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

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

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

 **APPEAL NO. 66/2018**

**Date of Registration : 15.10.2018**

**Date of Hearing : 24.01.2019**

**Date of Order : 31.01.2019**

**Before:**

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

**In the Matter of :**

Kiran Jain w/o Bhanu Kumar Jain

Veer Nagar, Shiv Puri Road,

Ludhiana.

 ...Petitioner

 Versus

Sr.Executive Engineer,

Sunder Nagar Division (Special) ,

PSPCL , Ludhiana

 ...Respondent

**Present For:**

Petitioner : 1. Sh.Sukhminder Singh

 Petitioner’s Representative (PR).

 2. Sh.Bhanu Kumar Jain,

 Petitioner’s Representative (PR).

Respondent : Er.Deepinder Singh Grewal,

 Senior Executive Engineer,

 Sunder Nagar Division (Special),

 PSPCL, Ludhiana.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 18.06.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-118 of 2018 deciding that :

*“ Account of the Petitioner be overhauled from 08.08.2017 to the date of replacement of meter i.e.. 14.12.2017 ( vide MCO No.1000004837273 dated 27.10.,2017 effected on 14.12.2017) on the basis of consumption assessed as per LDHF formula with detected load of the Petitioner and subsequently adjusted on the basis of actual consumption recorded in the corresponding period of the succeeding year as per Regulation 21.5.2 (d) of Supply Code-2014.”*

**2*.* Facts of the Case*:***

 The relevant facts of the case are that:-

1. The Petitioner was having a Medium Supply Category

connection with sanctioned load of 91.660 kW and contract demand (CD) of 99.999 kVA since 05.03.2012 for which, the Metering was done by providing LT-CT Operated static Energy Meter.

1. On noticing that the display of the Energy Meter became defective

in 08/2017, the Petitioner statedly informed the Respondent accordingly. The connection was then checked by the Addl.S.E/ Enforcement-I, PSPCL, Ludhiana, vide ECR No. 08,09/471 dated 29.09.2017, on a reference made by the AEE/Tech Unit-I regarding defective display. The readings noted by the Enforcement were as under:

kWh = 1,45,65,27.8

kVAh = 1,56,08,87.1

Demand = 2,88.95 kVA

On noticing excess demand, as compared to sanctioned load and CD, the connected load was checked and found to be 215.365 kW against sanctioned load of 91.660 kW. Accordingly, load surcharge of Rs.1,24,000/- was levied, by issuing supplementary notice vide memo no.9643 dated 01.11.2017, which was paid by the Petitioner.

1. The Energy Meter was replaced vide Device Replacement

Application No.100004837273 dated 27.10.2017, effected on 14.12.2017.

1. The Energy Meter was got checked from the M.E. laboratory on

04.01.2018 wherein the accuracy of the Energy Meter was found within limits and DDL was also taken.

1. ME Laboratory reported on 09.01.2018 that :

“ *The data of the meter Sr.No.07250194 Make L&T is downloaded for printing, but corrupted on dumping”.*

1. The Petitioner was served a energy bill dated 25.01.2018 for

Rs.35,07,110/- ( Current energy charges Rs.40,68,235/- less Arrear of Current Financial Year for Rs.5,61,123/-) against the consumption of 4,66,359 kVAh units ( 4,56, 641 units of old Energy Meter + 9,718 units of new Energy Meter) for the period 08.08.2017 to 08.01.2018 for 153 days.

1. Aggrieved with the exorbitant charges of Rs.40,68,235/- and load

surcharge of Rs.1,24,000/-, the Petitioner filed a Petition on 04.04.2018 in the Forum, who, after hearing, passed the order dated 18.06.2018. (Reference Page-2, Para-1).

1. Not satisfied with the decision of the Forum, the Petitioner preferred

an Appeal in this Court and prayed for revision/review of bill issued for the period from 08.08.2017 to 08.01.2018 with some realistic average basis.

**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 Representative of the Petitioner and the Respondents along with 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 Category

connection with sanctioned load of 91.660 kW and contract demand (CD) of 99.999 kVA since 05.03.2012. The Metering was being done by providing LT-CT Operated static Energy Meter.

1. The display of the Energy Meter became defective in 08/2017 and

the Respondent was informed accordingly.

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

Enforcement-I, PSPCL, Ludhiana on 29.09.2017 vide ECR No.08, 09/471 and it was reported that the display of the Energy Meter was stuck and directions were issued to the Respondent to get it replaced for testing in the M.E. laboratory.

1. The disputed Energy Meter was replaced on 14.12.2017 and tested

in the M.E. Laboratory on 04.01.2018 when its accuracy was found within limits. Data was down loaded but corrupted on dumping due to which print out of DDL could not be taken.

1. An energy bill dated 25.01.2018 for the period from 08.08.2017 to

08.01.2018 was issued showing very abnormal consumption of 4,66,359 kVAh (4,56,641 kVAh units from old/ defective Energy Meter and 9,718 kVAh units from new Energy Meter), amounting to Rs. 40,68,235/- (including arrears of previous bill). The consumption of 4,66,359 kVAh units for the period 08.08.2017 to 08.01.2018 was apparently abnormal considering the installed load of the Petitioner and use of supply from the connection. The Respondent charged Rs.1,24,000/- as load surcharge against excess load, but it was not covered under any rule/tariff schedule for MS category consumers. However, the amount of load surcharge was paid to avoid disconnection.

1. The Respondent neither rectified the abnormal bill issued in 01/2018

nor adjusted the amount of load surcharge paid by the Petitioner.

1. The supply from the connection was being used for Textile unit. The

consumption of the Petitioner varied from month to month according to season and work in the Unit.

1. The levy of load surcharge for excess load had been dispensed

with by the Hon’ble PSERC through various Tariff Orders. It had been specified as per Tariff schedule applicable to MS category for the Financial Year 2016-17 under Clause S11.6.1 that no load surcharge shall be levied for the extra load connected by the consumer temporarily or otherwise thereby exceeding sanctioned connected load. However, the installation of extra load shall conform to CEA (Measures Relating to Safety and Electric Supply) Regulations-2010 and statutory clearances wherever applicable shall be obtained by the consumer*.*

1. In the subsequent Tariff Orders/Schedule of Tariff issued for the

FY 2017-18 and 2018-19, similar provision had been made. There was no ambiguity/doubt in the above clause regarding non-levy of load surcharge for excess load. In spite of all this, the Respondent raised demand of Rs.1,24,000/- for excess load. Still, the Petitioner paid the said amount to avoid disconnection.

1. Although the Forum referred to the levy of load surcharge of

Rs.1,24,000/- but did not pass any order in this regard. The said amount was required to be refunded/adjusted as the same was not applicable to MS Category of consumers.

1. In view of the submissions made, the order dated 18.06.2018 of the

Forum be set aside and Appeal may be allowed by ordering the revision of bill issued for the period from 08.08.2017 to 08.01.2018 with some realistic average basis in the interest of justice.

1. **Submissions of the Respondent:**

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

1. The Petitioner was having a Medium Supply Category

connection with sanctioned load of 91.660 kW and contract demand (CD) of 99.999 kVA since 05.03.2012.

**(ii)** The Petitioner used this connection for Textile Unit. All bills were issued on the basis of actual readings taken.

**(iii)** As decided by the Forum, the Account of the Petitioner was overhauled from 08.08.2017 to the date of replacement of the Energy Meter i.e. 14.12.2017 on the basis of consumption assessed as per LDHF formula with detected load and subsequently adjusted on the basis of actual consumption recorded in the corresponding period of the succeeding year as per Regulation 21.5.2 (d) of the Supply Code-2014.

**(iv)** The Petitioner had deposited the load surcharge amounting to Rs.1,24,000/-. The Forum did not give any decision in regard to load surcharge.

1. Keeping in view the submissions made, the Appeal may be

dismissed.

4. **Analysis:**

 The issues requiring adjudication are the legitimacy of the

1. Load Surcharge of Rs.1,24,000/- levied on the Petitioner, vide letter dated 01.11.2017, due to the demand found excess than sanctioned load and CD.
2. Amount charged to the Petitioner due to overhauling of its account, for the period from 08.08.2017 to the date of replacement of the Energy Meter i.e. 14.12.2017, on the basis of consumption assessed as per LDHF formula with detected load and subsequently adjusted on the basis of actual consumption recorded in the corresponding period of succeeding year as per applicable regulations.

 *The points emerged in the case are deliberated and analysed as under:-*

**Issue No.(i)**

The dispute arose after the display of the Energy Meter became defective and the Respondent was statedly informed accordingly by the Petitioner. As a result, the connection was checked by the Addl.S.E/ Enforcement-I, PSPCL, Ludhiana, vide ECR No. 08,09/471 dated 29.09.2017, on a reference made by the AEE/Tech Unit-I regarding defective display. The readings noted by the Enforcement were as under:

kWh = 1,45,65,27.8

kVAh = 1,56,08,87.1

Demand = 2,88.95 kVA

On noticing excess demand, as compared to sanctioned load and CD, the connected load was checked and found to be 215.365 kW against sanctioned load of 91.660 kW. Accordingly, load surcharge of Rs.1,24,000/- was levied, by issuing supplementary notice vide memo no.9643 dated 01.11.2017, which was paid by the Petitioner. The Energy Meter was replaced vide Device Replacement Application No.100004837273 dated 27.10.2017, effected on 14.12.2017. The Energy Meter was got checked from the M.E. laboratory, on 04.01.2018, wherein the accuracy of the Energy Meter was found within limits and DDL was also taken. It was reported by the ME Laboratory on 09.01.2018 that “ t*he data of the meter Sr.No.07250194 Make L&T is downloaded for printing, but corrupted on dumping”.* The Petitioner was served an energy bill dated 25.01.2018 for Rs.35,07,110/- (Current energy charges Rs.40,68,235/- less Arrear of Current Financial Year for Rs.5,61,123/-) against the consumption of 4,66,359 kVAh units (4,56,641 units of old Energy Meter + 9,718 units of new Energy Meter) for the period 08.08.2017 to 08.01.2018 for 153 days.

 I agree with the contention of the Petitioner’s Representative that though the Forum has not given any decision on Load Surcharge of Rs.1,24,000/- levied vide Respondent’s letter dated 01.11.2017, the same is in contravention of provisions contained in Clause S11.6.1 of General Conditions of Tariff for the year 2017-18, approved by the Hon’ble PSERC, reproduced as under:

“ **Load Surcharge :**

*No load surcharge shall be levied for the extra load connected by the consumer temporarily or otherwise thereby exceeding sanctioned connected load. However, the installation of extra load shall conform to CEA ( Measures relating to Safety and Electric Supply) Regulations- 2010 and statutory clearances wherever applicable shall be obtained by the consumer*”.

At the same time, I am of the view that Demand Surcharge for exceeding the contract demand (CD) is chargeable ( as also agreed to/ consented by the Petitioner) in terms of Clause S11.6.2 of General Conditions of Tariff reproduced as under:

“**S 11.6.2: Demand Surcharge for exceeding the contract**

 **demand:**

*If a consumer in a month exceeds the sanctioned contract demand, demand surcharge shall be charged at a rate of Rs.750/- per kVA on excess demand irrespective of number of defaults. This demand surcharge shall be without prejudice to the distribution licensee’s right to take such other appropriate action as may be deemed necessary to restrain the consumer from exceeding his contract demand.*

 *In the event of MDI being defective, maximum demand for billing purpose shall be computed as per clause 16 of General Conditions of Tariff, as amended from time to time. In case computed maximum demand is more than the sanctioned contract demand, no surcharge for demand consequent to this computation shall be levied”.*

**Issue No. (ii)**

1. On the basis of excess load detected by the Enforcement, the

Petitioner applied for extension in load and CD from 91.660 kW/ 99.990 kVA to 249.660 kW/ 249.990 kVA on dated 14.04.2018 and deposited the requisite Security. The extension, as applied by the Petitioner, was released on 28.12.2018. The consumption data, placed on record reveals that no reading was taken during 09/2017, 10/2017, 11/2017 and in the previous months, the status of the Energy Meter was ‘O’ i.e. O.K. DDL was taken , but print out could not be taken.The ME Laboratory had taken the accuracy of the Energy Meter in Active Mode but in Reactive Mode, it was not taken despite the fact that the billing was done in kVAh units.

1. During the course of hearing, the Respondent was directed to get the

Load checking done in the presence of the Petitioner’s Representative at site. In response, Sr. Xen, DS Sunder Nagar Division, Ludhiana, issued telephonic instructions to its AEE/Technical for checking and thereafter reporting the results. In compliance, the load of the Petitioner’s connection was checked and the Load Checking Report No.09/6872 dated 24.01.2019 was sent by the Sr.Xen, Sunder Nagar Division (Special), Ludhiana, vide e-mail dated 25.01.2019, as per which, connected load was found to be 171.110 kW against the sanctioned load of 249.660 kW while Demand was 15.02 kVA against the sanctioned contract demand (CD) of 249.990 kVA.

1. Pursuant to the said checking, the Petitioner, vide its e-mail dated

25.01.2019 and 28.01.2019, apart from reiterating its submissions in the Appeal and the rejoinder dated 24.01.2019, submitted that the extension in load to the Petitioner from 91.660 kW/ 99.999 kVA to 249.660 kW/ 249.990 kVA was released on 28.12.2018 and before that, machinery/extra load was not connected to Supply System of PSPCL although new machinery was installed and old machinery was also existing at Site during checking by the Enforcement before replacement of the Energy Meter. The Petitioner further submitted that during the period from 08.08.2017 to 14.12.2017 (the period of overhauling of the account), the Petitioner used the supply as per the then sanctioned load /CD of 91.660 kW/ 99.999 kVA. Petitioner’s Representative (PR) added that consumption (before and after extension in load) was available after replacement of the defective Energy Meter and prayed to revise the energy bill for the corresponding period of succeeding year.

 I observe that the Energy Meter, during testing at Site, was found to be defective, accordingly, the account of the Petitioner is required to be overhauled on the basis of consumption of the corresponding period of previous year in terms of provisions contained in Regulation 21.5.2 (a) of the Supply Code-2014 as the Energy Meter was O.K. during that period.

 From the above analysis, it is concluded that :

1. Load Surcharge of Rs.1,24,000/- is not recoverable from the

Petitioner for excess load detected by the Enforcement during checking dated 29.09.2017 in terms of provisions of Clause S 11.6.1 of General Conditions of Tariff for the year 2017-18, approved by the Hon’ble PSERC.

1. Demand Surcharge is recoverable from the Petitioner for the

months wherein Maximum Demand exceeded the sanctioned contract demand (CD) as per Clause S 11.6.2 of General Conditions of Tariff for the year 2017-18.

1. The account of the Petitioner for the period from 08.08.2017 to

14.12.2017 is required to be overhauled as per provisions contained in Regulation 21.5.2 (a) of the Supply Code-2014 i.e. on the basis of energy consumption of corresponding period of previous year because the Energy Meter was O.K.in that period i.e . by taking consumption and demand of period 08.08.2016 to 14.12.2016.

5. **Decision:**

**As a sequel of above discussions, the order dated 18.06.2018 of CGRF in case No. CG-118 of 2018 is set aside. It is held that the Respondent shall take appropriate/corrective action as per conclusion arrived at in para-4 above. It is also held that the Respondent shall recalculate the demand and refund/recover the amount found excess/ short after adjustment, if any, without interest/surcharge.**

**6.** The Appeal is disposed of 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)

January 31,2019 Lok Pal (Ombudsman)

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