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

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

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

 **APPEAL NO. 32/2019**

**Date of Registration : 19.06.2019**

**Date of Hearing : 20.08.2019**

**Date of Order : 22.08.2019**

**Before:**

 **Er. Virinder Singh, Lokpal (Ombudsman), Electricity**

**In the Matter of :**

Spice Communication,

Rurki Kalan,

ATC Telecom Infrastructure Pvt. Ltd.,

SEBIZ Square, Ist Floor, Plot No.IT-C-6,

Sector 67, SAS Nagar (Mohali)

 ...Petitioner

 Versus

Senior Executive Engineer,

DS Division,

 PSPCL, Malerkotla

 ...Respondent

**Present For:**

Petitioner Sh. Ashok Kumar, Advocate,

 Petitioner’s Counsel (PC).

 Respondent : 1. Er. Aamir Ashraf,

 Senior Executive Engineer,

 DS Division,

 PSPCL, Malerkotla.

 2. Er. Mehar Singh,

 Assistant Engineer.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 05.03.2019 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No.CG- 425 of 2018 deciding that :

*“ (a) Account of the Petitioner be overhauled for a period of six months immediately preceding the date of testing i.e. 30.05.2018 taking slowness of the metering equipment as 50.75% as reported by ASE Enforcement, PSPCL, Sangrur, vide ECR No. 40/3844 dated 30.05.2018 as per Regulation 21.5.1 of Supply Code 2014.*

1. *Bills issued in the month of 09/2018 and 10/2018 with*

*average consumption of 25103 units and 22156 units respectively be overhauled on the basis of average consumption of 4920 units per month recorded after the replacement of meter.”*

**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 Counsel (PC) submitted that the present Appeal could not be preferred in this Court within the stipulated period of one month from the date of receipt of order of the Forum due to the reason that copy of the decision dated 05.03.2019 of the Forum, was received by the Petitioner on 15.03.2019 and was thereafter, sent to Legal Department of the Petitioner’s Organisation for seeking approval of the Management. In this process, delay of 65 days beyond the stipulated/limitation period had occurred. Petitioner’s Counsel (PC) added that delay ibid was un intentional and bonafide and was also not in the interest of the Petitioner also as the Respondent had already disconnected the electricity connection of the Petitioner who was constrained to use DG sets for running of its Mobile Towers. Petitioner’s Counsel (PC) cited the decisions of the Hon’ble Supreme Court of India in case titled *Special Tehsildar Land Acquisition, Kerala Vs. K.V. Aysumme reported as 1996(10) SCC-634 and also in the case titled Collector, Land Acquisition, Anantnag Vs. Katijii report as AIR 1987 SC-1353* in support of its plea for condonation of delay. Petitioner’s Counsel prayed that the delay in filing the Appeal in this Court 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, but the same are not convincing. It ought to have taken the decision to prefer the Appeal in this Court with utmost expedition on receipt of the decision of the Forum. But the Petitioner did not do so and filed the present Appeal after 65 days of expiry of limitation period of one month. 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. The Petitioner was having a NRS Category connection with

sanctioned load of 34.560 kW. The connection was used for feeding Mobile Tower for which Metering was being done by providing LT CT operated static Energy Meter.

1. The connection was checked by the Addl.SE/Enforcement, PSPCL,

Sangrur, vide ECR No 40/3844 dated 30.05.2018, on the request of the AE, DS Sub-division, Lasoi, as the working of the Energy Meter was challenged by the Petitioner**.**

1. At the time of checking, the Energy Meter, readings recorded were

kWh= 3,08,249, kVAh= 3,25,690 and Overall Multiplication Factor= 0.5

1. The Enforcement, in its checking reported, as under:
2. *Metering equipment of the Petitioner was checked*

*with LT ERS meter at the running load by performing Dial Test and results were found to be slow by 50.75%.*

1. *The load of the Petitioner was running on two phases*

 *R & Y and accuracy was checked accordingly.*

1. *Only segment Y was appearing on the display of the*

 *meter and segments R & B were missing.*

1. *Voltage & Current were checked and found to be*

*R=0.00 Volt, Y= 364 Volt and Current R= 40 A and B= 0 Amp on the display of the meter.*

1. *CTC chamber of the Petitioner was opened and it was*

*found that Potential wire of Red phase and main cables of Neutral wire tightened with screws and both screws were carbonized. Therefore, consumption of electricity was not recorded completely.*

1. *Screws of R & N were set right by JE Sh. Balwant*

*Singh along- with his staff. After the connections were set right, the segments R, Y & B started to appear on the display of the meter.*

1. *Accuracy of the metering equipment was checked*

*again and results were found to be within limits.*

1. *DDL of the meter has been taken. Meter was*

*challenged. The meter be replaced and brought to ME Lab in sealed condition for further necessary action.*

1. *Seals on MCB/CTC were affixed by JE Sh. Balwant*

 *Singh.*

1. *Account be overhauled as per instructions of*

*Corporation.*

1. On the basis of the said checking report, the Respondent served a

Notice on the Petitioner, vide letter No. 584 dated 04.06.2018, to deposit Rs 2,42,144/- on account of overhauling of the account for the period from 12/2017 to 05/2018 by taking slowness factor as 50.75%.

1. The Energy Meter was replaced on 19.07.2018 (being challenged),

vide Meter Change Order (MCO) No 07/53181 dated 23.10.2017 and got checked from ME Laboratory on 13.02.2019 on the directions of the CGRF, Patiala. On checking, the accuracy of the Energy Meter was found within limits. However, DDL could not be taken due to communication failure between optical Port of Meter and Meter Reading Instrument (MRI).

1. Not satisfied with the Notice dated 04.06.2018 issued by the

Respondent, the Petitioner filed a Petition dated 05.12.2018 in the Forum, who, after hearing, passed the order dated 05.03.2019. (Reference: Page-2, Para-1).

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

an Appeal in this Court and prayed to quash the demand raised by the Respondent by setting aside the order dated 05.03.2019 passed by the Forum. The Petitioner also prayed to stay the operation of the said order and restore the electricity connection for use by the Mobile Tower.

**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.

1. **Submissions of the Petitioner**:

 The Petitioner made the following submissions for consideration of this Court:

1. The Petitioner was having a NRS Category connection with

sanctioned load of 34.560 kW. The connection was used for feeding Mobile Tower for which, Metering was done by providing LT CT operated static Energy Meter.

1. The connection was checked by the Addl.SE/Enforcement, PSPCL,

Sangrur, vide ECR No 40/3844 dated 30.05.2018, on the request of the AE, DS Sub-division, Lasoi, as the working of the Energy Meter was challenged by the Petitioner**.**

1. The Forum had given its findings by incorrectly relying on the

Checking Report of the Enforcement that the Energy Meter was running slow to the extent of 50.75% for seven months prior to the date of checking.

1. The Forum had arrived at the conclusion of running the Energy

Meter slow by taking into account the details of energy consumption for 5 years in violation of the provision of Section 56 (b) of the Electricity Act-2003 in which it is provided that in case of defective Energy Meter, the department was required to charge average of preceding six months and not of five years. As such, the Forum could not pass order in violation of the provisions of the Electricity Act-2003.

1. The report of checking by the Addl. S.E/Enforcement, PSPCL,

Sangrur could not be relied upon as the same could not be treated as impartial being one man show only. There was no proper team constituted with Technical Experts for the purpose. The report was mollified, arbitrary and illegal and not based on real truth.

1. The sealed Energy Meter was installed in the premises in lock and

key of the Respondent-PSPCL. The Petitioner was regularly making payment of monthly bills. The Meter Reader used to visit the premises every month to note down the reading recorded by the Energy Meter.

1. There was no reason for delay of seven months in finding out the

stated defect in the Energy Meter i.e. of its slow running and the Petitioner could not be penalized for no fault on its part.

1. As per Regulation 21.3.1 of Supply Code-2007 amended vide

Supply Code- 2014, it was specifically laid down that it shall be the responsibility of the Distribution Licensee to satisfy itself regarding the accuracy of an Energy Meter before it was installed at the consumer’s premises.

1. The Respondent, being sole supplier of electricity, framed draconian

rules to extract money from the pockets of the consumers demand exorbitant bills abruptly after a gap of seven months by stating that the Energy Meter was slow when the official of the Respondent visited the premises and checked the Energy Meter every month at the time of recording the reading.

1. The Respondent, while charging bill of Rs.2,42,144/- on the basis of

slowness after Energy Meter, had not given calculations/ method/ formula as per provisions of the Regulation 21 of Supply Code -2014 regarding testing of inaccurate Energy Meters.

1. The sanctioned load of the Petitioner was 34.596 kW, with reference

to which, the Respondent had already charged Monthly Minimum Charges. It was nowhere shown as to whether the deducted Monthly Minimum Charges received already by the Respondent were out of this impugned demand.

1. The Addl. S.E/Enforcement, in its report, stated that the potential

wire of Red Phase and main cable of neutral wire were tightened with screws and both screws were carbonized. Therefore, the consumption of electricity was not recorded correctly. These findings could not be relied upon because in case, the screws were found tightened, then, these could not be carbonized due to which, less consumption was alleged to be recorded. Usually, the wires of metering equipment was carbonized in case of loose connections only. In case, the screws were found tight, that meant there was no scope of carbonisation.

1. The Forum had not given any opportunity of hearing to the

Petitioner and passed the Order arbitrarily. No reason was given as to why the multiplication factor (MF) of 0.5 was applied when the Energy Meters equal to the capacity of load were available in the market.

1. The tower, to which metered supply was in dispute ,was seldom

used for signalling for long period as it was defective. Repair work on it was being carried out. There was erratic use of power supply on this tower, so, the consumption was used less in comparison to previous period.

1. In all circumstances, the Petitioner was ready to pay the

consumption charges equivalent to the average of last six months as per Rule 56(b) of the Electricity Act-2003.

1. The Energy Meter was not checked in the M.E. Laboratory. While

removing, the Energy Meter was not packed by following the instructions as contained in the Electricity Supply Instructions Manual (ESIM)

1. The Respondent did not have the power/authority to send the revised

energy bill in case of defective Energy Meter as held by the Hon’ble Punjab and Haryana High Court in case titled *Haryana Bijli Vitran Nigam Ltd & Anr Vs Amarjit Singh Chadha (2010(2) RCR (Civil)-605*. It was held by the Hon’ble High Court that if there was a dispute as to whether meter was correct or faulty, it was only Electrical Inspector who had jurisdiction to quantify penalty etc. after matter was referred to him and the Board had no authority to impose penalty. In addition, the following judgments may also be considered while adjudicating the dispute:

1. AIR-1988-SC 71: MPEB & Ors Vs. Smt. Basanti Bai
2. 2011(1) Civil Court Cases-001(SC): Municipal Committee, Hoshiarpur Vs. Electricity Board & Ors
3. 2010(2) RCR (Civil)-605: Haryana Bijli Vitran Nigam Ltd Vs. Amarjit Singh Chadha.
4. 2009(2) Civil Court Cases- 116(P&H): PSEB & Anr Vs. Firm New Era Printing Mills, Batala Road, Amritsar
5. 2010(4)-Civil Court Cases-058(Rajasthan) RSEB & Ors Vs. Ram Bhakta Hanuman Oil Inudstries.
6. RSA No.1917 of 2014: PSPCL Vs. M/S PVM Enterprises.
7. In view of the submissions made above, the Appeal may be

allowed.

1. **Submissions of the Respondent:**

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

1. The Petitioner was having NRS category connection with sanctioned load of 34.560 kW.
2. The Petitioner itself challenged the working of the Energy Meter on 23.10.2017 by depositing Challenge Fee vide Receipt No.194/3844 dated 30.05.2017.
3. In view of the said request, the checking of the Petitioner’s Energy Meter was got conducted, vide ECR No.40/3844 dated 30.05.2018 by the Addl. S.E/ Enforcement, Sangrur, who found that the Energy Meter of the Petitioner was slow by 50.75%.
4. A Notice was issued, vide letter No.584 dated 04.06.2018, to

deposit Rs.2,42,144/-, on account of overhauling of the Petitioner’s Account for the period from 12/2017 to 05/2018 taking slowness of the metering equipment as 50.75% determined at site by the Addl. S.E/ Enforcement. Aggrieved with this Notice, the Petitioner filed a Petition in the Forum who, after hearing, directed to overhaul the account of the Petitioner for a period of six months immediately preceding the date of testing i.e. 30.05.2018 taking slowness of the metering equipment as 50.75% as reported by ASE Enforcement, PSPCL, Sangrur, vide ECR No. 40/3844 dated 30.05.2018 as per Regulation 21.5.1 of Supply Code 2014.

1. On the basis of decision of the Forum, the account of the Petitioner overhauled and a Notice was issued to the Petitioner, vide letter No.608 dated 03.05.2019, by the Respondent to deposit the amounts.
2. The Petitioner did not deposit the amount charged, therefore, its connection was disconnected vide DCO No. 50138/19 dated 15.05.2019.
3. The decision of the Forum was correct which relied upon the checking report of the Addl.SE/Enforcement, PSPCL, Sangrur alongwith complete DDL Report of the Energy Meter and consumption data for the last five years. The Forum had clearly mentioned in its decision that the slowness of the Meter was clearly established from the DDL as well as the consumption pattern of the Petitioner.
4. As per Regulation 21.5.1 of Supply Code-2014, if a consumer Energy Meter, on testing, was found to be beyond the limit of accuracy as prescribed , 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 not exceeding six months immediately preceding the (a) date of test if the Meter had been tested at site to the satisfaction of the consumer or replacement of inaccurate Meter whichever is later, or (b) date, the inaccurate Meter is removed for testing in the Laboratory of the Distribution Licensee.
5. In view of the submissions made, the Appeal may be dismissed.

**5.** **Analysis:**

The issue requiring adjudication is the legitimacy of the overhauling of the account of the Petitioner’s Unit for a period of six months immediately preceding the date of testing of the metering equipment at site i.e. 30.05.2018 by the Enforcement with slowness determined as 50.75%.

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

1. The present dispute arose when the Petitioner, having a NRS

Category connection for feeding Mobile Towers, challenged the working of the Energy Meter in May 2018. Accordingly, a request was made for the checking of the metering equipment of the Petitioner by the Assistant Engineer, DS Sub Division, Lasoi to the Addl. S.E., Enforcement, PSPCL, Sangrur who conducted the requisite checking, vide ECR No. 40/3844 dated 30.05.2018 and reported , inter-alia, as under:

“ (a) Metering equipment of the Petitioner was checked with LT ERS meter at the running load by performing Dial Test and results were found to be slow by 50.75%.

1. The load of the Petitioner was running on two

phases R & Y and accuracy was checked accordingly.

1. Only segment Y was appearing on the display of

the meter and segments R & B were missing.

1. CTC chamber of the Petitioner was opened and

it was found that Potential wire of Red phase and main cables of Neutral wire are tightened with screws and both screws are carbonized. Therefore, consumption of electricity was not recorded completely.

1. Accuracy of the metering equipment was

checked again and results were found to be within limits.

1. DDL of the meter has been taken. The meter be

replaced and brought to ME Laboratory in sealed condition for further necessary action.”

1. Petitioner’s Counsel (PC) contended that the Forum had given its

findings incorrectly relying on the Checking Report of the Enforcement that the Energy Meter was running slow to the extent of 50.75% for seven months prior to the date of checking. The Forum had arrived at the conclusion of running the Energy Meter slow by taking into account the details of energy consumption for 5 years in violation of the provision of Section 56 (b) of the Electricity Act-2003 which provided that in the case of defective Energy Meter, the department was required to charge average of preceding six months and not of five years. As such, the Forum could not pass order in violation of the provisions of the Electricity Act-2003.

 In response to the above submission, PC was apprised that the account of the Petitioner was overhauled for a period of six months immediately preceding the date of testing of the metering equipment with slowness of 50.75% (as determined at site during checking dated 30.05.2018 by the Addl. SE/ Enforcement, PSPCL, Sangrur) in terms of Regulation 21.5.1 of the Supply Code-2014 which read as under:

*“ 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 not exceeding six months immediately preceding the 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.”*

 Petitioner’s Counsel (PC) was also specifically told during the hearing itself that the provisions of the Regulation ibid were consistent with the mandate/ provisions of the Electricity Act-2003 referred to by it.

1. Though the Petitioner’s Counsel was convinced during the course of

hearing that the account of the Petitioner was correctly overhauled for a period of six months (immediately preceding the date of testing of the metering equipment with slowness of 50.75% determined at site during checking dated 30.05.2018 by the Enforcement) and not on the basis of energy consumption recorded by the Energy Meter during five years preceding the date of checking, it would be worthwhile to peruse the year wise energy consumption details of the Petitioner’s connection as under:

|  |  |  |
| --- | --- | --- |
| **Year**  |  **Energy Consumption** **(in kWh units)** |  **Remarks** |
| 2013 |  46,841 |  |
| 2014 |  14,899 | Almost 1/3rd of consumption of the year 2013. |
| 2015 |  19,767 | Almost 1/3rd of consumption of the year 2013. |
| 2016 |  3,140  | Indication of not taking correct reading or non recording of reading correctly by the Energy Meter |
| 2017 |  72,587 | Indication of not taking correct reading or non recording of reading correctly by the Energy Meter |
| 2018  |  1,13,184 | Indication of not taking correct reading or non recording of reading correctly by the Energy Meter |

 I find from the perusal of the Tamper Data, brought on record of this Court, that due to non contribution by PT on Red and Blue phases for different periods of time from 2014 onwards, energy consumption remained erratic.

 I agree with the Petitioner’s Counsel that the Respondent did not monitor the variations in energy consumption of the Petitioner’s connection through Energy Variation Register/SAP System as required. I also observe that in compliance to the Order dated 15.03.2018 passed by this Court, Instruction No. 104.7 of ESIM was amended by incorporating the following:

“All the ASEs/Sr. XENs to keep a vigil on the variations in the energy consumption recorded and available in SAP in respect of all categories of consumers within their respective jurisdiction, analyse the cases of abnormal decrease in consumption of current vis-a-vis previous months (s) and take immediate corrective action, wherever required, with a view to protect the interests of both the Utility and the Consumers.”

 I also observe that implementation of the directions needs to be ensured and monitored.

**6. Conclusion**

From the above analysis, the legitimacy of the overhauling of the account of the Petitioner’s connection for a period of six months immediately preceding the date of testing (i.e. 30.05.2018) taking the slowness as 50.75%, as determined at site by the Addl. S.E./Enforcement, PSPCL, Sangrur during checking dated 30.05.2018 proves beyond doubt in terms of provisions contained in Regulation 21.5.1 of Supply Code-2014 as decided by the CGRF, Patiala.

**7.** **Decision:**

As a sequel of above discussions, the order dated 05.03.2019 of the CGRF, Patiala in Case No. CG- 425 of 2018 is upheld.

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

**9**. The Respondent-PSPCL Management is advised to take corrective action by putting in place a centralised system of taking Automatic Meter Reading (AMR) [ which shall be installed by the Telecom Companies like the Petitioner] of the unmanned Mobile Towers operating in the State to improve fiscal discipline and financial health of the Utility, reduce human interference and minimise such disputes.

**10**. 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)

August 22, 2019 Lok Pal (Ombudsman)

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