

**COURT OF THE LOK PAL (OMBUDSMAN),
ELECTRICITY, PUNJAB,
PLOT NO. A-2, INDUSTRIAL AREA, PHASE-1,
S.A.S. NAGAR (MOHALI).**

**(Constituted under Sub Section (6) of Section 42 of
Electricity Act, 2003)**

APPEAL No. 66/2019

Date of Registration : 29.11.2019
Date of Hearings : 16.01.2020/30.05.2022/02.06.2022
Date of Order : 02.06.2022

Before:

**Er. Gurinder Jit Singh,
Lokpal (Ombudsman), Electricity, Punjab.**

In the Matter of:

BSNL Telephone Exchange,
Karamgarh Satran,
Tehsil and District-Bathinda.

Contract Account Number:Y23GC230008A (NRS)
...Appellant

Versus

Sr. Xen/ DS Division,
PSPCL, Gidderbaha.

...Respondent

Present For:

Appellant: (1) Sh. Pawan Kumar Sharma, Advocate,
Appellant's Counsel.
(2) Sh. Resham Singh Bhari,
Appellant's Representative
(3) Sh. Verjinder Mittal,
Appellant's Representative

Respondent : Er. Deepak Kurmi,
Sr. Xen/ DS Division,
PSPCL, Gidderbaha.

Before me for consideration is an Appeal preferred by the Appellant against the decision dated 24.10.2019 of the Consumer Grievances Redressal Forum (Forum), Patiala in Case No. CGP-229 of 2019, deciding that:

- *“The amount of Rs.11,97,779/- charged to the petitioner vide memo No. 663 dated 14.05.2019 on account of overhauling of Petitioner's account for the period 20.08.2010 to 08.05.2019 due to application of wrong multiplication factor as 1 instead of 2 is in order and is recoverable as per note under Regulation 21.5.1 of Supply Code 2014.*
- *Dy.CE/SE/Op. Muktsar shall conduct an inquiry into the lapses and fix the responsibility of the delinquent official/officer who failed to perform their duties. Copy of the order be supplied to Dy.CE/SE/Op. Muktsar.*
- *Further since the petitioner was not billed correctly for a period of almost 9 years, Forum is of the opinion that suitable installments may be allowed to the petitioner by taking an undertaking regarding the same. No interest /surcharge be levied to the petitioner for the same.”*

2. Registration of the Appeal

A scrutiny of the Appeal and related documents revealed that the Appeal was received in this Court on 29.11.2019 i.e. within the period of thirty days of receipt of decision dated 24.10.2019 of the CGRF, Patiala in Case No. CGP-229 of 2019, received

by the Appellant on 04.11.2019. The Appellant deposited the requisite 40% of the disputed amount. Therefore, the Appeal was registered on 29.11.2019 and copy of the same was sent to the Addl.S.E/Sr. Xen, DS Division, PSPCL, Gidderbaha for sending written reply/ parawise comments with a copy to the office of the CGRF, Patiala under intimation to the Appellant vide letter nos. 1125-27/OEP/A-66/2019 dated 02.12.2019.

3. Proceedings

With a view to adjudicate the dispute, a hearing was fixed in this Court on 16.01.2020 at 12.00 Noon and intimation to this effect was sent to both the parties vide letter nos. 1175-76/OEP/A-66/2019 dated 20.12.2019. As scheduled, the hearing was held in this Court and arguments of both the parties were heard. A copy of proceedings dated 16.01.2020 was sent to both parties vide Memo No. 45-46/OEP/A-66/2019 dated 16.01.2020. During deliberations, the Sr. Xen/ DS Division, Gidderbaha, appearing on behalf of the Respondent (PSPCL) also submitted that in a similar case of Surinder Kaur v/s PSPCL (A-52/2016) decided by this Court against the Appellant, vide order dated 08.12.2016, CWP No. 2539 of 2017 (O & M) was filed by the above named Appellant in the

Hon'ble Punjab and Haryana High Court who, after hearing, passed order dated 20.09.2018 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.”

The Respondent further stated that LPA No. 7732 of 2018 was subsequently filed by the PSPCL, for stay and quashing the aforesaid order dated 20.09.2018 of the Single Bench before the Division Bench of the Hon'ble Punjab and Haryana High Court and the case was fixed for hearing on 09.03.2020.

In view of the above, the representatives of both the parties- Appellant and Respondent prayed that since the matter was subjudice, the decision in the present Appeal be deferred till the decision of the pending L.P.A case by the Hon'ble Punjab and Haryana High Court. The Sr. Xen/DS Division, PSPCL, Gidderbaha, however, added that the defaulting amount will continue to be shown in future energy bills and no punitive action against the Appellant will be taken in the event of adjournment of case sine die till decision of the present Appeal by the Court of the Ombudsman.

On request of the AR & the Respondent and in view of pendency of said LPA No. 7732 of 2018, the Appeal was adjourned sine die.

Now, the Respondent requested this Court vide Memo No. 1914 dated 25.05.2022 to decide the Appeal on merits in view of judgment dated 05.10.2021 of the Hon'ble Supreme Court in Civil Appeal No. 7235/2009 titled as M/s Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. & Ors. The copy of this request letter of the Respondent was sent to the Appellant through email on 26.05.2022. The next date of hearing in this case was fixed for 30.05.2022 at 01.00 PM and intimation to this effect was sent to both the parties vide letter nos. 492-93/OEP/A-66/2019 dated 26.05.2022. As scheduled, the hearing was held in this Court and the case was adjourned to 02.06.2022 at 12.30 PM on the request of the Appellant's Counsel. A copy of proceedings dated 30.05.2022 was sent to both parties vide letters No. 503-504/OEP/A-66/2019 dated 30.05.2022. The hearing was held on 02.06.2022 and arguments of both the parties were heard.

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 deliberations made by the

Appellant's Representative and the Respondent alongwith material brought on record by both the parties.

(A) Submissions of the Appellant

(a) Submissions made in the Appeal

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

- (i) The Appellant was having NRS category connection, bearing Account No. Y23GC230008A, Meter No. 9679114, with Sanctioned Load as 25.94 kW under DS Division, PSPCL, Gidderbaha.
- (ii) Since the sanction of electricity connection by PSPCL to the Appellant, the Appellant had never defaulted in making the payments of electricity bills or otherwise till April, 2019 and the billing of the said Account was done by the Respondent with Multiplying Factor as 1(One).
- (iii) Without giving any notice, AEE Sub Division, Gidderbaha, during their checking, on 09.04.2019 vide LCR No. 012/120037 and on 09.05.2019 vide LCR No. 35/120004, reported to have found the Multiplying Factor (MF) as 1 (One) of the Account No. Y23GC230008A, instead of Multiplying Factor as 2 (Two).

- (iv) The Appellant received notices from the Respondent, vide Memo Nos. 663, 737 and 873 dated 14.05.2019, 27.05.2019 and 20.06.2019 respectively and the Respondent raised the demand of ₹ 11,97,779/- on account of wrong Multiplying Factor, since 20.08.2010.
- (v) The Appellant deposited a sum of ₹ 2,39,556/- (20%) vide Receipt No. 474/58155 dated 04.09.2019 and filed the dispute before the CGRF, Patiala against the notices referred to above. But the Forum decided against the Appellant.
- (vi) The Appellant was a Government undertaking and there was no reason of having Multiplying Factor to be used as 1 instead of Multiplying Factor 2. It was submitted that the meter was fixed/installed by the PSPCL (erstwhile known as Punjab State Electricity Board) in a sealed compartment in the premises of Appellant meaning thereby that the consumer did not have any access to the sealed box/ compartment.
- (vii) The Forum had erred in deciding the matter, as they had failed to take into consideration the provisions of Electricity Supply Instructions Manual (updated upto 30.06.2017), issued by Punjab State Power Corporation Limited, Patiala. Instruction No. 93.2 Limitation, reproduced as under:-

“Under Section 56(2) of the Act, no sum due from any consumer 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 arrears of charges for electricity supplied.”

- (viii) It was pertinent to mention that the Respondent had never shown as arrears of charges for electricity supplied, in the electricity bills issued to the Appellant since the change of electric meter in August, 2010. The copies of the bills prior to May, 2019 may be produced during the proceedings. These bills did not show any arrear to be paid by the Appellant and also had shown the Multiplying Factor as 1.
- (ix) The Respondent had never shown the amount of ₹ 11,97,779/- recoverable as arrears of charges for electricity supplied, as required under Instruction No. 93.2 of Electricity Supply Instructions Manual-2017.
- (x) The impugned order of the Forum was arbitrary, perverse and illegal as the provisions of Electricity Supply Instructions Manual updated upto 30.06.2017 had been ignored.
- (xi) The Appellant humbly prayed that the impugned order of the Forum may kindly be quashed and the Respondent may kindly be directed to refund a sum of ₹ 4,79,112/- deposited with them (₹ 2,39,556/- on 04.09.2019 as well as on 25.11.2019) with 12% interest from the date of deposit. It was also prayed that

the Respondent may kindly be directed to compensate the Appellant, in the interest of justice.

(b) Submission during hearing

The Appellant's Counsel gave an application during hearing on 02.06.2022 which was taken on record. He pleaded that the present Appeal case may be kept pending till decision of LPA No. 7732/2018 pending in Hon'ble Punjab & Haryana High Court. There was no direction to the Ombudsman for keeping the case pending and the same was adjourned sine-die on the request of both parties. Now the case has been reopened on the request of the Respondent. The request of the Appellant to keep the case pending for more time was not acceded to in view of the judgment of the Hon'ble Supreme Court of India.

The arguments of the Appellant's Counsel were heard. He pleaded that demand raised is covered under Limitation Act and should be recovered in instalments only. He pleaded that no action has been taken against delinquent officers/ officials of the Respondent so far.

(B) Submissions of the Respondent

(a) Submissions in written reply

The Respondent submitted the following written reply for consideration of this Court:-

- (i) The connection of the Appellant was checked as per instruction of Memo No. 6702/07 dated 09.04.2019 of S.E/ DS Circle, Sri Muktsar Sahib vide LCR No. 012/120037 dated 09.04.2019 and vide LCR No. 085/120004 dated 09.05.2019. During the checking, the metering equipment particulars were found as under:-

Meter Sr. No.	09679114
Make	L & T
Meter Capacity	100/5A
CT Set Sr. No.	1372, 1374, 1373
Make	AS Farms
CT Set Capacity	200/5A

$$\begin{aligned} \text{Overall Multiplying Factor} &= (\text{CT Ratio}/\text{Meter Ratio}) \\ &= (200/5 / (100/5)) = 2 \end{aligned}$$

- (ii) When metering equipment particulars were cross checked with the official record/ledger, it was observed that overall multiplying factor was 1 in the ledgers while actually it was 2 and this mistake was continuing since the installation of Meter Sr. No. 09679114 and CT's of the consumer.
- (iii) The Meter Sr. No. 09679114 alongwith CT's was installed on 20.08.2010 and the same was updated in the ledger, but multiplying factor of metering equipment was wrongly entered as 1 instead of 2, thus account of the Appellant was overhauled as per Note under Regulation 21.5.1 of Supply Code-2014 and

Instruction No. 58.1 of ESIM-2018 from the date of implication of wrong multiplication factor and amount of ₹ 11,97,779/- was charged to the Appellant for the period 20.08.2010 to 08.05.2019 & Notice No. 663 dated 14.05.2019 was issued to the Appellant to pay the amount.

- (iv) The Appellant did not pay any amount. Reminder Notice No.1 vide Memo No. 737 dated 27.05.2019, Reminder Notice No. 2 vide Memo No. 873 dated 20.06.2019 and Reminder No. 3 vide Memo No. 1430 dated 20.08.2019 were issued again and again to the Appellant.
- (v) The Appellant had filed a dispute case in the CGRF, Patiala on 18.09.2019 after depositing 20% of the disputed amount on 04.09.2019 which was decided on 18.10.2019 in the favour of PSPCL.
- (vi) The connection was again checked in the presence of BSNL Representative's vide LCR No. 092/120004 on 09.10.2019 to confirm all the particulars of metering equipment installed at Appellant's premises. All the particulars were found same as reported in earlier checking reports.
- (vii) The Forum stated in its decision that amount charged to the Appellant on account of overhauling of Appellant's account for the period of 20.05.2010 to 08.05.2019 due to application of

wrong multiplication factor as 1 instead of 2 was in order and was recoverable as per Note under Regulation 21.5.1 of Supply Code-2014.

- (viii) On the other hand, as per instructions in order dated 18.10.2019 of CGRF, Patiala, an inquiry was being conducted by PSPCL for lapses and fixing the responsibility of the delinquent officials/officers who failed to perform their duties.
- (ix) The Appellant filed the Appeal before the Ombudsman, Electricity, Punjab after depositing additional 20% of the disputed amount.
- (x) The billed amount charged to the Appellant was recoverable as per Regulations of PSERC because amount charged was related to electricity actually consumed by the Appellant and the Appellant was not charged any penalty, surcharge or interest.

(b) Additional Submissions made by the Respondent

The Respondent made the following additional submissions vide Memo No. 1914 dated 25.05.2022: -

- (i) The Respondent submitted that in the light of recent ruling of the Hon'ble Supreme Court in Civil Appeal No. 7235/2009 titled as M/s Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. & Ors., the PSPCL was entitled to raise the demand of said

amount, so long as the consumer does not dispute the correctness of the claim made by the Licensee.

- (ii) The Respondent submitted that in the present Appeal, the Appellant was charged for consumption of electricity with wrong Multiplying Factor (MF) and hence revenue loss to the Licensee occurred. MF was corrected later on and claim was raised by the PSPCL for the actual energy consumption. So, the Appellant was bound to pay for the electricity consumed by it.
- (iii) The claim raised by the PSPCL did not tantamount to deficiency in service as per ruling of the Hon'ble Supreme Court and the correctness of the claim was not disputed by the Appellant. So, in light of the said judgment of the Hon'ble Supreme Court, the Appeal may be disposed off.

(c) Submission during hearing

The Respondent pleaded during hearing on 02.06.2022 that the correctness of demand raised and multiplication factor has not been challenged by the Appellant. This demand is escaped assessment and is fully recoverable as per judgment dated 05.10.2021 of the Hon'ble Supreme Court of India. He promised that suitable disciplinary action shall be initiated against delinquent officers/ officials in this case who failed to

detect wrong MF for a very long period. He prayed for dismissal of Appeal.

6. Analysis and Findings

The issue requiring adjudication is the legitimacy of the amount of ₹ 11,97,779/- charged vide Notice No. 663 dated 14.05.2019 on account of overhauling of the account of the Appellant from 20.08.2010 to 08.05.02019 by applying correct Multiplying Factor (MF) of 2 instead of 1.

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

- (i) The Appellant's Representative (AR) reiterated the submissions made in the Appeal. He pleaded that the impugned order of the Forum was arbitrary, perverse and illegal as the provisions of Electricity Supply Instructions Manual updated upto 30.06.2017 had been ignored. The Respondent had never shown the amount of ₹ 11,97,779/- recoverable as arrears of charges for electricity supplied, as required under Instruction No. 93.2 of Electricity Supply Instructions Manual-2017 (ESIM). As such, the Respondent could not raise the demand beyond 2 years as per Instruction No. 93.2 of ESIM. He further pleaded that the Respondent wrongly billed the Appellant with

Multiplying Factor as 1 instead of 2 and the Appellant cannot be penalized for the mistake of the officials/officers of the Respondent. The Appellant humbly prayed that the impugned order of the Forum may kindly be quashed and the Respondent may kindly be directed to refund a sum of ₹ 4,79,112/- deposited with them (₹ 2,39,556/- on 04.09.2019 as well as on 25.11.2019) with 12% interest from the date of deposit. It was also prayed that the Respondent may kindly be directed to compensate the Appellant, in the interest of justice.

- (ii) On the other hand, the Respondent controverted the pleas raised by the Appellant in its Appeal and reiterated the submissions made by the Respondent in the written reply/ additional submissions. The Respondent argued that the amount of ₹ 11,97,779/- charged to the Appellant was recoverable as per Regulations of PSERC because amount charged was related to electricity actually consumed by the Appellant and the Appellant was not charged any penalty, surcharge or interest. The account of the Appellant was overhauled as per Note under Regulation 21.5.1 of Supply Code-2014 and Instruction No. 58.1 of ESIM-2018 from the date of implication of wrong multiplication factor. The Forum rightly upheld the demand raised to the Appellant as per Note under Regulation 21.5.1 of

Supply Code-2014. He further submitted that as per instructions in order dated 18.10.2019 of CGRF, Patiala, an inquiry was being conducted by PSPCL for lapses and for fixing the responsibility of the delinquent officials/ officers who had failed to perform their duties. He had requested this Court to decide the Appeal on merits in light of judgment dated 05.10.2021 of the Hon'ble Supreme Court of India in Civil Appeal No. 7235/2009 titled as M/s Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. & Ors. and prayed for the dismissal of the Appeal.

(iii) The Forum in its order dated 24.10.2019 observed as under:

“Forum observed that the Petitioner is having NRS connection with sanctioned load of 25.9 KW under Operation Sub Division, S/U Gidderbaha under Operation Division Gidderbaha. The connection of the petitioner was checked by AEE/Sub Division, PSPCL, S/U Gidderbaha on 09.04.19 vide checking report No. 12/120037 dated 09.04.2019 and again by ASE/Op Division, PSPCL, Gidderbaha on 09.10.19 vide checking report No. 92/120004 dated 09.10.2019. During both the checkings it was observed that multiplying factor of the connection is 2 and it is being applied as 1 since date of replacement of meter and CT's of the petitioner on 20.08.10. The particulars of the metering equipment installed at the premises of the petitioner were found to be as Meter S.No. 09679114 Make L&T Meter Capacity 100/5 CT's S No 1372,1374,1373 Make Ashmore Capacity 200/5 Overall MF = CT Ratio/ Meter Ratio = (200/5) / (100/5) = 2

Forum observed that MF was 1 being applied as per ledger instead of actual MF of 2 w.e.f. date of replacement of meter and CT's of the petitioner on 20.08.10 the advice for the same was sent to computer centre on 13.09.10 with MF as 1. The particulars of the metering equipment were cross checked with the SR and it was observed that Meter bearing S.No.09679114, Make L&T, Capacity 100/5 and CT's S No 1372,1374,1373 of Ashmore make Capacity 200/5 were drawn vide SR No 17/37006 on 22.03.2010. The account of the petitioner was overhauled as per note under Regulation 21.5.1 fo Supply Code 2014 from the date of application of wrong MF and amount of Rs.11,97,779/- was charged to the petitioner. A notice was served by AEE Sub Division, S/U Gidderbaha vide Memo No. 663 dated 14.05.2019 amounting to Rs.11,97,779/- on account of

application of wrong MF as 1 instead of actual MF of 2 w.e.f. date of replacement of meter and CT's of the petitioner on 20.08.10. Subsequently reminders vide memo no 737 dated 27.05.19, 873 dated 20.06.19 and 1430 dated 20.08.19 were served for depositing the amount. The petitioner did not agree with the same and filed a case in the Forum.

The particulars of meter/CTs were verified at site in the presence of the petitioner as directed by this Forum on 04.10.2019 as per the checking carried out vide LCR No. 092/12004 dated 09.10.2019 and the particulars were found to be as under: Meter S.No. 09679114 Make L&T Meter Capacity 100/5 CT's S No 1372,1374,1373 Make Ashmore Capacity 200/5 Overall MF = CT Ratio/ Meter Ratio = $(200/5) / (100/5) = 2$

These particulars match with the particulars of the material drawn vide SR No 17/37006 on 22.08.2010 and Meter bearing S.No.09679114, Make L&T, Capacity 100/5 and CT's S No 1372,1374,1373 of Ashmore make Capacity 200/5 were installed at the premises of the petitioner for which advice for the replacement of meter and CT's of the petitioner on 20.08.10 was sent to Computer Center on 13.09.10 with MF as 1. However, as per the above data MF 2 was to be applied to the petitioner. As such the petitioner has been billed for half of the consumption actually recorded by the petitioner right from 20.8.2010 i.e. the date of replacement of meter and CT's. Forum further observed that there is no dispute regarding the accuracy of the metering equipment.

Forum further observed that it is a clear case of deficiency in service on the part of the respondent as they have failed to issue correct bills to the petitioner by applying correct MF for a long period of 9 years. Dy.CE/SE/Op. Muktsar shall conduct an inquiry into the lapses and fix the responsibility of the delinquent official/officer who failed to perform their duties.

Forum is of the opinion that meter and CTs of the petitioner were replaced on 20.8.2010 and the account of the petitioner has been rightly overhauled w.e.f. 20.8.2010 as per note under Regulation 21.5.1 of Supply Code 2014 which states that "where accuracy of the meter not involved and it is a case of application of wrong MF the accounts shall be overhauled for the period this mistake continued."

Further since the petitioner was not billed correctly for a period of almost 9 years, Forum is of the opinion that suitable installments may be allowed to the petitioner by taking an undertaking regarding the same. No interest /surcharge be levied to the petitioner for the same.

Keeping in view the above, Forum came to the unanimous conclusion that amount of Rs.11,97,779/- charged to the petitioner vide memo No. 663 dated 14.05.2019 on account of overhauling of Petitioner's account for the period 20.08.2010 to 08.05.2019 due to application of wrong multiplication factor as 1 instead of 2 is in order and is recoverable as per note under Regulation 21.5.1 of Supply Code 2014.

Dy.CE/SE/Op. Muktsar shall conduct an inquiry into the lapses and fix the responsibility of the delinquent official/officer who failed to perform their duties.

Further since the petitioner was not billed correctly for a period of almost 9 years, Forum is of the opinion that suitable installments may be allowed to the petitioner by taking an undertaking regarding the same. No interest /surcharge be levied to the petitioner for the same.”

- (iv) I have gone through the written submissions made by the Appellant in the Appeal, written reply of the Respondent/ additional submissions of the Respondent as well as oral arguments of both the parties during the hearing on 02.06.2022. The Appellant’s account was overhauled on the basis of the checking reports vide LCR No. 012/120037 dated 09.04.2019 of AAE, DS Sub Division S/U Gidderbaha and vide LCR No. 085/120004 dated 09.05.2019 of AEE, DS Sub Division S/U Gidderbaha and ₹ 11,97,779/- was charged to the Appellant due to overhauling of the account of the Appellant from 20.08.2010 to 08.05.2019 by applying correct Multiplying Factor of 2 instead of 1 vide Notice No. 663 dated 14.05.2019. The Appellant approached the Forum against this amount charged but the Forum decided that the said amount was fully recoverable. Hence, the Appellant filed an Appeal in this Court.
- (v) After registration of Appeal on 29.11.2019, the hearing was held on 16.01.2020 in this court. During the hearing, the Sr. Xen/ DS Division, Gidderbaha, appearing on behalf of the Respondent (PSPCL) also submitted that in a similar case of Surinder Kaur v/s PSPCL (A-52/2016) decided by this Court against the

Appellant, vide order dated 08.12.2016, CWP No. 2539 of 2017(O & M) was filed by the above named Appellant in the Hon'ble Punjab and Haryana High Court who, after hearing, passed order dated 20.09.2018 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.”

The Respondent further stated that LPA No. 7732 of 2018 was subsequently filed by the PSPCL, for stay and quashing the aforesaid order dated 20.09.2018 of the Single Bench before the Division Bench of the Hon'ble Punjab and Haryana High Court and the case was fixed for hearing on 09.03.2020.

In view of the above, the representatives of both the parties-Appellant and Respondent prayed that since the matter was sub judice, the decision in the present Appeal be deferred till the decision of the pending L.P.A case by the Hon'ble Punjab and Haryana High Court. The Sr. Xen/ DS Division, Gidderbaha, however, added that the defaulting amount will continue to be shown in future energy bills and no punitive action against the Appellant will be taken in the event of adjournment of case sine

die till decision of the present Appeal by the Court of the Ombudsman. On request of the AR and the Respondent and in view of pendency of said LPA No. 7732 of 2018, the Appeal was adjourned sine die.

- (vi) In the LPA No. 7732 of 2018 filed by the PSPCL before the Division Bench of the Hon'ble Punjab and Haryana High Court, the PSPCL quoted decision of the Hon'ble Supreme Court in the matter of Swastic Industries Vs MSEB-1997 (9) SCC 465 with the relevant portion of the said judgment reproduced as under:-

“5. It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24 to make demand for payment of the charges and on neglecting to pay the same they have the power to discontinue the supply or cut off the supply, as the case may be, when the consumer neglects to pay the charges. The intendment appears to be that the obligations are mutual. The Board would supply electrical energy and the consumer is under corresponding duty to pay the sum due towards the electricity consumed. Thus the Electricity Board, having exercised that power, since admittedly the petitioner had neglected to pay the bill for the additional sum, was right in disconnecting the supply without recourse to filing of the suit to recover the same. The National Commission, therefore, was right in following the judgment of the Bombay High Court and allowing the appeal setting aside the order of the State Commission. Moreover, there is no deficiency of service in making supplementary demand for escaped billing. There may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage to the consumers. That would be deficiency of service under the Consumer Protection Act. We do not find any illegality warranting interference.”

PSPCL further stated in the said LPA that the principle of escaped billing as has been approved by the Hon'ble Supreme Court in **Swastic Industries (Supra)**, has been accepted by various High Courts including the Hon'ble Delhi High Court, in **Jingle Bell Amusement Park Pvt Ltd. vs NDPL 2011**

(123) DRJ447 wherein it was held as under:-

“11. I am in respectful agreement with the view taken by the High Court of Jharkhand. The case here of the respondent is that though the electricity consumed by the petitioner from 30th November, 2002 to July, 2003 was more; that the bill was raised for a lesser consumption owing to the inadvertent application of a wrong multiplying factor. Thus, the entire electricity claimed to have been consumed by the petitioner cannot be said to have been billed by the respondent. To that part of the electricity consumed and for which no bill was raised, the dicta in *H.D. Shourie* (supra) will clearly apply. H. D. Shourie cannot be read in a restrictive way to hold that even if the units consumed are say 100 but bill is erroneously raised for 10 units only, the claim for the balance 90 units for which no bill has been raised would also stand barred by time.

12. I find that the Division Bench of the Bombay High Court in *Rototex Polyester v. Administrator, Admn. of Dadra & Nagar Haveli Electricity Dept., MANU/MH/0760/2009* in identical facts held that in case the consumer is under-billed on account of clerical mistake such as where the multiplication factor had changed, but due to oversight the department issued bills with 500 as multiplication factor instead of 1000, the bar of limitation cannot be raised by the consumer. It was held that the revised bill amount would become due when the revised bill is raised and Section 56(2) of the Act would not come in the way of recovery of the amount under the revised bills.

13. Having held against the petitioner on the aspect of limitation, this writ petition is not maintainable owing to the alternative remedies available under Section 42(5) or 42(6) of the Act.”

PSPCL further stated that the aforesaid disposition of law has also been approved by the Hon'ble Bombay High Court and the

Hon'ble Jharkhand High Court in the following cases and reliance is placed upon the same:-

- i. Drum Manufacturing Company Pvt. Ltd. v. The Municipal Corporation of Greater Bombay AIR 1978 Bombay 369
 - ii. H. D. Shourie v. Municipal Corpn. of Delhi 32 (1987) DLT 73 : 1987 (13) DRJ 225
 - iii. MCD (DESU) v. H. D. Shourie 53 (1993) DLT 1
 - iv. NDPL v. Delhi Bottling Company Ltd. LPA No. 356/2007, dt. 24.04.2009
 - v. Ram Kishan v. NDPL 130 (2006) DLT 549 (DB)
 - vi. Rototex Polyester v. Administrator, Admn. of Dadra & Nagar Haveli Electricity Dept. MANU/MH/0760/2009
 - vii. Tata Steel Ltd. v. Jharkhand State Electricity Board AIR 2008 Jhar 60
- (vii) Now, the Respondent had requested this Court vide Memo No. 1914 dated 25.05.2022 to decide the pending Appeal on merits in view of judgment dated 05.10.2021 of the Hon'ble Supreme Court of India in Civil Appeal No. 7235/2009 titled as M/s Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. &Ors.
- (viii) I had gone through above mentioned judgment of the Hon'ble Supreme Court of India, the Hon'ble Supreme Court had observed in its judgment dated 05.10.2021 as under: -

“The raising of an additional demand in the form of “short assessment notice”, on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or

otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it was not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of “escaped assessment” and not “deficiency in service”.

- (ix) I am of the opinion that the above judgment of the Hon’ble Supreme Court of India is applicable to the facts of the present case. The amount of ₹ 11,97,779/- charged to the Appellant due to overhauling of the account from 20.08.2010 to 08.05.2019 by applying correct Multiplying Factor of 2 instead of 1 is an “escaped assessment” which was detected by the Respondent after the checking of the Appellant’s premises vide LCR No. 012/120037 dated 09.04.2019 of AAE/ DS Sub Division S/U Gidderbaha and vide LCR No. 085/120004 dated 09.05.2019 of AEE, DS Sub Division S/U Gidderbaha in which it was found that the meter capacity was 100/5A and CT capacity was 200/5A, so the MF was 2, but the Appellant was being billed at MF = 1. The Appellant was charged for the electricity actually consumed by it which could not be charged earlier due to the mistake of the officials/officers of the Respondent. Hence, the

amount of ₹ 11,97,779/- charged to the Appellant is fully recoverable from the Appellant being escaped assessment.

(x) The issue raised by the Appellant that the amount charged was not recoverable in view of Instruction No. 93.2 of ESIM as the demand raised to the Appellant was for the period which was more than 2 years old, has also been addressed by the judgment dated 05.10.2021 of the Hon'ble Supreme Court in Civil Appeal No. 7235/2009 titled as M/s Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. &Ors. in which it is held that the escaped assessment can be recovered from the consumer at any time without any Limitation.

(xi) In view of the above and in the light of judgment dated 05.10.2021 of the Hon'ble Supreme Court in Civil Appeal No. 7235/2009 titled as M/s Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. &Ors., this Court is not inclined to interfere with the decision dated 24.10.2019 of the Forum in Case No. CGP-229 of 2019. The amount of ₹ 11,97,779/- charged vide Notice No. 663 dated 14.05.2019 on account of overhauling of the account of the Appellant from 20.08.2010 to 08.05.2019 by applying correct Multiplying Factor of 2 instead of 1 is fully justified and hence recoverable from the Appellant.

- (xii) The Respondent should conduct an inquiry into the lapses and fix the responsibilities of the delinquent officials/officers who failed to perform their duties resulting in Financial Loss to the Respondent as well as undue harassment to the Appellant.
- (xiii) The Respondent had not challenged the decision of the Forum in any competent court till now. It means that the Respondent agrees with the decision of the Forum dated 24.10.2019.
- (xiv) The Appellant had not challenged about the correctness of Multiplying Factor made applicable in the demand raised vide Notice No. 663 dated 14.05.2019. Further, the correctness of amount charged (₹ 11,97,779/-) is not disputed by any of the party in this case.

7. Decision

As a sequel of above discussions, the order dated 24.10.2019 of the Forum in Case No. CGP-229 of 2019 is hereby upheld.

- 8.** The Appeal is disposed of accordingly.
- 9.** As per provisions contained in Regulation 3.26 of Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2016, the Licensee will comply with the award/order within 21 days of the date of its receipt.

10. 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.

June 02, 2022
S.A.S. Nagar (Mohali)

(GURINDER JIT SINGH)
Lokpal (Ombudsman)
Electricity, Punjab.

