**COURT OF THE LOKPAL (OMBUDSMAN),**

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO. 54/2019**

**Date of Registration : 26.09.2019**

**Date of Hearing : 14.11.2019**

**Date of Order : 21.11.2019**

**Before:**

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

**In the Matter of**

Garg Brothers,

Near Lande Patak,

Tehsil Road, Jagraon.

 ...Petitioner

 Versus

 Senior Executive Engineer,

DS Division,

PSPCL, Jagraon

 ...Respondent

**Present For:**

Petitioner : Sh. Sukhminder Singh,

 Petitioner’s Representative (PR).

Respondent : Er. Gurmanpreet Singh,

 Senior Executive Engineer,

 DS Division, PSPCL,

 Jagraon.

 Before me for consideration is an Appeal preferred by the Petitioner against the decision dated 27.08.2019 in Case No. CGL-147 of 2019 of the Consumer Grievances Redressal Forum (Forum), Ludhiana stating as under:

*“ The amount charged to the Petitioner with the slowness factor of 36.96%, as per ME Lab report, is recoverable”.*

**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 69.830 kW and contract demand (CD) of 77.950 kVA for which, the Metering was being done by providing LT CT operated Static Energy Meter.

1. The connection was checked on 21.08.2018 by the Addl.S.E/ MMTS-1,

PSPCL, Ludhiana who issued directions to replace the non-DLMS Energy Meter.

1. The Energy Meter alongwith LT CTs were replaced, vide Device

Replacement Order No.100006400720 dated 21.08.2018, effected on 13.09.2018..

1. The connection was again checked by the AEE/Enforcement, PSPCL,

Bathinda vide ECR No.033/2209 dated 18.02.2019 where by, it was reported that Energy Meters display was showing Phase Sequence Reverse on physical checking, it was found that CT wires of Yellow and Blue Phases were interchanged at Meter Terminal Block.

1. On the basis of this report, the Energy Meter was replaced vide Device

Replacement Application No.082/073518 dated 05.03.2019, effected on 16.03.2019.

1. The said Energy Meter, installed on 13.10.2018 and replaced on

16.03.2019, was got checked from the M.E Laboratory on 16.04.2019 and found running slow by 36.96 %.

1. In view of this report, the account of the Petitioner was overhauled with

slowness factor of 36.96% and a Notice, bearing No.427 dated 22.04.2019, was sent to the Petitioner to deposit a sum of Rs.3,57,228/-.

1. The Petitioner did not agree with the Notice ibid and filed a Petition dated

30.05.2019 in the CGRF, Ludhiana who, after hearing passed order dated 27.08.2019. (Reference Page-2, Para-1).

1. Not satisfied with the decision of the CGRF, Ludhiana, the Petitioner

preferred an Appeal in this Court and prayed to set aside the decision of the Forum and allow the Appeal in the interest of justice.

**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 alongwith material brought on record by both the sides.

1. **Submission of the Petitioner:**

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

1. The official of PSPCL was recording readings every month and bills as

 issued on the basis of recorded consumption, were paid in due course. The Energy Meter of the Petitioner was replaced on 13.9.2018 whereafter, abrupt increase in consumption was noticed. The normal monthly consumption before the replacement of the Energy Meter was 5000 kVAh units apprx. and after 9/2018, the monthly consumption was recorded in the range of 11000-20000 kVAh units. The consumption as recorded after the installation of the Energy Meter in question (disputed Energy Meter) from 10/2018 to 3/2019 was abnormal/very much on the higher side when compared with normal consumption pattern of the consumer up to 9/2018. Thus, the Petitioner considered that Energy Meter would be declared fast in ME laboratory but to its surprise the Energy Meter was declared slow by 36.96% on 16.04.2019 by ME Laboratory. It was clear that the checking was biased and with the motive to penalize the Petitioner which was also evident from the site checking report of ASE/Enforcement.

1. The checking at site was conducted by the Assistant Executive Engineer/ Enforcement, PSPCL,. Bathinda vide ECR No.033/2209 dated 18.2.2019 on the directions of higher authorities (as mentioned on the ECR, without naming the authority). It was mentioned in the report thatthe wires of CTs of Yellow phase and Blue phase were found interchanged on the terminal of the meter”. The accuracy of the Energy Meter was checked with LT ERS Meter which was probably within limits. However, ASE/Enforcement mentioned in the report that accuracy was checked but it could not arrive at any conclusion.
2. It was very strange as to why the accuracy results of checking at site, by senior/competent officer, on running load, were mentioned in the report. Needless to submit here that any checking at site conditions with LT ERS Meter was more accurate and reliable than checking at different conditions in ME Laboratory. The Petitioner apprehended that wires of CTs were connected in such a way that Energy Meter was running fast but ASE/Enforcement, PSPCL, gave remarks that *“he could not arrive at any conclusion after checking with ERS Meter”.* It was still a mystery as to why, ASE/Enforcement, PSPCL could not arrive at any conclusion. The petitioner was not aware whether the wires as reported to be interchanged were actually interchanged or not. The Petitioner could not say anything about the actual conditions of the wires of CTs of Yellow phase and Blue phase at the time of checking. This situation would not have been there if the ASE/Enforcement, PSPCL, mentioned the accuracy results at the time of checking at site.
3. The same metering equipment ,when checked in ME Laboratory on 16.04.2019, was reported to be slow by 36.96%.The checking in ME *laboratory was biased (and probably done after creating conditions to declare the Energy Meter slow)* which was also substantiated from the site checking and consumption pattern of the Petitioner. But, the ASE/Enforcement, did not report the accuracy results as the Energy Meter was running fast at site conditions.
4. As stated above, the consumption, after the change of Energy Meter on 13.9.2018, increased abnormally. **The normal MDI of the Petitioner was 33 KVA**. Even by applying the approved LDHF formula of PSPCL, the resultant consumption came to 9311 kVAh units [77.590 kVA x 25 (days) x 8 (hours) x 0.60 demand factor]. However, after the replacement of the Energy Meter on 13.09.2018, the consumption was recorded as under:

 Month Energy consumption (kVAh units)

 10/2018 14826

 11/2018 15478

 12/2018 11822

 1/2019 17535

 2/2019 20174

 3/2019 16444

 From the above data, it was evident that consumption as recorded from 10/2018 to 3/2019 was very much on the higher side, considering the sanctioned load as 69.830kW/CD 77.590kVA & MDI of 33 kVA and consumption pattern up to 09/2018. *Now, if (for example) the consumption as recorded in 1/2019 & 2/2019 was enhanced by slowness factor of 36.96%, the resultant consumption worked out to 27816 kVAh units and 32002 kVAh units for 1/2019 and 2/2019 respectively. However, If the supply from the connection was used for 24 hours during the entire period of 30 days of a month with MDI of 33 KVA, the resultant consumption worked out to 23760 kVAh units****.*** *Although it was not practically possible to use supply for 24 hours in the entire period of 30 days of a month, with maximum demand but even with this hypothical situation, the consumption of 27816 kVAh units and 32002 kVAh units worked out to 1/2019 and 2/2019 (after applying slowness factor of 36.96%) was more than the consumption of 23760 kVAh units (calculated with hypothical situation).*Thus, there may not be any doubt that Energy Meter was not slow as reported in the ME/lab checking report.

1. After the coming into force of Electricity Act -2003 and Supply Code- 2007 (amended w.e.f. 1.1.2015), every penal action on the consumer should be supported by rules/regulations because it is the consumer who had to pay the difference due to less billing of previous period and it should be informed under which rule/regulation, the consumer was being penalized. The Chief Engineer/ Commercial, PSPCL, vide CC No. 53/2013 and CC No.59/2014. issued instructions (on the basis of order dated 26.09.2013 passed by Hon’ble Punjab and Haryana High Court, in CWP10644 of 2010) that while initiating proceedings against any consumer, the competent authority of PSPCL must quote the relevant regulations of the Supply Code or any other regulations framed by the competent authority under the EA-2003. These instructions were again reiterated, vide CC No.30/2015 dated 5.8.2015, for strict compliance as Hon’ble PSERC had taken serious view of non-compliance of these instructions.
2. The Respondent charged the amount of Rs.3,57,228/- on account of slowness factor of 36.96% for the period of more than 6 months, without reference to any rule/regulation of Supply Code or Electricity Act-2003. As such, the amount charged to the consumer was liable to be quashed.
3. As already stated Member/Technical of the Forum, was very much convinced with the submission of the Petitioner and had given its opinion in the order.
4. The Forum had also observed that consumption recorded during the disputed period i.e. from 10/2018 to 3/2019 was quite higher than the consumption recorded during the corresponding months of previous year.
5. The MDI as recorded in 11/2018, 12/2018, 1/2019, 2/2019 and 3/2019 was 27 KVA, 25 KVA, 33 KVA, 33 KVA & 33 KVA respectively. Even at the time of checking by the AEE/Enforcement, PSPCL, on 18.2.2019, it was 33.06 kVA. Needless to submit that MDI meant maximum load (in KVA) used in the month during particular time/period. However, Chairman and Member/Finance, Forum considered SL but taking Number of hours as 20 hours for comparison of consumption with standard LDHF formula. The load survey (if any available) was not provided to the Petitioner for verification of the quantum of load used and number of hours the factory was in operation.
6. The consumption as recorded in 1/2019 and 2/2019 was 17535 kVAh and 20174 kVAh and MDI as 33 kVA. Now, if (for example) the consumption as recorded in 1/2019 and 2/2019 was enhanced by slowness factor of 36.96%, the resultant consumption came to 27816 kVAh units and 32002 kVAh units for 1/2019 and 2/2019 respectively. However, If the supply from the connection was used for 24 hours in the entire period of 30 days of a month with MDI of 33 kVA, the resultant consumption came to 23760 kVAh unitsand consumption after enhancing with slowness factor worked out to 27816 kVAh units and 32002 kVAh units for 1/2019 and 2/2019 respectively. Moreover, use of maximum load (33 KVA) for 24 hours during entire period of 30 days was imaginary situation but even with this consumption came to 23760 kVAh units and consumption arrived at after applying slowness factor was more than the consumption even with imaginary situation. The Forum failed to assess this situation.
7. The site conditions when the Energy Meter was checked by the AEE/Enforcement, PSPCL, Bathinda were definitely different and probably conditions of CT wires were made to declare the Energy Meter slow in ME Laboratory and at the time of testing by the Engineer of the manufacturer of the Energy Meter. The Petitioner was not aware whether the wires as reported to be interchanged were actually interchanged or not. The Petitioner could not say anything about the actual conditions of the wires of CTs of Yellow phase and Blue phase at the time of checking. However, the Forum could have easily assessed the situation from the remarks as per site checking report of the AEE/Enforcement, PSPCL and consumption pattern but the Forum preferred to ignore all the evidences/facts and figures and even the clear observations of its Technical Member.
8. The observations/conclusion of the Forum was wrong, vague and non-speaking and was thus liable to be quashed.
9. In view of the submissions made, the unjustified demand raised by the Respondent be quashed and Appeal be allowed.
10. **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 69.830 kW and contract demand (CD) as 77.590 kVA.
2. The Energy Meter of the Petitioner was replaced on 13.09.2018 vide Device Replace Application No.100006400720, as per checking done by the Addl.SE/MMTS-1, PSPCL, Ludhiana dated 21.08.2018 as the Energy Meter installed at the premises of the Petitioner was non DLMS Meter.
3. New DLMS Energy Meter, installed against non-DLMS Meter of the Petitioner’s connection, was again checked by the AEE/Enforcement, PSPCL, Bathinda on 18.02.2019.
4. During the checking, it was fond that Energy Meter’s display was showing “Meter Sequence Reverse”. The wire of CTs of Yellow Phase and Blue Phase were found interchanged in the terminal of the Meter. The checking authority directed the Sub-Divisional office to change the Energy Meter and get it checked in the M.E. laboratory. The said Energy Meter was replaced on 16.03.2019 vide Device Replacement Application No.82/73518 dated 05.03.2019.
5. The Energy Meter was tested in the M.E. laboratory vide Challan No.153 dated 16.04.2019 and was found running 36.96% slow. As per ME Laboratory report, the account of the Petitioner was overhauled and charged Rs.3,57,228/- vide Notice, bearing No.427 dated 22.04.2019.
6. Instead of paying the charged amount, the Petitioner approached the Forum and challenged the charged amount after depositing 20% of the disputed amount i.e. Rs.76,441/- on 28.05.2019.
7. The Forum, vide its decision dated 27.08.2019 decided to recover the charged amount, which was intimated to the Petitioner vide Memo No.793 dated 09.09.2019.
8. The Petitioner did not agree with the decision of the Forum and preferred an Appeal in this Court for review.
9. The concerned official of the PSPCL was recording readings every month and bills issued, on the basis of recorded consumption, were paid in due course.
10. After replacement of the Energy Meter on 13.09.2018, every consumption of the Petitioner increased from 5000 units to 11000-20000 units.
11. LDHF formula was applicable only in the case where Energy Meter was defective/ burnt and previous consumption data was not available. So LDHF formula was not applicable in this case as submitted by the Petitioner in the present Appeal.
12. The account of the Petitioner was overhauled from 13.09.2018 to 16.03.2019 as per rule /regulation 21.5.1 of Supply Code-2014.
13. The amount to the Petitioner on account of slowness of Energy Meter was charged as per rules/regulations of the PSPCL/applicable provisions of Supply Code-2014.
14. In view of the submissions made, Appeal may be dismissed.

**5. Analysis**

 The issue requiring adjudication is the legitimacy of overhauling the account of the Petitioner with slowness factor of 36.96% as per report dated 16.04.2019 of M.E Laboratory.

*The points emerging in the present dispute are deliberated and analysed as under:*

1. The Petitioner was having a Medium Supply Category connection

with sanctioned load of 69.830 kW and contract demand (CD) of 77.950 kVA for which, the Metering was being done by providing LT CT operated Static Energy Meter. The Present dispute arose after its connection was checked on 21.08.2018 by the Addl.S.E/ MMTS-1, PSPCL, Ludhiana who issued directions to replace the non-DLMS Energy Meter. Accordingly, the Energy Meter alongwith LT CTs were replaced, vide Device Replacement Order No.100006400720 dated 21.08.2018, effected on 13.09.2018.The connection was again checked by the AEE/Enforcement, PSPCL, Bhatinda vide ECR No.033/2209 dated 18.02.2019 whereby, it was reported that dispute of the Energy Meter was showing Phase Sequence Reverse. On physical checking, it was found that CT wires of Yellow and Blue Phases were interchanged at Meter Terminal Block. On the basis of this report, the Energy Meter was replaced, vide Device Replacement Application No.082/073518 dated 05.03.2019, effected on 16.03.2019. The Energy Meter installed on 13.10.2018 and replaced on 16.03.2019, was got checked from the M.E Laboratory on 16.04.2019 and found running slow by 36.96.In view of this report, the account of the Petitioner was overhauled with slowness factor of 36.96 and a Notice, bearing No.427 dated 22.04.2019, was sent to the Petitioner to deposit a sum of Rs.3,57,228/-.

1. On the directions of the Forum, the Energy Meter was got tested from the

Manufacturer of the Meter to report on the behaviour of the Meter as the consumption recorded during the disputed period was on very much higher side. The Respondent submitted the report to the Forum as under:

*“During testing the Meter, we found that the phase association of Current for ‘Y’ & ‘B’ phases are interchanged. We tested the Meter keeping the same connections at the following conditions and results are as below:*

 ***PULSE TEST****:*

1. *Voltage Applied 240 volts, Current Applied 5Amp at UPF,*

 *Meter showed error-36.41%.*

1. *Voltage Applied 240 volts, Current Applied 5Amp at 0.866*

*Lead, Meter showed error-40.17%.*

1. *Voltage Applied 240 volts, Current Applied 5Amp at 0.8 Lag*

 *PF, Meter showed error- 40.63%*

***DIAL TEST*** *:*

1. *Voltage Applied 240 volts, Current Applied 5 Amp at*

 *UPF, we applied dosage 0.3 kWh, Meter recorded energy 0.19 kWh i.e. -0.34% slow.*

1. *Voltage Applied 240 volts, Current Applied 5Amp at 0.9 Lag*

 *PF, we applied dosage 0.3 kWh, Meter recorded energy 0.179 kWh i.e. – 40.15% slow.*

1. *Voltage Applied 240 volts, Current Applied 5Amp at 0.866*

*Lag PF, we applied dosage 0.2 kWh, Meter recorded energy 0.12 kWh i.e. – 0.38 % slow.*

*In all the conditions, Meter was found slow and error various from -34% to -40% various Power Factor”.*

1. The consumption data of the Petitioner’s is tabulated as under:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Year | 2016 | 2017 | 2018 | 2019 |
| Month | Consumption | Consumption | Consumption | Consumption |
|  | Kwh | kVAh | kWh | kVAh | kWh | kVAh | kWh | kVAh |
| Jan | 4306 | 4704 | 2898 | 5433 | 2154 | 2496 | 15425 | **17535** |
| Feb | 4122 | 4449 | 2828 | 5987 | 1905 | 2333 | 19920 | **20174** |
| March | 3666 | 3971 | 2180 | 3301 |  |  | 18119 | **16444** |
| April | 4694 | 5096 | 3248 | 3835 | 5345 | 5643 | 3314 | 3315 |
| May | 4339 | 4880 | 2806 | 3154 | 4463 | 4597 | 4073 | 4089 |
| June | 4554 | 5224 | 3097 | 3505 | 5640 | 5848 | 4641 | 4663 |
| July | 4404 | 4631 | 4036 | 4602 | 4365 | 4384 |  |  |
| Aug | 3919 | 4007 | 4021 | 4594 | 5870 | 6251 |  |  |
| Sept | 4629 | 4565 | 3659 | 4278 | 4372 | 4961 |  |  |
| Oct | 5187 | 5720 | 2563 | 3226 | 13039 | **14826** |  |  |
| Nov | 4116 | 5630 | 1707 | 2036 | 13756 | **15478** |  |  |
| Dec | 1645 | 3353 | 1357 | 1544 | 12752 | **11822** |  |  |

1. The Respondent failed to check the Energy variation which increased from the month of 10/2018.
2. The CGRF (Two out of Three Members) decided the case on the basis of consumption data and observed that the consumption recorded during the disputed period i.e. from 10/2018 to 03/2019 was quite higher than the consumption recorded during the corresponding months of previous years. Even after the replacement of the Energy Meter, the consumption recorded was comparable with the consumption recorded during the corresponding undisputed months of previous years and quite less than consumption recorded during disputed period.
3. Member/Technical of CGRF did not agree to the conclusion and gave its dissenting opinion:

*“ From the consumption data, it could not be concluded that how the consumption remained very high during the period the disputed metering equipment remained installed with wrong connections, which will further increase if the slowness factor of 36.96% is applied. Such a huge consumption was never recorded before and after the disputed period. Even the Respondent could not justify this high consumption during the disputed period and he could not even produce the Energy Variation Register when the consumption was recorded more than 7-8 times during the disputed period as compared to corresponding period of previous/successive years/year. Further the checking agency i.e. AEE/Enforcement, Bathinda, vide his ECR No.33/2209 dated 18.02.2019, checked this* *connection and found the wrong connections at site. He checked the accuracy of the Meter at site with ERS Meter but he could not reach at any conclusive decision. In this report,* *he did not mentioned the results of the ERS Meter whether the Meter was running slow or fast. He must have recorded the actual accuracy results taken with the ERS Meter at site, which might have helped in deciding the case. The Meter testing in ME Lab and at Firm premises was done under standard conditions and not as per actual at site conditions. Further the exorbitant consumption was recorded only for the period, the disputed metering equipment remained installed at* *disputed period. So, the site and the same is quite normal just before and after the metering equipment can be treated as defective and hence the data shown in the disputed DDL period, be also considered as defective and can not be relied* *upon. So, it will be against the natural justice, by not considering the metering equipment ‘defective’ during the disputed period. Therefore, he is of the opinion that the behaviour of the ‘Metering Equipment’ remained erratic during the disputed period from 13.09.2018 to 16.03.2019, so the same can be treated as defective and the account of the Petitioner should be overhauled from 13.09.2018 to 16.03.2019 (till replacement of Meter), with the consumption of corresponding period of previous year, as per Regulation 21.5.2 (a) of Supply Code-2014.”*

This means that Energy Meter was defective and accountof the Petitioner is required is required to be overhauled for six months prior to replacement of disputed Energy Meter ( 16.03.2019) as per provisions contained in Regulation 21.5.2 (a) of Supply Code-2014 i.e. with the consumption of corresponding period of previous year.

**5. Conclusion:**

From the above analysis, it is concluded that the account of the Petitioner is required to be overhauled for six months prior to replacement of disputed Energy Meter (16.03.2019) as per provisions contained in Regulation 21.5.2 (a) of Supply Code- i.e. on the basis of consumption of corresponding period of previous year.

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

**As a sequel of above discussions, the order dated 27.08.2019 of the CGRF, Ludhiana in Case No. CGL-147 of 2019 is set-aside. It is held that the account of the Petitioner shall be overhauled as per conclusion arrived at in Para-5 above. The Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustments, without 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)

 November 21, 2019 Lokpal (Ombudsman)

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