

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH**

**Petition No. 18 of 2020
Date of Order: 23.10.2020**

Petition under Section 68,69,70,71 and 72 and other relevant provisions of Chapter XIII of the Conduct of Business Regulations 2005 as amended up to date and other relevant rules and regulations as approved by the Commission including Conditions No. 24 of General Conditions of Tariff contained in Tariff Order for 2018-19 and read with the relevant provisions of the Electricity Act 2003.

In the matter of: M/S Vardhman Polytex Limited, D/295/1, Phase VIII,
Focal Point, Ludhiana 141123 Punjab.

....Petitioner

VERSUS

1. Punjab State Power Corporation Ltd, the Mall, Patiala, through its Chairman-Cum-Managing Director.
2. Sr. Xen/ DS, Focal Point, Divn, (Spl.), PSPCL, Ludhiana.
3. Consumer Grievances Redressal Forum, 220 KV Sub Station, Opp. Verka Milk Plant, Ferozepur Road, PSPCL, Ludhiana.
4. Lokpal (Ombudsman) Electricity Punjab, 66 KV grid Sub Station, Plot No. A-2, Industrial Area Phase-1, Mohali.

....Respondents

Present: Ms. Kusumjit Sidhu, Chairperson
Ms. Anjali Chandra, Member

ORDER

M/S Vardhman Polytex Limited, Focal Point, Ludhiana, filed the present petition for i) setting aside the Order dated 29.10.2019 passed by CGRF, Ludhiana in case No. CGL-199/19 whereby the prayer for granting benefit of threshold consumption has been declined, ii) setting aside Order dated 13.01.2020 passed by the Court of Lokpal (Ombudsman), Electricity Punjab SAS Nagar, Mohali in Appeal No. 65 of 2019 whereby the Order dated 29.10.2019 passed by CGRF has been upheld and for iii) directing PSPCL to grant and release the benefit of rebate permissible on the Power consumed over and above the threshold limit in terms of the tariff Order passed by the Commission for the FY 2018-19 and the consequential circular, CC No. 26/2018 issued by PSPCL in this regard. The petition was taken up for hearing on admission on 15.07.2020 and the counsel for the petitioner prayed for an adjournment for filing an amended petition. The petitioner filed an additional affidavit dated 28.07.2020 praying to amend the prayer clause in the petition. The petition was admitted for hearing vide Order dated 10.08.2020.

Petitioner's Submissions

1. The Petitioner has submitted that the petitioner company is a Large Supply Industrial Consumer of PSPCL and has been consistently drawing power as a LS consumer since 06.11.2004 for its works /factory at Ludhiana. The Petitioner was earlier being supplied electricity by PSPCL against Account Number 3002809444 in the name of Vardhman Polytex Limited, Unit - Vinayak Textile Mill, however, later on in the year 2016, a request was made by the Petitioner for the change of name from

“Vardhman Polytex Limited, Unit - Vinayak Textile Mill” to “Vardhman Polytex Limited” on account of policy decision and administrative reasons. Consequently, PSPCL while granting approval for Change of Name, allotted a new account No. 3015027199 with effect from December - 2016 in the name of Vardhman Polytex Limited. The change of name sought by the Petitioner was only to the extent of deleting the words i.e. “Unit - Vinayak Textile Mill” from its existing name and eventually the name of the consumer emerged as “Vardhman Polytex Limited”.

1.1 That the Commission introduced prudent initiatives to utilize the surrendered power of PSPCL, and devised a mechanism for granting rebate to the consumers who consume power over and above the threshold limit calculated on the basis of the power consumed for the last two years. The said incentive was declared by the Commission in the tariff order for the year 2016-17, whereby a discounted tariff @ 4.99/-kwh was announced for consuming power over and above the threshold limit. The Commission reduced the energy charges for 2018-19 (under Two-part Tariff structure) Rs 4.28/- per KVAH for consumption of Power exceeding the threshold limit. Accordingly, PSPCL brought out a Commercial Circular No. 26/2018 in this regard. Clause No.1 of the said Commercial Circular No.26/2018 provided that the maximum annual consumption in any of the last two financial years shall be considered as threshold. However, if the connection has been released after 31.03.2016 in such eventuality, no benefit of the reduced energy charges shall be given to the consumer.

1.2 That the Petitioner, as per the Circular, took up the matter with PSPCL for claiming the “reduced energy charges” benefits on the threshold consumption through various representations to the

SDO (Commercial) SPL-Division, Focal Point, PSPCL, Ludhiana, XEN Billing, CBC-Ludhiana, Chief Engineer (Commercial, PSPCL), the Director (Commercial, PSPCL) however, despite taking up the matter at the highest level of the PSPCL by the Petitioner, nothing fructified.

1.3 That being aggrieved by the illegal, arbitrary, unjust, unwarranted and unsustainable inaction of PSPCL, the petitioner filed a complaint before the Consumer Grievances Redressal Forum, Ludhiana (CGRF) on 06.08.2019. In spite of the submissions of Petitioner that the communication address, work place, nature of work, Board of Directors, GST No. and VAT No. etc., remained the same CGRF, Ludhiana wrongly dismissed the complaint vide its order dated 29.10.2019, while inter-alia holding that it is not clear whether, rebate of Threshold units is to be allowed to the consumer where change of name takes place during the previous two years. The Petitioner preferred Appeal no. 65 of 2019. before the Court of Lokpal (OMBUDSMAN), Electricity, Punjab, SAS Nagar, Mohali, which has been disposed of vide Order dated 29.10.2019 upholding the CGRF's order dated 29.10.2019.

1.4 That, the Complaint filed by the Petitioner was dismissed on technical grounds that there is no clarity in the circular brought by PSPCL/Tariff order issued by the Commission as to whether the benefit/ rebate of threshold units can be allowed where there is change of name or not. The whole purpose of the Reduced Energy Charge scheme was to increase the consumption by the consumers so as to utilize the Surplus capacity of PSPCL and the Petitioner had run its factory in excess of last 2 year's consumption during the period believing that the Petitioner will be charged

reduced tariff and calculated the costing of the products accordingly.

1.5 That the criteria for eligibility is “if the connection has been released before 31.3.2016”. In the present matter the connection was already released prior to 31.3.2016, there was neither any disconnection nor any reconnection, nor any change of meter. Further, there was no feasibility study, feasibility clearance, submission of NOCs/undertakings, deposit of ACD and Service connection charges, verification of test report etc associated with release of a new connection. PSPCL insisted for submission of new A&A form which were submitted and PSPCL, on its own allotted a new account number with change of name. Thus, the “change of name” cannot be termed as “release of connection” as mandated in the Tariff order and CC 26 of 2018. The fact has been clearly overlooked while pronouncing the orders by both the courts below. Thus it was not a change of name with change of ownership i.e. sale of entity / new management but change of name only and cannot be termed as “release of connection” in terms of para (i) of CC 26 of 2018/ tariff order.

1.6 That CE/Commercial vide letter bearing No. 974L 128, dated 09.09.2019 rightly pointed out to Sr. XEN/DS that in the present case Change of Ownership be verified by Divisional office and decision be taken, indicating clearly that Change of Name along with Change of Ownership collectively is to be taken as the criteria for treating the connection as new and if there is no change of ownership but only change of name, it is not to be treated as new connection. Still, in spite of written directions of CE/Commercial, Sr. XEN did not decide the matter on his own and took a contradictory stand before the CGRF and the Lok Pal.

The petitioner has prayed to:-

- i) Pass an order clarifying/interpreting the tariff order passed by the Commission for the year 2018-19 to the effect that the benefit of "Reduced Energy Charges/rebate for consumption of Power exceeding the threshold limit for the year 2018-19 shall be payable by PSPCL to the Petitioner in the peculiar facts and circumstances of the present case and accordingly direct PSPCL to grant and release the benefit of rebate permissible on the power consumed over and above the threshold limit to the Petitioner, in terms of the tariff order passed by the Commission for year 2018-19 and the consequential circular issued by PSPCL in this regard i.e. CC No 26/2018, in view of the peculiar terms and conditions of Change of Name involved in the case of Petitioner:
- ii) For any other relief in favour of the Petitioner as the Commission may deem fit in the facts and circumstances of the case.

Submissions of PSPCL

2.0 PSPCL has submitted that the petitioner applied for change of name from Vardhman Polytex Ltd. (Unit: Vinayak Textiles Mills) to Vardhman Polytex Ltd. on 06.10.2016. Change of name was affected on 08.12.2016. During this process of change of name, the a/c no. of the petitioner changed from 3002809444 to 3015027199. As the consumer has signed a new A&A form with PSPCL and a new a/c no. was allotted with new agreement,

therefore it became a new legal and commercial entity and accordingly threshold rebate as per CC No, 26/2018 dated 24.04.2018 was not awarded to the consumer. The petitioner approached the CGRF Ludhiana and the Ombudsman Electricity, Mohali for the rebate of Threshold units as per CC no. 26/2018 with the plea that the company is the same after change of name. However, both CGRF and ombudsman (Electricity), Mohali decided that the consumer is not entitled for threshold rebate under CC No. 26/2018.

2.1 PSPCL explained that as soon as a request for change of name is received by the office of PSPCL, the J.E. concerned is required to visit the premises of the consumer for re-rating the installation, so that the new consumer is not held responsible for any alteration in connected load which may have been effected by the existing consumer without sanction of PSPCL. In the context of the said regulation, it was submitted that as per the 'General Conditions of Tariff issued by PSERC from time to time, it is stated under Two part Tariff structure, for consumers that are covered under Contract Demand system, Fixed Charges shall be levied on 80% of the sanctioned contract demand or actual demand recorded during the billing cycle (restricted to sanctioned contract demand), whichever is higher. It is also stated under the Two part Tariff structure that in case the consumer exceeds its sanctioned contract demand during the billing cycle, he shall be liable to pay applicable demand surcharge as provided in the schedule of tariff for the relevant category.

2.2 That there were five directors in Vardhman Polytex Ltd. (Unit.Vinayak Textile Mills). Further, during the change of name

three more Directors were incorporated in the list of Directors. The above said consumer having load 8775KW/5500 KVA is already under the contract Demand system as per the 'General conditions of Tariff, hence in case the consumer exceeds its sanctioned contract demand, he is liable to pay Demand Surcharge as per the respective LS category.

2.3 As per Supply Code-2014 Regulation No. 11.6.2, during change of Name of the above said firm, difference of the security (consumption) and security (meter) is to be charged to the consumer. This difference of amount of security is charged by the SAP system automatically, if there is any requirement of difference of deposited security by the consumer and the security required as per the existing contract Demand. However, in this case the security deposited by the consumer up till 18.10.2016 is Rs,2,27,25,460/-, whereas the security required to be deposited by the consumer for 8000KVA load should be Rs. $1180 \times 8000 = \text{Rs.}94,40,000/-$, therefore it is clear that the consumer has deposited excess security already and thus difference of security need not to be charged in this case for change of name request, only processing fees of Rs.2000/- is to be charged.

2.4 That as per PSERC Notification as on 26.12.2016 Regulation No. 3.28 of the PSERC (Form and Ombudsman) Regulations, 2016, no party can file an appeal before the Commission against the order passed by the Ombudsman (Electricity) and the present case should be dealt under the Regulation 3.28 of PSERC Regulations.

3. OBSERVATIONS AND DECISION OF THE COMMISSION

The Commission has examined the submissions made in the petition, reply filed by PSPCL, rejoinder filed by the petitioner and after hearing the parties observes as under:-

The Court of the Lokpal (Ombudsman), Electricity, Punjab in its Order dated 13.01.2020 in Appeal No. 65/2019, has referred to the provisions contained in Regulation 11.6 of PSERC Electricity Supply Code and Related Matter Regulations, 2014 (relating to procedure for change of Title or Transfer of Agreement) and has concluded as under while dismissing the appeal:

“

*A perusal of the above provisions reveals that the Applicant, after change of title/name of the industry/firm, became a **new consumer** of the distribution licensee(Respondent-PSPCL) because the Appellant had signed new A & A Form with PSPCL and was allotted a new A/c No. 3015027199 by closing old A/c No. 3002809444. As a result, the energy consumption of old entity/consumer could not be considered for determining the admissibility of grant of benefit of rebate to new A/c No. 3015027199.*

5. Conclusion:

From the above analysis, it proves beyond doubt that the Appellant is not legitimately entitled to the rebate claimed on the basis of energy consumption for the period 01.04.2016 to 07.12.2016 of its old unit bearing A/c No. 3002809444 towards its new A/c No. 3015027199 (after change of name of the unit/entity) as the Appellant had signed a new A & A with the PSPCL and was sanctioned the load and CD afresh by the Chief Engineer, DS, Central Zone, PSPCL, Ludhiana. As a result, the Appellant became a new

consumer of PSPCL w.e.f. 08.12.2016 for all intents & purposes and is not fulfilling the conditions laid down in Clause No.1 of CC No. 26/2018 dated 24.04.2018 for claiming the rebate in energy charges.

The Commission is of the view that the said issue has been already adjudicated by the Ombudsman vide its detailed speaking Order dated 13.01.2020. The Petitioner's request for interpretation of said provisions of the Tariff Orders appears to be a afterthought and tantamounts to review of the Order of the Court of the Ombudsman. The Commission refers to Regulation 3.28 of the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2016, which specifies as under.

“Finality of award

3.28 No party can file an appeal before the Commission against the order passed by the Ombudsman. However, this is without prejudice to the rights of the complainant and the licensee to seek appropriate remedy against the order passed by the Ombudsman before appropriate bodies.”

A plain reading of the above regulation shows that, the Commission is not the forum to seek review/challenge the Orders of the Ombudsman.

The petition is dismissed accordingly.

Sd/-

**(Anjuli Chandra)
Member**

Sd/-

**(Kusumjit Sidhu)
Chairperson**

Chandigarh

Dated: **23.10.2020**