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

**CWP No.12290 of 2021
Date of Decision:09.07.2021**

Punjab State Power Corporation Limited

...Petitioner

Versus

Lokpal Electricity and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: - Mr.Sehajbir Singh, Advocate,
for the petitioner.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL. J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

Prayer in this writ petition is for quashing of order dated 28.11.2019 (Annexure P-14) passed by respondent No.1 whereby appeal preferred by respondent No.2 for setting aside order dated 12.7.2019 (Annexure P-11) passed by Consumers Grievances Redressal Forum, Ludhiana [for short 'the CGRF'] has been disposed of by directing the present

petitioner to overhaul the account of respondent No.2 in terms of the observations in para 6 therein.

Brief facts, necessary for adjudication of the matter, are that respondent No.2 became consumer of the present petitioner w.e.f. 04.1.2014 having a non-residential supply connection with a sanctioned load of 4735 kW and a contract demand of 3409 kVA at a 11 kV single point supply. Order dated 09.6.2015, passed by the Punjab State Electricity Regulatory Commission [for short 'the PSERC'] was adopted by the petitioner-PSPCL on 14.12.2016. It was decided that a Distribution Franchisee Agreement would be entered into with the Distribution Franchisee for getting Single Point Supply for distribution wherein it is agreed that the petitioner PSPCL would supply electricity to the Distribution Franchisee i.e. respondent No.2 at HT/EHT voltage level as a Single Point Supply and the same shall be covered under Dedicated Distribution Facility (DDF)/Urban Category feeders. Distribution franchisee-respondent No.2 was to develop efficient coordinated distribution system in its area to further supply electricity to the consumers therein. It is a matter of record that when respondent No.2 became a consumer in January 2014, it was entitled to voltage rebate at 20 paise/kVAh as per the applicable tariff. However, as per the subsequent franchisee agreement dated 28.4.2017 (Annexure P-7) respondent No.2 was entitled to rebate of 10% electricity consumption charges. Petitioner-PSPCL issued notice dated 31.12.2018 asking respondent No.2 to deposit an amount of Rs.28,97,008/- stating therein that petitioner was not eligible for rebate at 20 paise/kVAh as had been given to it for the period 14.12.2016 to 01.02.2019.

Petition challenging the said demand was preferred by respondent No.2 before the CGRF which was dismissed on 12.7.2019. An

appeal was preferred by respondent No.1 before the Lokpal (Ombudsman). Overhauling of the account was directed by the Lokpal (Ombudsman), Electricity vide impugned order dated 28.11.2019 while observing as under: -

- “(i) 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.*
- (ii) 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 28.4.2017.”*

It was directed that account of respondent No.2 be overhauled in terms of the aforesaid observations and present petitioner was directed to calculate and refund/recover the amount due without interest from respondent No.2 through future energy bills.

Aggrieved thereafter, present petition has been filed by the PSPCL.

Learned counsel for the petitioner vehemently argues that first and foremost, when decision dated 09.06.2015 by PSERC was adopted on 14.12.2016 by PSPCL, rebate at 20 paisa/kVAh extended to the petitioner would automatically come to an end and respondent No.2 was not entitled to the same from 14.12.2016 onwards. Said rebate @ 20 paisa/kVAh continued

to be availed by respondent No.2 incorrectly till 31.12.2018. When the said error was detected by the petitioner-Corporation; notice for refund was correctly issued to respondent No.2. Moreover, respondent No.2, it is submitted, is not strictly complying with the terms and conditions of the Distribution Franchisee Agreement, therefore, is not entitled to rebate of 10%as well. It is further prayed that order dated 12.7.2019 (Annexure P-11) passed by the CGRF be upheld and order dated 28.11.2019 (Annexure P-14) be set aside.

Heard learned counsel for the petitioner and have gone through the file with his able assistance.

It is a matter of record that respondent No.2 became a consumer of the petitioner-corporation in January 2014. Petitioner was admittedly entitled to rebate at the rate of 20 paise per KVAH as per the relevant applicable tariff order at that time. Petitioner-corporation proceeded to adopt decision dated 09.06.2015 passed by the Punjab State Energy Regulatory Commission (PSERC) wherein it is held that Clause 8 of Condition of Supply, under which Single Point Supply was given to residential colonies, shopping malls, commercial complexes etc., was not consistent with provisions of the Electricity Act. Following direction was issued in this respect: -

“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

and 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."

Consequently, draft distribution franchisee agreements were circulated in January 2017 for providing electricity at a single point supply. Pursuant to issuance of notice dated 25.04.2017 to respondent No.2, the franchisee agreement was executed between petitioner-corporation and respondent No.2 on 28.04.2017. However, the petitioner-corporation continued to afford rebate at the rate of 20 paise per KVAH to respondent No.2 till the discrepancy was discovered on 31.12.2018, whereas as per clause 15 of the franchisee agreement, respondent No.2 was entitled to 10% rebate. Notice for recovery of the amount of rebate at the rate of 20 paise per kVAh given to respondent No.2 from 14.12.2016 till 01.02.2019 was issued. Learned Lokpal (Ombudsman), Electricity, Punjab has rightly observed in

order dated 28.11.2019 that respondent No.2 is entitled to rebate at the rate of 20 paise per kVAh from 14.12.2016 till 28.04.2017 i.e., date of signing of the franchisee agreement. It is apparent that provisions as contained in the franchisee agreement would not have retrospective effect i.e. prior to execution of the franchisee agreement. Terms and conditions thereof do not indicate the same. Moreover franchisee agreement was signed on 28.04.2017 pursuant to subsequent notice dated 25.4.2017.

Admittedly the petitioner-corporation itself continued to give rebate to respondent No.2 at the rate of 20 paise per KVAH even after execution of agreement on 28.04.2017. It is not the case of the petitioner that there was any misrepresentation on the part of respondent No.2, who indeed continued to deposit the amount as per demand raised by the petitioner-Corporation itself. Therefore, to say that respondent No.2 is not entitled to rebate at the rate of 20 paise per KVAH from 14.12.2016 i.e., the date of adoption of decision dated 09.06.2015 of PSERC, by the petitioner till the date of signing of franchisee agreement, is patently incorrect. Learned Lokpal (Ombudsman), Electricity has, thus, rightly held respondent No.2 to be entitled to refund of the rebate as per energy consumption from 14.12.2016 to 28.04.2017 as per the provisions as contained in tariff order/commercial order of the respective financial years 2016-2017 and 2017-2018. Respondent No.2 has rightly been held entitled to 10% single point rebate from 28.04.2017 i.e., date of execution of the franchisee agreement, in terms of circular No.58 of 2016 and clause 15 of the agreement dated 28.04.2017.

I do not find any merit in the argument raised by learned counsel for the petitioner that as there is some alleged violation or non-compliance of conditions of agreement dated 28.04.2017, therefore, rebate of 10% is not

available to respondent No.2. Relevant part of clause 15 of the agreement reads as under:-

“However rebate as allowed by the 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. No other rebate on electricity consumption charges as per billing by Distribution Franchisee shall be admissible as the individual consumers are being billed at LT tariff as per the General Conditions of Tariff/Schedules of Tariffs.”

It is apparent that this rebate of 10% is not contingent on any other condition, therefore to link the same with alleged non-compliance is not justified or called for. Needless to say, the petitioner has specific remedy in case of non-compliance, if any, of the conditions of agreement by respondent No.2.

Learned counsel for the petitioner is unable to point out any illegality or irregularity in the impugned order dated 28.11.2019 passed by the learned Lokpal (Ombudsman), Electricity which calls for any interference by this Court in exercise of writ jurisdiction.

No other argument has been raised.

Keeping in view the facts and circumstances, this writ petition is dismissed with no order as to cost.

(LISA GILL)
JUDGE

09.07.2021

Vivek/Om

Whether speaking/reasoned: **Yes/No**

Whether reportable: **Yes/No**