IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 16487 of 2014 (O&M)
Date of decision: 15.9.2016

M/s Meera Foods

...Petitioner

Versus

Punjab State Power Corporation Limited, Patiala and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Ankit Goel, Advocate,
for the petitioner.

Ms. Geeta Sharma, Advocate,
for respondent No.1.

RAKESH KUMAR JAIN, J. (Oral)

This petition is directed against the order dated 21.7.2014/ 23.7.2014, passed by the Ombudsman, Electricity Punjab.

In short, the petitioner is engaged in the business of manufacturing of fruit and vegetable products and having electricity connection No. KK1/04, sanctioned for 141.602 KW and a contract demand (CD) of 140 KVA. On 5.5.2010, when the electricity meter, installed in the premises of the petitioner, was checked, it transpired that the Maximum Demand Indicator of the meter had jumped to 228.6 KVA against the contract demand of 140 KVA and a demand of surcharge of Rs. 66,450/- was levied.

The petitioner applied for meter testing after depositing the prescribed fee on 17.6.2010 but no action was taken though in terms of

Regulation 21.4 of the Electricity Supply Code, the meter testing at the request of the consumer was required to be done within 7 days by the licensee. There was abnormal functioning of the meter, which recorded erroneous MDIs as per readings taken on 1.1.2011, 5.4.2011 and 4.6.2011 and the petitioner repeatedly reminded the respondents to undertake the meter testing. However, in order to avert any action of disconnection, the petitioner deposited Rs. 4,07,209/- under protest on account of demand surcharge which was levied against it. The meter finally started malfunctioning on regular basis and in February, 2012, once again the petitioner approached the respondents to conduct meter testing which was due for the last more than a year and a half. The petitioner again deposited meter testing fee on 5.3.2012 and thereafter on 18.4.2012, the meter was tested by Sr. XEN, MMTS, Bathinda, who checked the meter on the spot, inspected the connected load, downloaded the data from the meter on 4.4.2012 and recommenced change of the meter forthwith vide his letter dated 18.4.2012. The meter was replaced on 22.6.2012 and thereafter there was not even a single occasion when the MDI had exceeded the contract demand of 140 KVA but still a demand surcharge was unnecessarily increased to Rs. 7,32,239/- by respondent No.1 and again the petitioner took recourse to the Consumer Complaint Handling Procedure, prescribed by the Punjab State Electricity Regulatory Commission.

The Zonal Disputes Settlement Committee (ZDSC), Bathinda, vide its order dated 26.12.2013, upheld the charges levied against it. Aggrieved by the order, the petitioner approached the Consumer Grievance Redressal Forum, under the Punjab State Electricity Regulatory

Commission (Forum and Ombudsman) Regulations, 2005, which vide order dated 31.3.2014 held that the demand surcharge for the period May, 2010 to June, 2012 be recalculated by restricting the maximum recorded demand upto 164.740 KVA. Additionally, the Forum also ordered disciplinary action against the officials of respondent No.1.

The petitioner challenged the order of the Forum before the Ombudsman, Punjab on 5.5.2014 and in the meanwhile, complied with the order dated 31.3.2014 passed by the Forum. Respondent No.1 recalculated the amount and refunded the balance to the petitioner, along with interest, totaling Rs. 6,33,484/- vide letter dated 8.5.2014.

The grievance of the petitioner is that the Ombudsman, while passing the impugned order, has though recorded that "however, to some extent I find merit in the argument of the petitioner that the Forum arbitrarily and without any valid grounds has fixed the limit of 164.740 KVA", yet the Ombudsman has passed the later part of the order, which is uncalled for as there was no appeal on behalf of the respondent in that regard.

Learned counsel for the respondent could not defend the order passed by the Ombudsman so far as the later part of the order is concerned and thus it has been argued that the order of the Ombudsman may be set aside and the matter may be remanded back to him to decide afresh in accordance with law. Learned counsel for the petitioner has not shown any reservation in this regard and, therefore, the prayer is accepted.

Consequently, the order passed by the Ombudsman is set aside and the matter is remanded back to him to decide afresh in accordance with law, after affording opportunity of hearing to both the parties.

The parties are directed to appear before the Ombudsman on 7.11.2016. Needless to mention that the parties would be at liberty to address all the issues before the Ombudsman.

15.9.2016 **(RAKESH KUMAR JAIN)**
prem **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No