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

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

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

 **APPEAL NO. 63/2018**

**Date of Registration : 28.09.2018**

**Date of Hearing : 03.01.2019 and 29.01.2019**

**Date of Order : 05.02.2019**

**Before:**

 **Er. Virinder Singh, Lok Pal (Ombudsman), Electricity**

**In the Matter of :**

Sunny View Estates Pvt. Ltd,

A-40A, Building F-7,

Phase-8B, Industrial Area,

S.A.S. Nagar (Mohali)

 ...Petitioner

 Versus

Addl. Superintending Engineer,

DS Division (Special),

 PSPCL , S.A.S. Nagar (Mohali).

 ...Respondent

**Present For:**

Petitioner : Sh. Daljeet Singh Nagi,

 Petitioner’s Representative (PR).

Respondent : Er. H.S. Oberai,

 Additional Superintending Engineer,

 DS Division (Special),

 PSPCL, S.A.S. Nagar (Mohali).

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 23.08.2018 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-212 of 2018 deciding that :

*“Respondent is directed to ensure the compliance of Commercial Circular No.58/2016 dated 14.12.2016 by executing Franchisee Agreement with the Petitioner to implement the orders/directions of the Commission”.*

**2*.* Facts of the Case*:***

 The relevant facts of the case are that:-

1. The Petitioner was having a Non Residential Supply Category

connection, bearing Account No. 3000319364 with sanctioned load of 1260 kW and contract demand (CD) of 1400 kVA, released on 02.09.2013 at Supply Voltage of 11 KV.

1. The Petitioner filed a Petition dated 23.5.2018 in the Forum for

getting the HT rebate which was not given from the very beginning as per various Commercial Circulars (CC) issued by the Respondent-PSPCL.

**(iii)** After hearing the case, the Forum passed order dated 23.08.2018

(Reference: Page-2, Para-1) directing the Respondent to ensure

compliance of the Commercial Circular No. 58/2016 dated 14.12.2016 issued with the approval of the Hon’ble PSERC, by executing the Franchisee Agreement with the Petitioner.

1. Not satisfied with the decision of the Forum, the Petitioner preferred

an Appeal in this Court and prayed to grant it HT Rebate for the period from 02.09.2013 to 14.12.2016 and 10% Single Point Rebate as per Commercial Circular No. 58/2016 w.e.f. 14.12.2016 till date as the decision of the Forum was silent on this aspect. The Petitioner also prayed for issuing directions to the PSPCL to change its tariff from NRS to LS General so as to avail itself of subsidized rate of Rs. 5/- per kVAh variable tariff as per Punjab Government’s Policy and PSPCL’s own Commercial Circular No. 46/2018.

**3. Submissions made by the Petitioner and the Respondent**:

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

1. **Submissions of the Petitioner**:

 The Petitioner made the following submissions for consideration of this Court:

1. The Petitioner was having a Non Residential Supply Category

connection, bearing Account No. 3000319364, with sanctioned load of 1260 kW and contract demand (CD) of 1400 kVA, which was released on 02.09.2013.

**(ii)** A rebate of 15 paise per kVAh was applicable for the period from 01.04.2013 to 31.03.2014 as per Commercial Circular No. 23/2013 and 20 paise per kVAh as per Commercial Circular Nos. 44/2014, 14/2015, 25/2016, 46/2017 and 23/2018 to Non Residential Supply category consumers getting supply at 11 kV voltage. The said HT rebate was not allowed to the Petitioner.

**(iii)** In compliance to the decision of the Forum, the Petitioner was willing to execute the Franchisee Agreement as per Commercial Circular (CC) No. 58/2016, but the order of the Forum was silent about the period of HT rebate from 02.09.2013 till 14.12.2016.

**(iv)** The Petitioner was eligible to get either single point rebate for the said period or HT rebate as admissible in terms of the said Circular.

**(v)** The Single point rebate of 10% was also admissible to the Petitioner for the period from 14.12.2016 till date, but the order of the Forum was silent in regard to the date of implementation of Single Point rebate.

(**vi)** In view of the submissions made above, the Appeal may be allowed by issuing directions to the Respondent to grant HT Rebate for the period from 02.09.2013 to 14.12.2016 and 10% Single Point Rebate as per Commercial Circular (CC) No. 58/2016 from 14.12.2016 till date and also to change its tariff from NRS to LS General Category so as to avail subsidized rate of Rs. 5/- per kVAh variable Tariff as per Punjab Government’s Policy and Commercial Circular (CC) No. 46/2018 issued by the PSPCL.

1. **Submissions of the Respondent:**

 The Respondent, in its defence, submitted the following for consideration of this Court**:**

1. The Petitioner was having a NRS category Connection, bearing ` Account No. 3000319364, with sanctioned load of 1260 kW and

contract demand (CD) of 1400 kVA getting supply at 11 kV voltage.

1. The Petitioner was entitled to HT rebate from 02.09.2013 as it was getting supply at 11 kV voltage in view of Commercial Circulars issued by the PSPCL for the Financial Year 2013-14 onwards.
2. The Account of the Petitioner was overhauled and found that the

rebate claimed related to Audit period, therefore, the Petitioner filed a Petition in the Forum, who, after hearing, decided the Petition on 23.08.2018 as per which, directions were issued to the Respondent to execute the Franchisee Agreement with the Petitioner without mentioning anything about HT rebate.

1. Keeping in view the submissions made, the Appeal may be dismissed.

**4.** **Analysis:**

 The issues requiring adjudication are the legitimacy of the:

1. Grant of HT Rebate for the period from 02.09.2013 to 14.12.2016;
2. Allowing 10% Single Point Rebate from 14.12.2016 till date;
3. Change of Tariff from NRS to LS General Category so as to avail subsidized rate of Rs. 5/- per kVAh variable tariff.

 *The issues emerged in the case are deliberated and analysed as under:*

**Issue (i) and (ii):**

1. The Petitioner’s grievance is that HT Rebate @ 15 paise per kVAh from 02.09.2013 to 31.03.2014 and thereafter @ 20 paise per kVAh was not given to it (having NRS Category connection since 02.09.2013 at Supply Voltage of 11 kV), admissible as per provisions of Commercial Circular No. 23/2013, 44/2014, 14/2015, 25/2016, 46/2017 and 23/2018. Petitioner’s Representative (PR) contended that in compliance to the decision of the Forum, the Petitioner was willing to execute the Franchisee Agreement as per Commercial Circular (CC) No.58/2016 dated 14.12.2016, but the order of the Forum was silent about the period of HT Rebate from 02.09.2013 to 14.12.2016. Petitioner’s Representative (PR) prayed that the Petitioner be granted HT Rebate for the period from 02.09.2013 to 14.12.2016 and 10% Single Point Rebate, as per CC No.58/2016, from 14.12.2016 till date.

I find that as part of its annual exercise, PSPCL issues Commercial Circulars, circulating the revised rates of Tariff for providing Power Supply to various categories of consumers approved by the Hon’ble PSERC. The relevant details of these Commercial Circulars for the FY 2013-14 to FY 2018-19, are reproduced as under:

|  |  |  |
| --- | --- | --- |
|  | *Commercial Circular Nos. issued by the**PSPCL* | *Details of Rebate provided* |
| ***a*** | *23/2013 dated 11.04.2013 for the FY 2013-14* | *As per**Note (viii) given therein, Rebate of 25 Paise/unit to all consumers getting supply at 220/132 kV, 20 Paise/unit to all consumers getting supply at 66/33 kV and 15 Paise/unit to DS, NRS, AP High Technology, Compost Plants / Solid Waste Management Plants for Municipalities/ Urban Local Bodies and MS Category consumers getting supply at 11 kV shall be allowed.*  |
| ***b*** | *44/2014 dated 27.08.2014 for the FY 2014-15* | *Note (viii) of the said Circular provided that Rebate of 30 Paise /kVAh to all consumers getting supply at 400/220/132 kV, 25 Paise/kVAh to all consumers getting supply at 66/33 kV and 20 Paise / kVAh to DS, NRS and MS consumers getting supply at 11 kV and 20 Paise / kVAh to AP/AP High Technology, Compost Plants / Solid Waste Management Plants for Municipalities/ Urban Local Bodies consumers getting supply at 11 kV shall be allowed.* |
| ***c*** | *14/2015 dated 07.05.2015 for the**FY 2015-16* | *As per Note (viii), Rebate of 30 Paise / kVAh to all consumers getting supply at 400/220/132 kV, 25 Paise / kVAh to all consumers getting supply at 66/33 kV, 20 Paise / kVAh to DS, NRS & MS consumers getting supply at 11 kV and 20 Paise/kWh to AP/AP High Technology, Compost Plants / Solid Waste Management Plants for Municipalities/ Urban Local Bodies consumers getting supply at 11 kV shall be allowed.*  |
| ***d*** | *25/2016 dated 29.07.2016 for the**FY 2016-17* | *Note (ix) provided that Rebate of 30 Paise /kVAh to all consumers getting supply at 400/220/132 kV, 25 Paise / kVAh to all consumers getting supply at 66/33 kV, 20 Paise / kVAh to DS, NRS & MS consumers getting supply at 11 kV and 20 Paise/ kWh to AP/AP High Technology / High Density Farming Compost Plants / Solid Waste Management Plants for Municipalities/ Urban Local Bodies consumers getting supply at 11 kV.*  |
| ***e*** | *46/2017 dated 10.11.2017 for the**FY 2017-18* | *As per Note (vi), Rebate of 30 Paise /kVAh to all consumers getting supply at 400/220/132 kV, 25 Paise / kVAh to all consumers getting supply at 66/33 kV, 20 Paise / kVAh to DS, NRS & MS consumers getting supply at 11 kV and 20 Paise / kWh to AP/AP High Technology / High Density Farming Compost Plants / Solid Waste Management Plants for Municipalities / Urban Local Bodies consumers getting supply at 11 kV was continued.*  |
| ***f*** | *23/2018 dated 24.04.2018 for the**FY 2018-19* | *As per Note (v), Rebate of 30 Paise / kVAh to all consumers getting supply at 400/220/132 kV, 25 Paise / kVAh to all consumers getting supply at 66/33 kV, 20 Paise / kVAh to DS, NRS & MS consumers & Compost Plants/ Solid Waste Management Plants for Municipalities / Urban Local Bodies consumers getting supply at 11 kV for getting supply at 11 kV and 20 Paise / kWh to AP/AP High Technology / High Density Farming consumers getting supply at 11 kV was continued.*  |

 **I have gone through Clause 4.21 in regard to Rebate to consumers catered at higher voltage of the Tariff Order issued by the PSPCL for the FY 2013-14, which reads as under:**

*“While processing the ARR Petition of the erstwhile Punjab State Electricity Board (Board) for the year 2009-10, the Commission observed that voltage at which supply is to be given to different categories of consumers have been specified in the ‘Conditions of Supply’ since the last more than ten years and the Board was required to release all new connections / additional loads / demands at the voltage specified in the ‘Conditions of Supply’. The Commission, therefore, found no logic in any rebate in tariffs to a consumer who is given supply at the specified voltage for that category and the Commission decided to discontinue all voltage rebates with effect from April 1,2010, which were being offered previously by the erstwhile Board.*

 *However, with the ‘Cost of Supply’ study (Methodology II) adopted by the Commission (refer para 5.2), it is observed that cost to serve at higher voltage is lesser than the cost to serve at lower voltages. Accordingly, the Commission decides to approve rebate of 15 paise/ nit to consumers who are catered at 220/132 kV voltage, 20 paise/unit at 66/33 kV voltage and 25 paise/unit to DS, NRS, MS and AP/AP High Tech. categories at 11 kV voltage. The Commission has assessed the impact of this voltage rebate at Rs.103.63 crore on the basis of energy sales data supplied by PSPCL. The revenue from tariff on existing rates has accordingly been reduced to this extent. The actual revenue impact will be adjusted at the time of True up.”*

 I have also gone through Clause 5.2.9, 5.2.10 and 5.2.11 of the Tariff Order of the PSPCL for the FY 2013-14, which is reproduced as below:

“5.2.9 The results obtained with Methodology – 1 for the years 2011-12 and 2012-13 are as under:

|  |  |  |  |
| --- | --- | --- | --- |
| ***Voltage of******Supply*** | ***Consumer category*** | ***Cost of supply (Rs/kWh) for 2011-12*** | ***Cost of Supply (Rs/kWh) for 2012-13*** |
| *220 kV* | *Railway Traction* | *3.33* | *3.48* |
| *132 kV* | *Industrial* | *3.31* | *3.49* |
| *Bulk* | *3.64* | *3.92* |
| *Railway Traction* | *3.22* | *3.36* |
| *66 kV* | *Industrial* | *4.11* | *4.73* |
| *Bulk* | *4.29* | *4.68* |
| *33 kV* | *Industrial* | *4.25* | *4.62* |
| *Bulk* | *4.77* | *5.22* |
| *11 kV* | *Industrial* | *3.93* | *4.54* |
| *Domestic* | *4.63* | *5.02* |
| *Commercial (NRS)* | *4.15* | *4.27* |
| *Bulk* | *4.43* | *4.60* |
| *LT* | *Industrial* | *6.01* | *6.38* |
| *Domestic* | *5.64* | *5.74* |
| *Agriculture* | *5.29* | *5.56* |
| *Commercial (NRS)* | *5.85* | *6.00* |
| *Bulk /Public Lighting* | 6.40 | 7.08 |

 *From above, it is observed that the cost of supply at 11 kV for industrial consumers is less than that for the industrial consumer at 66 kV and 33 kV, which is not acceptable. Similarly, the same pattern is there in the case of Bulk supply and Railway Traction categories.*

*The Results for the years 2011-12 and 2012-13 as per Methodology-II are as under, which are logical and acceptable:*

|  |  |  |  |
| --- | --- | --- | --- |
| ***Voltage*** ***of******Supply*** | ***Consumer category*** | ***Cost of supply (Rs./kWh) for 2011-12*** | ***Cost of Supply (Rs/kWh) for 2012-13*** |
| *220 kV* | *Industry* | *3.69* | *3.93* |
| *Railway Traction* | *3.68* | *3.93* |
| *132 kV* | *Industrial* | *3.73* | *3.97* |
| *Bulk* | *3.68* | *3.92* |
| *Railway Traction* | *3.70* | *3.95* |
| *66 kV* | *Industrial* | *4.41* | *4.82* |
| *Common Pool* | *3.91* | *4.16* |
| *Bulk* | *4.23* | *4.52* |
| *33 kV* | *Industrial* | *4.59* | *4.93* |
| *Bulk* | *4.20* | *4.48* |
| *11 kV* | *Industry (LS)* | *4.56* | *5.13* |
| *Domestic* | *4.59* | *4.90* |
| *Commercial (NRS)* | *4.84* | *5.09* |
| *Bulk* | *4.68* | *4.94* |
| *LT* | *Industry (MS)* | *5.70* | *6.17* |
| *Industry (SP)* | *6.53* | *6.57* |
| *Domestic (0-100)* | *5.27* | *5.52* |
| *Domestic**(101-300)* | *5.27* | *5.52* |
| *Domestic**( above 300)* | *5.27* | *5.52* |
| *Agriculture* | *5.04* | *5.33* |
| *Commercial (NRS)* | *5.65* | *5.92* |
| *Public Light* | *5.23* | *5.62* |
| *Bulk* | *4.85* | *5.21* |

***Hence, the Commission decides to adopt Methodology-II for determination of cost of supply to various categories of consumers.***

 ***The indicative voltage-wise, category-wise cost of supply for the year 2013-14 on the basis of results obtained with Methodology-II are as per Annexure-V.”***

*“5.2.10 It would be ideal to fix electricity tariff for all consumers on cost to serve basis. But, historically, there has been extensive cross subsidization in electricity sector. The tariff for consumers, who pay less than the cost to serve, will need to be hiked significantly to cover the gap between the tariff of subsidized consumers and cost to serve these consumers. As such, the Commission is raising tariff of subsidized consumers gradually to reduce such gap, and at the same time avoiding tariff shock to subsidizing consumers and bringing the tariffs of various consumers within reasonable difference as compared to cost to serve these consumers.”*

***“5.2.11 In order to move in the direction of cost of supply, the Commission decides to give rebate as mentioned under para 6.2.3 [Note (vii) under Table 6.11].”***

In view of the above, rebate to DS, NRS, AP - High Technology, Compost Plants/Solid Waste Management Plants for Municipalities/Urban Local Bodies and MS Category consumers getting supply at 11 kV has been allowed by the Hon’ble PSERC in various Tariff Orders.

1. During the course of hearing on 03.01.2019, the Petitioner was directed orally and also vide letter No. 35 dated 09.01.2019 to intimate under which Section of the Electricity Act-2003/ Supply Code approved by the Hon’ble PSERC, the Petitioner was distributing the supply to the different consumers in its premises. Simultaneously, the Respondent was directed to intimae by 16.01.2019, after checking the Site at which the Petitioner’s connection was installed, the particular IT firms/offices to whom, the parts/portions of the premises of the Petitioner were let out.

In response, the Petitioner intimated vide letter dated 15.01.2019, that Instruction No. 6.5 at Page 21 and 22 of ESIM-2011 pertained to one connection in one premises is relevant in the case of Petitioner. The Petitioner also referred to Clause SV.6 of Single Point Supply in private building Complex of Appendix to Section 4th at Page 93 and 94 of ESIM 2011 which is reproduced below:

“ *Mixed or predominately commercial loads of private connection housed in a building complex with single ownership shall be catered as a single point supply under this Schedule with 5% rebate on consumption charges or monthly minimum charges*.”

The Respondent also, in compliance to the directions issued by this Court on 03.01.2019, sent vide letter no.1027/DB-86 dated 25.01.2019 Load Checking Report of the checking of the connection by the AEE/Technical-2, DS Sub Division, S.A.S. Nagar of the Petitioner’s connection and stated that as per Clause-8 of Conditions of Supply, Single Point connection could be given/sanctioned but this Clause was not consistent with the provisions of the Electricity Act-2003. This was due to the reason that as per Electricity (Removal of Difficulties) (Eight) Order-2005, a provisions was made in the Supply Code-2014 by providing for execution of Franchisee Agreement where Single Point connections are running. The Respondent added that the Franchisee Agreement was yet to be executed with the petitioner with the approval of the competent authority of the PSPCL. The Respondent pleaded that the Electricity Act-2003 was over and above the Supply Code and in case, any of the Regulation of the Supply Code was not consistent with that of Electricity Act-2003, provisions of the Electricity Act-2003 would prevail. The Respondent concluded by stating that the Petitioner was not entitled to HT Rebate in view of the above.

**(c)** Petitioner’s Representative contested the plea of the Respondent by stating during the course of hearing dated 29.01.2019 that Tariff Orders for the FY 2013-14 onwards, providing for grant of HT Rebate, issued by the Hon’ble PSERC were approved in accordance with the provisions of the Electricity Act-2003/Supply Code. Hence, there was genuine merit in its claim for relief on account of grant of HT Rebate admissible as per Tariff Orders for the respective Financial Year.

I observe from the perusal of the Tariff Orders for the years 2013-14 to 2018-19 that *the energy rate for NRS consumers, having load exceeding 100 kW was greater than the tariff applicable to NRS consumers having load upto 100 kW.* Hence, the Petitioner is entitled to HT rebate for the period from 02.09.2013 to 14.12.2016 in terms of provisions contained in Tariff Orders for the respective financial year.

 In so far as the Issue (ii) relating to 10% Single Point Rebate from 14.12.2016 till date, as per Commercial Circular (CC) No.58/2016 dated 14.12.2016 is concerned, the Respondent informed the Court during oral submissions on 29.01.2019 that since the Franchisee Agreement had not so far been executed between the Petitioner and the Respondent as per directions given by the Forum in its order dated 23.08.2018, hence, it was not entitled to any rebate. Thus, no rebate is required to be allowed to the Petitioner beyond 14.12.2016 for Single Point connection, as per provisions contained in CC No.58/2016 till the execution of Franchisee Agreement.

**Issue (iii) :**

The Petitioner has also prayed for change of Tariff from NRS to LS Category so as to avail itself of subsidized rate of Rs. 5/- per kVAh variable tariff in terms of provisions of CC No. 46 / 2018 issued by the PSPCL.

In this connection, I have gone through the material brought on record and observed that the Petitioner did not raise this issue and pray for this relief in its Petition dated 23.05.2018 filed before the Forum in terms of provisions of Regulation 3.18 (i) of PSERC (Forum and Ombudsman) Regulations-2016 which reads as under:

*“3.18 :*  *No representation to the Ombudsman shall lie unless:*

1. *The consumer had, before making a representation to the Ombudsman approached the Forum constituted under sub-section (5) of Section 42 of the Act, for redressal of his grievance.”*

 I find that the Petitioner has also not placed on record of this Court, documentary evidence or tangible ground in support of its contention for the relief claimed. Besides, the Addl. S.E, DS division (Special), S.A.S, Nagar (Mohali) intimated during hearing dated 29.01.2019 that the Petitioner’s Unit/Company had let out many portions to Non IT firms/offices. Hence, the claim of the Petitioner for change of Tariff from NRS to LS General category is not maintainable.

From the above analysis, it is concluded that:

1. The Petitioner is entitled to HT Rebate for the period from 02.09.2013 to 14.12.2016 as allowed by the PSPCL in the Tariff Order for the relevant Financial Year. However, no interest is required to be allowed to the Petitioner who did not make any representation to the Respondent till the filing of its Petition dated 23.05.2018 in the Forum while the Tariff Orders of the Hon’ble PSERC were available on its website for Petitioner to move its case for H.T. rebate.
2. 10% Single Point Rebate beyond 14.12.2016 onwards as per provisions of the Commercial Circular No.58/2016 dated 14.12.2016 is not admissible to the Petitioner as the requisite Franchisee Agreement between the Petitioner and the Respondent has not been executed so far.
3. The plea of the Petitioner for change of Tariff from NRS to LS General Category raised in the present Appeal is not maintainable as the issue was not raised before the CGRF for adjudication as required in terms of Regulation 3.18 (i) of the PSERC (Forum and Ombudsman) Regulations-2016.

5. **Decision:**

**As a sequel of above discussions, the order dated 23.08.2018 of CGRF in case No. CG-212 of 2018 is modified. It is held that:**

1. **The Petitioner shall be allowed HT Rebate, for the period from 02.09.2013 to 14.12.2016 as provided in the Tariff Order for the respective Financial Year. However, no interest shall be allowed to the Petitioner on this account as discussed in Para 4 above.**
2. **The Petitioner shall not be allowed 10% Single Point Rebate beyond 14.12.2016 in terms of provisions of CC No. 58/2016 dated 14.12.2016 as the Franchisee Agreement between the Petitioner and the Respondent has not so far been executed.**
3. **The Petitioner shall not be allowed change of Tariff from NRS to LS General Category for its not having sought necessary remedy from the Forum as required under the provisions of the Regulation 3.18 (i) of the PSERC (Forum and Ombudsman) Regulations-2016.**

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

**7.** 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 the Regulation 3.28 of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations - 2016.

(VIRINDER SINGH)

February 05, 2019 Lok Pal (Ombudsman)

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