**COURT OF THE LOKPAL (OMBUDSMAN),**

**ELECTRICITY, PUNJAB,**

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

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

**APPEAL NO.09/2019**

**Date of Registration : 29.01.2019**

**Date of Hearing :18.04.2019 and 25.07.2019**

**Date of Order : 08.08.2019**

**Before:**

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

**In the Matter of :**

 Dev Arjuna Promoters

 & Developers Pvt.Ltd,

 Phase II, Rajgarh Estate,

 Village Birmi, Ludhiana.

 ...Petitioner

Versus

 Senior Executive Engineer,

DS, Aggar Nagar Division (Special),

PSPCL, Ludhiana

 ...Respondent

**Present For:**

Petitioner : 1. Sh. R.S.Dhiman

 Petitioner’s Representative (PR)

 2. Sh. Kunal Verma

 Petitioner’s Representative (PR)

Respondent : 1. Er. Parminder Singh,

Sr. Executive Engineer,

DS, Aggar Nagar Division (Special),

PSPCL, Ludhiana.

2. Er. Gurpreet Singh

 AEE/Commercial

Before me for consideration is an Appeal preferred by the Petitioner against the order dated 31.12.2018 of the CGRF, Patiala in Case No. CG-383 of 2018 deciding that:

***(a)*** *“Either the Petitioner himself creates the 11 kV feeder required for connectivity from 66 kV S/Stn., South City, Ludhiana to the premises of the Petitioner or deposit the estimated cost of the said feeder at present rates in accordance with the spirit of the Clause 9.1.1 (ii) of Supply Code, 2014.*

***(b)*** *The rebate of 12% is admissible to the Petitioner as per the relevant tariff orders for the year 2016-17, 2017-18 and 2018-19 and also as per Clause 15 of Distribution Franchisee Agreement.*

***(c)*** *Bank guarantee as a Security for LD works equivalent to 25% of the cost of HT outdoor S/Stn., erected/installed in the franchisee area be obtained from the Petitioner as per Clause 17 of the Distribution Franchisee Agreement besides completion of other formalities as provided under Supply Code, 2014.”*

**2. Facts of the Case:**

The relevant facts of the case are that:

1. The Petitioner was having a Domestic Supply (DS) Category

Connection (Single Point supply)with sanctioned load of 578 kW and contract demand (CD) of 634 kVA.

**(ii)** The Petitioner applied for NOC, through Chief Administrator,

GLADA, Ferozepur Road, Near Rajgarh Nagar, Ludhiana, for its residential colony namely Rajgarh Estates, Phase- II at Village Birmi, Tehsil and District Ludhiana for its 35.56 acres residential colony project under RID 459 during May 2015. No Objection Certificate (NOC) for the same was issued by the EIC/Commercial, PSPCL, Patiala vide Memo No. 36/Rajgarh Estates- Phase- II, Ludhiana/RID- 459 dated 08.01.2016 in accordance with the provisions of Regulation 6.6.2 (Single Point Supply) of Supply Code, 2014, reproduced as follows:

*"Notwithstanding anything contained in Regulation 6.6.1, the licensee may appoint a franchisee for a particular area in its area of supply as per 7th provision to section 14 of the Electricity Act, 2003. The licensee may provide single point supply on an application by the franchisee for making electricity available within the particular area to the following categories:*

(i) *residential colonies*

*(ii) commercial complexes*

*(iii) industrial complexes*

*(iv) IT Parks*

*(v) other single point supply consumers."*

1. The total load of the project was to be 3522 kW/ CD 3914 kVA. As

per the terms and conditions in the ibid NOC, the developer was required to develop LD System at the estimated expenditure of Rs.2,19,65,470/- on its own or through PSPCL after depositing the estimated cost, subject to any change in cost of estimate as per rates prevailing at the time of execution of work.

1. The Electricity Supply to the project was to be given from a new 11

kV feeder emanating from 66 kV Grid Sub-station, South City, Ludhiana for which total cost of Rs.62,58,274/- was required to be deposited by the Petitioner. The cost of estimate was purely on tentative basis which was subject to actual sanction of estimate at the time of execution of work as per Regulation 9.3.6 of the Supply Code, 2014 effective from 01.01.2015 and as per policy / regulations of the PSPCL at the time of release of load.

1. The Supply was to be given to the Petitioner at a Single Point.

However, after obtaining the above NOC for the project as a whole, the Petitioner subsequently applied separately to Distribution Organization for a load of 578 kW/CD 634 kVA. The case was processed by the Respondent separately and load of 578 kW/CD 634 kVA was released from the existing system of PSPCL without creating a new feeder which was released vide Device Application No. 100002853826 dated 18.11.2016. The Part Load was released by tapping 11 kV Rajgarh feeder.

1. The Internal Audit Party, DS, Aggar Nagar Division (Special),

PSPCL, Ludhiana, pointed out certain discrepancies in the release of connection vide Memo No. 87 dated 09.01.2018, one of which pertained to non-deposit of estimated cost of new 11 kV feeder by the developer. As per the observations of the Audit Party, Single Point rebate was not admissible until the conditions of NOC were not complied with.

1. As there was no self-speaking instruction regarding the deposit of

charges of new 11 kV feeder as per the NOC, in case the consumer availed part load, a clarification was sought from CE/Commercial, PSPCL, Patiala by Dy. C.E., City West Circle, Ludhiana, vide Memo No. 8816 dated 27.08.2018. In response, office of the CE/ Commercial, Patiala clarified, vide Memo No. 569/ Dev Arjuna/RID 459 dated 31.08.2018, as under:

*a.) “As per terms of NOC, the estimated load of colony for Single Point Supply was proposed through new 11kV feeder emanating from 66kV Sub Station South City, Ludhiana for which an amount of Rs.62.58 lakhs was to be deposited by the Promoter.*

*b.) It has been informed that partial load of 578 kW/ CD 634 kVA was applied by Promoter for which feasibility was granted from existing 11kV Rajgarh Feeder. Promoter deposited connectivity charges for partial load amounting to Rs.5.37 lakh and also laid down the complete LD system. However, cost of new 11 kV feeder or BG was not deposited by the Promoter at the time of release of partial load.*

*c.) It is stated that as per the provisions of Supply Code, 2014, Reg. 8.4.3 Amendment- 4 (Issued on 17.05.2018) regarding release of partial load of Single Point consumers, in case an HT/EHT consumer requests for release of partial load/ demand at voltage lower than the specified voltage, such requests may be accepted by the licensee subject to deposit of cost of works for supply at the lower voltage and furnishing BG equivalent to 150% of the cost of HT/EHT Sub-station, HT/EHT line alongwith associated equipment and the cost of incomplete LD system.*

*As the Petitioner has to pay the cost as per Reg. 9.1.1, of supply Code-2014, the expenditure shall include the full cost of service line and proportionate cost of portion of main line including bay/ breaker up to the feeding Substation as per the Standard Cost Data approved by the Hon’ble Commission.*

*d) It is informed that as per CC No. 58/2016 dated 14.12.2016, all Single Point Supply consumers are required to become Distribution Franchisees by signing the Distribution Franchisee Agreement. The said provisions of Supply Code, 2014 have been incorporated in para-2 of the Draft Distribution Franchisee Agreement.*

*In view of above, it is clarified that before release of partial load, Promoter should deposit cost of works for release of partial load along with 150% BG towards cost of new 11kV feeder."*

1. Accordingly, a Notice for deposit of 150% BG was served to the

Petitioner vide Memo no. 2896 dated 13.09.2018.

1. The Petitioner was not satisfied with the Notice and filed a Petition

on 08.10.2018 in CGRF, Patiala, who, after hearing, passed order dated 31.12.2018(Page 2,Para 1).

1. The Petitioner did not agree with the decision of the Forum, and

preferred an Appeal in this Court and prayed that the order of the CGRF, Patiala, regarding construction of a separate 11 kV line from 66 kV South City Sub-station, Ludhiana before availing full load by the Petitioner may be set aside. The Petitioner stated that it was bound by Franchisee Agreement to get this line erected at the time of availing full load.

**3. 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 submitted the following consideration of this Court:

1. The Petitioner’s company was builder of Residential Colony,

Rajgarh Estate, Phase II, Village Birmi. A single point electricity connection of 578 kW, bearing Account No. 3015024281, was taken by the Petitioner under DS Category with contract demand (CD) of 634 kVA. All the electricity bills were paid regularly by the Petitioner.

**(ii)** The Petitioner had entered into an Agreement of Distribution Franchisee with the PSPCL and was supplying power to the residents of the said colony as per the terms and conditions of this Agreement.

**(iii)** As per Clause No. 15 of the Franchisee Agreement ibid, the Petitioner was entitled to a rebate of 12% on the electricity consumption charges, being a DS consumer. This rebate was allowed by the Honourable PSERC and was admissible also as per Condition No. 8.4 (vii) of Conditions of Supply. The Respondent had allowed 12% rebate to the Petitioner up to 31.03.2018, but the same was stopped w.e.f. 01.04.2018 without any notice. After repeated requests to know the reason, the Petitioner was asked by the AEE/Commercial, Aggar Nagar, Ludhiana, vide its memo no.2886 dated 13.09.2018, to furnish 150% Bank Guarantee towards cost of new 11 kV feeder and incomplete LD System as per sanctioned load of 3522 kW/3914 kVA so that the matter regarding Single Point supply rebate was decided.

**(iv)** Having failed to get the 12% rebate restored, the Petitioner filed its grievance before the CGRF, Patiala, who, after hearing, passed orders for restoration of the 12% rebate, but simultaneously directed that either the Petitioner erected the 11 kV feeder required for connectivity from 66 kV Sub-station, South City, Ludhiana to the premises or the Petitioner or deposit the estimated cost of the said feeder at current rates in accordance with the spirit of Clause 9.1.1.(ii) of Supply Code 2014.

**(v)** The Forum cited Regulation 9.1.1. (ii) of Supply code-2014 for erection of separate feeder. But provisions of this Regulation stood complied with fully as the Petitioner had already deposited full cost of 11 kV Line required for availing the **partial load allowed by the** **PSPCL**. Erection of separate 11 kV Line proposed for the full load will be got done at the time of availing the full load. This line, if erected now, will remain idle till the Petitioner availed full load. If this was necessary at the time of releasing partial load, there was no reason to ask the Petitioner to spend Rs 5.37 lac on link line.

**(vi)** In view of the position explained above, the order of the CGRF, Patiala regarding construction of a separate 11 kV Line from 66 kV South City Sub-station, Ludhiana before availing full load by the Petitioner may be set aside. The Petitioner was bound by the Franchisee Agreement to get its line erected at the time of availing full load.

**(b) Submissions of the Respondent:**

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

1. The Petitioner’s company was a builder of residential colony,

Rajgarh Estate, Phase-II, Village Birmi. A Single Point electric connection of 578 kW, bearing Account No.3015022428, was availed by the Petitioner under DS category with contract demand (CD) of 634 kVA.

1. The Petitioner had entered into an Agreement of Distribution

Franchisee with the PSPCL and was supplying Power to residents of the aforesaid colony as per terms and conditions of the said Agreement. As per Clause 15 of the Franchisee Agreement, the Petitioner was to get a rebate of 12% on electricity consumption charges being DS consumer. The rebate was allowed by the Honourable PSERC and was admissible also as per Condition No.8.4 (vii) of the Conditions of Supply. The Respondent had allowed 12% rebate to the Petitioner up to 31.03.2018 and stopped the same w.e.f. 01.04.2018. The Petitioner was served with a Notice, vide Memo No. 2896 dated 13.09.2018, to furnish 150% Bank Guarantee towards cost of new 11 kV Feeder and incomplete LD system as per sanctioned load of 3522 kW and CD of 3914 kVA, so that the matter regarding Single Point supply rebate be decided.

1. Originally, the Petitioner got NOC for load of 3522 kW and CD

as 3924 kVA by the Chief Engineer/Commercial, PSPCL for providing a separate 11 kV Line from 66 kV Sub-station, South City, Ludhiana.

1. The Petitioner requested for release of partial load of 571 kW

and CD of 634 kVA. The request was allowed and partial load was released, vide Device Application No. 100002853826 dated 18.11.2016, after due clearance of feasibility by CE/DS circle. The partial load was released by tapping 11 kV Rajgarh Feeder.

**(v)** The Internal Audit Party, DS Aggar Nagar Division (Special), Ludhiana pointed out certain discrepancies in the release of connection, vide Memo-No. 87 dated 09.01.2018, one of which pertained to non-deposit of estimated cost of new 11 kV Feeder by the Developer.

(**vi)** As per observations of the Audit Party, Single Point rebate was

not admissible until the conditions of NOC were not complied with. A clarification in the matter was sought from CE/Commercial, PSPCL, Patiala by the Deputy Chief Engineer, City West Circle, Ludhiana, vide Memo No. 8816 dated 27.08.2018 in response to which, office of the CE/Commercial, Patiala clarified vide Memo No. 569/DEV Arjuna/Rid 459 dated 31.08.2018 (Page 5&6, Para vii).

 **(vii)** As per the aforesaid clarification, a Notice for deposit of 150% Bank Guarantee was served upon the Petitioner vide Memo No. 2896 dated 13.09.2018.

**(viii)** The Consumer represented against the said Notice before the CGRF, Patiala who decided the matter vide order dated 31.12.2018 (Page 2, Para 1).

**(viii)** The order ibid of the Forum was a well-reasoned and speaking order after considering the written submissions, documentary evidence and the rules and regulations of the PSPCL.

**(ix)** In view of the submissions made, the Appeal may be dismissed.

**4. Analysis:**

The issue requiring adjudication is the legitimacy of the requirement of construction of a separate 11 kV feeder from 66 kV South City Sub-station, Ludhiana **before** availing full load for its residential colony project or deposit of the estimated cost of the said Feeder at present rates and furnishing of Bank Guarantee.

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

1. With a view to adjudicate the present dispute, a hearing was held in this Court on 18.04.2019, when the Representatives of both the sides reiterated the written submissions made in the Appeal/Reply. Petitioner’s Representative (PR) emphasised that No Objection Certificate (NOC) for load of 3522 kW and contract demand as 3914 kVA was given with the approval of the Chief Engineer, Commercial, PSPCL, Patiala for providing a separate 11 kV line from 66 kV Sub-station, South City, PSPCL, Ludhiana up to the premises of the Petitioner after deposit of Rs 62,58,274/- with the PSPCL. In the meantime, the Petitioner applied for partial load of 578 kW with CD as 634 kVA which was released by the Respondent **by tapping the existing line without taking any Bank Guarantee for the erection of independent line for the applied load of 3522 kW.**  The Petitioner deposited the amount of Rs. 5.37 lac as connectivity charges for availing the partial load. However, the cost of new 11 kV feeder or Bank Guarantee was not deposited by the promoter at the time of release of partial load. As per the provisions of Regulation 8.4.3 of the Supply Code-2014 (amended on 17.05.2018) regarding release of partial load of single point connection, in case, an HT/EHT consumer requested for release of partial load at voltage lower than the specified voltage, such request should be accepted by the Licensee subject to deposit of cost of work for supply at lower voltage and furnishing of Bank Guarantee equivalent to 150% of cost of HT/EHT Sub-station, HT/EHT line along with associated equipment and cost of incomplete LD System.

 During deliberations, the Court was apprised that the Promoter/Developer had already signed the Franchisee Agreement with the Licensee. Accordingly, the Respondent was directed to get the clarification from the Hon’ble PSERC, through Chief Engineer/ARR & TR, as to whether or not, before release of partial load, the Promoter/Developer had to deposit cost of works for release of partial load alongwith 150% Bank Guarantee towards cost of new 11 kV feeder. The Respondent was also directed orally and also vide e-mail dated 19.07.2019, to send the clarification as received from the Hon’ble PSERC by 23.05.2019 for deliberating the matter further on the next date of hearing (30.05.2019).

1. Sr. Executive Engineer, DS, Aggar Nagar Division (Special), PSPCL, Ludhiana intimated, vide e-mail dated 28.05.2019, that the clarification sought from Honourable PSERC was awaited due to which, hearing fixed on 30.05.2019 be adjourned for July 2019. Accordingly, next date of hearing was rescheduled and fixed for 25.07.2019 at 12.00 Noon.
2. In the meantime, Technical Advisor of this Court also requested the Joint Director (Regulation), PSERC, Chandigarh to provide clarification required for adjudicating the present dispute and was informed that PSPCL should, if it so desired, file a Petition before the Hon’ble PSERC for a decision on the issue involved.
3. On 25.07.2019, the Representatives of both the sides attended this Court and stuck to their respective point of view during deliberations.

I find that the Petitioner did not avail the full load in the first stage and applied for a fresh load of 578 kW/CD 634 kVA under RID No. 16485. NOC for the same was issued, vide Memo No. 8426/B-1/Aggar Nagar/DevArjuna dated 31.8.2016, by the Dy. CE/Op. City West Circle, Ludhiana and the connection was to be released from existing 11 kV Rajgarh Estate feeder. The Petitioner applied for fresh load of 578 kW/CD 634kVA under RID No. 16485 instead of availing partial load against NOC granted earlier against RID No 459 was for load of 3522 kW/CD of 3914 kVA. The Petitioner should have availed partial load/demand against this NOC issued by Chief Engineer, Commercial, PSPCL, Patiala as per Regulation 8.4.3 of Supply Code-2014. It is not understood as to under which rule the then Dy C.E/DS circle of the Respondent released partial load of 578 kW/CD 634 kVA from its laid out system and blocked the release of this amount of load to other applicants.

 The Respondent- PSPCL management should curb the practice of release of partial load by its field officers under a separate connection, as it can lead to malpractice and the partial load in such cases should be released only against NOC issued by the CE/Commercial after deposit of Bank Guarantee (BG) as per provision laid down in Supply Code-2014.

I have perused Regulation 9.1.1(ii) of Supply Code-2014 which states that where the load/demand required for DS/NRS category exceeds 100 kW/100 kVA, the applicant shall be required to pay the actual expenditure incurred by the distribution licensee for release of connection. For 11 kV consumers, the expenditure shall include the cost of individual service line and proportionate cost of common portion of main line up to the feeding S/Stn. including breaker as per the cost data approved by the Hon’ble Commission. As such, an amount of Rs.62,58,274/- was to be deposited by the Petitioner in the first instance as estimated cost of the 11 kV feeder from 66 kV S/Stn South City, Ludhiana to the premises of the Petitioner.

I have also gone through the provisions contained in Regulation 8.4.5 of the Supply Code-2014 (5th Amendment) which reads as under:

*“In case of residential colonies/commercial complexes/industrial estates covered under regulation 6.6.1 & 6.6.2, phase wise development of the load /demand as per requirement may be permitted by the licensee. However, in case, an HT/EHT consumer requests for release of partial load/demand at voltage lower than the specified voltage, such request may be accepted by the licensee subject to deposit of cost of works for supply at the lower voltage and furnishing a Bank Guarantee (BG valid for 3 years) from any bank registered and regulated by RBI equivalent to the estimated cost of HT/EHT sub- station, HT/EHT line along with associated equipment and the cost of incomplete LD system prevailing at the time of allowing connectivity, plus, expected % age increase in the cost of material & labour in the next 3 years as may be approved by the Commission on the basis of increase in the cost during the preceding 3 years. The amount of Bank Guarantee shall keep on reducing with the completion of remaining works of the sub-station/line & L.D system. After the consumer shifts to the specified voltage at a later stage, no credit of the works carried out for supply at lower voltage shall be given to the consumer.”*

**5. Conclusion:**

From the above analysis, it is observed that the Respondent is responsible for giving new DS category connection to the Developer of the residential project whereas the Developer was required to apply for full load (as per NOC issued by the Chief Engineer, Commercial, PSPCL) out of which, partial load should have been allowed, in terms of previsions contained in Regulation 8.4.3. of the Supply Code-2014, by taking Bank Guarantee equivalent to 150% of the cost of HT/EHT Sub-station, HT/EHT Line alongwith associated equipment and cost of in complete LD system. In the present case, the NOC for giving Supply to the residential project of the Developer is to be given by erecting separate 11 kV feeder from 66 kV Sub-station, South City, Ludhiana at an estimated Cost of Rs 62,58,274/-. Since the Petitioner has taken the partial load, hence, Bank Guarantee equivalent to 150% of this amount plus amount of the left over LD works to be laid by the Developer in its residential colony as per approved drawings was required to be taken by the PSPCL. **Hon’ble PSERC amended the Regulation 8.4.3 of the Supply Code-2014, vide Notification dated 28.01.2019 of the Government of Punjab, as per which, the Bank Guarantee valid for three years from any Bank registered or regulated by the Reserve Bank Of India (RBI) equivalent to the estimated cost of HT/EHT Sub-station, HT/EHT line alongwith associated equipment and cost of incomplete LD System prevailing at the time of allowing connectivity plus expected % age increase in cost of material and labour in next three years as may be approved by the Hon’ble Commission on the basis of increase in cost during the preceding three years. It will, therefore, be just and fair to take 100% Bank Guarantee for the leftover work from the Petitioner as per amended provisions of Regulation 8.4.3 of Supply Code-2014 as per Notification dated 28.01.2019 issued by the Govt of Punjab.**

**6. Decision:**

As a sequel of above discussions, the order dated 31.12.2018 of the CGRF, Patiala in Case No. CG-383 of 2018 is modified in terms of conclusion arrived at in Para 5 above.

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

**8.** The Respondent- PSPCL management should curb the practice of release of partial load by its field officers under a separate connection, as it can lead to malpractice and the partial load in such cases should be released only against NOC issued by the Chief Engineer/Commercial after deposit of Bank Guarantee (BG) as per provision laid down in Supply Code-2014.

**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)

August 08, 2019 Lokpal (Ombudsman)

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