquiry from the Sr. Xen, DS, Sunder Nagar Division (Special), PSPCL, Ludhiana, during the course of hearing, the Court was apprised that since 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, the Power Factor came in the range of 0.97 to unity. This implies that Reactive Part of Mahashakti make Energy Meter was defective, due to which Power Factor was coming as low as 0.25 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 the exact cause of low Power Factor during the disputed period, is not ascertainable. As such, the Respondent failed to prove that the 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-49 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-Chiefs/Chief Engineers, DS Zones, 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 needs to be reported within one month of date of its issuance.

9. 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 29, 2018 LokPal (Ombudsman)

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