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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

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CWP-29676-2018 (O&M).
Date of Decision: 10.09.2024.

PUNJAB STATE POWER CORPORATION LIMITED

.. Petitioner

Versus

ARVIND GUPTA

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Ms. Jarnail Kaur Dhaliwal, Advocate,
for the petitioner.

Mr. Pankaj Middha, Advocate,
for the respondent.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated
27.02.2018 (Annexure P-8) passed by the Lok Pal (Ombudsman),
Electricity Punjab.

2 Briefly summarized, the facts of the present case are that the
respondent had been released a medium supply category connection bearing
account No.3002489680 with sanctioned load of 89.930 kW and a contract
demand of 99.92 KVA operating under AEE/OP Commercial Unit-2,

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Jalandhar, East Division, Jalandhar. The said electricity connection is stated to have been checked by the Senior Executive Engineer, Enforcement, PSPCL, Moga with ECR No.29/2093 dated 12.05.2017 wherein it was reported as under:-

DETAILS OF CHECKING:

1) Metering equipment particulars	Results of checking
1). Meters. i)Make & Type- L&T ii)Capacity 200/5 iii)Rev/Imp. Per KWH 62.5 iv)Sr. No./Guide No.13488417 v)Meter Readings KWh 0522966 KVAh 0573417 KVA(MD) 110.29 2. C.T. Ratio 100/5A 3. P.T. Radio 4. See' i)MCB PC seal No.AI27862 broken for checking ii)MTC PC seal No. G 132171, 132170 No intact iii)ME C13/14 2Kh 2K 13/14 (2 No. paper seal No. intact) iv)Ultra Sonic Welding: 2K 13/15 v)MDI	1. MCB and CTC box is quite old and rusted. Standard size box may be installed. As per the regulations of the department, needful be done. 2. MCB and CTC 3 phase seals installed A133720, A 133702. 3. The meter display did not respondent on CMRI DDL.

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vi)CT Chamber PC Seal: F132173, broken for checking.	
vii)PT Chamber	
5. Working of a)Meter(s) b)CTs/PTs	The accuracy of meter was checked by LT Accucheck after passing load of 50 KW, it was found that the meter was running within its parameters.

3 It was thus noticed that due to deposit of carbonization at R and Y Phase, the display screen of R and Y phase showed zero voltage. The accuracy check was again attempted to check the CT Chamber, however, despite repair, display screen showed zero voltage for R and Y phase. It was accordingly concluded that there is a possibility of technical fault in the meter. The Senior Executive Officer Enforcement, PSPCL, Moga, scrutinized the DDL of the energy meter and passed a speaking order on 15.05.2017 which is extracted as under:-

“As it clears from temper data on/off and temper potential data that potential of Red phase and Yellow phase has been missing from 01.10.2015, So kindly overhaul the account of consumer from that date. It is also intimated that consumer bearing NRS account GT 62/559 for industrial usage. So it is case of UUE and do needful as per PSPCL's guidelines.”

4 Based on the above said speaking order, the energy meter was replaced vide Meter replacement order dated 17.05.2017 and the account of the petitioner was overhauled for the period 01.10.2015 to 12.05.2017 based on the report dated 15.05.2017 and the respondent was directed to deposit a sum of Rs.12,07,834/-. It is also submitted that the energy meter was got

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tested in the M.E. Lab and as per its report dated 20.07.2017, the energy meter was found dead at red and yellow phases and was slow to the extent of 66% to 67%, when tested at different load and power factors. The display of the energy meter was also found defective. As the respondent-consumer did not agree with the demand raised by the respondent Distribution Licensee, a petition was filed before the Consumer Grievances Redressal Forum (for short hereinafter referred to as 'CGRF') challenging the said demand. The matter was heard by the CGRF and after considering the contentions raised on behalf of the respective parties as also on appreciation of the regulations framed by the Appropriate Commission, the CGRF came to a conclusion that the amount charged to the respondent-consumer on account of overhauling from 01.10.2015 to 12.05.2017, by enhancing the recorded consumption for the respondent with 66% slowness factor due to carbonization, potential of yellow phase and red phase resulting in non-contribution of energy to the meters on two phases is correct and recoverable. The operative part of the order passed by the CGRF reads thus:-

“Forum noted the contention of the petitioner in the proceedings that according to Regulation No. 21.5 of the Punjab State Electricity Regulatory Commission (Electricity Supply Code and related matters) Regulations-2014, in case of defective meter, the accounts of a consumer shall be overhauled/billed for a maximum period of six (6) months on the basis of energy consumption of corresponding period of previous year.

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Forum noted the contention of the respondent in the proceedings that Regulation 21.5 supply code relates to defective meter but in this case potential of Red and Yellow phases was not contributing from 1.10.2015 as it is clear from tamper data on/off and tamper potential data. The PSPCL has installed correct meter but due to carbonization potential of Red and Yellow phases was not contributing to the meter. Due to this reason, the meter was not recording consumption on two phases.

Forum studied the DDL of the petitioner dated 15.05.2017 and noted that from 01.10.2015 R phase PT link and Y phase PT link was missing in the DDL.

Forum studied the consumption data of the petitioner as supplied by the respondent and noted that the consumption of the petitioner as under:-

<i>Year</i>	<i>Monthly minimum consumption in KVAh</i>	<i>Monthly maximum consumption in KVAh</i>
<i>2014</i>	<i>13665</i>	<i>26141</i>
<i>2015 (upto 28.9.2015)</i>	<i>14147</i>	<i>30598</i>
<i>2015 (From 28.10.2015 to 28.12.2015)</i>	<i>1965</i>	<i>5664</i>
<i>2016</i>	<i>27</i>	<i>9747</i>
<i>2017 (upto 6.7.2017)</i>	<i>34</i>	<i>7103</i>

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From the above table, it is very clear that the consumption of the petitioner has decreased to great extent due to missing of potentials of R phase and Y phase from 01.10.2015.

Forum further observed that in case of defective meters Reg. 21.5.2 of Supply Code Regulation, 2014 is applicable which provides as under:-

"Defective (other than inaccurate)/Deed Stop/Burnt/Stolen Meters The accounts of a consumer shall be overhauled/billed for the period meter remained defective/dead stop and in case of burnt/stolen meter for the period of direct supply subject to maximum period of six months as per procedure given in the Regulations."

So as per above regulation the account of the petitioner is to be overhauled for the period the meter remained defective/dead stop i.e. from 01.10.2015 to the date of checking i.e. 12.5.2017.

Forum further noted the contention of the petitioner in the proceedings that according to Regulation No. 21.3 of "PSEB Electricity Supply Code and Related Matters Regulations-2014", the licensee has to conduct periodical inspection/testing of meters installed at the consumer's premises. But there is nothing on record to ascertain it. PC stated that according to instruction No.102.2 of ESIM, it is the responsibility of the engineering officer to ensure correctness of connections and correct working of the meter. PC contended that instruction No. 104.1 of ESIM provides checking schedule for checking of connections. There is no allegation of any type of slowness etc. with regard to working of the metering equipment. There is no

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allegation of any type of interference with working of the meter against the complainant. PC stated that according to ESIM instruction No. 102.7 an energy variation register is maintained in office to watch variance in monthly consumption of consumers. There is no allegation of less consumption against the complainant.

Forum further noted the contention of the respondent in the proceedings that as per record previous checking was done of this connection on 27.1.2015 by ASE/Enforcement-2, Jalandhar vide ECR No. 9/22378. As per checking dated 27.1.2015 meter was changed on 29.1.2015. Thereafter no checking by competent authority was found in the record. As per record no energy variation register is maintained but previous two years consumption is mentioned on the bill served to the consumer monthly. Forum decided that disciplinary action against the delinquent officials/officers be initiated who failed to check the connection of the petitioner as per clause No.104.1 of ESIM.

In view of the above discussions, Forum came to unanimous conclusion that the amount charged to the petitioner on account of overhauling the account of the petitioner from 01.10.2015 to 12.05.2017 (date of checking) by enhancing the recorded consumption of the petitioner with 66% slowness factor due to carbonization potential of Red and Yellow phases resulting in non- contribution of energy to the meter on two phases, is correct and recoverable.

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Keeping in view the petition, reply, oral discussions, and after hearing both the parties, perusal of the record produced by them & observations of Forum, Forum decides that:-

The amount charged to the petitioner on account of overhauling the account of the petitioner from 01.10.2015 to 12.05.2017 (date of checking) by enhancing the recorded consumption of the petitioner with 66% slowness factor due to carbonization potential of Red and Yellow phases resulting in non-contribution of energy to the meter on two phases is correct and recoverable.

SE/Op. Circle, Jalandhar is directed to initiate disciplinary action against the delinquent officials/officers who failed to check the connection of the petitioner as per clause No. 104.1 of ESIM.

Forum further directs the respondent to club both the connections of the petitioner as per instructions of the corporation.

Forum further decides that the balance amount recoverable/refundable, if any, be recovered/refunded from/to the consumer alongwith interest/surcharge as per instructions of PSPCL.

As required under Punjab State Electricity Regulatory Commission (Forum & Ombudsman) Regulations-2005, the implementation of this decision may be intimated to this office within 30 days from the date of its receipt. If

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the petitioner is not satisfied with the decision of CGRF, he has the right to file an appeal in the Court of Ombudsman, Electricity, Punjab, Mohali within one month from the date of receipt of the order of the Forum as per Regulation-18 (3)(ii) as per Punjab State Electricity Regulation Commission (Forum & Ombudsman) Regulations-2005.”

5 Aggrieved of the same, the respondent preferred an appeal before the Electricity Ombudsman under Section 42 (7) of the Electricity Act, 2003 raising various objections. It was the specific case of the respondent-consumer that he was regularly paying the electricity bills issued by the respondent Distribution Licensee and that there was no outstanding. It is submitted that accuracy of the meter could not be checked even after correcting the R and Y phases and correcting voltage of these phases. The Checking Officer clearly concluded that there is possibility of technical fault in the meter, hence, the being meter defective and less consumption having been recorded was due to the defective meter and not due to non-contribution of R and Y phases of potentials. Even as per the M.E. Lab report and the checking conducted in July 2017 showed that there was a defective display. Hence, there was no basis for the Distribution Licensee to come to a conclusion that meter potential of red and yellow phase are missing from 01.10.2015. The conclusion of the Enforcement Officer is hypothetical and without any basis and officer has tried to justify his checking dated 12.05.2017. It was also pleaded that that the potential of

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red and yellow phases w.e.f. 01.10.2015 had also not been supplied and that the award passed by the CGRF lacked in reasoning.

6 Upon consideration of the rival submissions advanced by the respective parties, the Electricity Ombudsman, allowed the said appeal vide order dated 27.02.2018 and directed as under:-

“I observe that the Forum, vide its order dated 16.08.2017 in this case, directed the S.E./DS Circle, Jalandhar to initiate disciplinary action against the delinquent officers/officials who failed to check the connection of the petitioner as per Instruction No.104.1 of ESIM-2010.

iv) PC further argued that the speaking orders conveyed by the Sr. XEN/Enforcement, PSPCL, Moga, vide e-mail dated 15.05.2017 after checking of another connection in the name of the petitioner vide ECR No. 30/2023 dated 12.05.2017, declaring it a Unauthorized use of Electricity (UUE) case was not correct since, Sr. XEN, Enforcement was not an Assessing Officer. The Govt. of Punjab had declared Assessing Officers vide notification dated 27.12.2004, as detailed in Annexure-9 of Supply Code-2014. The Respondent had not followed the procedure, prescribed in Regulation 36 of Supply Code-2014, for declaration of the case of Unauthorized Use of Electricity (UUE). PC added that the calculations for Rs.56,546/- made in the notice issued, vide memo No.2068 dated 18.05.2017, were also incorrect.

I observe from the material placed on record that two more connections, running in the name of the petitioner, were also

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checked by the Enforcement. One connection, bearing Account No. J62GT62/559 of NRS category with Sanctioned Load of 19.620 KW, was being used for Industrial purpose. So, it was a case of UUE and the Respondent had taken action and charged Rs. 56,546/- which was deposited by the petitioner who also got the connection permanently disconnected. Another connection was also running in the same premises. I find that the Forum had already directed the Respondent to club both the connections and this fact was confirmed, during oral arguments on 22.02.2018 by the Respondent who stated that both the connections had been clubbed.

4. Decision:

From the above analysis, it proves beyond doubt that the Energy Meter's display was defective and Energy Meter was dead on Red and Yellow phases. As such, this court is to take recourse to the provisions relevant in this regard i.e. Regulation 21.5.2 of Supply Code-2014, reproduced below, for overhauling the account of the petitioner in the present case:

"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 and in case of burnt/stolen meter for the period of direct supply subject to maximum period of six months as per procedure given below:

a) On the basis of energy consumption of corresponding period of previous year.

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b) In case the consumption of corresponding period of the previous year as referred in para (a) above is not available, the average monthly consumption of previous six (6) months during which the meter was functional, shall be adopted for overhauling of accounts.

c) If neither the consumption of corresponding period of previous year (para-a) nor for the last six months (para-b) is available then average of the consumption for the period the meter worked correctly during the last 6 months shall be taken for overhauling the account of the consumer.

d) Where the consumption for the previous months/period as referred in para (a) to para (c) is not available, the consumer shall be tentatively billed on the basis of consumption assessed as per paras-4 of Annexure-8 and subsequently adjusted on the basis of actual consumption recorded in the corresponding period of the succeeding year.

e) The energy consumption determined as per para (a) to (d) above shall be adjusted for the change of load/demand, if any, during the period of overhauling of accounts.

As a sequel of above discussions, it is held that the account of the petitioner should be overhauled, as per provisions contained in Regulation 21.5.2 (a) of Supply Code-2014, for a period of six months, prior to replacement of disputed Energy Meter, based on energy consumption recorded during the corresponding period of previous year. Accordingly, the Respondent is directed to recalculate the demand and

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refund/recover the amount found excess/short, if any, after adjustment.

5. The Appeal is disposed of accordingly.

6. EIC/Commercial, PSPCL, Patiala should issue instructions to all the Engineers-in-Chief/Chief Engineer of DS Zones to direct all the field officers/officials to ensure during the installation of LT CT operated Energy Meters alongwith LT CT that the Potential Wires tapped from the main cable should be of the same material as that of the main cable (directly or preferably through bi-metallic thimble) to avoid bi-metallic resistance due to which, the carbonization takes place and with the passage of time, the wires get disconnected contributing to less recording of consumption by the Energy Meter.

7. Engineer-in-Chief, Commercial, PSPCL, Patiala may issue Instructions requiring all the Addl. Superintending Engineers/Senior Executives Engineers to keep a vigil on the variations in the energy consumption recorded and available in SAP in respect of all categories of consumers within their respective jurisdiction, analyse the cases of abnormal decrease in consumption of current vis-a-vis previous month(s) and take immediate corrective action, wherever required, with a view to protect the interests of both the Utility and the Consumers.

8. In case, the petitioner or the Respondent (Licensee) is not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate bodies in accordance with Regulation 3.28 of Punjab State

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Electricity Regulatory Commission (Forum and Ombudsman) Regulations 2016.”

7 During the course of arguments, learned counsel for the petitioner could not advert to any statutory provision which is allegedly ignored by the Electricity Ombudsman. She has also not been able to point out any defect or illegality in the order passed by the Electricity Ombudsman despite a specific query being raised to her. This Court has noticed that the contentions noticed by the CGRF were taken into consideration by the Electricity Ombudsman and was also informed of energy consumption despite the defect in energy consumption of R and Y phases. Accordingly, Regulation 21.5.2 of the Electricity Supply Code, 2014 was referred to by the Electricity Ombudsman which prescribes for overhauling of the account as per the procedure given thereunder. It was thus ordered that account of the respondent-consumer should be overhauled as per provisions contained in Regulation 21.5.2 (a) of the Electricity Supply Code, 2014 for a period of six months prior to replacement of disputed energy meter based on energy consumption recorded during the corresponding period of previous year. The petitioner respondent Distribution Licensee was directed to recalculate the demand and refund/recover the amount found excess/short, if any after adjustment.

8 This Court, while sitting in judicial review would ordinarily not interfere with an order passed by the competent authorities unless any legal or substantial factual error is established. It was incumbent upon

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counsel for petitioner to point out the legal or factual defects/errors in the order but she failed to refer to any.

9 Since the counsel for the petitioner has failed to point out any error, illegality; impropriety or perversity in the order, I find that there is no ground for interference in the order passed by the Electricity Ombudsman. The present writ petition is accordingly dismissed.

September 10, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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