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

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

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

 **APPEAL NO. 68/2019**

**Date of Registration : 11.12.2019**

**Date of Hearing : 30.01.2020 & 05.02.2020**

**Date of Order : 07.02.2020**

**Before:**

**Er. Gurinder Jit Singh,**

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

**In the Matter of :**

Anil Sood

c/o Sood Medicine Traders Pvt. Ltd.,

Heera Colony, Bassi Khawaju,

Medicine Market,

Hoshiarpur

 ...Appellant

 Versus

Additional Superintending Engineer,

 DS City Division,

 PSPCL, Hoshiarpur.

 ...Respondent

**Present For:**

Appellant : 1. Sh. Sunil Parashar, Advocate,

Appellant’s Counsel(AC).

 2. Sh. Karanjit Sharma

Appellant’s Representative(AR).

Respondent : 1. Er. Manroop Singh

Addl.S.E, DS City Division,

 PSPCL, Hoshiarpur

 2. Er. Gagandeep Singh,

 AE/ DS, Model Town Sub- division,

 Hoshiarpur.

 Before me for consideration is an Appeal preferred by the Appellant against the order dated 13.11.2019 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-249 of 2019, deciding that :

*“The decision taken by the CDSC in its meeting held on 16.08.2019 is in order and upheld. The account of the Petitioner has been rightly overhauled as per Regulation No.21.5.2(a) of Supply Code-2014 by the Audit Party for the period 04/2016 to 09/2016 on the basis of consumption recorded in the corresponding period of previous year and charged ₹* 1,91,635/-*”.*

**2.** **Proceedings**

1. Two hearings were held in this case. The first hearing was held in this Court on 30.01.2020, when Sh. Sunil Parashar, Advocate (not nominated at the time of filing the Appeal) attended the Court and submitted a Power of Attorney from the Appellant. Sh. Sunil Parashar stated that he was given the Power of Attorney to defend/argue the case only a day before the said date i.e. on 29.01.2020 and was not prepared to argue the case. He prayed to adjourn the hearing to some other date. The Addl.S.E, DS City Division, PSPCL, Hoshiarpur (Respondent) did not object to the request of the Appellant’s Counsel for adjournment. It was, then, decided to defer hearing of the case to 05.02.2020 at 12:30 hours. Both the sides were informed accordingly during hearing itself and also in writing, vide this office Memo No.83/OEP/A-68/2019 dated 30.01.2020.
2. On the next date of hearing on 05.02.2020, the representatives of both the sides, appeared, submitted their respective points of view and also made additional submissions in writing.

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

With a view to adjudicate the present dispute, it is necessary to go through written submissions made by the Appellant and reply of the Respondent as well as oral submissions made by their representatives along with material brought on record by both the sides.

1. **Submissions of the Appellant**
2. **Submission made in the Appeal**

The Appellant made the following submissions, in its Appeal dated 11.12.2019 for consideration of this Court:

1. The order of the Forum was contrary to law, weight of evidence and probabilities of the facts.
2. The order of the Forum was based only on presumptions, surmises and conjectures which were not relevant to the circumstances of the case.
3. Since the M.E. Laboratory reported that the Energy Meter was burnt, the Respondent asked the Appellant to shift the load to other Energy Meter for the period from 04/2016 to 09/2016. The Appellant, then, shifted the load of the said (burnt) Energy Meter to other Energy Meter installed in the same premise.
4. The Appellant paid the increased bill of the other Energy Meter to the Respondent from 04/2016 to 09/2016. It was also crystal clear from the record that direct connection was not given to the Appellant and no question arose to deposit the arrears of the bill from 04/2016 to 09/2016 on the basis of electricity consumption of corresponding months of the previous year which already stood paid as per recorded energy consumption.
5. The Respondent informed the Appellant after three years (in the year 2019) regarding the disputed amount which was also against the rules and regulations of the Electricity Act-2003.
6. The Forum did not take into consideration the applicability of the limitation period in raising the demand and the fact that the load of burnt Energy Meter was shifted to another Energy Meter and also that the increased bill was paid by the Appellant.
7. It was evident from the above mentioned facts that the Forum did not apply the law of natural justice and limitation.
8. In view of the submissions made above, the Appeal be allowed and order dated 13.11.2019 of the Forum be set-aside in the interest of justice.
9. **Submission during Hearing**

Apart from reiterating some of the submissions made in the present Appeal, the Appellant’s Counsel submitted a statement duly signed as under:

“The Appellant never shifted the load of Meter bearing a/c no. 3002337661 to Meter bearing a/c no.3002337662 during the period of dispute.”

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

The Respondent, in its defence, submitted the following in the written reply to the Appeal, sent vide Memo dated 04.01.2020, for consideration of this Court**:**

1. The decisions of the Forum and Circle Dispute Settlement Committee (CDSC) were based on the rules and instructions of the PSPCL.
2. The Appellant had misrepresented the facts about shifting of load of the disputed Energy Meter to the other Energy Meter installed in its premise. In fact, on receipt of the request of the Appellant on 10.10.2016, (after the burning of the disputed Energy Meter), the said Energy Meter was replaced vide Device Replacement Application No. 100002655783 dated 10.10.2016 and sent to the M.E Laboratory vide Challan No.74 dated 09.02.2017. The Respondent-PSPCL never asked the Appellant to shift the load of the disputed Energy Meter to other Energy Meter installed in the same premise. Besides, shifting of load of the disputed Energy Meter to the other Energy Meter was not as per the instructions of the Respondent-PSPCL. The reading of the disputed Energy Meter of the consumer was recorded for the period from 04/2016 to 09/2016, but the consumption of NRS category connection of the consumer, with the sanctioned load 31.840 kW, during disputed period was not commensurate/comparable with the consumption data of the corresponding months of pre and post disputed period. Therefore, the amount charged to the Appellant by Internal Audit, vide Half Margin No.02 dated 13.07.2017 for the period from 04/2016 till replacement of the disputed Energy Meter, was chargeable/recoverable as per the instructions of the Respondent-PSPCL.
3. It was worth to mention here that if a consumer shifted its load, on its own, to other Energy Meter, then, it was a case of UUE as submitted, during proceedings in the Forum. During the course of proceedings, the Forum directed to take action by checking the connection at site, but nothing objectionable was found during checking. As such, no action (regarding UUE) was taken. As per the instructions of the Respondent-PSPCL, if the Energy Meter of the consumer got defective/ burnt, direct supply could be given to the consumer till the replacement of such Energy Meter but no direct supply was given in the present case.
4. The disputed Energy Meter was replaced on the very day of receipt of its request dated 10.10.2016. The Appellant was correctly charged for the period of 04/2016 to 09/2016 on the basis of consumption recorded in the corresponding period of previous year as per the observations made by the Internal Audit Party.
5. The Forum decided the case after consideration of all facts

and circumstances and the order passed by it was correct and as per instructions of the Respondent-PSPCL.

1. In view of the submissions made, the Appeal may be

 dismissed.

1. **Submissions during Hearing**

Apart from reiterating the submissions made in the written reply, a signed statement was submitted by Respondent during hearing on 05.02.2020 as under:

“In view of the discussion and statement given by the Appellant in the Court of Lokpal on 05.02.2020 i.e. the Appellant Counsel, Mr. Anil Sood bearing A/c No. 3002337661, has not used the supply from the other Energy Meter of the consumer Mrs. Sneh Lata having Account No. 3002337662 during the disputed period. This office had given the reply in the CGRF, Ludhiana on behalf of the Petition of the Petitioner/Appellant about UUE case. As per record of the office, there is no any such checking of any agency or office for this cause during the disputed period. Therefore, no case of UUE is established. However, the charges pointed out by the Audit Party are recoverable from the Appellant as per rules and regulation of the PSPCL.”

**4.** **Analysis and Findings**

The issue requiring adjudication is the legitimacy of the amount of ₹ 1,91,635/- charged to the Appellant for the period from 04/2016 to 09/2016 on the basis of energy consumption of corresponding period of previous year as a result of review of the record of the consumer’s account by the Inter Audit Party during 07/2017.

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

(i) In the present dispute, the Appellant, at the time of filing

the Appeal in this Court, nominated Sh. Karnajit Sharma as its Representative (who had also represented the Appellant in the CGRF, Ludhiana) to file the Appeal and thereafter argue the case in this Court. But, in the very first hearing on 30.01.2020, Sh. Sunil Parashar, Advocate appeared in the Court and submitted a Power of Attorney on behalf of the Appellant for defending the case. However, Sh. Karanjit Sharma also attended the Court alongwith Sh. Sunil Parashar, Advocate who sought adjournment of the case to some other date to enable him to prepare for and argue the case on the next date. The Addl.S.E, DS City Division, PSPCL, Hoshiarpur did not object to the adjournment of the case. The request of the Appellant’s Counsel was accepted and hearing of the case was deferred to 05.02.2020 at 12:30 PM. Both the sides were informed orally and also, vide this office Memo No. 83/84 dated 30.01.2020.

1. During the course of next hearing on 05.02.2020, the Appellant’s Counsel contended that the Respondent-PSPCL had raised the disputed demand of ₹ 1,91,635/- relating to the period from 4/2016 to 9/2016, against the Appellant, vide Memo No. 564 dated 30.05.2019 after a period of more than two years and the same was not recoverable as per provisions of the Electricity Act-2003. Appellant’s Counsel also submitted that the Forum did not take cognizance of the law of limitation and principle of natural justice while upholding the demand raised against the Appellant.

In this connection, it is relevant to peruse the instructions circulated by the PSPCL vide Commercial Circular No. 05/2012 dated 14.03.2012 (pursuant to decision of the Hon’ble Punjab and Haryana High Court in LPA No. 605 of 2009, decided on 09.09.2011), which read as under:

*“Section-56 of Electricity Act does not wipe off the recovery of arrears for more than two years. The right to recovery of arrears by way of suit has been specifically protected.*

*It is clarified that limitation period of two years for charging the amount under the Section-56(2) of Electricity Act-2003 shall start from the date of detection of mistakes by the officer(s)/official(s)/demand raised by PSPCL.”*

In this case, the demand was raised by the Respondent on 30.05.2019, hence, the amount of ₹ 1,91,635/- charged to the Appellant by the Respondent is within limitation period and recoverable.

1. Appellant’s Counsel next contended that the disputed amount of ₹ 1,91,635/- was also not otherwise recoverable from the Appellant due to the reason that the readings of the Appellant’s connection, bearing Account No. 3002337661 during the disputed period from 04/2016 to 09/2016, were taken by the Meter Reader who did not point out anything adverse about the disputed Energy Meter and bills received with ‘O’ code status and were duly paid. Besides, payment of the bills of the other connection bearing Account No. 3002337662 as per the energy consumption recorded during 04/2016 to 09/2016 were also duly paid.

I observe that the disputed Energy Meter installed at the premise of the Appellant got burnt due to short circuit as stated on behalf of the Appellant in the Forum and also as per perusal of the request of the Appellant received on 10.10.2016 in the office of the Assistant Engineer, DS Model Town Sub Division, PSPCL, Hoshiarpur. The burnt Energy Meter was replaced on 10.10.2016 i.e the date of receipt of request of the Appellant and got checked on 14.12.2016 from the M.E Laboratory which declared the said Energy Meter burnt. But the Respondent did not take follow up action, on its own, to overhaul the account of the Appellant as per applicable regulations. Subsequently, the Internal Audit Party reviewed the details of burnt Energy Meters and issued Half Margin dated 13.07.2017 pointing out recovery of ₹ 1,91,635/- after overhauling the Appellant’s Account for the Period 04/2016 to 09/2016 on the basis of consumption of corresponding period of previous year.

I observe that considering the facts and circumstances of the dispute, the said amount of ₹ 1,91,635/- charged to the Appellant is correct and recoverable in terms of provisions contained in Regulation 21.5.2(a) of Supply Code-2014.

1. The issue of shifting of load by the Appellant from the connection bearing Account No. 3002337661 to 3002337662 installed in the same premise during the disputed period 04/2016 to 09/2016 also came up for discussion during the hearing dated 05.02.2020.

The Appellant’s Counsel, then, submitted a signed statement mentioning that the Appellant never shifted the load from the disputed Energy Meter to the another Energy Meter installed in the same premise.

The Respondent, on being asked, during the hearing, also gave a statement, duly signed, mentioning that no case of UUE for the period of dispute was established against the Appellant as per record and no checking for this cause was done by any agency.

 I observe that the matter relating to Unauthorised Use of Electricity (UUE) does not come within the purview of this Court as per scope of work assigned under the provisions contained in Regulation 2.27 (b) of PSERC (Forum and Ombudsman) Regulations, 2016. As such, no comments are offered on this issue.

**5.** **Decision**

 **(i) As a sequel of above discussions, the order dated 13.11.2019 of the CGRF, Ludhiana in Case No. CGL-249 of 2019 does not warrant interference by this Court and is upheld.**

 **(ii) The Respondent-PSPCL shall take appropriate action against the officers/officials who were responsible for the delay in issuing notice for recovery of the disputed amount in 05/2019 despite the fact that the observation on this account was raised by the Internal Audit Party in 07/2017.**

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

**7.** 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)

February 07, 2020 Lokpal (Ombudsman)

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