**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

*****

**<u>1. CWP No. 9084 of 2013</u>**
**Date of Decision: 1.2.2018**

**Punjab State Power Corporation Limited and another**
**..........Petitioners**

**v.**

**Ombudsman Electricity, Punjab and another**
**..........Respondents**

**<u>2. CWP No. 193 of 2014</u>**

**M/s Subhan Chiling Centre and another ..........Petitioners**

**v.**

**Punjab State Power Corporation Limited and others**
**..........Respondents**

**CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**

Present:- Mr. Vikas Mohan Gupta, Advocate(in CWP No.9084 of 2013)
Mr. Anil Kumar Garg, Advocate (in CWP No. 193 of 2014)
for the petitioners

Mr. Vikas Mohan Gupta, Advocate, for respondent No.1
(in CWP No.193 of 2014)

Mr. Pardeep Sharma, Advocate, for respondent No. 2

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**<u>RAKESH KUMAR JAIN, J (Oral) :</u>**

This order shall dispose of two petitions bearing CWP No. 9084 of 2013 titled as '**Punjab State Power Corporation Limited and another v. Ombudsman Electricity, Punjab and another'** (for short 'the first petition) and CWP No. 193 of 2014 titled as **'M/s Subhan Chiling Centre and another v. Punjab State Power Corporation Limited and others'** (for short 'the second petition), as both the petitions have been filed

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to challenge the order passed by the Ombudsman on 10.8.2011 as in the first petition order passed by the Ombudsman and in the second petition orders passed by all the authorities i.e. The Circle Dispute Settlement Committee (for short 'the Committee'), Grievance Redressal Forum (for short 'the Forum') and the Ombudsman have been challenged. However, for the sake of convenience, the facts are being extracted from the first petition.

Respondent No.2 i.e. M/s Subhan Chilling Centre applied for the electricity connection under the Medium Scale (MS) Industrial Category with a sanctioned loan of 51.938 KV in the year 2007. The electricity connection was supplied from 11 KV line from Urban Pattern Supply (UPS) Feeder because the premises of respondent No.2 was situated 175 meters within the phirni. Respondent No.2 was granted rebate of 7.5% in the periodic bills from February 2007 to March 2009. However, during the checking of the accounts by the Assistant Accounts Officer (AAO)/ Revenue, objection was raised for illegally providing the rebate of 7.5%, contrary to the circulars and recovery of Rs.1,00,631/- was ordered. The crux of the audit report dated 24.3.2009 is as under :

> *"The appellant consumer vide A & A from No. 33502 dated 15.5.2006 had applied for connection for Chilling Centre for a load of 51.938 KW. As per estimate, this connection was proposed to be released from UPS Sherwanikot feeder by laying 175 meters HT line from 100KVA transformer. This connection is within 500 meters phirni of village. Since this connection is being fed from UPS feeder, so no HT rebate is admissible to consumer as per instructions but on scrutiny of ledger, it was found that 7.5% HT rebate is being given to consumer. An amount of Rs,1,00,631/-paid to the consumer as 7.5% HT rebate during the period 2/2007 to 3/2009 be recovered from him."*

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Respondent No.2 challenged the demand notice before the Committee. The said petition, however, was dismissed on 8.6.2010. The relevant observations made in the said order are reproduced as under :

> *"1) M/s Subhan Chilling Centre, MS-34/22, Sharwani Kot, disputed amount Rs.1,00,631/-.*
>
> *In the above referred case Er. Surinder Singh along with Sr. Executive Officer, Operation Division, Malerkotla and Presenting Officer appeared. On behalf of consumer Shri Mohd. Deen owner himself appeared. He submitted that he had obtained the electricity connection after installing the transformer at his own cost. Therefore, the rebate already given to him with respect to HT rebate should be granted and be continued.*
>
> *The committee decided that the Electricity connection of the consumer is available from UPS Feeder, which is on HT line. Therefore, he is not entitled for grant of HT rebate of 7.5%. The amount to be recovered as assessed by Audit Party is legal and same is recoverable from the consumer. As er the request of the consumer, the amount recoverable be recovered in five equal monthly instalments.*

| | | |
|---|---|---|
| *Sd/-* | *Sd/-* | *Sd/-* |
| *Er. Harmesh Pal Gupta,* | *T.S. Sandhu* | *Er. Ajay Bansal* |
| *S Supdt., Engineer,* | *Sub Chief Auditor* | *Dy. Director* |
| *OP.Div. Sangrur* | *West Zone, Patiala* | *Sales III, Patiala"* |

Still seems unsatisfied, respondent No.2 filed the appeal before the Forum which was also dismissed on 22.12.2010. Respondent No.2 then filed further appeal to the Ombudsman, Electricity, Punjab, who vide his order dated 10.8.2011 partly allowed it and the rebate of 7.5% was reduced to 3%. The petitioner in the first petition, is thus, aggrieved against the order of ombudsman by which the rebate has been reduced from 7.5% to 3% and the petitioner in the second petition is aggrieved against the orders passed by the Committee and the Forum by which the rebate was declined to the tune of 7.5% and the Ombudsman who has reduced the rebate to 3%

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from 7.5%.

Learned counsel for the petitioner in the first petition has submitted that the release of connections from UPS Feeder for villages is provided in Clause 45.1, 45.2, 45.3.1 and 45.3.2 which is governed by Sales Regulations issued in the year 1999, which are also reproduced as under :

*"**45. Release of connections from urban pattern supply feeders for villages.***

*Release of connections from urban pattern supply feeders for villages will be regulated as under :-*

***45.1. within Phirni:-** All categories of metered supply connections (existing/new) falling within phirni of the village except APT/wells are covered in the scheme and can be allowed from '24 hours supply feeder' by extending supply system through 3-phase HT/LT line.*

***45.2 within 500 metres of phirni:-** All categories of consumers (existing/new) falling within 500 metres of the phirni of village except AP T/wells are entitled for supply from urban pattern supply feeder as per of scheme. Supply shall, however, be given through single phase LT line for loads up to 10KW and through 3-phase HT line for loads above 10 KW and up to 100 KW by installing suitable capacity transformer outside the premises of the consumer and LT service cable without laying any 3-phase, 4-Wire O/H system.*

***45.3 Beyond 500 meters of phirni :***

***45.3.1 - Existing connections :** Existing consumers except AP tubewells located beyond 500 metres of the phirni shall be entitled for Urban Pattern Supply facility provided they pay the actual cost of works involved in the shifting of supply lines etc. along with 16% establishment charges.*

***45.3.2 New Connections :** New connection except AP/T/Wells falling beyond 500 metres of phirni can be released from urban pattern supply feeder. However, supply for existing as well as new consumers shall be given through single phase LT line for loads upto 10KW and for loads above 10KW at 11 KV (with consumer's own transformer).*

*In such a case metering will be done on LT and the*

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*consumption shall be enhanced by 3% to cover the transformation losses."*

The transmitting licensee provides electricity on the UPS Feeder for 24 hours. Clause 45 deals with the release of connections from the UPS for the connections within the phirni and beyond 500 meters outside the phirni. It is submitted that the connection released to respondent No.2 was within 500 meters of the phirni.

He has further referred to a circular dated 21.2.2002 by which it has been clarified that the rebate of 7.5% is not available to those consumers whose connection load is more than 10 KV and the supply Volatge is 11 KV. The said circular is also reproduced as under for ready reference :

*"From*
*The C E Commercial*
*Sales-1, PSEB, Patiala*

*To*
*The Chief Auditor,*
*Pb. State Elecy. Board,*
*Patiala*

*Memo No. 1876-416*
*Dated 2.12.2002*

*Sub : allowing rebate @ 7.5% to the connections given on HT supply 24 hours Urban pattern Feeders- Sales Regulation-45.*

*Please refer to your office memo No.10939/CA/RA-1/Loose 5 dated 11.6.2002 on the subject cited above.*

*In this regard, it is clarified that the rebate of 7.5% is not admissible to those consumers who have connected load of above 10KW and for which supply voltage is 11KV which is mandatory under 24 hours Urban Pattern Supply Scheme as per Sales Regulation Clause 45.3.1 and 45.3.2.*

*Sd/-*
*Director/Sales-1,*
*for CE/Commercial, PSEB, Patiala."*

Learned counsel for the petitioner in the first petition has thus,

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submitted that respondent No.2 was not eligible to be granted the rebate of 7.5% much less the rebate of 3% has been done by the Ombudsman by misreading the provisions of Sales Regulations 1999. He has also submitted that the Ombudsman has committed an error in relying upon the Clause 83.3.3 of the Sales Regulations which deals with the tariff to be charged. It is submitted that Clause 83.3.3 , applied by the Ombudsman for the purpose of reducing the rebate from 7.5% to 3% is not applicable to the UPS Feeder as it would be regulated by Clause 45.1, 45.2, 45.3, 45.3.1 and 45.3.2 of the Sales Regulations 1999.

On the other hand, learned counsel for respondent No.2 who is the petitioner in the second petition has submitted that the Committee and Forum have committed an error in declining the rebate of 7.5% and has referred to Clause 83.3.5 of the tariff provided in the Sales Regulations, which read as under :

> *"**83.3.5** - In case of Rice Shellers, Ice Factories, Cold Storage & Stone Crushers falling under MS Category the consumption shall be metered at 11 KV and rebate of 7.5% will be allowed as per tariff provisions provided the transformer is installed by the consumer otherwise rebate of 3% shall be allowed where Board's transformer is installed."*

It is submitted that the petitioner is running a Chilling Centre i.e. a Cold Storage. It is not denied by learned counsel for the petitioner in the first petition and has further submitted that respondent No.2 has installed his own transformer as well. In this regard, learned counsel for the petitioner has submitted that this tariff would not be applicable because it does not apply to the UPS. In the alternative, learned counsel for respondent No.2 has submitted that the Ombudsman has granted 3% rebate

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on the ground that the Sr. Xen. has noted in the two other cases that the meter is installed at 400 volts whereas in the case of the petitioner, the meter has been installed at 11 KV. It is clearly a disadvantage to the petitioner due to metering being done on 11 KV instead of at 400 volts as mandated in ESR 45.2 and in the case of other two similar connections as reported by Sr. Xen. the rebate has been granted on account of transformation charges.

In this regard, learned counsel for the petitioner, in the first petition, has submitted that the Ombudsman himself has mentioned in the impugned order that "on query from the counsel whether the other two connections have been given supply on LT-400 volts or 11 KV, he clarified that both these connections were released from 11 KV line by installing transformer outside the premises of the consumer and LT service cable and installing the meter at 400 volts. He again reiterated that rebate in similar cases is not being allowed and the petitioner is not entitled to any kind of rebate"

It is, thus, submitted that case of the petitioner is not similar to the other two consumers on the basis of which the Ombudsman has passed the order reducing the rebate to 3%.

I have heard learned counsel for the parties and perused the record with their able assistance.

The issue in this case is as to whether respondent No.2, who is admittedly having its premises and electricity connection within the 500 meters of the phirni is entitled to rebate of 7.5% or even 3%?

Admittedly, respondent No.2 has got the MS Industrial Category Electricity Connection having sanctioned load of 38 KV. The premises of respondent No.2, to which the electricity connection has been

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provided, is within 175 meters of the phirni of the village. Respondent No.2 has been allowed rebate of 7.5% in the periodic billing of February 2007 till the audit party had found that the said rebate was not admissible. Therefore, recovery was ordered. Respondent No.2 could not succeed before the Committee and the Forum, however, the Ombudsman though agreed with the petitioner of the first petition that the rebate of 7.5% was illegally granted but reduced it to 3%. Respondent No.2 has basically relied upon the rate of tariff as provided in the Sales Regulations i.e. 83.3.3 and 83.3.5. Sales Regulation 83.3.3 read as under :

> *"The above tariff covers supply at 400 volts. A rebate of 7.5% will be allowed if supply is given at 11 KV."*

Argument of the petitioner is that the said tariff is not applicable in a case where the electricity supply is provided under the UPS. It is further submitted that the rebate insofar as UPS is concerned, is provided in Sales Regulations of 1999 in Clause 45, which has already been reproduced in earlier part of the order. The said Clause 45 has two parts. First part deals with the electricity connection available under the UPS Feeder Scheme within phirni i.e. Within 500 meters of phirni and the other part is regarding the electricity connection provided beyond 500 meters of phirni.

The petitioner had issued a circular dated 21.2.2002 in order to remove any objection or doubt about grant of rebate of 7.5% in the said circular, which has not been challenged by respondent No.2, which categorically provides that the rebate of 7.5% is not admissible to those consumers who have connection load of more than 10 KV and supply voltage is 11 KV, under 24 hours Urban Pattern Supply Scheme as per Sales

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Regulations Clause 45.3.1 and 45.3.2. Since the supply connection load of respondent No.2 is above 10 KV i.e. 51.938 KV and the connected electricity supply was of 11 KV i.e. 24 hours Urban Pattern Supply Scheme. which is regulated by Clause 41.1 and 41.2. In that matter, the circular which had come much before the billing period i.e. in the year 2002 and the billing period was of 2007 to 2009, therefore, the said circular is applicable with full force.

Question, thus, would be as to whether respondent No.2 could get any help from the tariff schedule provided in the Sales Regulations?

The tariff schedule to which respondent No.2 has referred to i.e. Clause 83.3.3 and 83.3.5 do not talk of the supply by UPS. The supply by UPS is specifically provided in the Sales Regulations 1999, which has been discussed herein-above. The order of the Ombudsman that similar relief of 3% has been provided to similar cases, has no similar facts of the case as mentioned above. Thus, looking from any angle, order of the Ombudsman challenged in the first petition is patently illegal and erroneous and the same is hereby set aside and the writ petition filed by the first petitioner is allowed. As a consequence thereof, the second writ petition fails and is hereby dismissed.

A photocopy of this order be placed on the connected case file.

**(RAKESH KUMAR JAIN)**
**JUDGE**

**1.2.2018**
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Speaking/Reasoned Yes/No
Reportable Yes/No

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