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

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

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

 **APPEAL NO. 05/2020**

**Date of Registration : 23.01.2020**

**Date of Hearing : 11.03.2020**

**Date of Order : 16.03.2020**

**Before:**

**Er. Gurinder Jit Singh,**

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

**In the Matter of:**

Surjit Singh,

Plot No. 256,

Industrial Area ‘A’

Ludhiana.

**Contract Account Number: 3002953660**

 ...Appellant

Versus

Sr. Executive Engineer,

DS, CMC Division (Special)

PSPCL, Ludhiana.

 ...Respondent

**Present For:**

Appellant: Sh. Sukhminder Singh

 Appellant’s Representative (AR)

 Respondent: Er. Sukhbir Singh,

 Sr. Executive Engineer,

 DS, CMC Division (Special)

 PSPCL, Ludhiana.

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 29.10.2019 of the Consumer Grievances Redressed Forum (Forum), Ludhiana in Case No. CGL-235 of 2019, deciding that:

*“The account of the Petitioner be overhauled from 17.09.2017 onwards and up to the date of PDCO with slowness factor of 67.15% as per Regulation 21.5.1 of Supply Code-2014.”*

**2.Registration of the Appeal**

The present Appeal was received in this office on 23.01.2020 i.e. after more than one month of receipt of decision dated 29.10.2019 by the Appellant who submitted an application giving reasons for condonation of delay in filing the Appeal. The Appellant had deposited ₹ 84,000/- on 09.09.2019; ₹ 54,000/- on 16.12.2019 and ₹ 30,000/- on 17.12.2019. Thus, a total amount of ₹ 1,68,000/- deposited with the PSPCL was more than the requisite 40% of the disputed amount (₹4,18,026/-) assessed by the Forum for filing the appeal. Accordingly, the Appeal was registered and copy of the same was sent to the Sr.Xen, DS CMC Division (Special), Ludhiana, for furnishing reply/parawise comments with a copy to CGRF, Ludhiana under intimation to the Appellant vide Memo No. 57-59/OEP/A-05/2020 dated 23.01.2020.

**3.** **Proceedings**

A hearing to adjudicate the present dispute was held in this Court on 11.03.2020 and was attended by the representatives of both the sides. At the start of proceedings, the Appellant’s Representative submitted a Rejoinder to the written reply of the Respondent which was taken on record and copy thereof was given to the Respondent for perusal. Copies of proceedings were sent to the Appellant as well as the Respondent vide Memo No.248-249/OEP/A-05/2020 dated 11.03.2020.

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

 During the course of hearing on 11.03.2020, the issue of condonation of delay in filing the Appeal in this Court was taken up. The Appellant’s Representative (AR) submitted that the Appellant had deposited ₹ 84,000/- (as 20% of the disputed amount) with the PSPCL on 09.09.2019 for registration of the Case in the Forum. On receipt of decision dated 29.10.2019 of the Forum, a Notice was issued by the AEE/Commercial, DS, CMC Division (Special), Ludhiana, vide Memo No. 4286 dated 01.11.2019, asking the Appellant to deposit the balance payable amount of ₹ 1,91,228/-. As the Appellant wanted to file an Appeal in this Court, it arranged funds with difficulty and deposited ₹ 54,000/- on 16.12.2019 and also ₹ 30,000/- on 17.12.2019. After depositing the requisite amount as detailed above, the Appellant filed the Appeal in this Court on 23.01.2020. The Appellant’s Representative submitted that the said delay was not intentional and beyond its control, therefore, the same may be condoned in the interest of justice.

 The Respondent did not object, either in its written reply or during hearing, to the request of the Appellant’s Representative for condonation of the delay in filing the appeal.

In this connection, 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 the Appellant had given reasons for not filing the Appeal within the stipulated period and the same are not convincing as the Appellant did not file the Appeal in this Court for more than a month after deposit of the requisite amount on 17.12.2019.

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 appeal 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 submitted the following in its Appeal received in this Court on 23.01.2020, for consideration of this Court:

1. The Appellant had a Medium Supply category connection with sanctioned load as 90.970 kW which was disconnected permanently in February, 2018 due to defaulting amount. There was dispute with PSPCL for amount of ₹ 2,34,160/- relating to the bill issued for the period 09.01.2012 to 10.02.2012. The amount included surcharge and interest which was accumulated to ₹ 5,09,693/.
2. The Appellant filed a case in CGRF Patiala who, in its proceedings dated 13.06.2018 directed the Addl. S.E, DS, CMC Division, Ludhiana to workout actual recoverable amount and get the same pre-audited.
3. The Appellant was not satisfied with the decision of the Forum but instead of filing an Appeal in this Court, preferred to get the case settled as per One Time Settlement (OTS) scheme circulated vide PSPCL’s CC No. 35/2018 dated 24.5.2018. The validity of OTS scheme was extended up to 23.11.2018 vide CC No. 54/2018 dated 30.08.2018.
4. The OTS Committee was required to consider the disputed amount only as per case filed before the Forum and interest/surcharge levied in subsequent bills issued under SAP system. The OTS Committee was not supposed to consider any subsequent amount raised due to problem in Metering Equipment for which, the consumer was not issued any detail whatsoever to verify the charges and challenge the case as per Consumer Complaint Handing Procedure (CCHP) for redressal of grievances of consumers.
5. The OTS Committee held its meeting on 03.07.2019 to consider the case of the Appellant. However, in addition to the disputed amount of previous period, an amount of ₹ 4,18,026/- was added as amount recoverable as per ME Challan 1119 dated 27.2.2019 (meter slow by 67.15%). The account of the Appellant was overhauled from 07.08.2017 to 03.02.2018 (date of Permanent Disconnection) with slowness of 67.15%.
6. The Appellant was not provided any details of this amount of ₹ 4,18,026/-, such as calculation sheet, ME Lab report, DDL report etc to verify the correctness of charges and to challenge the amount as per CCHP of PSPCL. Further, the Appellant was not given any time to check the details especially the amount of ₹ 4,18,026/- chargedas per ME Challan 1119 dated 27.02.2019 (Energy Meter slow by 67.15%) and forced to sign the minutes of OTS Committee. Therefore, the Appellant filed a case in the CGRF Ludhiana. The Appellant deposited 20% of the disputed amount of ₹ 4,18,026/- i.e. an amount of ₹ 84,000/- vide receipt dated 09.09.2019 and the case was admitted for hearing as Case No. CGL 235 of 2019.
7. The Appellant made genuine submissions before the Forum based on record/evidence but the Forum did not consider all the pleadings and decided the case by providing marginal relief. The Forum decided that the account of the Appellant be overhauled from 17.09.2017 onwards up to the date of PDCO with slowness factor of 67.15% as per Regulation 21.5.1 of Supply Code-2014. The Forum observed in its order (at page No.15) that as per DDL record, the voltage failure started on 17.09.2017 and during proceedings, the Respondent had admitted that the low voltage of all the three phases had been recorded from 17.09.2017 to the date of PDCO.
8. From the copy of DDL print-out provided by the Respondent,the date/period-wise parameter of voltage failure was not available and as per data of Phase Failure available in the DDL print-out, the total period of voltage failure/current failure was 64 days & 12 hours. Thus, it was not clear from where the data of voltage failure from 17.09.2017 to the date of PDCO had been taken by the Forum. Thus the Appellant was not satisfied with the decision of the Forum, therefore, the present appeal was filed.
9. While charging a sum of ₹ 4,18,026/- for the period of six months i.e. from 07.08.2017 to 03.02.2018 with slowness of 67.15%, the reasons of slowness had not been mentioned which were required to be mentioned, such as, whether the Energy Meter was slow due to carbonization of wires etc or for any other reason. The DDL print-out provided to the Appellant was incomplete. The load survey data and Tamper Report was not available in the copy of DDL print-out provided to the Appellant and without these reports, it was not feasible to analyze the reasons of slowness. Anyhow, as per data of Phase Failure available in the DDL print-out, the total period of voltage failure/current failure was 64 days & 12 hours. Further, this period of voltage failure/current failure was the total period during which Energy Meter remained installed in the premise of the consumer.
10. Further, the DDL print-out showed voltage imbalance for a very short period in different time intervals during the period 08.08.2017 to 22.10.2017. Similarly, current missing for a very short period in different time intervals during the period 15.11.2017 to 04.12.2017. Thus the parameters shown as per DDL report did not, indicate, in any way, that the Energy Meter was slow by 67.15% viz not contributing on two phases for a period of six months or from 17.09.2017 to 03.02.2018 (date of disconnection) as observed by the Forum.

 (xi) The connection of the Appellant was disconnected from incoming cable (from outside the premises) on 05.02.2018. The Energy Meter was not tested at site and it was tested in ME Lab. on 27.02.2019 i.e more than one year after the disconnection of electricity supply. Since DDL print-out was not suggesting slowness by 67.15% (non- contribution on two phases), it is quite possible that during the period from 05.02.2018 to 27.02.2019, the Potential Wires might had been carbonized which led to slowness of meter.

(xii) The consumption from the disputed Energy Meter was according to use of supply from the Energy Meter. The work in the factory was very less and was declining due to which Appellant was unable to meet with the expenditure, to pay the outstanding dues of PSPCL and Appellant had to close the factory. Thus the connection of the Appellant was disconnected from incoming cable from outside the premises on 05.02.2018. The consumption after applying slowness factor, worked out to very much on the higher side. The fault in the Energy Meter (nature of fault not explained in the ME Lab checking) might had developed during the period from 05.02.2018 to 27.02.2019. The work in the factory was less due to which consumption of electricity(before disconnection of supply) was comparatively less and the Respondent’s office could have investigated variation in consumption as per PSPCL rules, to ascertain the factual position. The Respondent contested the claim of less work in the factory on the ground that the Appellant did not submit any evidence in the PSPCL office. It was nowhere prescribed that Appellant should inform the PSPCL office or submit evidence regarding less work in the factory. Rather, PSPCL was required to investigate the reasons of less/variation in consumption, to ascertain the factual position.

(xiii) The Forum has arrived at the conclusion to order the overhauling of account with slowness factor of 67.15% on the ground that as per DDL record, the voltage failure started on 17.09.2017 to the date of PDCO. On the one hand, the Forum has mentioned/admitted that DDL report was not continuous and on the other hand, the Forum ordered the overhauling of account with slowness factor of 67.15% from 17.9.2017 to the date of PDCO. As per data of Phase Failure available in the DDL print-out, the total period of voltage failure/current failure is 64 days & 12 hours and it may be a case of Make & Break during previous period (from date of installation of Meter). It was not clear from where the data of voltage failure from 17.09.2017 to the date of PDCO had been taken by the Forum. Further, the Forum had viewed/compared the consumption pattern from 09/2017 to 02/2018 with corresponding period of the previous year without taking into consideration the resultant consumption for this period by applying slowness factor of 67.15%.The actual reasons of comparatively less consumption were explained to the Forum.

In view of the submission made, the decision of the Forum, be set aside and the unjustified demand of ₹ 4,18,026/- as raised by the Respondent (on the report as per ME Challan 1119 dated 27.2.2019 for alleged slowness of meter by 67.15%) be set aside in the interest of natural justice & fairness.

1. **Submissions during Hearing**

During the Course of hearing on 11.03.2020, the Appellant submitted a Rejoinder to the written reply of the Respondent and reiterated the submission made therein.

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

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

1. The energy bill of the Appellant for November, 2011 was

raised for the consumption of 17,734 units amounting to ₹ 1,09,200/- including surcharge. In December, 2011, the energy consumption of the Appellant’s connection was 16,877 units and after adding the bill of November, 2011 (₹1,09,200/-), gross amount payable along with surcharge was ₹ 2,14,503/-. The Appellant deposited ₹ 96,851/- on 09.01.2012 and balance sum of ₹ 1,17,652/- was added in the subsequent bill of January, 2012 during which, consumer consumed 18,512 units and after adding the previous balance, the amount payable came to ₹ 2,32,238/-. The Appellant again deposited ₹ 1,13,841/- on 08.02.2012 and after adding the balance sum of ₹ 1,18,392/- in the bill of February, 2012, the total amount payable by consumer came to ₹ 2,34,160/-. The Appellant consumed 20,233 units in February, 2012.

1. The Appellant challenged the said bill no. 23075 dated 29.02.2012 payable by 12.03.2012 in Civil Court of Ms. Shilpa, Civil Judge, Ludhiana by filing a civil suit bearing CS No. 159 of 12.03.2012. The Civil Suit was contested by PSPCL and was decreed in favour of PSPCL vide order dated 13.08.2014 as the amount charged to the Appellant was on account of actual consumption.

(iii) The Appellant filed an Appeal against the aforesaid order dated 13.08.2014 in the Court of Addl. District Judge, Ludhiana by filing a Civil Appeal No. 03 dated 06.01.2015 CIS No CA-19/2015 which was also decided in favour of PSPCL on 16.05.2015.

1. During the pendency of dispute, late payment Surcharge was charged to Appellant as per the PSPCL rules and disputed amount worked out to ₹ 5, 09,693/- While on migration of data from DOEAC to SAP system, the said amount was got omitted from the consumer’s account. When this fact came to notice of the office of the Respondent, the amount was charged in the account of the Appellant through the bill dated 17.07.2017. The Appellant failed to pay this amount due to which, his connection was disconnected.
2. The Appellant approached the CGRF, Patiala for relief but his case was not admitted by CGRF and in the minutes of proceeding dated 13.06.2018 (Case No. T-178 of 2018), the Respondent was asked to calculate the exact amount and issue notice after pre - audit. In compliance of the aforesaid order, the chargeable amount was recalculated, got pre- audited and a fresh notice was issued to the consumer with the direction to deposit ₹ 8,23,950/-.
3. The Appellant opted for One Time Settlement (OTS) scheme. During its proceeding, the OTS Committee noticed that the consumer’s Energy Meter was still installed at its premise and the same was, then, removed from the premise vide Disconnection Order No. 100004772431 dated 14.10.2017 effected on 05.02.2018 in the presence of consumer’s representative.
4. The removed Energy Meter was sent to ME lab vide ME Lab

Challan No.1119 dated 27.02.2019 and was got checked in the presence of consumer’s representative. It was found that the Energy Meter was 67.15 % slow and DDL was also taken.

1. Accordingly, Appellant’s account was overhauled as per instructions of PSPCL and an amount of ₹ 4,18,026/- was charged to it. A supplementary bill bearing Memo No. 2738 dated 26.06.2019 along with calculation sheet was issued to the Appellant.
2. OTS Committee decided, after considering all other facts that an amount of ₹ 9,60,284/- was chargeable to the Appellant who was, then, asked to deposit the amount vide Notice bearing No. 2885 dated 09.07.2019.
3. The Appellant did not agree with the amount charged to it on account of ME lab report regarding the slowness of the Energy Meter by 67.15 % and approached the CGRF, for relief. It was decided that the amount charged on Slowness Factor of Energy Meter could be dealt as per the rules and regulations of PSPCL as the Notice of slowness factor of Energy Meter, bearing Memo No. 2738 dated 26.06.2019, was redelivered to the consumer in the Court of CGRF on 22.08.2019 and the remaining amount (₹ 9,58,284/ – ₹4,18,026/- = ₹ 5,40,258/-) was to be recovered from the Appellant as per the decision taken by the OTS Committee on 03.07.2019.
4. The Appellant agreed with this decision but did not agree with the rest of amount charged to him on account of slowness of the Energy Meter by 67.15 % amounting to ₹ 4,18,026/-. The Appellant approached the CGRF for relief. His case was reviewed by the CGRF (Case No. CGL No.-235 of 2019) and decided on 29.10.2019 after giving due opportunity to the Appellant. It was decided by the CGRF that the account of the Appellant be overhauled from 17.09.2017 onwards and up to date of PDCO with slowness factor of 67.15% as per Regulation 21.5.1 of supply Code -2014. The decision of CGRF was implemented by the Respondent and consumer’s account was overhauled accordingly. A refund of ₹ 1,42,766/- was given to consumer vide SCA NO. 772/52/R-608. Accordingly, the consumer was also informed regarding this decision vide Memo. No. 4286 dated 1.11.2019.
5. The Connection of Appellant was disconnected from the premise vide Disconnection Order No. 100004772431 dated 14.10.2017 effected on 05.02.2018 from outside its premise which was locked. The Energy Meter was removed from site after getting the Energy Meter tested from Enforcement on 04.02.2019 vide ECR no. 25/975 in the presence of the Appellant’s representative.
6. The removed Energy Meter was sent to ME lab vide ME

Lab Challan No.1119 dated 27.02.2019 and was got checked in the presence of Appellant’s representative and it was reported that Energy Meter was slow by 67.15 %. The ME Lab report was very much clear regarding working of Energy Meter and no objection was raised during the course of checking in the presence of the Appellant’s representative.

1. The office of the Respondent did not receive Load Survey Data and Tamper Report from ME Lab at first instance. The matter was taken up with the ME lab/ Addl. SE, Enforcement. The Complete DDL Report taken at site on 04.02.2019 at the time of checking of the Energy Meter installed at Appellant premise, vide ECR No. 25/975, was submitted before the CGRF.

(xv) The account of the Appellant was rightly overhauled as per rules and regulation of the PSPCL.

1. The DDL of the Energy Meter was also done on site but accuracy of the Energy Meter could not be checked as there was no motive load at site at the time of checking. It was only the baseless apprehension of Appellant that Potential Wires might have been carbonized which led to the slowness of the Energy Meter. The Appellant had not submitted any evidence in support of its contention. The ME Lab report was very much clear regarding working of Meter and the same was checked in the presence of the Appellant’s representative. No objection was raised by the Appellant’s representative at the time of checking in the ME lab.
2. The Appellant did not produce any evidence regarding less work in its factory. The Appellant account was rightly overhauled as per the instruction of PSPCL. The decision of the CGRF was as per rules and regulation of PSPCL by considering all the other factors and issues raised by the Appellant before it. The grievance of the Appellant was rightly addressed by the CGRF in decision dated 29.10.2019. It was decided by the CGRF that the Account of the Appellant be overhauled from 17.09.2017 onwards and up to date of PDCO with slowness factor of 67.15% as per Regulation 21.5.1 of Supply Code - 2014. The decision of CGRF was implemented by the Respondent and consumer’s account was overhauled accordingly. A refund of ₹ 1,42,766/- was given to Appellant. Accordingly the Appellant was also informed regarding this decision vide Memo No. 4286 dated 01.11.2019.
3. The Appeal of the Appellant should be dismissed.
4. **Submissions during Hearing**

During the Course of hearing on 11.03.2020, the Addl. S.E, DS Sunder Nagar Division (Special), PSPCL, Ludhiana reiterated the submissions made in its written reply and contested the averments made in the Rejoinder of the Appellant’s Representative.

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

The issue requiring adjudication is the legitimacy of overhauling of the account of the Appellant for the period from 17.09.2017 to 05.02.2018 (date of PDCO) with slowness factor of 67.15% as per applicable regulations.

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

* 1. The dispute arose when the Respondent failed to transfer the defaulting amount from old billing system to SAP system and when it came to the knowledge of the Respondent only then, DCO was issued on 14.10.2017 which was effected on 05.02.2018. In fact, the Respondent did not comply with the provision of Regulation 32.1 of Supply Code-2014 in toto and did not disconnect supply line or other works (Metering Equipment etc). The Metering Equipment was taken out from the site/premise only on the instructions of OTS Committee to whom, the Appellant approached for redressal of its grievance.
	2. Before taking out the disputed Energy Meter and LT CTs, the same was checked by the Addl. SE, Enforcement at site in the presence of the Appellant’s representative vide ECR No.25/975 dated 04.02.2019**.** As per its checking report, supply was given for short duration and readings recorded were kWh= 0358089 and kVAh= 0389832. DDL was also done at site but accuracy could not be determined as there was no motive load. The Enforcement directed the Respondent to bring it to ME Lab for checking of accuracy. Accordingly, the removed Energy Meter was checked in ME Lab and found running slow by 67.15%.
	3. A perusal of the consumption data till the date of disconnection reveals that the consumption of the Appellant in the year 2017 was comparable with that of the year 2016 up to 09/2017 and thereafter, the consumption recorded was on lower side. As a result, the account was overhauled for the period 09/2017 till the date of PDCO by taking slowness factor as 67.15%.
	4. A scrutiny of DDL data reveals that Main Energy Readings (Final) on 04.02.2019 were kWh=358089 and kVAh=389832. These readings matched with the readings taken by the Enforcement during checking on 04.02.2019 and in ME Lab. The Midnight snap shots from 11.04.2018 to 19.06.2018 also show that on 19.06.2018, the readings were kWh=358087 and kVAh=389830.

I observe from Midnight snap shots that per day, one to two units were consumed by the Energy Meter as the current and voltage coils of the Energy Meter took some power through internal battery.

* 1. After going through Cumulative Events (Tamper data), it is noticed that tamper data is not continuous and recorded voltage related events from 08.08.2017 to 22.10.2017. From the voltage related events, it is also seen that less voltage was started from 17.09.2017 as also observed by the Forum in its decision.
	2. On observing the Phase failure, the total duration of voltage failure was 64 hours and 12 minutes. It implies that there was **make & break of the connections due to internal defect in the Energy Meter**. Constant slowness factor of 67.15% can not be applied for overhauling of period from 17.09.2017 to 05.02.2018. The meter was defective. Hence, the provisions contained in Regulation 21.5.2(a) of Supply Code-2014 are relevant as per which, the account of the Appellant is required to be overhauled from 17.09.2017 to 05.02.2018 (Date of Disconnection) on the basis of consumption recorded during the corresponding period of previous year. Slowness of meter varied from time to time with changing electrical parameters like Voltage, Current and Power Factor. Exact slowness could not be determined, as the perusal of DDL revealed that Voltage, Current and Power Factor were different at different points of time.

**7. Decision**

**As a sequel of above discussions, the order dated 29.10.2019 of CGRF, Ludhiana in Case No.CGL-235 of 2019 is set aside. It is held that the account of the Appellant shall be overhauled for the period from 17.09.2017 to 05.02.2018 (date of PDCO) on the basis of consumption recorded during the corresponding period of previous year in terms of provisions contained in Regulation 21.5.2(a) of Supply Code-2014.**

**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.

 (GURINDER JIT SINGH)

March 16, 2020 Lokpal (Ombudsman)

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