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

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

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

 **APPEAL NO. 55/2020**

**Date of Registration : 01.12.2020**

**Date of Hearing : 16.12.2020**

**Date of Order : 21.12.2020**

**Before:**

**Er. Gurinder Jit Singh,**

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

**In the Matter of:**

Kohinoor Rice Mills,

V& PO: Kot Ise Khan, Distt.-Moga.

**Contract Account Number: F23-KI01-00002**  ...Appellant

 Versus

Addl. Superintending Engineer,

 DS City Division, PSPCL, Moga.

 ...Respondent

**Present For:**

Appellant : Sh. Navtej Pal Dhingra,

 Appellant’s Representative (AR).

Respondent : 1. Er. Amarjit Singh,

 Addl. Superintending Engineer,

 DS City Division, PSPCL, Moga.

 2. Er. Jhalman Dass,

Assistant Executive Engineer,

 DS City Division, PSPCL, Moga.

 Before me for consideration is an Appeal preferred by the Appellant against the decision dated 26.10.2020 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-68 of 2020, deciding that:

 *“No average energy charges for the period 30.10.18 to 04.11.18 (i.e. 6 days) period be charged to the petitioner. However the charges recovered from the Petitioner for the period 5.11.18 to 5.1.19 on the basis of energy consumption of corresponding period of previous year as per clause No. 21.5.2(a) of Supply Code, 2014 is in order. The petitioner’s account be overhauled accordingly and excess amount be refunded to the petitioner after pre-audit.”*

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

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 01.12.2020 i.e. within one month of receipt of the decision dated 26.10.2020 (of the CGRF, Patiala in Case No. CGP-68 of 2020) by the Appellant. The Appellant submitted copies of receipts No. 181 dated 24.12.2018 for ₹ 2,00,000/-, No. 182 dated 24.12.2018 for ₹ 2,54,710/-, No. 90 dated 20.01.2019 for ₹ 3,00,000/-, No. 91 dated 20.01.2019 for ₹ 2,00,000/- and No. 92 dated 20.01.2019 for ₹ 1,97,530/- as evidence of deposit of the entire disputed amount of the energy bills. The Appellant did not receive revised notice as per decision of the Forum. However, the Appeal was registered and copy of the same was sent to the Sr. Executive Engineer/DS City Division, PSPCL, Moga for sending written reply/parawise comments with a copy to the office of the CGRF, Patiala for sending the case file under intimation to the Appellant vide letter nos. 1147-1149/OEP/ A-55/2020 dated 01.12.2020.

**3.** **Proceedings**

With a view to adjudicate the dispute, a hearing was fixed in this Court on 16.12.2020 at 12.30 PM and an intimation to this effect was sent to both the sides vide letter nos. 1199-1200/OEP/A-55/2020 dated 10.12.2020. As scheduled, the hearing was held in this Court, on the said date and time. Arguments were heard and the order was reserved. Copies of the minutes of the proceedings were sent to the Appellant and the Respondent vide letter nos. 1216-17/OEP/A-55/2020 dated 16.12.2020.

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

Before undertaking analysis of the case, it is necessary to go through written submissions made by the Appellant and reply of the Respondent as well as oral submissions made by the representative of the Appellant and the Respondent alongwith material brought on record by both the sides.

1. **Submissions of the Appellant**

(a) Submissions made in the Appeal.

The Appellant made the following submissions in its Appeal for consideration of this Court:

1. The Appellant was having a Large Supply Category connection, bearing Account No. F23-KI01-00002, with sanctioned load of 249.632 kW and CD as 263 kVA.
2. The Appellant had challenged the demand raised against exorbitant energy bills issued on 14.12.2018 and 15.01.2019 by the Respondent. These two bills were issued on the basis of average consumption due to the burning of CT/PT unit of the Appellant. The Forum did not agree to the plea of the Appellant as urged by it in the petition and refused to invoke the provisions of Regulation 21.5.3 of Supply Code-2014.
3. The impugned order was not sustainable in the eyes of law. The same was whimsical & arbitrary and was, therefore, liable to be set aside and further deserved to be modified.
4. The Appellant had pleaded that during the Rice Sheller season 2018-19, less paddy was procured by the Appellant and as such, its work of the Rice Sheller was 33% less as compared to the work of the Rice Sheller done by it during the Rice Sheller season 2017-18.
5. The balance sheets for the year 2017-18 and 2018-19 produced by the Appellant showed milling of paddy by the Appellant weighing 99093.12 Quintals in the year 2017-18 and 65709.88 Quintals in the year 2018-19, thereby recorded fall of 33%. Further, the record of PUNGRAIN had showed supply of Paddy to the Appellant for shelling during the Rice Sheller season 2017-18 and 2018-19.
6. The Appellant, on the basis of receipt of material by it, had requested the Forum that the case of the Appellant was a fit case to invoke Regulation 21.5.3 of Supply Code-2014 to give the benefit thereof to the Appellant and that the average of 61276 kVAh and 98029 kVAh units respectively charged and recovered from the Appellant through the above said energy bills dated 14.12.2018 and 15.01.2019 being not equitable, logical and against the intent and spirit of Regulation 21.5.3 of Supply Code, 2014 may be ordered to be set aside. Keeping in view the equities on both the sides, such average should be worked out a fresh and as per such fresh determination of average, the excess amount charged and recovered from the Appellant through the aforesaid electric bills may be further arrived at and refunded/adjusted in future electric bills of the Appellant.
7. The Forum, on flimsy grounds, had rejected the aforesaid pleas of the Appellant which were substantially documented. The Forum had not considered the authentic record of PUNGRAIN and the consumption pattern of the Appellant. The Forum had given undue weightage to the consumption data of the Appellant for the current year 2020 to deny the benefit of Regulation 21.5.3 of Supply Code- 2014.
8. The consumption data was not disputed because during the current year 2020, the procurement of paddy by the Appellant increased.
9. The Forum had failed to appreciate that any business including the business of Rice Shelling was not static and quantum of business kept on increasing or decreasing because of various market forces together with economic and social conditions of the businessman. Rise and fall in the business was a common feature of the Commerce Industry and in appreciation of this fact, Regulation 21.5.3 of Supply Code- 2014 seems to had been enacted. The Forum failed to appreciate its true spirit and importance.
10. In view of the submissions made above, the Appellant requested to allow its Appeal by setting aside the impugned order.

(b) **Submission during hearing**

During hearing on 16/12/2020, the Appellant reiterated the submissions made in the Appeal and prayed to allow the same.

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

The Respondent submitted the following written reply, sent vide memo no. 6873/DSC-KIK dated 11.12.2020, for consideration of this Court:

1. The Appellant was having a LS Category connection with sanctioned load of 249.632 kW under DS Sub Division, Kot Ise Khan.
2. The power supply to the Appellant’s connection failed on 29.10.2018 and the connection was checked by Sr. Xen/ MMTS, Moga vide ECR No. 14/371 dated 30.10.2018 as per which, the CT/ PT Unit was found damaged. The direct supply was restored on 05.11.2018 vide SJO No. 115/387 and CT/PT was subsequently replaced on 09.01.2019 vide MCO No. 68/296 dated 30.10.2018.
3. The Appellant was served bills on average basis for the period 29.10.2018 to 28.11.2018 for 61276 kVAh and for the period 29.11.2018 to 05.01.2019 for 98029 kVAh. Thus, the Appellant was billed on average basis from 29.10.2018 to 05.01.2019. This average was on the basis of consumption of corresponding months of the previous year.
4. The Forum rightly decided not to invoke the Regulation 21.5.3 of Supply Code-2014 on perusal of the consumption data for the year 2017, 2018, 2019 and current year 2020 showing wide variation in the monthly consumption pattern during these years. The Appellant was only eligible for the relief of refund of average charged for the period 30.10.2018 to 04.11.2018 (i.e. 6 days) as during this period, its power supply remained disconnected. It was pertinent to mention here that as was evident from the history of the case, the Appellant was billed on average basis w.e.f. 29.10.2018 to 05.01.2019 whereas the CT/PT unit was replaced on 09.01.2019, but the bill for the period 05.01.2019 to 28.01.2019 was on actual consumption basis but the average for 06.01.2019 to 08.01.2019 was not added in it, which was recoverable from the Appellant. The bill for the period 05.01.2019 to 28.01.2019 was attached as Annexure.
5. It was, therefore, prayed that the Appeal of the Appellant may be rejected and order regarding recovery of bill on average basis for the period 06.01.2019 to 08.01.2019 may also be passed.

**(b) Submission during hearing**

During hearing on 16.12.2020, the Respondent reiterated the submissions made in the written reply and prayed to dismiss the same.

**5.** **Analysis and Findings**

The issue requiring adjudication is the legitimacy of the energy bill dated 14.12.2018 (for the period 29.10.2018 to 28.11.2018) for 61276 kVAh and energy bill dated 15.01.2019 (relating to period 29.11.2018 to 05.01.2019) for consumption of 98029 kVAh on the basis of average consumption of corresponding period of previous year due to burning of CT/P unit detected during checking dated 30.10.2018 by MMTS.

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

1. As per material brought on record of this Court, the Appellant was having a Large Supply Category connection with sanctioned load of 249.632 kW and CD as 263 kVA for running a Rice Sheller. The Appellant’s firm was receiving electricity through 11 kV metering panel housed with CT/PT unit installed at its premises. The Appellant’s firm informed the office of the SDO, Kot Ise Khan on 29.10.2018 that power supply to its connection had failed /stopped. As a result, the SDO, Kot Ise Khan sent message through its mobile to MMTS for checking the connection of the Appellant. Accordingly, Sr. Xen, MMTS, Moga checked the said connection, vide ECR No. 14/371 dated 30.10.2018 whereby, it was reported that:

“ਉਪ ਮੰਡਲ ਅਫ਼ਸਰ ਸ/ਡ ਕੋਟ ਈਸੇ ਖਾਂ ਦੇ ਮੋਬਾਈਲ ਫੂਨ ਸੰਦੇਸ਼ਤੇ ਸ਼ਪੈਸ਼ਲ ਚੈਕਿੰਗ ਕੀਤੀ ਗਈ ਹੈ। ਚੈਕਿੰਗ ਦੌਰਾਨ ਦੇਖਿਆ ਗਿਆ ਹੈ ਕਿ ਮੀਟਰ ਦੀ ਡਿਸਪਲੈਅ ਬੰਦ ਹੈ ਅਤੇ ਕੋਈ ਵੀ ਪੈਰਾਮੀਟਰ ਬਿਜਲੀ ਸਪਲਾਈ ਚਲਦੀ ਹੋਣ ਤੇ ਵੀ ਨਹੀਂ ਆ ਰਿਹਾ ਹੈ । ਬਿਜਲੀ ਸਪਲਾਈ ਬੰਦ ਕਰਵਾ ਕੇ ਸੀ.ਟੀ./ਪੀ.ਟੀ. ਯੂਨਿਟ ਖੁੱਲ੍ਹਵਾ ਕੇ ਦੇਖਿਆ ਗਿਆ ਕਿ yellow ਫੇਜ਼ ਦਾ ਪੀ.ਟੀ. ਸੜ ਕੇ ਟੁੱਟ ਗਿਆ ਹੈ ਅਤੇ Red ਅਤੇ Blue ਫੇਜਾਂ ਦੇ ਪੀ.ਟੀ. ਦੀਆ ਪ੍ਰਾਇਮਰੀ ਲੀਡਾਂ ਸੜ ਕੇ ਟੁੱਟ ਗਈਆ ਹਨ, ਸੀ.ਟੀ./ਪੀ.ਟੀ. ਯੂਨਿਟ ਤਰੁੰਤ ਬਦਲੀ ਕੀਤਾ ਜਾਵੇ। ਮੀਟਰ ਦਾ DDL ਕਰ ਲਿਆ ਗਿਆ ਹੈ। ਬਿਜਲੀ ਸਪਲਾਈਤਰੁੰਤ ਬੰਦ ਕੀਤੀ ਜਾਵੇ।”

Thereafter, direct supply to the Appellant’s connection was restored on 05.11.2018 on the request of the Appellant vide Sundry Job Order No. 115/387 dated 05.11.2018. Subsequently, CT/PT Unit of the Appellant’s connection was replaced vide Meter Change Order No. 68/296 dated 30.10.2018 effected on 09.01.2019. In the meantime, the Appellant was served with energy bill dated 14.12.2018 (from 29.10.2018 to 28.11.2018) for 61276 kVAh and bill dated 15.01.2019 (from 29.11.2018 to 05.01.2019) for consumption of 98029 kVAh on the basis of average of consumption of previous year. Aggrieved, the Appellant approached the Forum in 02/2020 for relief. The Forum, vide order dated 26.10.2020, decided that no average energy charges for the period 30.10.2018 to 04.11.2018 (i.e. 6 days) be charged to the Appellant. The Forum also decided that the charges recovered from the Appellant for the period 05.11.2018 to 05.01.2019 on the basis of energy consumption of corresponding period of previous year as per Regulation 21.5.2 (a) of Supply Code- 2014 was in order.

1. The Appellant’s representatives contended that it had pleaded before the Forum that during the Rice Sheller season 2018-19, less paddy was procured by the Appellant and as such, its work of the Rice Sheller was 33% less as compared to the work of the Rice Sheller done by it during the Rice Sheller season 2017-18. The balance sheets for the year 2017-18 and 2018-19 produced by the Appellant showed milling of paddy by the Appellant weighing 99093.12 Quintals in the year 2017-18 and 65709.88 Quintals in the year 2018-19, thereby recorded fall of 33%. Further, the record of PUNGRAIN had showed supply of Paddy to the Appellant for shelling during the Rice Sheller season 2017-18 and 2018-19. The Appellant, on the basis of receipt of material by it, had requested the Forum that the case of the Appellant was a fit case to invoke Regulation 21.5.3 of Supply Code-2014 to give the benefit thereof to the Appellant and that the average of 61276 kVAh and 98029 kVAh respectively charged and recovered from the Appellant through the above said energy bills dated 14.12.2018 and 15.01.2019 being not equitable, logical and against the intent and spirit of Regulation 21.5.3 of Supply Code-2014 may be ordered to be set aside. Keeping in view the equities on both the sides, such average should be worked out afresh and as per such fresh determination of average, the excess amount charged and recovered from the Appellant through the aforesaid electricity bills may be further arrived at and refunded/adjusted in future electricity bills of the Appellant. But, the Forum, on flimsy grounds, had rejected the aforesaid pleas of the Appellant which were substantially documented. The Forum had not considered the authentic record of PUNGRAIN and the consumption pattern of the Appellant. The Forum had given undue weight age to the consumption data of the Appellant for the current year 2020 to deny the benefit of Regulation 21.5.3 of Supply Code-2014.The consumption data was not disputed because during the current year 2020, the procurement of paddy by the Appellant increased. The Appellant’s Representative prayed to allow the Appeal by setting aside the order of the Forum.
2. The Respondent, in its defence, stated that the Forum rightly decided not to invoke the Regulation 21.5.3 of Supply Code- 2014 on perusal of the consumption data for the year 2017, 2018, 2019 and current year 2020 showing wide variation in the monthly consumption pattern during these years. The Appellant was only eligible for the relief of refund of average charged for the period 30.10.2018 to 04.11.2018 (i.e. 6 days) as during this period, its power supply remained disconnected. It was pertinent to mention here that as was evident from the history of the case, the Appellant was billed on average basis w.e.f. 29.10.2018 to 05.01.2019 whereas the CT/PT unit was replaced on 09.01.2019, but the bill for the period 05.01.2019 to 28.01.2019 was on actual consumption basis but the average for 06.01.2019 to 08.01.2019 was not added in it, which was recoverable from the Appellant. The bill for the period 05.01.2019 to 28.01.2019 was attached as Annexure. The Respondent prayed that the Appeal of the Appellant may be rejected and order regarding recovery of bill on average basis for the period 06.01.2019 to 08.01.2019 may also be passed.
3. The details of the energy consumption of the Appellant’s connection for the period from 31.12.2016 to 17.11.2020 are tabulated below:

|  |  |  |  |
| --- | --- | --- | --- |
| **2017** | **2018** | **2019** | **2020** |
| Reading dated | Consumption(kVAh) | Reading dated | Consumption(kVAh) | Reading dated | Consumption(kVAh) | Reading dated | Consumption(kVAh) |
| 31.12.16 | 77492(avg.) | 28.12.17 | 72232 | 05.01.19 | 98029(avg.) | 21.12.19 | 89516 |
| 30.01.17 | 75900 | 30.01.18 | 100104 | 28.01.19 | 31544 | 22.01.20 | 145104 |
| 28.02.17 | 72292 | 28.02.18 | 94924 | 27.02.19 | 73912 | 24.02.20 | 135676 |
| 30.03.17 | 76160 | 03.04.18 | 101412 | 21.03.19 | 47592 | 23.03.20 | 74824 |
| 29.04.17 | 28608 | 28.04.18 | 30084 | 20.04.19 | 76524 | 20.04.20 | 36576 |
| 31.05.17 | 2044 | 30.05.18 | 16372 | 28.05.19 | 17716 | 22.05.20 | 132636 |
| 30.06.17 | 1652 | 30.06.18 | 2144 | 15.06.19 | 2440 | 22.06.20 | 131178 |
| 31.07.17 | 2420 | 30.07.18 | 2344 | 21.07.19 | 2732 | 22.07.20 | 113778 |
| 30.08.17 | 2076 | 29.08.18 | 3588 | 22.08.19 | 2428 | 24.08.20 | 16764 |
| 30.09.17 | 2272 | 28.09.18 | 2776 | 21.09.19 | 3412 | 21.09.20 | 4980 |
| 31.10.17 | 7136 | 29.10.18 | 0 | 21.10.19 | 3724 | 20.10.20 | 3108 |
| 30.11.17 | 54140 | 28.11.18 | 61276(avg.) | 21.11.19 | 22748 | 17.11.20 | 61944 |

A perusal of the above details reveals that energy consumption pattern/trend during pre and post disputed period does not lead to any definite conclusion and also does not prove/justify the contention of the Appellant for relief on the plea that energy consumption during 2018-19 was less as compared to 2017-18 due to less receipt of paddy/fall in business. Besides, the balance sheets of the unit, referred to in the Appeal, pertained to complete years (2017-18/2018-19) and did not give month wise details of quantum of work done. The Appellant’s representative placed reliance on provisions of Regulation 21.5.3 of Supply Code-2014 which is reproduced below:

*“Any evidence provided by the consumer about conditions of working and/or occupancy of the concerned premises during the said period(s) which might have a bearing on computation of electricity consumption shall, however be taken into consideration by the distribution licensee.*”

A perusal of the above provisions reveals that the same are not relevant to the facts and circumstances of the case and have been quoted out of context. The Appellant’s representative, on being asked during hearing on 16.12.2020, failed to refer to any ‘Conditions of Working’ (labour problem or natural calamity) or occupancy of the concerned premises, having a bearing on energy consumption which may be taken into consideration. Accordingly, the claim of the Appellant for relief on this account is not sustainable.

1. It is worthwhile to peruse the provisions relevant in this case for overhauling the account of the Appellant i.e. of Regulation 21.5.2 (a) of Supply Code-2014 which provides that:

***“21.5.2 Defective (other than inaccurate)/Dead Stop/Burnt/Stolen Meters***

*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 month. 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.”*

Thus, as per above provisions, the account of the Appellant’s connection is required to be overhauled for the period from 05.11.2018 (after excluding the period of disconnection from 30.10.2018 to 04.11.2018) to 09.01.2019 (date of replacement of CT/PT unit) on the basis of energy consumption of corresponding period of previous year i.e. 05.11.2017 to 09.01.2018.

1. CT/PT unit is a part the Meter as per definition of the Meter given in the Supply Code. The meter is considered as burnt in this case. The Respondent defaulted in ensuring compliance of the provisions contained in Regulation 21.4.1 of Supply Code-2014 which reads as under:

***“Defective/ Dead Stop/Burnt/Stolen Meters***

*In case a consumer’s meter becomes defective/dead stop or gets burnt, a new tested meter shall be installed within the time period prescribed in Standards of Performance on receipt of complaint [or detection by the distribution licensee]. If the meter is burnt due to reasons attributable to the consumer, the distribution licensee shall debit the cost of the meter to the consumer who shall also be informed about his liability to bear the cost. In such cases the investigation report regarding reasons for damage to the meter must be supplied to the consumer within 30 days. However, supply of electricity to the premises shall be immediately restored even if direct supply is to be resorted to, till such time another tested meter is installed.”*

1. From the above analysis, it is concluded that the Forum rightly decided that no average energy charges for the period 30.10.2018 to 04.11.2018 (i.e. 6 days) when the connection remained disconnected be charged to the Appellant. Further, overhauling of the Appellant’s account is required to be done from 05.11.2018 to 09.01.2019 on the basis of energy consumption of corresponding period of previous year i.e. 05.11.2017 to 09.01.2018 as per Regulation 21.5.2 (a) of Supply Code-2014.

**6.** **Decision**

As a sequel of above discussions, the order dated 26.10.2020 of the CGRF, Patiala in Case No. CGP-68 of 2020 is set aside. It is held that the account of the Appellant shall be overhauled for the period from 05.11.2018 to 09.01.2019 (date of replacement of CT/PT unit) on the basis of energy consumption of corresponding period of previous year (i.e. 05.11.2017 to 09.01.2018) in terms of provisions contained in Regulation 21.5.2 (a) of Supply Code-2014. Energy charges for the period 30.10.2018 to 04.11.2018 shall not be charged because power supply remained disconnected during this period. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustments with surcharge/interest as per instructions of the PSPCL.

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

**8.** In case, the Petitioner or the Respondent is not satisfied with the above decision, it is at liberty to seek appropriate remedy against this order from the appropriate Bodies in accordance with Regulation 3.28 of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016.

(GURINDER JIT SINGH)

December 21, 2020 Lokpal (Ombudsman)

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