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

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

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

 **APPEAL NO. 58/2019**

**Date of Registration : 03.10.2019**

**Date of Hearing : 21.112019**

**Date of Order : 28.11.2019**

**Before:**

 **Er. Virinder Singh, Lokpal (Ombudsman), Electricity**

**In the Matter of :**

Bharati Realty Ltd.,

Old Sessions Court,

Civil Lines,

Ludhiana

 ...Petitioner

 Versus

Addl.Superintending Engineer,

DS City West Division (Special),

 PSPCL, Ludhiana

 ...Respondent

**Present For:**

Petitioner : Sh.Sukhminder Singh,

 Petitioner’s Representative (PR).

Respondent : Er.Ramesh Kaushal,

 Addl.Superintending Engineer,

 DS West Division (Special) ,

 PSPCL, Ludhiana.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 12.07.2019 of the Consumer Grievances Redressal Forum (Forum), Ludhiana in Case No. CGL-140 of 2019 deciding that :

 “i. *The Petitioner has already signed Model Distribution*

*Franchisee Agreement in compliance to CC No.58/2016, therefore, he is not entitled for HT rebate and the amount charged to the Petitioner by the Respondent vide Memo No.856 dated 31.12.2018 amounting to Rs.28,97,008/- on account of HT rebate for the period 12/2016 to 01/2019 is justified and recoverable. However, the Petitioner will be entitled for the requisite rebate on billing as permissible to Franchisee on completion of required formalities.*

*ii. Forum also express displeasure on the part of the*

*Petitioner for concealing the fact that he was served notice by the Respondent and Franchises agr*eement was already signed by him”.

**2.** **Condonation of Delay:**

 At the outset, the issue for condonation of delay in filing the Appeal in this Court was taken up. The Petitioner’s Representative (PR) submitted that the decision of the CGRF, Ludhiana was sent to the Petitioner by Registered Post, vide Memo No.2112-13/CGL-140/2019 dated 16.07.2019, by the Secretary, CGRF, Ludhiana. After receipt of the decision, the Petitioner took time in having consultation/advice from its Counsel and also in the matter regarding completion of formalities relating to Distribution Franchisee. As a result, the Petitioner preferred the Appeal in this Court on 03.10.2019 and the delay of 42 days beyond the stipulated period occurred. Petitioner’s Representative (PR) stated that delay was due to compelling reasons and may be condoned in the interest of justice.

 The Respondent, in its reply to the Appeal, did not offer any comments on the submissions made by the Petitioner regarding condonation of delay and also did not raise any objection in this regard during the course of hearing.

In this connection, I have gone through Regulation **3.18 (ii)** of the PSERC (Forum and Ombudsman) Regulations-2016 which reads as under:

“*No representation to the Ombudsman shall lie unless the representation is made within one month of the date of receipt of order of the Forum.*

 *Provided that the Ombudsman may entertain a representation beyond one month on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of one month”.*

 *I observe that though the Petitioner has given reasons for not filing the Appeal within the stipulated period, it ought to have taken necessary precautions to ensure that the Appeal was filed in this Court within stipulated time. I also observe that non condonation of delay would deprive the Petitioner of the opportunity, required to be afforded, to seek remedy and would also not meet the ends of ultimate justice. With this in view, the delay in filing the Appeal in this Court is condoned and the Petitioner is afforded an opportunity to present the case.*

**3**. **Facts of the Case:**

 The relevant facts of the case are that:-

1. The Petitioner was having NRS Category connection with

sanctioned load of 4735 kW and contract demand (CD) of 3409 kVA **at 11 kV Single Point Supply.**

1. The Petitioner was engaged in sale of Electricity to the occupants

 of the shops in the Pavillion Mall.

1. The Petitioner was being given Rebate from the date of release of its

connection on 04.01.2014 as per Tariff Orders issued by the Hon’ble PSERC. But, the Respondent issued Notice vide Memo No.856 dated 31.12.2018, asking the Petitioner to deposit an amount of Rs.28,97,008/- on account of Rebate allowed for the period from 14.12.2016 to 01.02.2019 on the plea that it was not eligible to be given rebate in view of Commercial Circular (CC) No.58/2016 dated 14.12.2016.

1. The Petitioner did not agree with the above Notice and filed a

Petition dated 27.05.2019 in the CGRF, Ludhiana who, after hearing, passed the order dated 12.07.2019 (Page-2,Para-1).

1. Not satisfied with the decision of CGRF, Ludhiana, the Petitioner

filed an Appeal in this Court and prayed to set aside the decision of the Forum and allow the Appeal in the interest of justice.

**4. 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 NRS category connection with sanctioned load of 4735.000 kW and contract demand (CD) of 3409.000KVA (11KV, Single Point Supply).
2. AEE/Commercial City West Division issued Notice, vide Memo No.856 dated 31.12.2018, asking the Petitioner to deposit an amount of Rs.28,97,008/- on account of HT rebate allowed for the period from 12/2016 to 1/2019 (which was mentioned as not admissible in view of CC No.58/2016). The Notice for Rs. 28,97,008/- was issued without providing any details/calculation sheet and copy of CC No.58/2016. The Petitioner had sought complete details but the Respondent charged the disputed amount of Rs. 28,97,008/- in the regular energy bill issued for the period 31.12.2018 to 31.1.2019**.** The Petitioner, then, deposited the total billed amount of Rs. 63,28,620/- vide receipt dated 14.2.2019 under protest to avoid disconnection of supply.
3. The amount of rebate of Rs. 28,97,008/-, as allowed from 31.12.2018 to 31.1.2019, was charged to the Petitioner and the same was deposited under protest.
4. The respondent did not provide 10% rebate from the deemed date of 12/2016 of signing the Distribution Franchisee Agreement (as taken by the Respondent, whereas the Agreement was signed on 28.4.2017) as admissible to Distribution Franchisee as per Clause No.15 of Model Distribution Franchisee Agreement. Further, the Petitioner was also not provided rebate @ 10% of electricity consumption charges in the energy bills issued from date of connection till date, as admissible to consumers getting Single Point Supply.
5. The Forum did not provide any relief to the Petitioner as admissible on merit.
6. On the one hand, the Forum mentioned that the Petitioner was not entitled for HT rebate as Model Distribution Franchisee Agreement had been signed but denied rebate admissible to Distribution Franchisee by stating that the Petitioner had failed to make compliance of various provisions of Model Distribution Franchisee Agreement. It was strange that Forum did not observe that the office of the Respondent did not ask for anything (after submission of signed agreement) before allowing rebate as admissible to Distribution Franchisee and rather continued to allow rebate for the period 12/2016 to 1/2019 and thereafter, through energy bills. The Agreement was between the two parties viz consumer & PSPCL and there was clear lapse on the part of the Respondent who continued rebate and the same was re-charged and upheld by the Forum, whereas the Petitioner had been denied rebate as admissible to Distribution Franchisee by stating that the Petitioner had failed to make compliance of various provisions of Model Distribution Franchisee Agreement. This was unjust decision of the Forum by denying legitimate dues to the Petitioner (without any fault on its part) and upholding the amount charged by the Respondent’s office although there was clear lapse on its part.
7. The instructions issued, dated 14.12.2016, contained directive of PSERC regarding signing of Distribution Franchisee Agreement by all Single Point Supply Consumers of Residential Colonies/Buildings Complexes/Shopping Malls/Commercial complexes/Industrial Estates. **The Agreement was to be signed within three months of receipt of Notice for signing Model Distribution Franchisee Agreement** **from PSPCL**. The Model Distribution Franchisee Agreement was signed on **28.4.2017.** With reference to Notice issued by DS West Division (Spl), PSPCL, Ludhiana vide Memo No.748 dated 20.1.2017 and again vide Memo No.1005 dated 25.4.2017**,** the Petitioner was just asked to get prepared the Agreement on a stamp paper of Rs.200/- in triplicate and submit the same to the said office after getting it signed from its authorized signatory. Accordingly, the Petitioner submitted signed copy of Franchisee Agreement in the office of Addl.S.E, DS West Division (Spl), PSPCL, Ludhiana, as asked for vide Memo No.748 dated 20.1.2017 and 1005 dated 25.4.2017.
8. After signing and submitting Franchisee Agreement to the DS Division, West (Special) further necessary action was to be taken by the said office as mentioned in Memo No.748 dated 20.1.2017 and 1005 dated 25.4.2017). However, the concerned office continued to provide rebate through regular energy bills.
9. After providing rebate for about 2 years after signing the Agreement, the concerned office realized that rebate being given through energy bills was HT rebate, which was to be discontinued in view of instructions issued vide CC No.58/2016.
10. AEE/Commercial, City West Division (Special),PSPCL, Ludhiana issued Notice vide Memo No.856 dated 31.12.2018, asking to deposit an amount of Rs.28,97,008/- on account of HT rebate allowed for the period 12/2016 to 1/2019 (which was mentioned as not eligible/admissible in view of CC No.58/2016). Even after issue of notice to deposit an amount of Rs.28,97,008/- on account of HT rebate, the same again continued through energy bills issued after 1/2019. *This showed the approach of the concerned office, who misused the rules/regulations and instructions than the consumers of PSPCL****.*** The right course available with the Respondent’s office was to ask the consumer/Petitioner for completion of any other formality as required (after submission of signed agreement) to provide rebate admissible to Distribution Franchisee and should have provided rebate as admissible to Distribution Franchisee and at the same time Respondent’s office was required to discontinue HT rebate. Hon’ble PSERC never desired to put the single point supply consumers to any disadvantage by ordering to discontinue HT rebate and to introduce the concept of Distribution Franchisee of PSPCL. But the Forum did not properly understand the spirit of Model Distribution Franchisee Agreement (as decided by the Hon’ble PSERC) and decided the case against the Petitioner just on the pretext that the Petitioner failed to make compliance of various provisions of Model Distribution Franchisee Agreement as if only the Petitioner was bound to see the various provisions of Agreement and the Respondent’s office was at liberty to act as per their whim and continue any rebate (which was subsequently considered as not admissible) and charge the rebate again so allowed any time but deny the admissible rebate just on the ground that the Petitioner failed to submit certain documents (although the same were never demanded from the Petitioner).This was highly unjust on the part of Forum to ignore the apparent lapses on the part of the Respondent’s office (who beyond doubt could be considered much more aware about the rules/regulations and instructions than any of the consumer of PSPCL) and penalize the Petitioner who did not make any fault intentionally, as explained above.
11. Para-15 of (relevant part) of Distribution Franchisee Agreement read as under:

 *“The billing to distribution Franchisee shall be done based on the difference of readings recorded on the Main meter of single point supply to the Distribution Franchisee and units/ total consumption of individual consumers including common services and temporary supply consumers and shall be billed at the highest slab of relevant category of Distribution Franchisee i.e. DS when it is provided for residential purposes, NRS rates will be applicable when the supply is effected for commercial purposes and relevant industrial tariff when it is provided for industrial purposes.*

*However, rebate as allowed by the Hon’ble Commission from time to time shall be given on the electricity consumption charges of all DS/NRS consumers in the franchisee area i.e. a rebate of 12%, in case of Domestic Supply and 10% in case of NRS & industrial Supply will be allowed”.*

1. The Respondent charged the amount of HT rebate earlier allowed from 12/2016 but did not provided 10% rebate as per above para of the Agreement.
2. The Petitioner was a Single Point Supply consumer and as per provisions of CC No 25/2016 dated 29/07/2016 effective from 01.08.2016, (Note vii given below the revised tariff rates for 2016-17), it was provided that :

*“Consumers getting single point supply for providing electricity to ultimate users shall be eligible for rebate @ 12% of electricity consumption charges in case of the residential colonies/cooperative group Housing societies/Employers Colonies and 10% of electricity consumption charges in case of Commercial Complexes/shopping Malls/ Industrial Estates etc., in addition to other voltage rebate as may be applicable.”*

 **The rebate of 10% to Single Point Supply consumers is admissible, in addition to other voltage rebate (HT rebate etc).** However, the Petitioner had not been provided rebate @ 10% of electricity consumption charges in the energy bills issued up to the date of signing of Franchisee Agreement.

 Similar note (Note iv) has been given in the tariff rates issued vide CC No.46/2017 dated 10.11.2017. However, the Petitioner was not provided rebate @ 10% of electricity consumption charges in the energy bills issued for FY 2017-18.

(xv) The Forum while arriving at conclusion referred to decision dated 09.06.2015 of the Hon’ble PSERC of Suo-motu Petition no. 61 of 2014 (relevant portion),which was reproduced as under: -

*“PSPCL is directed to draft Model Distribution Franchisee Agreement in accordance with the position brought out in para 10.1 to 10.8 above within 3 months of the issue of this Order and put it on its website for the information of all the stakeholders. Individual notices shall also be issued to consumers who have been granted single point supply under clause 8.1 to 8.4 of the repealed Conditions of Supply. It shall be ensured that Terms & Conditions offered to the existing single point supply consumers for continuing as ‘franchisee’ for the area/colony/ complex for which Agreement (A&A form) has already been signed under clause 8 of the ‘Condition of Supply’ shall not be changed to the disadvantage of the consumer/developer of such colony/complex provided the provisions of Franchisee agreement are in conformity with the Electricity Act, 2003. However, the parties are free to negotiate the Terms & Conditions of the franchisee agreement which are mutually acceptable to both the parties, in accordance with the Act and the regulations framed under the Act. The existing single point supply consumers who have been released connections under clause 8.1 to 8.4 of the repealed Conditions of Supply shall sign the franchisee agreement within 3 months of receipt of Model Distribution Franchisee Agreement from PSPCL.”*

1. In addition toabove decision of the Hon’ble PSERC, the

Forum discussed the provisions of CC No 25/2016 dated 29/07/2016 and instructions as contained in Tariff Orders issued by the Hon’ble PSERC during 2016-17, 2017-18 and 2018-19, before arriving at its conclusion which was not actually in accordance with the spirit of the Orders/Instructions of the Hon’ble PSERC.

1. It was, thus, clear that the decision of the Forum was wrong

and unjust and was liable to be set aside and refund on account of rebate due to the Petitioner as per Clause No.15 of Model Distribution Franchisee Agreement and allow10% rebate to Single Point Supply connection be allowed inthe interest of natural justice and fairness.

1. **Submissions of the Respondent:**

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

1. The Petitioner’s company was the holder of NRS category

connection, bearing Account No.3002811900, in its name with a sanctioned load of 4735 KW and contract demand as 3409 KVA.

1. The Petitioner’s company had signed the Model Distribution

Franchisee Agreement with the Respondent and was engaged in sub distribution and sale of electricity to the occupants of the shops in the Pavilion Mall.

1. The Petitioner’s company was given H.T. Rebate to which, it was

not entitled to and the Respondent, vide Notice bearing Memo No.856 dated 31.12.2018, asked the Petitioner’s company to deposit an amount of Rs.28,97,008/- on account of HT Rebate allowed for the period 12/2016 to 01.02.2019 being not eligible to the Franchisee in view of CC No.58/2016 which reads as under:

**Commercial Circular No.58/2016**

*“In compliance to Punjab State Electricity Regulatory Commission order dated 09.06.2015 on Suo-Motu Petition No.61 of 2014, Draft Model Distribution Franchisee Agreement to be signed by all single Point Supply Consumer of Residential Colonies/ Building Complexes/ Shopping Malls/ Commercial Complexes/Industrial Estates has been approved by BODs in its meeting held on 08.11.16.*

*As per directive of the Commission, this draft Distribution Franchisee Agreement enclosed as is to be signed by all the consumers who have been granted single point Supply under clause 8.1 to 8.4 of the repealed conditions of Supply. The Distribution Franchisee Agreement be signed by such consumer within three months of receipt of Model Distribution Franchisee Agreement from PSPCL.*

*All the field offices are hereby directed to issue individual notices to such consumer for signing the Distribution Franchisee Agreement within 7 working days from the date of issue of this circular and copy of the notice issued be forwarded to concerned CE/OS and CE/Commercial for follow up of strict compliance of these instructions.*

*In case of non-compliance of these instructions by any of the consumers getting single point supply within the stipulated period as per the notice issued, the supply shall be disconnected being violated of the provisions of Electricity Act, 2003.*

*Meticulous compliance of these instructions be ensured by all field offices.”*

1. The whole case hinges around the aforesaid circular and the

Consumer Grievances Redressal Forum, Ludhiana, after going through the facts of the present case and after correctly appreciating the aforesaid Circular and other relevant documents on the file, passed a well-reasoned and detailed order and decided that the Petitioner’s company had already signed Model Distribution Franchisee Agreement in compliance to CC No.58/2016, therefore, the Petitioner was not entitled for HT Rebate and the amount charged to the Petitioner by the Respondent, vide Memo No.856 dated 31.12.2018 amounting to Rs.28,97,008/- on account of HT Rebate for the period 12/2016 to 01/2019, was justified and recoverable. The Forum further ordered that the Petitioner will be entitled for the requisite rebate on billing as permissible to the Franchisees on completion of required formalities. The Forum also expressed displeasure on the part of the Petitioner’s company for concealing the fact that it was served Notice by the Respondent and Franchisee Agreement was already signed by it. A detailed and well reasoned speaking order containing Twenty Two pages was passed by the Forum and there was no infirmity in the said order passed by the Forum.

1. The instructions issued, vide C.C.No.58/2016 dated 14.12.2016 had

been complied with and the Petitioner’s company had executed the Model Distribution Franchisee Agreement. The Respondent had asked the Petitioner’s company to complete all the formalities required in terms of CC.No.58/2016, but the Petitioner’s company failed to do the needful. The Forum, after properly understanding the spirit of Model Distribution Franchisee Agreement, decided the case by passing a detailed and well reasoned order. The Forum had not ignored the lapses on the part of the Respondent, in fact, there was no lapse on the part of the Respondent and the contention of the Petitioner’s company in this regard were not correctly stated.

1. The Notice issued, vide Memo No.748 dated 20.01.2017 and

Memo No.1005 dated 25.04.2017, were legal and valid. There was no illegality or infirmity in the said Notices. The Petitioner’s company was bound to comply with the terms of the said Notices.

(vii) AEE, Commercial, DS City West Division, rightly claimed the

amount vide Notice bearing Memo No.856 dated 31.12.2018. It was ordered by the Forum that Petitioner’s company would be entitled for requisite rebate on billing on completion of the required formalities. The Petitioner’s company had not completed the formalities and as such not entitled to the said rebate.

1. The provisions of C.C.No.23/2018 dated 24.04.2018 were not

applicable to the facts of this case and the relevant circular in this case was CC No.58/2016 dated 14.12.2016.

1. In view of the submissions made above, the Appeal be dismissed

with costs.

**5.** **Analysis:**

The issues requiring adjudication are the legitimacy of the prayer of the Petitioner for

1. Refund of rebate @20 pasie/kVAh from 14.12.2016(date of issue of CC No.58/2016) till 28.04.2017(date of signing of Franchisee Agreement) initially given in the energy bills but subsequently charged in the bill for 01/2019 and recovered.
2. Grant of 10% Single Point Connection Rebate for NRS category consumers for the period from 28.04.2017(date of singing of Franchisee Agreement) onwards as per CC No. 58/2016 dated 14.12.2016.

*The points emerging in the case are deliberated and analysed as under:-*

1. In its rejoinder to the reply to the Appeal preferred by the Respondent, the Petitioner’s Representative stated that the reply of the Respondent was incomplete, as against some of the objections raised in the Appeal, the reply was silent, and as such, all the points raised in the Appeal were required to be considered while arriving at any conclusion in the case. Instead of submitting point wise reply with reference to rules/regulations, the Respondent had reiterated again and again that the *‘Forum expressed displeasure for concealing the facts by the Petitioner regarding signing of Model Distribution Franchisee Agreement’.* Similarly, the Respondent had stated that *‘there was no lapses on the part of Respondent’s office and the Petitioner was not entitled to rebate on billing even though Franchisee Agreement stands signed by both the parties’.* **As far as allegation of concealing the facts, the following submission was made before the Forum:**

 “*The Hon’ble Forum as per proceedings dated 30.05.2019 directed the respondent to confirm (i) Whether notice was given to the petitioner for signing the Distribution Franchisee Agreement within 7 working days from the date of issue of circular No.58/2016? (ii) Whether Distribution Franchisee Agreement had been signed by the petitioner? (iii) Whether rebate admissible to Single Point Supply consumer had been given to the petitioner as per CCs issued from time to time?**But it is regretted to point out that inspite of clear directions by the Forum,* ***the respondent has not made clear whether rebate admissible to Single Point Supply consumer had been given to the petitioner as per CCs issued from time to time.****. It is clear that respondent is defying the orders of the Forum time and again. The respondent was required to submit complete parawise reply to the petition so that the Forum may arrive at justified conclusion without delay. However once again, the respondent has provided only copy of Distribution Franchisee Agreement signed by the petitioner and in his one para reply, has stated that consumer is misleading the Hon’ble court by concealing the actual facts. The respondent may not be aware that M/s Bharti Reality is a reputed, well connected and well established company and can never think of misleading any court. It is admitted that present person in charge at Ludhiana office was not aware of signing of Distribution Franchisee Agreement, which was signed in routine****. If the respondent was aware of signing of Distribution Franchisee Agreement then why the Forum was not informed about this while submitting first reply to the petition. Further, as to why the HT rebate (which was not admissible) was allowed through energy bills and is still continuing.*** *The respondent should have explained as to why 10% rebate from the date of signing the agreement, as admissible to Distribution Franchisee (as per para No.15 of Model Distribution Franchisee Agreement) was not allowed to the consumer through bills (after obtaining requisite information from the petitioner). The respondent still has not explained as to why rebate of 10% of electricity consumption charges as admissible to the petitioner (Single Point Supply consumer) has not been allowed through energy bills in view of provision made as per CC No.25/2016 & 46/2017? (refer para No.5 of the petition).*

 *In view of above position the Forum may kindly consider as to who is defying the orders of the court and misleading the Hon’ble court by concealing the actual facts. The Hon’ble Forum is humbly requested to take cognizance of these facts”.*

*In view of above position, this Court may consider as to how much the decision of the Forum was biased and non-speaking. The Respondent’ s office did not take required action after signing of Distribution Franchisee Agreement and it was only when the checking of connection was done by ASE/Enf. on 18.1.2019 (ECR No.44/974) pointing out non-admissibility of HT rebate, the demand of Rs.28,97,008/- on account of wrong HT rebate was raised against the Petitioner. Thereafter, AEE/Commercial also informed. ASE/Enf. vide memo No.52 dated 15.4.2019 that consumer was charged and had deposited the amount of HT rebate of Rs.28,97,008/-.*

1. Petitioner’s Representative (PR) also stated in its rejoinder that this

Court had decided almost similar case of *Sunny View Estates Pvt Ltd v/s PSPCL (Appeal No.62/2018, decided on 05.02.2019* wherein it was held that Petitioner was entitled to ***Consumption Rebate*** as per Tariff order of the respective financial year as the consumer was getting the supply at 11kV, instead of LT up to 14.12.2016 and 10% Single Point Connection Rebate (as per Clause 15 of Model Distribution Franchisee Agreement) after signing Agreement by both the parties. Although, the Forum discussed the issue (as claimed in the Petition filed before it) but had not given any decision on the same. It was, thus, clear that the decision of the Forum was wrong and unjustified and liable to be set aside.

1. Written and oral submissions made by both the sides as well as

material brought on record by both the sides have been gone through.

 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 as approved by the Hon’ble PSERC. I have noted the contention of the Petitioner’s Representative that the Forum did not pass any order on the claim of the Petitioner to allow refund of rebate of the energy consumption charges in the energy bills raised after issuance of CC No.58/2016 dated 14.12.2016 till the signing of Franchisee Agreement on 28.04.2017 as admissible to the NRS category consumer as per Tariff order for the financial year 2016-17 and 2017-18. PR clarified that the rebate @20 paise/kVAh units was being given in the energy bills(since release of NRS Category Connection on 04.01.2014) but the same(for the period from 14.12.2016 to 28.04.2017) was incorrectly charged in the bill for 01/2019 and was recovered.

 *I observe that the Forum was expected to decide the issue raised by the Petitioner in its Petition and pass appropriate orders but no order in this regard was passed by the Forum.*

 I also observe that rebate @ 20 paise/kVAh is admissible for the period from 14.12.2016(date of issuance of CC 58/2016) till 28.04.2017(date of signing of Franchisee Agreement) the instant case as per Commercial Circulars/Tariff Orders detailed below:

|  |  |
| --- | --- |
| Commercial Circular No & Date | Financial Year for which Tariff Order Issued. |
| 26/2016 dated 29.07.2016 | 2016-17 |
| 46/2017 dated 10.11.2017 | 2017-18 |

 *I observe that the Respondent defaulted in recovering the rebate @ 20 paise/kVAh unit, already being allowed in the energy bills from the date of release of the connection (04.01.2014) instead of continuing to allow the same in the energy bills till the date of signing of Franchisee Agreement on 28.04.2017. As such, the action of the Respondent in recovering energy charges for the aforesaid period of 14.12.2016 to 28.04.2017 (included in the total recovered amount of Rs 28,97,008/- deposited under protest by the Petitioner) was not in accordance with the provisions of Commercial Circulars/Tariff Orders ibid.*

1. In so far as the claim of the Petitioner for 10% Single Point Connection Rebate in terms of provisions of CC No.58/2016 dated 14.12.2016 is concerned, there is no denying the fact that after issuance of CC No.58/2016 dated 14.12.2016, the AEE/Commercial, City West Division(Commercial), PSPCL, Ludhiana issued Notice dated 20.01.2017 and again on 25.04.2017 whereafter, the Franchisee Agreement was signed by both the parties on 28.04.017(with delay of 8 days from the stipulated period of 3 months from the date of issue of first notice on 20.01.2017 by the Respondent-PSPCL).

Accordingly, the Petitioner became Franchisee of the PSPCL and was supplying/distributing power to the consumers (occupants of shops) in its area of Franchisee.

 I find that the Addl.SE, Enforcement, PSPCL, Ludhiana observed, after checking dated 18.01.2019, that the Petitioner was not eligible for the said rebate as it had not completed the requisite formalities while signing the Draft Franchisee Agreement on 28.04.2017.

 I also find that the Respondent did not bring on record of this Court any documentary evidence to prove that it had made any reference to the Petitioner for completion of any formality after submission of the Franchisee Agreement (signed by both the parties) on 28.04.2017 .

 I observe that the Petitioner informed the Addl.SE., DS West Division(Special), Ludhiana, vide letter dated 24.07.2019 and 13.09.2019(duly acknowledged by that office), that it had complete billing record of the dues charged from its consumers which could be provided to the Respondent any time as required in terms of conditions of Franchisee Agreement.

 I also observe that Addl.SE, DS West Division (Special), PSPCL, Ludhiana representing the PSPCL during the course of hearing in this Court pleaded that the Petitioner had concealed (in the CGRF, Patiala) the fact of signing of the Franchisee Agreement on 28.04.2017. But the Petitioner’s Representative (PR) refuted the above averment as per detail given in its rejoinder dated 21.11.2019[Para 5 (i)].

 *After perusing the submissions of both the sides in this regard, I am of the view that the Petitioner did not conceal the fact of signing the Franchisee Agreement dated 28.04.2017 during the course of hearing in the Forum as per material/evidence placed on record of this Court. The Franchisee Agreement was signed by the Petitioner and the Respondent on 28.04.2017 and was, in fact, a part of the records of DS West Division(Special), PSPCL, Ludhiana. Besides, the fact of signing of the Franchisee Agreement ibid slipped out of the knowledge of both the Petitioner and the Respondent who did not care to watch their respective interests. The Petitioner did not request for discontinuance of rebate (being allowed from release of connection) from 28.04.2017 and allowing 10% Single Point Connection Rebate from the said date(28.04.2017) onwards. On the other hand, the Respondent defaulted likewise and swung into action only when it issued Memo No.856 dated 31.12.2018 asking the Petitioner to deposit Rs 28,97,008/- on account of rebate wrongly given @20 paise/kVAh unit consumption through energy bills for the period from 14.12.2016 to 01.02.2019 on the plea that the Petitioner was not eligible for rebate as per CC No.58/2016 dated 14.12.2016. As a matter of fact, the Respondent failed to understand properly the implications of the provisions contained in Commercial Circular/Tariff Orders for the relevant financial years including, ofcourse, CC No.58/2016 dated 14.12.2016. Even if DS Division had got entered the fact of signing of Franchisee Agreement dated 28.04.2017 in the SAP Billing System, the system would have discontinued giving rebate @20 paise/kVAh on 28.04.2017 and started giving 10% Single Point connection rebate from 28.04.2017.*

**6. Conclusion**:

From the above analysis, it is concluded that :

1. The Petitioner is entitled to get refund of rebate as per energy consumption from 14.12.2016 (date of issuance of CC No.58/2016) to 28.04.2017 (date of signing of Franchisee Agreement) as per provisions contained in the Tariff Order/Commercial Circular of the respective financial years i.e. 2016-17 and 2017-18.
2. The Petitioner is entitled to be allowed 10% Single Point Connection Rebate for the period from 28.04.2017 (date of signing of Franchisee Agreement) onwards as per provisions contained in CC No.58/2016 and Clause no.15 of Franchisee Agreement dated 28.04.2017.

**7.** **Decision:**

**As a sequel of above discussions, the order dated 12.07.2019 of the CGRF, Ludhiana in Case No. CGL-140 of 2019 is set-aside. It is held that the account of the Petitioner shall be overhauled in terms of conclusion arrived at in Para 6 above. Accordingly, the Respondent is directed to calculate and refund/recover the amount due without interest from the Petitioner through future energy bills.**

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

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

(VIRINDER SINGH)

November 28, 2019 Lokpal (Ombudsman)

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