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

 **ELECTRICITY, PUNJAB,**

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

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

 **APPEAL NO. 30/2020**

**Date of Registration : 06.07.2020**

**Date of Hearing : 19.08.2020**

**Date of Order : 21.08.2020**

**Before:**

 **Er. Gurinder Jit Singh,**

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

**In the Matter of :**

 M/s Janta Land Promoters Pvt. Ltd.,

 SCO No. 39-42, Sector-82,

 S.A.S Nagar.

 **Contract Account Number: 3000160961**

 ...Appellant

 versus

Addl. Superintending Engineer,

DS Division (Special),

PSPCL, S.A.S Nagar.

 ...Respondent

**Present For:**

Appellant : Sh. S.S Pathania

 Appellant’s Representative (AR)

Respondent : 1. Er. Mohit Nagpal

Assistant Executive Engineer/Commercial -2,

DS Division (Special),

PSPCL, S.A.S Nagar.

 2. Sh. Money Kumar,

 LDC, Commercial-2,

 PSPCL, S.A.S Nagar.

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 02.06.2020 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-08 of 2020, deciding that:

 *“The matter be closed sine die till a decision in LPA No. 7732 of 2018 titled AEE/Commercial sub division and another V/s Surinder Kaur and others is disposed off by the Punjab & Haryana High Court.*

*Further the respondents/petitioner are advised to put up the matter before this Forum once the appeal against the LPA No. 7732 of 2018 as above is disposed off by Punjab & Haryana High Court for consideration of this Forum.”*

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

A scrutiny of the Appeal and related documents received in this Court on 06.07.2020 revealed that the same was preferred within one month of receipt of the decision dated 02.06.2020 of CGRF, Patiala in Case No. CGP-08/2020. In the present dispute, the Appellant was not required to deposit the requisite 40% amount as the Appellant had claimed refund of excess amount got deposited from it. Accordingly, the Appeal was registered and a copy of the same was sent to the Addl. Superintending Engineer, DS Division (Special), PSPCL, S.A.S Nagar(Mohali) for furnishing written reply/ parawise comments with a copy to the office of CGRF, Patiala for sending the Case File under intimation to the Appellant vide this office letter no. 542-544/OEP/A-30/2020 dated 06.07.2020.

**3.** **Proceedings**

With a view to adjudicate the present dispute, a hearing was fixed for 19.08.2020 and intimation to this effect was sent to both the sides vide letter no. 665-66/OEP/A-30/2020 dated 31.07.2020.

4. **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, for consideration of this Court:

1. The Appellant (Janta Land Promoters Pvt. Ltd.) was having MS Category connection in its name with sanctioned load of 89.99 kW/CD 90 kVA under Commercial Sub Division, PSPCL, Mohali. The Energy Meter was installed in STP in Sector 90-91, Mohali, with Account No. 3000160961, with CT ratio 200/5 Ampere whereas, the bills for the last 5 years i.e prior to 19.05.2015 were being sent with the CT ratio as 100/5 Ampere. Resultantly, the multiplication factor (MF) was considered as “1” instead of “0.5” and because of that, the Appellant was charged twice the amount of actual electricity consumption in STP in Sector 90-91, Mohali.
2. The Appellant had filed a complaint with regard to the above said discrepancy and illegality being committed while billing the Appellant. The disputed period for which, the refund was sought, was 11/2011 to 03/2015 which was on account of application of wrong multiplication factor.
3. The complaint of the Appellant was adjudicated by the Sub- Divisional Officer, PSPCL, Sohana (Mohali) who corrected the bill but adjusted the amount for only period of 6 months resulting in refund of ₹ 5,73,140/-. The refund for balance period was not calculated/ adjusted which worked out to be ₹ 39,90,000/-(including interest upto 31.03.2020). The Appellant had been charged the double of the amount which was legitimately to be charged by the PSPCL. Therefore, the Appellant had the right to seek refund of excess amount alongwith interest.
4. The Appellant was aggrieved with non-consideration and arbitrary action on the part of the Sub Divisional Engineer and approached the Consumer Grievances Redressal Forum, Patiala in January, 2020.
5. The Forum passed order dated 02.06.2020 vide which, the case was adjourned sine die to await the decision of LPA No. 7732 of 2018 filed by PSPCL which is pending before the Hon’ble High Court of Punjab and Haryana.
6. The order dated 02.06.2020 of the Forum was passed without application of mind and was illegal, arbitrary, violative of Article 14 and 16 of the Constitution of India interalia on the following grounds: -
7. The Appellant had admitted that the billing of the Appellant’s connection was to be done with the multiplication factor (MF) of “0.5” and the Appellant had been wrongly billed by applying the multiplication factor (MF) of “1” from 11/2011 to 03/2015. The above said fact was evident from perusal of the order dated 02.06.2020, of the Forum wherein the statement of the Respondent was duly recorded. The Respondent had itself admitted that there was a categorical error and failure on its part. Insite of that admission, the claim of the Appellant had not been considered and the amount due had not been refunded.
8. The Respondent had itself admitted the mistake and on account of illegality committed by the Respondent, amount for 6 months had been refunded/adjusted and for the remaining period viz from November, 2011 to September, 2014, the case was sent to Zonal Level Dispute Settlement Committee, which rejected the same, without any logical reasoning. Once there was categorical admission on the part of the Respondent that the wrong billing had been done, no reason suffices for not refunding/adjusting the amount in the future bills.
9. The Respondent had illegally and arbitrarily relied upon decision of the Hon’ble High Court in *CWP No. 2539 of 2017 titled as Surinder Kaur Versus Ombudsman Electricity Punjab and others.* The Forum, without considering the facts of the case, had tagged the case of the Appellant with the above said case in which, the Respondent had filed LPA No. 7732 of 2018 and the same was pending consideration before the Hon’ble High Court of Punjab and Haryana.
10. The decision of the Hon’ble High Court in CWP No. 2539 of 2017 decided on 20.09.2018 was not applicable in the present case and was clearly distinguishable on facts. The said writ petition was filed by the consumer against the order of the Respondent vide which, excess demand was raised. The excess demand was raised by levying of multiplication factor (MF) of ‘2’ and it had been wrongly made by applying multiplication factor (MF) of ‘1’. Thus less bill had been generated while, the consumer was liable to pay twice the bill originally issued. The Petitioner, in CWP 2539 of 2017, had raised the claim that it was the fault of the Respondent that it had not applied correct multiplication factor and resultantly, billed less. The said Petitioner contended that on account of fault on the part of the Respondent, the Petitioner could not be charged for more than 6 months. Hon’ble High Court observed that the Supply Code, 2014 was effective only from 01.01.2015, as such, the Respondent could recover the amount only from 01.01.2015 and not prior to that. The case in hand (of the Appellant) was distinct and separate from that in CWP No. 2539 of 2017. In the present case, the consumer was charged less whereas it was to be charged more as per version of the Respondent. Thus, the facts in the present case were absolutely contrary as the Respondent had charged twice the amount which the Appellant was actually billed. Resultantly, the Respondent had not only acted illegally and arbitrarily by refusing to refund the excess amount charged, the Respondent had, in fact, played fraud with the Appellant which was impermissible in law.
11. According to the well settled theory of precedents, every decision contained three basic postulates i.e i) findings of fact and/ inference drawn by the Court, ii) principles of law applicable to the problem involved and iii) judgment based on combined effect of facts and law involved. A decision was an authority for what it actually decided and for its ratio of law, not what could be logically construed from the same. Every observation made in arriving at such decision or ratio was not a binding precedent. Reference was made to the judgment of the *Hon’ble Supreme Court of India in case titled as Uttaranchal Road Transport Corporation Vs Mansaram Nainwal, 2006 (3) SCT 830.* Thus, once the facts of the said case were absolutely different, the ratio decided had been absolutely different in the Regulations relied in the judgment was distinct. Accordingly, the same could not have been applied to derail the legal and right claim of the present Appellant.
12. A bare perusal of the Supply Code, 2007 as well as the Supply Code, 2014 as amended upto date made it evident that multiplication factor of the meter was one of the essential particulars which was included in the bill.
13. In the Supply Code- 2007, the issue of disputed bills was considered in Clause 35 reproduced below: -

 ***“35 Disputed electricity bills:***

*35.1 A consumer will effect full payment of the bill amount even if it is disputed failing which the Licensee may initiate action treating it as a case of non payment.*

*Provided that no action will be initiated if such a consumer deposits, under protest: -*

1. *an amount equal to the sum claimed from him, or*
2. *the electricity charges for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the Licensee*
	1. *Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this Regulation shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supply.*
	2. *The Licensee will after the receipt of a complaint from a consumer in its notified office, decide on the billing dispute within twenty four hours if no additional information is required and within seven days if additional information is required.*
	3. *If on examination of a complaint, the Licensee finds a bill to be erroneous, a revised bill will be issued to the consumer indicating a revised due date of payment, which will not be earlier than seven days from the date of delivery of the revised bill to the consumer. If the amount paid by the consumer under Regulation 35.1 is in excess of the revised bill, such excess amount will be refunded though adjustment first against any outstanding amount due to the Licensee and then against the amount becoming due to the Licensee immediately thereafter. The Licensee will pay to such consumer interest on the excess amount at twice the SBI’s Short Term PLR prevalent on first of April of the relevant year from the date of payment till such time the excess amount is adjusted.”*

The clause 35.4 of Supply Code-2007, made it evident that once a complaint was made and if the bill was erroneous, the revised bill would be generated and the excess amount received would be refunded through adjustment in the outstanding amount and then against the amount becoming due to the licensee immediately thereafter. There was no condition that only amount for a period of 6 months could be refunded if there was fault on the part of the Respondent in generation of the bill.

1. Clause 35.4 of the Supply Code-2007 categorically stated that if the bill was erroneous, then, necessary adjustments were to be made. As per Annexure given in Supply Code- 2007, multiplication factor was one of the essential particular and included in the bill. Therefore, once wrong bill was generated, the Respondent was under obligation to correct and refund or adjust the excess amount received by them without any legal justification or any lawful backing.
2. Note below Regulation 21.5.1 of Supply Code, 2014 made it evident that where the issue was not with regard to accuracy of meter and was with regard to application of wrong multiplication factor, in that case, the account was to be overhauled for the error/blunder. No time limit for considering the fault had been provided and it had been categorically stated that the liability of the Respondent be attached for the period, the mistake had continued. The relevant portion of the Note below Regulation 21.5.1 reads as under: -

*“Note: Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued.”*

1. That under Regulation 21.6 of the Supply Code, 2014, categorical provision had been provided for refund of the amount excess charged to the consumer, which reads as under: -

***“21.6 Recovery/Refund of charges:***

*If a consumer is liable to pay an additional amount or entitled to refund in consequence of any overhaul of his account in accordance with Regulations 21.5 above, the distribution licensee shall effect recovery or adjust the excess amount in the electricity bills of the immediately succeeding months.”*

1. This Regulation 21.6 was very categorical that if the refund was to be given to the consumer, the same would be adjusted immediately in the succeeding months. It was evident from the order dated 02.06.2020 of the Forum in the present dispute, the Respondent have admitted their fault that it had applied the wrong multiplication factor (MF) and that the Appellant was being charged twice the amount than what the Appellant was actually supposed to pay. No occasion had arisen for the Forum not to direct the Respondent to initiate the refund process and adjust the same in the bills of immediately succeeding months.
2. The aforesaid order was passed by the Forum without considering the facts of the case and the settled position for no fault of the Appellant. The refund process to which the Appellant was rightfully entitled was delayed/declined. It is a famous quote that justice delayed amounts to justice denied and the same is squarely applicable to the facts of the case.

 **(b) Submissions during Hearing**

During the hearing on 19.08.2020, the Appellant’s representative reiterated the submissions already made in the Appeal and prayed to allow the same.

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

The Respondent, in its reply, sent vide letter no. 5144/DB-86 dated 21.07.2020 submitted the following in its defence for consideration of the Court:

1. The Appellant (M/s Janta Land Promoters Pvt. Ltd.) was having MS Category connection bearing No. 3000160961 with sanctioned load of 89.99 kW/ 90.00 kVA as Contract Demand.
2. The Appellant was required to be billed with multiplication factor ‘0.5’ but it was billed with multiplication factor of ‘1’ from 10/2011 to 03/2015,
3. As a result, AEE/ Comml.-2 S/D, Mohali overhauled the account of the consumer from 10/2014 to 03/2015 with multiplication factor of 0.5 and that the amount of the refund was adjusted in the bills of the Appellant. But for the earlier period from 04-03-2012 to 06-09-2014, being audited period, a case for refund of ₹ 22,54,292/- was prepared and sent to Zonal Level Refund Committee.
4. The case was considered by above mentioned committee as per the documents submitted by Presenting Officer/Respondent and the decision dated 20.09.2018 of the Hon’ble Punjab and Haryana High Court in *CWP No. 2539 of 2017 titled Surinder Kaur V/s Ombudsman Electricity, Punjab and Others*. It was decided that the Appellant was not entitled to refund for the period upto 31.12.2014.
5. Feeling aggrieved against the said order of the ZLDSC, the Appellant approached the CGRF, Patiala in January, 2020 for relief.
6. The Forum considered the case of the Appellant and the matter was closed sine die till a decision in *LPA No. 7732 of 2018 titled as AEE/Commercial Sub Division and another V/s Surinder Kaur and Others was disposed off* by the Hon’ble Punjab and Haryana High Court. Further, the Appellant was advised to put up the matter before the Forum once the Appeal against LPA No. 7732 of 2018 was disposed of by the Hon’ble Punjab and Haryana High Court.
7. The Respondent, in its reply, had admitted the facts of the case regarding existence of MS connection and charging of multiplication factor (MF) of ‘1’ instead of ’0.5’ during the disputed period. The Respondent prayed that LPA No. 7732 of 2018 against the decision passed in CWP No. 2539 of 2017 was pending in the Hon’ble Punjab and Haryana High Court and requested that till the outcome of the said LPA, the case may be adjourned sine die.
8. **Submissions during Hearing**

During the hearing on 19.08.2020, the Respondent reiterated the submissions already made in the written reply and prayed to uphold the decision dated 02.06.2020 of the CGRF, Patiala.

5. **Analysis and Findings**

The issue requiring adjudication is the legitimacy of the refund of ₹ 22,54,292/- on account of application of incorrect Multiplication Factor of 1 (one) instead of 0.5 during the period from 13.10.2011(date of release of connection) to 06.09.2014.

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

1. The present Appeal poses a challenge to the decision dated 02.06.2020 of the CGRF, Patiala in Case No. CGP-08 of 2020 deciding that the matter regarding refund claimed for the period from 13.10.2011 to 06.09.2014 due to application of incorrect MF as ‘1’ instead of ‘0.5’ be closed sine die till LPA No.7732 of 2018 is disposed off by the Hon’ble Punjab and Haryana High Court.
2. The relevant facts of the case are that the connection of the Appellant was released vide SCO No. 064/27316 dated 13.10.2011. As per this SCO, meter bearing Sr. No.10547397 of capacity 200/5 Ampere and LT CTs of secure make bearing Sr. No. 1852, 1854 and 1856 of capacity 100/5 Ampere were installed at the premise of the Appellant. The Energy Meter bearing Sr. No.10547397 of capacity 200/5 Ampere and LT CTs of secure make, bearing Sr. No. 1852, 1854 and 1856 of capacity 100/5 Ampere were installed at the premise of the Appellant right from date of release of connection against SCO No. 64/27316 dated 13.10.2011. As such, the billing of the Appellant was to be done by applying MF of 0.5. On the other hand, the Appellant was billed by applying MF of 1 from 11/2011 to 03/2015. The bills for the last six months prior to 03/2015 were overhauled by the Respondent and a refund of ₹ 5,73,140/- was given to the Appellant by adjustment in the bill for the month of 05/2015. The case for refund of ₹ 22,54,292/- was sent to Zonal Level Refund Committee for consideration as the refund related to the audited period. The case was deliberated by Zonal Level Refund Committee in its meeting held on 24.10.2019. The Committee considered the facts/documents produced by the Presenting Officer. The Committee also took into consideration order dated 20.09.2018 of Hon’ble Punjab & Haryana High Court in CWP No. 2539 of 2017 titled as *Surinder Kaur v/s Ombudsman Electricity Punjab & Others.* Finally, the Committee came to a unanimous conclusion that the refund sought by the Appellant was not admissible. The Appellant was not satisfied with this decision and filed a case before the CGRF, Patiala in January, 2020. After hearing both the sides, the Forum passed order dated 02.06.2020.
3. The Addl. S.E., DS Division, PSPCL, Mohali was requested, vide letter no. 694/OEP/A-30/2020 dated 10.08.2020, to send the copies of all the reports for checking of the connection done by any agency since its release. It was also requested that copies of all the Job Orders for change of Energy Meter including CT/PT Unit during the disputed period be furnished. Besides, the Respondent was asked to give a certificate of non replacement of Energy Meter and CT/PT Unit during disputed period if no such event had taken place.

In compliance to the aforesaid directions, the Addl. S.E., DS Division (Special), PSPCL, Mohali, vide letter no. 5890 dated 17.08.2020 sent the copies of:

* checking Report No. 45/1060 dated 27.08.2019 and 12/1078 dated 17.10.2019.
* and also of S.C.O. No. 64/27316 dated 13.10.2011 as per which Energy Meter and CT/PT was installed on 13.10.2011.

The Addl. S.E./DS Division, Mohali also intimated that Energy Meter and CT/PT Unit were not replaced during disputed period.

1. During hearing on 19.08.2020, AEE Commercial-2, DS Division(Special), Mohali stated, on being asked, that no checking of the Energy Meter including CT/PT unit of the Appellant’s connection was done during the disputed period i.e the period for which, MF 1 (one) instead of 0.5 was charged to the Appellant.
2. It is observed that the Forum based its decision on the consideration that LPA No.7732 of 2018 filed on behalf of the PSPCL, challenging the decision in CWP No. 2539 of 2017, was pending before the Hon’ble Punjab and Haryana High Court. In the said LPA, PSERC and Ombudsman were also named as Respondents. Accordingly, the Forum decided to await the decision of the Hon’ble High Court in this regard.
3. The Appellant’s Representative contested the decision of the Forum and stated during hearing in this Court on 19.08.2020 that the issue raised in LPA No.7732 of 2018 filed in the Hon’ble High Court on behalf of PSPCL was about recovery on account of application of wrong MF. He pointed out that the said LPA was filed against order dated 20.09.2018 passed in CWP No.2539 of 2017 by Justice Jitendra Chauhan of the Hon’ble Punjab and Haryana High Court. He contested that the present case of the Appellant was of refund and not of recovery(charging) on account of application of wrong MF decided in CWP No.2539 of 2017. He prayed that the case of the Appellant should not be kept pending sine die to await the outcome of decision in LPA No.7732 of 2018 as the issue raised by the Appellant was different from that raised in CWP No.2539 of 2017 against which LPA No.7732 of 2018 was filed and is now pending before Hon’ble High Court. In this connection, it is worthwhile to peruse and reproduce the operative part of the said order dated 20.09.2018 of Hon’ble High Court which reads as under:

*“However, it is to be noticed that the Supply Code, 2014 came to be amended with effect from 01.01.2015, therefore, the respondents can take the advantage of Supply Code, 2014 only with effect from 01.01.2015. Therefore, it is ordered that the respondents can recover the amount from the petitioner only from 01.01.2015 and not prior thereto.”*

I find that the prayer made by PSPCL in LPA No.7732 of 2018(challenging the aforesaid order in CWP No.2539 of 2017) reads as under:

*“This Hon’ble court may be pleased to allow this Letters Patent Appeal and set aside judgement dated 20.09.2018 which is riddled with factual error.”*

I also find it necessary to go through and reproduce the relevant provisions in Note below Regulation 21.5.1 of Supply Code-2014 on the basis of whose interpretation, relief was given to the consumer in CWP No.2539 of 2017 (challenged subsequently through LPA No.7732 of 2018) as under:

*“Note: Where accuracy of meter is not involved and it is a case of application of wrong multiplication factor, the accounts shall be overhauled for the period this mistake continued.”*

From the above analysis, it is concluded that in LPA No.7732 of 2018 filed on behalf of PSPCL, the issue requiring adjudication is the legitimacy of order dated 20.09.2018 in CWP No.2539 of 2017 setting aside the order dated 08.12.2016 of the Ombudsman in Appeal No. 52/2016 titled Surinder Kaur vs PSPCL. Thus, the said order of the Ombudsman, passed in terms of provisions contained in Note below Regulation 21.5.1 of Supply Code-2014 and the Regulation itself are under judicial scrutiny/adjudication in LPA No.7732 of 2018. The above Regulation provides for overhauling the accounts of the consumers wherein Multiplication Factor (MF) was applied incorrectly irrespective of the fact that the same (MF) was more or less than actual MF.

Thus, the plea of the Appellant’s Representative that the outcome of LPA No.7732 of 2018 pending in the Hon’ble High Court is not relevant in present dispute is without merit and not justified.

As per the website of the Hon’ble High Court, last date of hearing by the Division Bench in the said LPA was 19.05.2020. Next date of hearing is not appearing on the website of the Hon’ble High Court.

1. This Court is inclined to concur with the decision of the Forum in this case because the Regulations of the Supply Code on the basis of which, the refund is claimed are under scrutiny/adjudication before the Hon’ble Punjab and Haryana High Court. The outcome of LPA has to be awaited before deciding this case on merits.

**6.** **Decision**

As a sequel of above discussions, the order dated 02.06.2020 of CGRF, Patiala in Case No CGP-08 of 2020 is upheld.

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

**8**. 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.

 August 21, 2020 (GURINDER JIT SINGH)

 SAS Nagar (Mohali) Lokpal (Ombudsman)

 Electricity, Punjab.