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

 **ELECTRICITY, PUNJAB,**

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

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

 **APPEAL NO. 29/2020**

**Date of Registration : 01.07.2020**

**Date of Hearing : 29.07.2020**

**Date of Order : 31.07.2020**

**Before:**

**Er. Gurinder Jit Singh,**

 **Lokpal (Ombudsman), Electricity, Punjab**.

**In the Matter of:**

Resham Singh,

V& PO Raipur, Tehsil Sardulgarh,

Distt. Mansa.

**Contract Account Number: 3002941344**

 ...Appellant

 versus

Senior Executive Engineer,

DS Division, PSPCL,

Mansa.

 ...Respondent

**Present For:**

Appellant : Sh. Resham Singh

 Appellant.

 Respondent : 1. Er. Sahil Gupta

 Senior Executive Engineer,

 DS Division, PSPCL, Mansa.

2. Sh. Satish Kumar

 Divisional Superintendent.

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 10.02.2020 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-09 of 2020, deciding that:

 *“The bill issued to the petitioner of Rs. 21,330/- in the month of 02/2019 for the period 31.12.2018 to 12.02.2019 for a consumption of 4149 KVAH units for 43 days is in order and is recoverable. The decision of DDSC/Operation Division, Mansa held in its meeting dated 27.06.2019 is up held.”*

**2*.* Registration of the Appeal**

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 01.07.2020 i.e beyond the period of limitation of one month of receipt of order dated 10.02.2020 of the CGRF, Patiala in Case No. CGP-09/2020. The Appellant also submitted an application giving reasons for not filing the case within the limitation period and requested for condonation of delay in filing the Appeal in this Court. Besides, the Appellant had deposited 40% of the disputed amount of ₹ 21,330/- assessed by the Forum. Subsequently, the Appellant deposited ₹ 10,000/- vide Receipt No. 210800225731 on 01.07.2020 and ₹ 20,000/- vide receipt No. 219900207506 on 03.07.2020. Accordingly, the Appeal was registered and a copy of the same was sent to the Sr. Executive Engineer/DS Division, PSPCL, Mansa for sending written reply/parawise comments with a copy to the office of the CGRF, Patiala to send the case file under intimation to the Appellant vide this office letter no. 529-31/OEP/A-29/2020 dated 01.07.2020.

**3.** **Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 29.07.2020 and intimation to this effect was sent vide this office letter no. 641-42/OEP/A-29/2020 dated 27.07.2020 by e-mail. Copies of the minutes of proceedings held were sent to the Appellant as well as the Respondent vide letter no.651-52 /OEP/A-29/2020 dated 29.07.2020.

**4.** **Condonation of Delay**:

At the start of hearing on 29.07.2020, the issue of condonation of delay in filing the present Appeal was taken up. The Appellant stated that he could not file the Appeal in this Court within one month of receipt of order dated 10.02.2020 due to COVID 19 pandemic conditions and lockdown and prayed to condone the delay in filing the Appeal in this Court.

 I find that the Respondent did not object to the condonation of the delay in filing the Appeal in this Court either in its written reply or during hearing in this Court.

In this connection, I have gone through Regulation 3.18 of PSERC (Forum and Ombudsman) Regulations, 2016 which reads as under:

*“No representation to the ombudsman* shall lie unless:

*(ii) The representation is made within one month from the date of receipt of the 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 reasons given by the Appellant that he could not prefer the present Appeal within intimation period due to COVID-19 Pandemic lockdown is genuine.

I also observe that non condonation of delay would deprive the Appellant of the opportunity required to be afforded to defend the case on merits. Therefore, with a view to meet the ends of ultimate justice, the delay in filing the Appeal in this Court beyond the stipulated period was condoned and the Appellant was allowed to present the case

**5.** **Submissions made by the Appellant and the Respondent**

With a view to adjudicate the dispute, it is necessary to go through written submissions made in the Appeal by the Appellant and reply of the Respondent as well as oral submissions made by their respective representatives along with material brought on record by both the sides.

1. **Submissions of the Appellant**
2. **Submissions made in the Appeal**

The Appellant made the following submissions in the Appeal, received on 01.07.2020, for consideration of this Court:

1. The Appellant was having a Small Power (SP) 63/05 connection in his name with sanctioned load of 11.910 kW in the Village Raipur, Tehsil Sardulgarh, Distt. Mansa. He had received a letter dated 14.12.2018 from the Respondent advising him to maintain the load within limits and to ensure to maintain shunt capacitor in healthy condition. The Appellant acted on the said advice and got extended his load to 13.930 kW w.e.f 06.03.2019 and got installed shunt capacitors.
2. The Appellant was served an energy bill of ₹ 21,330/- in the month of 02/2019 for the period 31.12.2018 to 12.02.2019 (43 days) for a consumption of 4149 kVAh which was on higher side.
3. The Appellant did not agree with the said bill issued on 15.02.2019 and filed a case in the DLDSC which decided on 27.06.2019 that the bill was in order and was recoverable.
4. The Appellant expressed desire to challenge the working of the Energy Meter and was advised to deposit fee for checking of Energy Meter in ME Lab, Bhatinda. Accordingly, he deposited the Meter challenge Fee of ₹ 450/- on 25.03.2019. Thereafter, the Energy Meter was checked in ME Lab. The Appellant was told that the results of checking of the Energy Meter were within limits and bill served upon him was correct. Actually, difference between readings of kWh and kVAh consumption were significant and this could be due to installation of shunt capacitors.
5. The Appellant filed a Petition No. 09/2020 on 08.01.2020 in the office of CGRF, Patiala where the case was heard on 24.01.2020. The Appellant’s submission about kWh and kVAh readings was not considered.
6. On 11.02.2020, the Appellant received a letter from the Forum where he visited again and was asked to submit another application.
7. The Appellant returned from the Forum and took Mobile No. 9646121112. He kept on trying to contact on the said phone. Thereafter, COVID 19 lockdown came into force.
8. After opening of the office of CGRF, Patiala after the said lockdown, the Appellant again contacted the Forum on phone and was told that the Forum had no solution of the dispute and that the remedy lies with the Court of Ombudsman.
9. It was prayed to this Court to correct the bill of the Appellant. The ME Lab checking was done in kWh and not in kVAh.

**(b) Submissions during Hearing**

During the hearing on 29.07.2020, the Appellant reiterated the submissions already made in the Appeal and on being requested he submitted a copy of receipt dated 25.03.2019 for ₹ 450/- on account of deposit of Meter Challenge Fee. The Appellant was asked during hearing to intimate as to whether he was willing to get the disputed Energy Meter checked in M.E. Lab. where the same was lying in unsealed/open condition. In response, he expressed unwillingness to get the said checking done at this stage.

1. **Submissions of the Respondent**
2. **Submissions made in the Written Reply**

The Respondent, in its reply, sent vide e-mail dated 23.07.2020, submitted the following, in its defence, for consideration of the Court:

1. The Appellant was having a Small Power category connection in his name with sanctioned load of 11.910 kW upto 05.03.2019 and got its load extended to 13.930 kW from 06.03.2019.
2. The Appellant was given a Notice bearing No. 3609 dated 14.12.2018 regarding intimation of billing of SP category on kVAh consumption. The Appellant had visited the office of DS Divn., Mansa on 05.03.2019 for extension of load from 11.910 kW to 13.930 kW and the extension applied was sanctioned/ released from 05.03.2019.
3. It was correct that bill dated 15.02.2019 for the period 31.12.2018 to 12.02.2019 for 43 days of the Appellant was generated as per consumption of 217 kWh & 4149 kVAh in ‘O’ Code as per reading on Energy Meter. Billing of SP category was done as per kVAh consumption from 01.01.2019 as per Tariff applicable at that time.
4. The Appellant did not agree with this bill and challenged the working of the Energy Meter, installed at its premise on 25.03.2019. Accordingly, the Energy Meter was removed/ replaced on 19.04.2019 and sent vide challan dated 26.04.2019 to ME Lab. for checking. Thereafter, ME Lab vide Memo No. 743 dated 20.05.2019 reported that meter testing results were found within limits.
5. The Appellant was not satisfied with ME Lab report and filed case in DLDSC by depositing 20% of the disputed amount (₹ 4500/-) on 21.02.2019.
6. The DLDSC decided the case on 27.06.2019 against the Appellant. After analysing consumption data and DDL report, the disputed amount was held recoverable.
7. The Appellant was not satisfied with the decision of the DLDSC

and filed a case in the Forum who, after hearing both the sides, upheld, vide order dated 10.02.2020, the amount charged to the Appellant.

1. **Submissions during Hearing**

During the hearing on 29.07.2020, the Respondent reiterated the submissions already made in its written reply. Besides, the Respondent, on being asked, confirmed that accuracy of the disputed Energy Meter for kVAh consumption (for which the billing for the disputed period was done) was not checked in ME Lab. Accuracy test for kWh consumption only was done as reported by ME Lab. He also intimated that the disputed Energy Meter was presently available in unsealed/open condition in ME Lab., Bhatinda and accuracy of the same for kVAh consumption could be got checked now if the Appellant so desired. At the end of hearing, the Respondent was directed to send a copy of request letter submitted for challenge of the Energy Meter and also of the meter challan sent to ME Lab. by e-mail to this office by 30.07.2020 evening positively.

**6.** **Analysis and Findings**

The issue requiring adjudication is the legitimacy of the bill dated 15.02.2019 for ₹ 21,330/- issued to the Appellant for the period 31.12.2018 to 12.02.2019 (43 days) for energy consumption of 4149 kVAh.

*My findings on the points emerged, deliberated and analyzed are as under:-*

1. The relevant facts of the case are that the Appellant, having a Small Power category connection initially with sanctioned load of 11.910 kW, was advised by the Respondent, vide letter no. 3608 dated 14.12.2018, to keep its load within limits and maintain the shunt capacitor in healthy condition. The load of the Appellant was checked, vide LCR No. 25/141 dated 26.02.2019 and found to be 12.104 kW against sanctioned load of 11.910 kW. The Appellant, then, applied for extension in its load by two kW on 05.03.2019. Accordingly, the revised load of 13.930 kW was sanctioned/released on 05.03.2019 itself and a new shunt capacitor was installed. In the meantime, the Appellant was served with bill dated 15.02.2019 amounting to ₹ 21,330/- for the period 31.12.2018 to 12.02.2019 for energy consumption of 217kWh/ 4149 kVAh with OK status of Energy Meter. The billing was done for kVAh consumption, as required for Small Power Category connection, in terms of provision of Tariff Order for FY 2018-19. The Appellant did not agree with the said bill and challenged the working of the Energy Meter by depositing Meter Challenge Fee of ₹ 450/- on 25.03.2019. In response, the Energy Meter was replaced vide MCO dated 25.03.2019 effected on 19.04.2019 at final reading of 10442 kWh/ 20293 kVAh. The disputed Energy Meter was sent, vide Store Challan No. 04 dated 26.04.2019, to the ME Lab which reported that the test results of the disputed Energy Meter were within limits. Thereafter, the Appellant approached the DLDSC, Mansa which, in its meeting dated 27.06.2019, decided that the billed amount of ₹ 21,330/- was recoverable from the Appellant. Aggrieved, the Appellant filed a case in the office of the CGRF, Patiala which, vide order dated 10.02.2020, upheld the decision of the DLDSC.
2. The Appellant contended that energy consumption for the disputed period i.e 4149 kVAh, on the basis of which, energy bill amounting to ₹ 21,330/- was issued on 15.02.2019 was abnormal and much more than the energy consumption in kWh i.e 217.

I find that the Respondent stated in its reply that for Small Power (SP) category connections billing was to be done as per kVAh in accordance with the provisions of Tariff Order for FY 2018-19 and the disputed bill period from 31.12.2018 to 12.02.2019 was falling in the financial year 2018-19. I had observed that power factor of the Appellant during the disputed period is 0.05. The power factor of welding set is 0.40 as per Instruction no. 6.3 (b) of ESIM-2018. Such a low power factor of this installation could not be explained by the Respondent. It appears that there is some defect in recording of kVARh energy.

1. The Forum, in its decision, referred the DDL Report of the

Energy Meter and observed that an MDI of 2.12 kW had been recorded on 25.1.2019 at 17.00 hrs. and corresponding MDI in kVA was 13.60 as recorded on 13.1.2019 at 22.30 hrs. for the period 01.1.2019 to 01.2.2019. Further, MDI of 1.94 kW was recorded on 20.2.2019 at 18.30 hrs. and corresponding MDI in kVA was 13.25 as recorded on 06.2.2019 at 04.30 hrs. for the period 01.2.2019 to 01.3.2019. As such, there was huge difference in the MDI recorded in kW and that recorded in kVA from 01.1.2019 to 01.3.2019. However, this abnormal variation of MDI in kW and kVA was covered after this and MDI of 02.04 kW had been recorded on 01.3.2019 at 12.00 hrs. and corresponding MDI in kVA was 3.60 as recorded on 12.3.2019 at 13.30 hrs. for the period 01.3.2019 to 01.4.2019 and MDI of 4.94 kW was recorded on 26.4.2019 at 15.00 hrs. and corresponding MDI in kVA was 05.06 as recorded on 26.4.2019 at 15.00 hrs. for the period 01.4.2019 to 01.5.2019. The Forum observed on the basis of the above, that shunt capacitors of the Appellant’s connection were either defective or inadequate or were not in circuit for the period 01.01.2019 to 01.03.2019 which included the disputed period from 31.12.2018 to 12.02.2019 and which were set right after 12.02.2019. This was also evident from the daily consumption data as the consumption in kWh from 11.01.2019 to 12.02.2019 was 192 while consumption in kVAh was 4315 for the same period whereas the consumption in kWh from 13.2.2019 to 26.4.2019 was 317 kWh and consumption in kVAh was 539 for the same period. The Forum also observed that above position was corroborated from the load survey data of the disputed Energy Meter. On the basis of the above, the Forum concluded the Energy Meter of the Appellant was healthy and recorded correct kWh as well as kVAh consumption from 31.12.2018 to 12.02.2019 (disputed period) and again from 12.02.2019 to 26.04.2019 when the challenged Energy Meter of the Appellant was replaced. Accordingly, the Forum held that the amount of ₹ 21,330/- charged to the Appellant for the period 31.12.2018 to 12.02.2019 was correct and recoverable.

1. Written and oral submissions as well as material/evidence

brought on record of this Court by the Appellant and the Respondent have been gone through. It is observed that:

* 1. The Appellant was charged for a sum of ₹ 21,330/- vide bill dated 15.02.2019 for energy consumption of 4149 kVAh. But when the Appellant did not agree with the said bill and challenged the working of the meter vide application dated 25.03.2019, checking of the said Energy Meter was not done at site to confirm the genuineness of kVAh consumption for which the Appellant was charged in the disputed bill.
	2. The challenged Energy Meter, after removal from site on 19.04.2019, was sent to ME Lab vide Store Challan dated 26.04.2019 but the accuracy of the said Energy Meter was not checked as required vide Commercial Circular No.07/2019 dated 13.02.2019 which is reproduced below:

“The ESIM instruction no. 59.1 provides steps to be taken for routine testing/checking of energy meters. However, Ombudsman, Electricity, Punjab, in his Orders against Petition No. 36, 37 and 38 of 2018 has directed to issue instructions that the accuracy of the Energy Meters be checked/tested at site and/or in ME Laboratory in both Active (kWh) and Reactive Mode (kVARh) to determine the correctness of the Energy Meters.

Accordingly, ESIM instruction no. 59.1 is hereby amended to include the new sub-instruction 59.1.3 as under:-

1. **TESTING/CHECKING THE ACCURACY OF METERS-ADJUSTMENT OF ACCOUNTS:**

 59.1 Steps to be taken for routine testing/checking of the energy meters:

59.1.1 In order to ascertain whether the meter is working or not, Meter Readers should switch on one or two lights for a few seconds before taking monthly meter reading and watch that the meter reading advances in the correct direction.

##  59.1.2 Meter Inspectors, JEs, AE/AEE/XEN (DS) and AEE/XEN/Sr.XEN (Enforcement) shall conduct the accuracy test at site with the help of meter testing instrument.

 59.1.3 **The accuracy of the three phase LT CT meters and HT meters shall be checked/tested at site and/or in ME Laboratory in both Active (kWh) and Reactive Mode (kVARh) to determine the correctness of the Energy Meters.**

Meticulous compliance of the above instructions may please be ensured.”

* 1. During hearing on 29.07.2020, the Respondent, on being asked, confirmed that accuracy of the disputed Energy Meter for kVAh consumption (for which the billing for the disputed period was done) was not checked in ME Lab. Accuracy test for kWh consumption only was done as reported by ME Lab. He also intimated that the disputed Energy Meter was presently available in unsealed/open condition in ME Lab., Bhatinda and accuracy of the same for kVAh consumption could be got checked now if the Appellant so desired. The Appellant was, then, asked as to whether he was now willing to get the accuracy checked of the challenged Energy Meter lying in the M.E Lab. in the open condition. The Appellant expressed his unwillingness for checking the said accuracy at this stage.

The Appellant stated during hearing on 29.07.2020 that he is fully satisfied with the energy bills issued to him before and after the disputed period of 31.12.2018 to 12.02.2019.

1. From the above analysis, it is evident that accuracy of the challenged Energy Meter was not tested either at site or in M.E Lab. as per instructions of the PSPCL. Apart from this, the said Energy Meter was not sealed after checking on 26.04.2019 in the M.E Lab. and remained in the open condition till the date of hearing. It was not just and fair to charge the Appellant for the kVAh consumption of 4149 in the bill dated 15.02.2019. Thus, the option left is to consider the disputed Energy Meter as defective in view of incomplete testing by M.E. Lab. Provisions contained in Regulation 21.5.2 of Supply Code-2014 are applicable and are reproduced below:

 “*The accounts of a consumer shall be overhauled/billed for the period meter remained defective/dead stop subject to maximum period of six months. In case of burnt/stolen meter, where supply has been made direct, the account shall be overhauled for the period of direct supply subject to maximum period of six months. The procedure for overhauling the account of the consumer shall be as under:*

1. *On the basis of energy consumption of corresponding period of previous year.*

*b) In case the consumption of corresponding period of the previous year as referred in para (a) above is not available, the average monthly consumption of previous six (6) months during which the meter was functional, shall be adopted for overhauling of accounts.*

*c)If neither the consumption of corresponding period of previous year (para-a) nor for the last six months (para-b) is available then average of the consumption for the period the meter worked correctly during the last 6 months shall be taken for overhauling the account of the consumer.*

*d)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.*

*e)The energy consumption determined as per para (a) to (d) above shall be adjusted for the change of load/demand, if any, during the period of overhauling of accounts.”*

I am of the view that Regulation 21.5.2 (a) of Supply Code-2014 can not be applied in this case because kVAh consumption for the corresponding period of previous year is not available. Next option is to apply Regulation 21.5.2 (b) of Supply Code-2014. Accordingly, the accounts of the Appellant for disputed period (31.12.2018 to 12.02.2019) should be overhauled on the basis of average monthly consumption in kVAh of previous six months i.e. June, 2018 to November, 2018 during which the meter was functional.

**7.** **Decision**

As a sequel of above discussions, the order dated 10.02.2020 of CGRF, Patiala in Case No. CGP-09 of 2020 is set aside. It is held the account of the Appellant for the disputed billed period 31.12.2018 to 12.02.2019 (43 days) shall be overhauled in terms of provisions contained in Regulation 21.5.2 (b) of Supply Code-2014 on the basis of average monthly consumption in kVAh of previous six months i.e. June, 2018 to November, 2018 during which the meter was functional. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short after adjustment, if any, with surcharge/interest.

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

**9**. In case, the Appellant 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.

 July 31, 2020 (GURINDER JIT SINGH)

 SAS Nagar (Mohali) Lokpal (Ombudsman)

 Electricity, Punjab.