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

**ELECTRICITY, PUNJAB,**

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

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

 **APPEAL NO. 03/2019**

**Date of Registration : 21.01.2019**

**Date of Hearing : 28.03.2019**

**Date of Order : 04.04.2019**

**Before:**

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

**In the Matter of :**

 XEAM Ventures Pvt. Ltd,

F-202, 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 : Shri Karan Singla, Advocate,

Petitioner’s Counsel (PC).

Respondent : 1. Er. G.S. Sandhu,

 Addl. Superintending Engineer,

 DS Division (Special),

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

2. Er. Paramjit Singh,

 Asstt. Executive Engineer.

Before me for consideration is an Appeal preferred by the Petitioner against the order dated 18.12.2018 in Case No. CG-410 of 2018 of the Consumers Grievances Redressal Forum (Forum) deciding as under:

 *“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’s Unit was a Company incorporated under Companies Act, 1956 and was having a Non-Residential Supply (NRS) Category connection at 11 kV with sanctioned load of 165 kW and contract demand (CD) of 183.30kVA since 01. 09.2015.
2. The Petitioner submitted an application dated 12.07.2018 on the Grievances Redressal Portal of the PSPCL requesting to allow rebate @ 20 paise/kVAh for getting supply at 11 KV, as per CC No. 14/2015, 25/2016 and 46/2017 for the period from 01.09.2015 to 31. 05.2018, amounting to Rs. 40,968/-.
3. In response to the said application, the Petitioner was informed that the HT Rebate from 01.06.2018 onwards was being given to it while the rebate claimed for the period from 01.09.2015 to 31.05.2018 pertained to the audit period for which the Petitioner was directed to place its grievance before the competent authority i.e. CGRF.
4. The Petitioner then filed a Petition on 21.11.2018 in the Forum, who, after hearing, passed the order dated 18.12.2018 (Reference: Page-2, Para 1) directing the Respondent to ensure compliance of the Commercial Circular (CC) No. 58/2016 dated 14.12.2016 by executing a Franchisee Agreement with the Petitioner to implement the orders of the Hon’ble PSERC.
5. Not satisfied with the decision of the Forum, the Petitioner preferred an Appeal in this Court to set aside the decision of the Forum with cost and release the amount of Rs. 40,968/- along with interest in the interest of justice.
6. **Submissions made by the Petitioner and the Respondent:**

 Before undertaking analysis of the case, it is necessary to go through the 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.

**(a) Submissions of the Petitioner**:

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

1. The Petitioner’s Unit was a Company registered under Companies Act, 1956 and having a Non-Residential Supply (NRS) Category connection since 01.09.2015, with sanctioned load of 165 kW and contract demand (CD) of 183.30 kVA .
2. The Petitioner submitted an application dated 12.07.2018 to the Respondent to allow HT rebate @ 20 paise/kVAh for getting supply at 11 KV as per CC No. 14/2015, 25/2016 and 46/2017, for the period from 01.09.2015 to 31.05.2018, amounting to Rs. 40,968/-. The account of the Petitioner was overhauled and the Petitioner was informed that HT rebate claimed related to the audited period for which, the Petitioner should approach the competent authority.
3. The Petitioner was a franchisee in the capacity of individual entity and had a Franchisee Agreement with Lakme Academy powered by APTECH (Franchisor) and the said Academy was running at Petitioner’s Franchisee office premises.
4. On conducting the physical verification at the Petitioner’s premises on 18.12.2018 by the officials of the Respondent – PSPCL, no violation was found and nothing had been mentioned in its Inspection Report.
5. It was strange that physical verification was conducted on 18.12.2018 while the case was closed on 07.12.2018 for speaking orders by the Forum, who, finally passed orders on 18.12.2018 without affording any opportunity to the Petitioner to defend its case.
6. The Forum erred in passing the order ibid and making observations about catering of electric supply to other Academy i.e. Lakme Academy. It was not in the knowledge of the Petitioner as to when the oral discussions in respect of alleged catering of electricity supply to other academy i.e. Lakme Academy was held between the Respondent and the Forum. It was worth mentioning that the Petitioner was not running any other business in separate name and style except is own i.e. XEAM Ventures Pvt. Ltd. In fact, Lakme Academy came under the Petitioner’s business ambit.
7. The order of the Forum was basically illegal and against the provisions of the Electricity Act, 2003 under which, the Petitioner had sought the protection.
8. Keeping in view the above submissions, the Petitioner prayed that the Appeal may please be accepted and order of the Forum be set aside and the rebate amounting to Rs. 40,968/- with interest be released to it.

**b) Submission’s of the Respondent:**

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

1. The Petitioner was having an 11 kV Non Residential Supply (NRS) Category connection, bearing Account No. 3001415425, in the name of XEAM Ventures Pvt. Ltd, with sanctioned load of 165 kW and contract demand 183.300 kVA since 01.09.2015.
2. The Petitioner stated in its application dated 12.07.2018 that it was entitled for HT Rebate in accordance with the provisions of the Commercial Circular (CC) No. 14/2015, 25/2016 and 46/2017.
3. The account of the Petitioner was overhauled and it was found that the HT Rebate claimed (for the period from 01.09.2015 to 31.05.2018) related to the audited period while the HT rebate for the period from 01.06.2018 was being given to the Petitioner, who, in turn, was informed accordingly and directed to place its grievance before the competent authority i.e. CGRF for allowing rebate for the audit period.
4. The Petitioner filed a Petition in the Forum, who, after hearing, passed the order dated 18.12.2018 as per which, directions were issued to the Respondent to ensure 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 Hon’ble PSERC.
5. Accordingly, the Petitioner was directed, vide AEE / Commercial, PSPCL, S.A.S. Nagar (Mohali)’s letter No. 74 dated 08.01.2019, to submit the Franchise Agreement, but, the Petitioner failed to do so.
6. The order dated 18.12.2018 of the Forum was passed as per the instructions of the PSPCL.
7. It was correct that physical verification/inspection of the connection installed at the premises of the Petitioner was conducted by the AEE/Tech-2, S.A.S. Nagar (Mohali) on 18.12.2018. During the said checking, a Diesel Generating Set of capacity 250 kVA was found installed at the premises of the Petitioner. It was also noticed that the Petitioner was catering the electricity supply to another company (Lakme Academy) in its premises and two floors were vacant.
8. **Analysis:**

The issue requiring adjudication is the legitimacy of the claim of the Petitioner for grant of HT rebate @ 20 paise/kVAh for getting supply at 11 KV, for the period from 01.09.2015 to 31.05.2018, as per Commercial Circular (CC) No. 14/2015, 25/2016 and 46/2017.

*The points emerged are deliberated and analysed as under:*

1. In the present Appeal, the Petitioner has prayed for allowing HT Rebate @ 20 paise / kVAh, for the period from 01.09.2015 to 31.05.2018, as per CC No.14/2015, 25/2016 and 46/2017. The Petitioner pleaded that the order dated 18.12.2018 of the Forum was not legally sustainable and had been passed without taking into consideration the judicial and technical aspects as the Petitioner, was a franchisee in the capacity of individual entity and was having a Franchisee Agreement with Lakme Academy powered by the APTECH and the said Lakme Academy (Franchisor) was having its office in the premises of the Petitioner who was not running any other business in separate name and style except its own i.e. XEAM Ventures Private Ltd. Petitioner’s Counsel (PC) contested the contention of the Respondent mentioned by the Forum in its order that the Petitioner catered the electricity supply to other company i.e. Lakame Academy which was, in fact, under Petitioner’s business ambit. PC added that physical verification / inspection of the connection installed at the premises of the Petitioner was conducted on 18.12.2018, vide LCR No. 028/1001, by the AEE / Tech-II, DS Division (Special), PSPCL, S.A.S. Nagar (Mohali), who, did not report any violation about catering the electricity supply to any other consumer. PC also contended that a perusal of the Tariff Orders for the years 2013-14 to 2018-19 revealed that the energy rate for NRS consumers, having load exceeding 100 kW was greater than the tariff applicable to NRS Category consumers having load upto 100 kW, hence, the Petitioner was entitled to HT rebate claimed for the period from 01.09.2015 to 14.12.2016 in terms of provisions contained in Tariff Orders for the respective financial year. PC submitted that the Petitioner was also entitled to 10% Single Point Rebate from 14.12.2016 to 31.05.2018, as per Commercial Circular (CC) No.58/2016 dated 14.12.2016.

The Respondent in its defence, stated that the Petitioner was directed, vide Memo. No. 74 dated 08.01.2019, to execute the Franchisee Agreement but it had not executed the same so far as per directions given by the Forum in its order dated 18.12.2018.

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 Plant / 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 observe from the perusal of the Tariff Orders for the Years 2014-15 to 2018-19 that energy rate for NRS Category consumers having load exceeding 100 kW was greater than the tariff applicable to NRS Category consumers having load upto 100 kW. Hence, the Petitioner is entitled to HT rebate for the period from 01.09.2015 to 14.12.2016 in terms of provisions contained in Tariff Orders notified by the Hon’ble PSERC for the respective financial year. However, no interest on the said rebate is required to be allowed to the Petitioner who did not make any representation to the Respondent in this regard till filing its grievance dated 12.07.2018 on the portal of the PSPCL despite the fact that Tariff Orders issued annually by the Hon’ble PSERC, are available on its website.*

 *In so far as the claim of the Petitioner for grant of 10% Single Point Rebate, from 14.12.2016 to 31.05.2018 as per Commercial Circular (CC) No. 58/2016 dated 14.12.2016, 46/2017 dated 10.11.2017 and 23/2018 dated 24.04.2018 is concerned, the Petitioner’s Counsel (PC) stated, on being asked, during the course of hearing, that the requisite Franchise Agreement, as per order dated 18.12.2018 of the Forum and directions issued by the Respondent, vide letter dated 08.01.2019, had not been submitted by the Petitioner to the Respondent. PC then agreed to submit the Franchise Agreement to the Respondent for seeking approval of the Competent Authority for getting Single Point Rebate claimed by the Petitioner for the period from 14.12.2016 to 31.05.2018 as per instructions of the PSPCL.*

1. During the course of physical verification/checking of the connection installed at the premises of the Petitioner on 18.12.2018, by the Assistant Executive Engineer/Tech-II DS Division (Special), PSPCL, S.A.S. Nagar (Mohali), a Diesel Generating Set of 250 KVA was found installed.

*I observe that the Respondent was asked, during the hearing, whether the Petitioner had taken approval of competent authority to install and operate the D.G. Set. In response, the Respondent informed that the Petitioner had not taken any such approval. The action of the Petitioner in this regard is clearly violative of instructions of the PSPCL and appropriate action needs to be taken in the matter as per instructions of the PSPCL*.

1. **Conclusion:**

From the above analysis, it is concluded that:

1. The Petitioner is required to be allowed HT Rebate for the period from 01.09.2015 to 14.12.2016 as provided in the Tariff Order for the respective financial year. No interest on this account shall be paid to the Petitioner as discussed in Para 4 above.
2. The Petitioner is not required to be allowed 10% Single Point Rebate beyond 14.12.2016 upto 31.05.2018 in terms of provisions of Commercial Circular (CC) No. 58/2016 dated 14.12.2016 as the Franchisee Agreement between the Petitioner and the Respondent has not been executed till date. The rebate shall start with effect from the date, the Franchisee Agreement between the Petitioner and the Respondent is signed.
3. The Petitioner is required to take approval of the competent authority to operate 250 kVA D.G. Set installed at its premises.
4. **Decision:**

**As a sequel of above discussions, the order dated 18.12.2018 of the Forum in Case No. 410 of 2018 dated 18.12.2016 is partly modified. It is held that:**

1. **The Petitioner shall be allowed HT rebate @ 20 paise/kVAh, for the period from 01.09.2015 to 14.12.2016, as provided in the Tariff Order for the respective financial year. No interest on this account shall be paid to the Petitioner as discussed in para 4 above.**
2. **The Petitioner shall not be allowed 10% Single Point Rebate beyond 14.12.2016 upto 31.05.2018 in terms of provisions of CC No. 58/2016 dated 14.12.2016 as the requisite Franchisee Agreement between the Petitioner and the Respondent has not been executed till date. The rebate shall start with effect from the date, the Franchisee Agreement between the Petitioner and the Respondent is signed.**
3. **The Petitioner shall take the approval of the competent authority, as per instructions/rules of PSPCL, for installation of 250 kVA D.G. Set at its premises.**
4. The Appeal is disposed of accordingly.
5. In case, the Petitioner or the Respondent (Distribution Licensee) 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)

April 04, 2019 LokPal (Ombudsman)

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