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

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

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

**APPEAL NO. 02/2020**

**Date of Registration : 13.01.2020**

**Date of Hearing : 26.02.2020 and 04.03.2020**

**Date of Order : 06.03.2020**

**Before:**

**Er. Gurinder Jit Singh,**

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

**In the Matter of :**

AB Bansal Foods,

Ubhawal Chathe Road,

Badrukha, Sangrur.

...Appellant

 versus

Senior Executive Engineer,

DS Division ,

PSPCL, Sangrur.

 ...Respondent

**Present For:**

Appellant : Sh. Mayank Malhotra, Advocate,

 Appellant’s Counsel (AC).

Respondent : 1. Er. Varinder Deepak

 Senior Executive Engineer,

 DS Division,PSPCL, Sangrur

 2. Sh. Gurpreet Singh,

Revenue Accountant (RA)

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 25.11.2019 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-233 of 2019, deciding that :

*“ The energy bill issued to the petitioner in the month of 06/2018 for a consumption of 22,584 kVAh for the period 30.04.2018 to 31.05.2018 for 31 days amounting to ₹1,66,680/- is in order and decision of ZDSC, South Zone, Patiala taken in its meeting held on 11.06.2019 is upheld.”*

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

A perusal of the Appeal and related documents received on 13.01.2020 revealed that the disputed amount shown by the Appellant in the prescribed Format was₹ 1,96,909/-. The Appellant’s Counsel stated, at the time of submission of the Appeal, that it had deposited ₹ 51,500/- on 11.03.2019 and ₹27,270/- on 08.01.2020 i.e. total amount of ₹78,770/- which is more than the requisite 40% of the said disputed amount. Besides, an application for condonation of delay in filing the present Appeal was also received along with the Appeal related documents. Therefore, the Appeal was registered and copy thereof was forwarded to Sr.Xen, DS Division, PSPCL, Sangrur for furnishing reply/parawise comments with a request to the CGRF, Patiala to send the case file under intimation to the Appellant vide Memo No. 23-25/
OEP/A-02/2020 dated 13.01.2020.

**3.** **Proceedings**

(i) A hearing in the case was fixed for 26.02.2020 at 12.30 P.M. and intimation to this effect was sent to both the sides vide Memo No 40-41 OEP/A-02/2020 dated 16.02.2020. In the meantime, the Appeal preferred by the Appellant and reply there to sent by the Respondent, vide Memo No. 1883 dated 24.02.2020, were examined in detail and it was observed that the disputed amount (for which, the demand was raised by the Respondent vide Memo No. 361 dated 06.02.2019 and upheld by the ZLDSC as well as CGRF, Patiala) was actually ₹ 2,56,941/-.

The matter was deliberated during hearing on 26.02.2020 in this Court as a result of which, the Appellant agreed to deposit the difference of the amount due ( 40% of ₹2,56,941/-) and the amount already deposited (₹78,770/-). The Respondent, on being asked, did not raise any objection in this regard. Accordingly, the Appellant was directed to deposit the requisite balance amount with the Respondent and send a photo copy of receipt of the same. Both the parties were also directed to attend the Court on the hearing fixed for 04.02.2020 at 11:30 A.M. A copy of the proceedings was sent to the Appellant and the Respondent vide Memo No. 181-182/OEP/A-02/2020 dated 26.02.2020.

(ii) In response to above directions, the Appellant deposited the balance amount of ₹24,100/- with the Respondent on 03.03.2020 and a copy of Receipt was provided to the Court on the date of hearing i.e. 04.03.2020. The hearing was attended by the representatives of both the parties and deliberations were held for adjudication of the present dispute. Copies of the proceedings were sent to both the Appellant and the Respondent vide Memo No. 212-213/OEP/A-02/2020 dated 04.03.2020.

**4.** **Condonation of Dela**y

On 04.03.2020, the issue of condonation of delay in filing the Appeal in this Court was taken up. The Appellant’s Counsel (AC) reiterated the submission in its application dated 10.01.2020 that order dated 25.11.2019 of the CGRF, Patiala sent by Registered Post, vide Memo No.2720 dated 25.11.2019, was received by the Appellant on 06.12.2019. As per provisions of Regulation 3.18(ii) of PSERC (Forum and Ombudsman) Regulations, 2016, the Appellant could file an Appeal in the Court of the Ombudsman within a month of the receipt of decision of the Forum i.e. by 06.01.2020. However, the Appellant filed the present Appeal in this Court on 13.01.2020, thus, there was delay of seven days in filing the Appeal. The Appellant also stated that filing of the Appeal got delayed as the Respondent-PSPCL did not accept the requisite balance amount (40% of disputed amount) for filing the Appeal in this Court. It was only after a lot of pursuance that the said remaining amount was accepted by the PSPCL on 08.01.2020. Only thereafter, the Appellant filed the Appeal in this Court on 13.01.2020. The Appellant’s Counsel prayed that delay in filing the Appeal was not intentional and was due to reasons beyond its control and may be condoned in the interest of justice.

 The Respondent in its defence, stated that the Appellant did not agree to deposit the actual amount due as per decision of the Forum. However, the Respondent did not object to the request of the Appellant for condonation of delay. I have gone through Regulation **3.18 (ii)** of the PSERC (Forum and Ombudsman) Regulations-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 Appellant has given reasons for not filing the Appeal within the stipulated period, the same are not convincing. The Appellant’s Counsel did not bring any documentary evidence on record of this Court to prove that it had made any written request to the
Respondent for acceptance of requisite 40% of disputed amount. Besides, the Appellant was expected to make earnest efforts well in time to ascertain the amount actually due and arrange funds for deposit of the requisite fee in the office of the Respondent.

I also observe that non condonation of delay would deprive the Appellant 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 Appellant is afforded an opportunity 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 13.01.2020, for consideration of this Court:

1. The Appellant was having a Large Supply category

connection with sanctioned load of 186.310 kW and contract demand of 207 kVA.

1. The Appellant made payments of all legal and correct bills

issued by the Respondent from time to time in the past and nothing was due except disputed illegal and incorrect billed amount of ₹2,56,941/- intimated by the Respondent vide Memo No. 361 dated 06.02.2019.

1. The Respondent issued energy bill dated 05.06.2018 amounting to ₹ 1,66,680/- excluding surcharge for consumption of 22,584 kVAh for the period from 30.04.2018

 to 31.05.2018. This illogical billed amount may be due to jump in the reading of the Energy Meter installed at the premise of the Appellant. The recorded consumption of the Energy Meter, for the period prior to disputed period, remained constant and was very reasonable.

1. Since energy bill dated 05.06.2018 issued by the Respondent

was excessive, wrong, illogical and illegal, the Appellant challenged the Energy Meter on 14.06.2018 by depositing the requisite fee of ₹2400/-.

1. The disputed Energy Meter was replaced/changed vide

Device Replacement Application dated 14.06.2018, effected on 12.10.2018. Since the energy bill was not corrected on the basis of realistic consumption, the Appellant was unable to deposit the legitimate dues with the Respondent.

1. The disputed Energy Meter was checked on 18.01.2019 in

M.E Laboratory, which reported that the results were within permissible limit.

1. The Appellant did not agree with the test results as copy

of checking report was not supplied to the Appellant. It was submitted that jump in the recorded consumption was a momentary event and this might not be revealed in the checking report of accuracy of Energy Meter carried out in the M.E Laboratory as considerable time had elapsed after occurrence of the event.

1. The Respondent had not supplied copies of Job

Order relating to installation of the Metering Equipment in dispute, checking report of removed Energy Meter carried out in M.E Laboratory/other agency regarding accuracy of the Energy Meter before installation at the premise of the Appellant and Purchase Order containing specifications of the Metering Equipment installed in the premise of the Appellant.

1. As per Instruction No.51 of ESIM-2018, it was the

responsibility of the Respondent to install a correct Energy Meter of suitable capacity. The Appellant neither interfered with the Energy Meter nor its connection. There was no allegation as such against the Appellant.

1. As per Regulation 21.3 of Supply Code - 2014, the

licensee had to conduct periodical inspection/testing of Meters installed at the consumer’s premise. But there was nothing on record to ascertain it and there was nothing adverse against the Appellant.

1. The Respondent - Corporation was also required to place

 on record the Calibration Report of the Reference Energy Meter, if any, with which, accuracy of metering Equipment was checked in M.E. Laboratory.

1. Instruction No. 104.1 of ESIM-2018 provided schedule

for checking of connections. There was no allegation of any type of slowness etc. with regard to working of the metering equipment. There was no allegation of any type of interference with the working of the Energy Meter against the Appellant.

1. As per Instructions of ESIM-2018, an Energy Variation

Register was required to be maintained in the office to watch variations in monthly consumption of the consumers, but there was no allegation of less consumption against the Appellant.

1. The Appellant had not purchased any paddy during

2016-17,2017-18 and 2018-19 as per the certificate given by the PUNSUP and Market Committee, Sangrur. It had been certified by the agencies that the Appellant had done milling of paddy supplied by the Government agencies.

1. It had been established beyond doubt from the

data supplied by the Appellant that Appellant firm had not done any milling of paddy supplied by the PUNSUP during billing period i.e. from 01.05.2018 to 31.05.2018 and even thereafter upto 30.06.2018.

1. It was clear from the data supplied that the Appellant

firm had not produced any rice production of PUNSUP, but delivered only 3371.49 quintals rice to PUNSUP during billing period. The rice production and supply of rice to PUNSUP during 01.06.2018 to 30.06.2018 was nil. The rice bran production account of the Appellant firm showed nil production of rice bran production.

1. The Appellant firm had neither procured any paddy

during FY 2016-17, 2017-18 and 2018-19 nor done any milling of Government supply of paddy or rice bran during and after the billing period.

1. The abnormal consumption recorded as per the energy

bill issued on 05.06.2018 and in the energy bills issued after this date was not genuine and might be due to jump in the recorded consumption of the Appellant’s connection.

1. The Respondent neither replaced the disputed Energy

Meter within the stipulated period nor got it checked from M.E Laboratory within stipulated time.

1. The CGRF, Patiala, vide order dated 25.11.2019,

upheld the decision of the ZLDSC taken in its meeting dated 11.06.2019.

1. The decision of the Forum was non - speaking, arbitrary,

illegal and was not sustainable in the eyes of law. It was against the instructions of the Respondent-PSPCL which provided that the decision should be speaking one, but the Forum decided the case by ignoring the genuine submissions of the Appellant.

1. The Forum failed to appreciate the fact that the Respondent

had not issued notice in compliance to Instruction No.57.5 of ESIM which provided that recovery of charges could be done only after serving Show Cause Notice to the consumer. The Forum had relied on data i.e. kVAh readings recorded in DDL and wrongly concluded that if the Energy Meter of the Appellant had jumped, then, it would have jumped in all time blocks. The jump in the reading was not a continuous process, but it was momentary action and occurred only in one/two seconds. The jump in the Meter reading might be in one time zone and same may or may not repeat in other time blocks. The Forum decided the case without any reliable data. The Forum had observed at page 5 of its decision that Load Survey Data had not been provided by the Respondent. The Forum also observed that data down loaded (DDL) by the MMTS at the time of checking in ME Lab did not have load Survey data of 5/2018 and 6/2018.

1. In view of the submissions made above, the order of the

Forum as well as of the ZLDSC be set aside/quashed and Appeal may be allowed in the interest of natural justice and fairness. The Respondent be directed to rectify the account of the Appellant on the basis of realistic consumption, so that the Appellant was able to deposit legitimate dues in installments with the Respondent who may also be directed not to disconnect the connection of the Appellant and refund the excess amount deposited alongwith interest.

1. **Submissions during Hearing**

In the hearing held in this Court on 04.03.2020, the Appellant’s Counsel reiterated mainly the submissions already made in the Appeal. In addition, the Appellant Counsel, on being asked, confirmed that the present dispute related to bill dated 05.06.2018 (period 30.04.2018 to 31.05.2018) and dated 06.07.2018 (period 31.05.2018 to 29.06.2018).

1. **Submissions of the Respondent**
2. **Submissions in the written Reply to the Appeal**

The Respondent, in its defense, submitted the following, Vide Memo No. 1883 dated 24.02.2019, for consideration of this Court:

1. An energy bill amounting to ₹ 1,63,653/- was issued to the Appellant, Bansal Foods by DS Sub Division, Badrukha in the month of 06/2018 on ‘O’ Code with consumption of 22,584 kVAh.
2. The Appellant did not deposit the said bill and challenged the Energy Meter by depositing a sum of ₹2400 vide Receipt No. 21420005999 dated 14.06.2018.
3. For replacement of challenged Energy Meter of the Appellant, Badrukha Sub Division issued Device Replacement Application No. 100005996881 dated 14.06.2018 to the Junior Engineer in the month 07/2018.
4. Subsequently an energy bill on ‘O’ Code for 4044 kVAh amounting to ₹33,202/- (Current cycle charges) was issued in 07/2018 to the Appellant who did not deposit this bill also.
5. The connection of the Appellant was checked by the Addl. SE, EA & MMTS, Patiala vide Checking No. 25/510 dated 09.07.2018. In its checking report, directions were issued to replace the Energy Meter and thereafter send the same to ME Lab, Patiala for checking/testing.
6. The Appellant deposited the bills issued after the months of dispute i.e. 06/2018 and 07/2018.
7. In compliance to directions issued during checking dated 09.07.2018, the challenged Energy Meter was replaced on 12.10.2018 .
8. The challenged Energy Meter of the Appellant was checked in ME, Lab Patiala vide Challan No. 109 dated 18.01.2019 as per which, it was reported that accuracy of the Energy Meter was within limits. The results of above checking were also intimated to the Appellant vide letter No.242 dated 21.01.2019.
9. The Appellant did not agree with the report of ME Lab, Patiala and filed its complaint before ZLDSC, South Zone, Patiala. ZLDSC decided on 11.06.2019 that bills issued to the Appellant in the months of 06/2018 and 07/2018 were in order. The decision of the ZLDSC was communicated to the Appellant vide letter no.1519 dated 09.07.2019.
10. The Appellant was not satisfied with the decision of ZLDSC and filed a Case in the office of the CGRF, Patiala. After hearing both sides, the Forum decided that the energy bill issued to the petitioner in month of 06/2018 for a consumption of 22,584 kVAh for the period 30.04.2018 to 31.05.2018 for 31 days amounting to ₹1,66,680/- was in order and also upheld the decision of the ZLDSC, South, Patiala taken in its meeting held on 11.06.2019.
11. **Submissions during Hearing**

During the course of hearing, the Respondent reiterated the submissions made in its written reply and contested the averments made by the Appellant’s Counsel during hearing. The Respondent stated, on being asked, that the present dispute related to bill dated 05.06.2018 (period 30.04.2018 to 31.05.2018) and dated 06.07.2018 (period 31.05.2018 to 29.06.2018).

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

The issue requiring adjudication is the legitimacy of the amounts charged vide

(i) bill dated 05.06.2018 (for the period 30.04.2018 to 31.05.2018) amounting to ₹1,66,680/- excluding surcharge/ interest for consumption of 22,584 kVAh.

(ii) bill dated 06.07.2018 (for the period 31.05.2018 to 29.06.2018) amounting to ₹2,10,490/- (including Arrears of current Financial Year but excluding surcharge/interest) for consumption of 4044 kVAh.

 *My findings on points emerged, deliberated and analysed*

*are as under:*

1. The present dispute arose after issuance of energy bill dated

05.06.2018 amounting to ₹ 1,63,653/- to the Appellant, on ‘O’ Code with consumption of 22,584 kVAh. The Appellant did not deposit the said bill and challenged working of the the Energy Meter by depositing a sum of ₹2400 on 14.06.2018.

Subsequently, an energy bill on ‘O’ Code with Consumption of 4044 kVAh amounting to ₹33,202/- (Current cycle charges) was issued in 07/2018 to the Appellant who did not deposit this bill also. The connection of the Appellants was checked by the Addl. SE, EA & MMTS, Patiala Vide ECR No. 25/510 dated 09.07.2018 as per which, directions were issued to replace the Energy Meter and thereafter send the same to ME Lab, Patiala for checking/testing.

 In compliance to these directions, the challenged Energy Meter was replaced on 12.10.2018 .The challenged Energy Meter of Appellant was checked in ME, Lab, Patiala Vide Challan No. 109 dated 18.01.2019 as per which, it was reported that accuracy of the Energy Meter was within prescribed limits. The results of above checking were also intimated to the Appellant vide letter No.242 dated 21.01.2019. The Appellant did not agree with the report of ME Lab, Patiala and filed its complaint before ZLDSC, South Zone, Patiala. which decided on 11.06.2019 that bills issued to the Appellant in the months of 06/2018 and 07/2018 were in order. The Appellant was not satisfied with the same and filed a Case in the office of the CGRF, Patiala. After hearing both sides, the Forum upheld the decision of the ZLDSC dated 11.06.2019.

1. As per the Instantaneous Report of DDL taken on 09.07.2018

 the cumulative Energy kVAh (import) was 3,65,391.

(iii) A scrutiny of the Billing Report of DDL reveals that

 cumulative energies in different Time Zones were as under:

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Date |  | Total | Zone8 | Zone7 | Zone6 | Zone 5 | Zone 4 | Zone 3 | Zone 2 | Zone 1 |
| 01.07.2018 | kVAh | 365316 | 32420 | 6825 | 5713 | 20583 | 5432 | 5978 | 189268 | 99066 |
|  | MDI | 8.24 | 7.65 | 7.86 | 7.93 | 8.11 | 7.81 | 7.92 | 8.14 | 8.24 |
| 01.06.2018 | kVAh | 364308 | 32345 | 6805 | 5690 | 20513 | 5415 | 5962 | 188765 | 98813 |
|  | MDI | 20.67 | 8.10 | 8.15 | 8.02 | 8.11 | 8.13 | 8.55 | 20.67 | 8.33 |
| 01.05.2018 | kVAh | 358663 | 31877 | 6686 | 5571 | 20043 | 5301 | 5848 | 185981 | 97356 |
|  | MDI | 31.98 | 30.81 | 29.68 | 29.76 | 31.11 | 29.60 | 30.49 | 31.98 | 31.98 |
| 01.04.2018 | kVAh | 346413 | 30792 | 6416 | 5334 | 19001 | 5042 | 5594 | 179998 | 94236 |
|  | MDI | 41.44 | 38.19 | 37.07 | 37.06 | 39.30 | 37.48 | 36.08 | 39.31 | 41.44 |
| 01.03.2018 | kVAh | 306287 | 27030 | 5562 | 4574 | 16449 | 4434 | 4942 | 160655 | 82641 |
|  | MDI | 36.43 | 34.51 | 35.74 | 36.25 | 36.43 | 35.11 | 34.01 | 35.56 | 34.41 |

The figures given in the above Table are to be multiplied by 4 (MF) for arriving at actual consumption recorded by the Energy Meter of the Appellant.

1. The Appellant has disputed the bill issued for the period from

30.04.2018 to 31.05.2018 for the consumption of 22,584 kVAh. The DDL taken showed energy consumption of 22,580 kVAh (Reading as on 01.06.2018 was 3,64,308 –

Reading as on 01.05.2018 was 3,58,663 = 5645x4 = 22,580 kVAh) for the period from 01.05.2018 to 01.06.2018 which matches with the energy consumption mentioned in the bill.

1. The energy consumption for the period from 31.05.2018 to

29.06.2018 was 4044 kVAh, and 960 kVAh for the period from 29.06.2018 to 31.07.2018. Thus, the Forum rightly observed that reduction in the consumption was due to the reason that the season of the Rice Sheller was coming to end on 30.06.2018. The consumption of 87,872; 49,124; 22,584; 4044 and 960 kVAh during 03/2018, 04/2018, 05/2018, 06/2018 and 07/2018 respectively showed a diminishing trend. Similar was the pattern of Maximum Demand recorded during the above months.

1. The Maximum Demand of 82.69 kVA was recorded in

Second Time Zone i.e. 06.00 hrs to 18.00 hrs and in all other zones, it was in the range of 32.08 kVA to 32.52 kVA. This proves that Meter Reading had not jumped as alleged by the Appellant and the connection ran in the period Time Zone-2.

1. The Appellant stated during the course of hearing in the

Forum that his sheller was not an old conventional type of sheller which used to run on a single motor but is a modern sheller where more than 15 motors have been installed with different capacities in the range of 2 HP to 50 HP which includes 3 No. drier motors of 5 HP, 7.5 HP, 15 HP and a whitener motor of 30 HP. This indicates that some load of the Appellant’s connection including driers were running during the disputed period which was correctly recorded by the disputed Energy Meter.

1. The Appellant’s Counsel placed reliance on the evidence

supplied by the Appellant that its Unit had not milled any rice production of PUNSUP, but delivered only 3371.494 quintals of rice to PUNSUP during the billing period. Besides, the firm had neither procured any paddy during 2016-17, 2017-18 and 2018-19 nor done any milling of Government supply of paddy or any rice bran during billing period or even there- after. The Appellant’s Counsel also referred to certificates from PUNSUP and Market Committee, Sangrur (after checking dated 30.04.2018 and 29.05.2018 respectively) in support of its contention that no work was going on in its Unit on the dates of checking. This data has no relevance in the present dispute case.

 I observe that report given by the M.E. Laboratory about correctness of disputed Energy Meter and results of the DDL taken confirming the recording of energy consumption by the disputed Energy Meter are sufficient evidence to justify that the disputed Energy Bills issued during 06/2018 and 07/2018 are correct and recoverable with surcharge and interest.

**7**. **Decision**

**As a sequel of the above discussions, the energy bills dated 05.06.2018 (period 30.04.2018 to 31.05.2018) and dated 06.07.2018 (period 31.05.2018 to 29.06.2018) issued to the Appellant by the Respondent-PSPCL are correct and recoverable with surcharge/interest. The Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment with surcharge and 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.

 (GURINDER JIT SINGH)

March 06, 2020 Lokpal (Ombudsman)

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