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

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

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

 **APPEAL NO. 02/2019**

**Date of Registration : 15.01.2019**

**Date of Hearing : 19.03.2019**

**Date of Order : 28.03.2019**

**Before:**

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

**In the Matter of :**

Vanishika Garg,

Shiva Towers,

Opp. Dhandari Railway Station,

G.T.Road, Ludhiana

 ...Petitioner

 Versus

Senior Executive Engineer,

DS Estate Division (Special) ,

 PSPCL , Ludhiana.

 ...Respondent

**Present For:**

Petitioner : 1. Sh. Charanjit Singh,

 Petitioner’s Representative (PR).

Respondent : 1. Er. Amandeep Singh,

 Senior Executive Engineer,

 DS Estate Division (Special),

 PSPCL, Ludhiana.

 2. Sh. Krishan Singh,

Assistant Accounts Officer.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 31.12.2018 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Petition No.CGL-035 of 2018 deciding that :

“1. *The charging of amount of Rs.3,67,496/- is in order*

 *and hence recoverable from the Petitioner.*

 *2. Dy.CE/City West Circle, Ludhiana, will enquire, about the lapses on the part of concerned office, which caused, Non-billing of this case, for such a long period and initiate action against the delinquent officer/official for causing, recurring revenue loss to PSPCL”.*

**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 9 kW. The connection was released in 06/2015 vide Service Connection Order (SCO) No. W11/ S/15 /24751/08672 dated 20.06.2015 effected on 29.06.2015.

1. No energy bills were issued by the Respondent upto September

2018. The Petitioner submitted an application on 01.10.2019 in the office of the Respondent intimating about non receipt of the energy bills ever since release of connection to it.

1. The load was checked by the Respondent on 01.10.2018 vide Load

Checking Register (LCR) No.76/1757 and found to be 1.220 kW. The Energy Meter was checked again on the same day by the Respondent vide LCR No.40/756 dated 01.10.2018 and found that display of the Energy Meter as defective and not visible.

1. A supplementary bill vide notice dated 01.10.2018 was issued for

 Rs.3,67,658/- for the period from 20.06.2015 to 01.10.2018 by using LDHF formula (1080 kVAh units/month) as the energy consumption was not available for the said period.

1. The Energy Meter was replaced vide Device Replacement

 Application No.100006680659 dated 03.10.2018.

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

laboratory which declared the Energy Meter as “ **Burnt**”, as such DDL could not be taken.

1. The Petitioner was not satisfied with the supplementary bill and filed

a Petition dated 14.11.2018 in the CGRF, Ludhiana, who, after hearing, passed the order dated 31.12.2018. (Reference Page-2, Para-1).

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

an Appeal in this Court stating that supplementary bill-cum- provisional notice issued on 01.10.2018 for the period 20.06.2015 to 01.10.2018 (39 months & 11 days) amounting to Rs.3,67,500/- with standard LDHF formula (monthly consumption as 1080 kVAh units) was highly unjustified and prayed that the demand so raised may be revised as per submission made in the present petition, in the interest of natural justice and fairness*.*

**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 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 obtained NRS category connection with sanctioned

 load as 9 kW in 06/2015.

1. No energy bills were issued to the Petitioner after the release of the

connection till 30.09.2018.

1. The Petitioner and its representative repeatedly visited the office of

the Respondent for issuance of energy bills, but no energy bill was issued to the Petitioner.

1. After a gap of three years, the Respondent issued a supplementary

bill-cum-provisional notice on 01.10.2018 for a sum of Rs.3,67,500/- (amount payable after due date, with surcharge as Rs.3,67,658/-) for the period from 20.06.2015 to 01.10.2018 (39 months and 11 days).

1. On receipt of the supplementary bill-cum notice, the Petitioner

contacted the officer of the Respondent and it was told that the bill had been prepared for the period from 20.06.2015 to 01.10.2018 with LDHF formula (monthly consumption as 1080 kVAh units).

1. The Petitioner requested for the rectification of the supplementary

bill on the basis of actual load existing at site i.e. 1.220 kW instead of taking 9 kW load for assessment of energy consumption with LDHF formula.

1. The Respondent did not rectify the supplementary bill amounting to

 Rs.3,67,658/-.

1. Not satisfied with the supplementary bill, the Petitioner filed a

Petition in the CGRF, Ludhiana, who, after hearing, passed the order dated 31.12.2018. (Reference Page-2, Para-1) and upheld the demand raised by the Respondent.

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

an appeal in this Court with the request that the decision of the Forum may be quashed and the Appeal be accepted.

1. No energy bills were issued to the Petitioner after the release of the

connection. After waiting for three to four months, the Petitioner and its representative repeatedly visited the office of the Respondent many times for getting/obtaining the energy bills, but the energy bills were never issued and every time it was stated that the energy bill would be delivered soon under SAP System and it could pay the energy bill as and when delivered to it.

1. The preparation and delivery of energy bills on the specified dates,

as per provisions of the Supply Code, was the duty and responsibility of the Respondent. The Petitioner could not be penalised at later stage by taking average/assessed consumption ( for a period of more than 3 years) on the basis of standard formula especially when the use of supply was marginal and the connected load of the Petitioner was much less than the sanctioned load.

1. The load of the Petitioner was checked by the Respondent on

01.10.2018 vide LCR No.76/1757 and was reported as 1.220 kW only. Thus, there was no justification in the issue of energy bill (overhauling of the account) relating to the period from 20.06.2015 to 01.10.2018 by taking monthly consumption of 1080 kVAh units (based on LDHF formula and considering load as 9 kW). Therefore, the demand raised for Rs.3,67,658/- was liable to be quashed.

1. After coming into force of Electricity Act-2003 and Supply

Code-2007 (amended we.f.1.1.2015), every penal action on the consumer should be supported by rules/regulations because it was the consumer who had to pay the amount and it should be informed under which rule/regulation, the consumer was being charged/penalised.

1. Chief Engineer/Commercial, PSPCL, vide Commercial Circular

(CC) No53/2013 and CC No.59/2014, issued instructions on the basis of the order dated 26.09.2013 passed by the Hon’ble Punjab and Haryana High Court in CWP No.10644 of 2010 that while initiating proceedings against any consumer, the competent authority of Respondent must cite the relevant regulations of the Supply Code or any other regulations framed by the Competent Authority under the Electricity Act-2003. These instructions were reiterated vide CC No.30/2015 dated 5.8.2015 for strict compliance as the Hon’ble PSERC had taken serious view of non compliance of these instructions.

1. The Respondent had issued supplementary bill-cum-provisional

notice on 01.10.2018 for a sum of Rs.3,67,658/- for the period from 20.06.2015 to 01.10.2018 (more than 39 months) with LDHF formula (1080 kVAh units/month) without referring to any rule and regulation of the Supply Code or the Electricity Act-2003.

1. The Petitioner could not find any such rule, where first energy bill

for a period of more than 39 months could be issued with LDHF formula especially where connected load of the Petitioner was much less than the sanctioned load.

1. The provisional energy bill issued to the Petitioner for the period

from 20.06.2015 to 01.10.2018 was required to be to be rectified on the basis of consumption as recorded after the replacement of the disputed Energy Meter.

1. The Energy Meter of the Petitioner was declared dead/stop, as per

the checking report dated 11.10.2018 of the M.E. Laboratory. The Account against dead stop Energy Meter could be overhauled as prescribed in Regulation 21.5.2 of the Supply Code-2014.

1. In view of Regulation 21.5.2 and 21.5.3 of the Supply Code-2014,

the energy bill of the Petitioner was required to be rectified by taking energy consumption for 6 months by applying LDHF formula and for the remaining period, MMC could be levied. Further the average consumption taken for 6 months was also required to be adjusted on the basis of actual consumption recorded in the corresponding period of the succeeding year. The consumption after replacement of the disputed Energy Meter was also available.

1. The Forum did not deliberate any clauses of Regulation 21.5.2,

21.5.3, 30.3 and 30.8 of the Supply Code-2014. Thus the decision of the Forum was wrong, non-speaking, biased and required to be quashed.

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

allowed 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 did not contact the Respondent regarding non-issuance of the energy bill of its connection till 01.10.2018. The Petitioner only contacted the officer of the Respondent on 01.10.2018, by submitting an application, regarding non issue of energy bill.
2. On receiving the application, the Energy Meter of the Petitioner was checked vide LCR No.40/1756 dated 01.10.2018 and 76/1757 of even date. As per these checkings, the Energy Meter was found burnt/dead stop and reading was not visible. The accuracy of the Energy Meter was not checked and DDL could not be taken.
3. The Petitioner contacted/represented to the Respondent only when the Energy Meter was burnt and reading was not visible.
4. No doubt, Regulation 21.5.2(d) of the Supply Code-2014 permitted to overhaul the account for 6 months in case of burnt/defective Energy Meter, where the consumption for the previous months had referred in para (a) to (c) of Regulation 21.5.2 was not available, therefore, the consumer (Petitioner) should be tentatively billed on the basis of consumption assessed and subsequently adjusted on the basis of the actual consumption recorded in the corresponding period of the succeeding year.
5. But, in this case, the Petitioner was not billed from the date of release of connection i.e. 20.06.2015 to 01.10.2018 and as it was a case of non-billing and the detection of non-billing had occurred on 01.10.2018 when Energy Meter of the Petitioner was defective/Burnt and the reading was not visible.
6. The plea of the Petitioner to overhaul its account considering the load as 1.220 kW by applying LDHF formula for 6 months and prior to that on MMC was not tenable/maintainable because the connected load of the Petitioner, as on 01.10.2018, was reported/found 1.220 kW against sanctioned load 9 kW as per Load Checking Report dated 01.10.2018.
7. The Respondent correctly raised the disputed bill as per instructions of the PSPCL.
8. It was a non billing case and overhauling of account was also involved as the actual consumption/reading of the Energy Meter was not available as the reading was not visible on the display of the Energy Meter and the Energy Meter was found Dead Stop and the accuracy of the Energy Meter could not be checked in the M.E. laboratory and DDL was also could not be taken to work out the consumption for the non-billing period.
9. The plea of the Petitioner to make billing on MMC basis from 06/2015 to 03/2018 was not maintainable because there was no record of consumption recorded, as the Energy Meter was found burnt on 01.10.2018 at the time of checking and the reading was not found visible on the Energy Meter. Thus, the billing for the period from 20.06.2015 to 01.10.2018 had been correctly raised as per LDHF formula on sanctioned load.
10. The Forum had correctly decided the case by passing speaking order.
11. In view of the submissions made, the Appeal may be dismissed.

4. **Analysis:**

The issue requiring adjudication is the legitimacy of the amount of Rs.3,67,658/- charged to the Petitioner, vide Supplementary bill dated 01.10.2018, due to non issuance of energy bill for the period from 29.06.2015 to 01.10.2018 by using LDHF formula (1080 kVAh units per month) in the absence of availability of energy consumption of the Energy Meter for the said period.

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

1. In the present dispute, a Non-Residential Supply (NRS) category connection with sanctioned load of 9 kW was released to the Petitioner vide Service Connection Oder (SCO) dated 20.06.2015, effected on 29.06.2015. After the release of the said connection, no energy bill was issued to the Petitioner who did not contact the Respondent regarding non-issuance of the energy bill of its connection till 30.09.2018. The Petitioner contacted the officer of the Respondent only on 01.10.2018 and submitted an application, regarding non issue of energy bill. On receiving the said application, the Energy Meter of the Petitioner was checked vide LCR No.40/1756 dated 01.10.2018 and 76/1757 of even date. As per these checkings, the Energy Meter was found burnt/dead stop and reading was not visible on the display of the Energy Meter. The Petitioner contacted/represented to the Respondent only on noticing that the Energy Meter was burnt and reading was not visible. A supplementary bill was then issued vide Notice dated 01.10.2018 amounting to Rs.3,67,658/- for the period from 20.06.2015 to 01.10.2018 by using LDHF formula (1080 kVAh units per month) as consumption for this period was not available.
2. In its rejoinder (to the written reply of the Respondent) submitted during hearing, Petitioner’s Representative (PR) submitted that the responsible Officer of the PSPCL should have conducted enquiry at site where multi-storey building existed and PSPCL had installed Energy Meter at every storey of the multi-storey building or should have relied on the sudden checking by a team of officials of the PSPCL, vide LCR No.76/1757 dated 1.10.2018, that connected load was reported as 1.220 kW only (one submersible pump 1.5 BHP, one light and Plug) and work of repairs/furnishing was going on. Above all, the Respondent was required to quote the rule/regulation of the Supply Code-2014 or Electricity Act-2003, to justify the overhauling of account relating to the period from 20.06.2015 to 01.10.2018 by taking monthly consumption of 1080 kVAh units ( based on LDHF formula and considering load as 9 kW). It was just not enough to mention that the case of the consumer related to non-billing from 20.06.2015 to 01.10.2018 and not the case of overhauling of account as prescribed in Regulation 21.5.2 of Supply Code-2014. Petitioner’s Representative (PR) added that the Respondent should have admitted that due to clear lapses on the part of the concerned officials, the energy bills could not be issued, the Energy Meter was found burnt during checking and load was detected as 1.220 kW only and overhauling was required to be done as per Regulation 21.5.2 of the Supply Code-2014. Petitioner’s Representative (PR) prayed that in view of the provisions contained in Regulation 21.5.2 and 21.5.3 of the Supply Code-2014, the energy bill of the Petitioner was required to be revised by taking consumption for 6 months calculated with LDHF formula considering load as 1.220 kW and for the remaining period, MMC could be levied (due to non-issue of bills from the date of release of the connection). Petitioner’s Representative (PR) contended that the average consumption taken for 6 months was also required to be 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. The energy consumption after replacement of the disputed Energy Meter was also available.

 The Respondent contested the above submissions of the Petitioner’s Representative stating that in this case, the Petitioner was not billed from the date of release of the connection i.e. 20.06.2015 to 01.10.2018 and it was a case of non-billing and the detection of non-billing had occurred on 01.10.2018. At that time, the Energy Meter of the Petitioner was defective/Burnt and the reading was not visible. The plea of the Petitioner to overhaul its account on 1.220 kW by applying LDHF formula for 6 months and prior to that, on MMC basis was not tenable/maintainable because the connected load of the Petitioner, as on 01.10.2018, was reported/found 1.220 kW against sanctioned load 9 kW as per Load Checking Report dated 01.10.2018. The Respondent correctly raised the disputed bill as per instructions of the PSPCL. It was a non billing case and overhauling of account was also involved as the actual consumption/reading of the Energy Meter was not available due to reading not visible on the display of the Energy Meter which was found burnt and the accuracy of the Energy Meter could not be checked in the M.E. laboratory and also DDL could not be taken to work out the consumption for the non-billing period. The plea of the Petitioner to make billing on MMC basis from 06/2015 to 01/2018 was not maintainable because there was no record of consumption recorded, as the Energy Meter was found burnt on 01.10.2018 at the time of checking and the reading was not found visible on the Energy Meter. Thus, the billing for the period from 20.06.2015 to 01.10.2018 had been correctly raised as per LDHF formula on sanctioned load.

 *I find that the Petitioner could have got its load reduced from 9 kW to 1.220 kW by submitting an application in the prescribed A&A form which it never did. The Respondent reserved 9 kW capacity for the Petitioner in its power system for which, Petitioner must be made to pay. Hence, the Petitioner’s plea that load of 1.220 kW should be taken while assessing of energy consumption per month during the disputed period is not sustainable.*

*I observe that officials of the Respondent showed dereliction of duty by not issuing the bill for such a long period after release of connection on 29.06.2015 [instead of 20.06.2015 i.e. the date of issuance of Service Connection Order (SCO), which was effected on 29.06.2015] and violated the provisions of Regulation 30.3 of the Supply Code 2014****.***

*I also observe that the Petitioner could not bring any evidence on record to prove that it had ever requested in writing, during 20.06.2015 to 30.09.2018 (39 months and 11 days ), to the Respondent about non receipt of the energy bills for the above period which showed that the Petitioner, being a NRS category consumer, did not discharge its obligation sincerely, honestly and responsibly. Had the Petitioner been vigilant, the present dispute would not have arisen.*

**5. CONCLUSION:**

 From the above analysis, the legitimacy of applicability of instructions contained in Regulation 21.5.2 (d) of the Supply Code-2014 in the present case proves beyond doubt as is evident from the perusal of the said Regulation which is reproduced below:

 “***21.5.2: Defective (other than inaccurate)/Dead***

 ***Stop/Burnt/Stolen Meters:***

 *The accounts of a consumer shall be overhauled/billed for the period meter remained defective/dead stop and in case of burnt/stolen meter for the period of direct supply subject to maximum period of six months as per procedure given below:*

1. *Where the consumption for the previous months/period as referred in para (a) to para (c) is not available, the consumer shall be tentatively billed on the basis of consumption assessed as per para-4 of Annexure-8 and subsequently adjusted on the basis of actual consumption recorded in the corresponding period of the succeeding year”.*

*Annexure-8, Para-4, referred to above, deals with the LDHF formula (Load x No. of days x Supply hours per day x Demand Factor) for assessment of electricity consumption per month.*

Accordingly, the Petitioner is required to be charged for six months preceding the date of replacement of the disputed Energy Meter with LDHF formula by taking the sanctioned load (i.e. 9 kW) at the time of release of the connection vide Service Connection Order (SCO) dated 20.06.2015, effected on 29.06.2015. However, no surcharge and interest is required to be levied on this account as the Respondent failed to deliver the first bill for more than 39 months.

**6.** **Decision:**

**As a sequel of above discussions, the order dated 31.12.2018 of the CGRF, Ludhiana in Case No. CGL-035 of 2018 is set aside. It is held that the Petitioner shall be charged for six months preceding the date of replacement of the disputed Energy Meter with LDHF formula by taking sanctioned load (i.e. 9 kW) at the time of release of the connection on 29.06.2015. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment without surcharge/interest.**

**7.** The Appeal is disposed of accordingly.

**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)

March 28, 2019 Lok Pal (Ombudsman)

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