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

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

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

 **APPEAL NO. 15/2019**

**Date of Registration : 18.02.2019**

**Date of Hearing : 09.05.2019**

**Date of Order : 28.05.2019**

**Before:**

 **Er. Virinder Singh, Lok Pal (Ombudsman), Electricity**

**In the Matter of :**

Yogesh Garg,

c/o Ganpati Creations,

K-65, Industrial Growth Centre,

Bathinda

 ...Petitioner

 Versus

Senior Executive Engineer,

DS Division ,

 PSPCL, Bathinda.

 ...Respondent

**Present For:**

Petitioner : Sh.Yogesh Garg,

 Petitioner’s Representative (PR).

Respondent : Er.Baljinder Singh,

 Asstt. Executive Engineer (Commercial-1),

 DS Division ,

 PSPCL, Bathinda.

 Before me for consideration is an Appeal preferred by the Petitioner against the order dated 24.01.2019 of the Consumer Grievances Redressal Forum (Forum) in Case No.CG-434 of 2018 deciding that :

“(a**)** *Petitioner be billed on the basis of NRS Tariff*

*applicable to the Petitioner from the date of checking by AEE / Enforcement-II, Bathinda vide ECR No. 03/2126 dated 02.10.2018.*

 ***(b)*** *Respondent is directed to get the revised A&A*

*Form completed from the Petitioner under NRS Category.”*

**2**. **Facts of the Case:**

 The relevant facts of the case are that:-

1. The Petitioner was presently having a Medium Supply (MS)

Category connection with sanctioned load of 33.500 kW and contract demand of 37.210 kVA for which, the metering was being done by providing Three Phase Four Wire, Whole Current, 10 - 60A, Energy Meter.

1. Initially, the Petitioner submitted Application & Agreement

(A&A) No.36648, dated 20.02.2009 for new connection under Small Power Industrial Category for 17.990 kW load by specifying nature of work as **“Embroidery Cloth”** and “Establishment of Embroidery Unit”. Thereafter, the Petitioner applied for extension in load from 17.990 kW to 33.500 kW on 01.08.2011 along with change in category of connection from Small Power (SP) to Medium Supply (MS) Industrial Category.

1. The connection was checked, vide ECR No. 03/2126 dated

02.10.2018, by the AEE/ Enforcement-II, PSPCL, Bathinda who observed that the connection was being used for embroidery machines. According to SV 1.1 of Schedule of Tariff of NRS Category connection, Tariff for NRS Category was to be charged to the Petitioner who was being charged at Medium Supply (MS) Industrial Category Tariff rates.

1. In view of the above checking, the account of the Petitioner was

overhauled from 12/2011 to 08/2018 and an amount of Rs. 1,89,132/- was charged to the Petitioner vide Supplementary Notice bearing No. 4466 dated 22.10.2018

1. Aggrieved with the above Notice, the Petitioner filed a Petition

dated 24.12.2018 in the Forum, who, after hearing, passed the order dated 24.01.2019. (Reference Page-2, Para-1).

1. Not satisfied with the decision of the Forum, the Petitioner preferred

an Appeal in this Court and prayed that relevant Industrial Tariff be ordered to be made applicable to the Petitioner and it should not to be forced to sign new A&A for billing its consumption under NRS Category. The Petitioner also prayed that the Respondent be restrained to ask the Petitioner to sign new Application & Agreement during the pendency of its Appeal as there were more than 5000 units of embroidery running in Punjab under SP/MS/LS Industrial category. The demand raised against the Petitioner clearly showed discrimination/biasedness with regard to its Unit .

**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 made the following submissions for consideration of this Court:

1. The Petitioner was presently having a Medium Supply Category

connection with sanctioned load of 33.500 kW and contract demand of 37.210 kVA. for which, the metering was being done by providing Three Phase Four Wire, Whole Current, 10 - 60A, Energy Meter.

(ii) Initially, the Petitioner applied for and obtained an electricity connection for the purpose of Textile Embroidery. At that time, the relevant Industrial Small Power/Medium Supply (SP/MS) Category Tariff was applied to its energy consumption.

(iii) Thereafter, the Petitioner applied for extension in load from 17.990 kW to 33.500 kW on 01.08.2011 along with change in category of connection from Small Industrial Power to Medium Supply Industrial Category.

(iv) The connection was checked by the AEE/Enforcement-II, PSPCL, Bathinda vide ECR No.03/2126 dated 02.10.2018.

(v) After the checking, the Petitioner was billed on the basis of NRS Tariff applicable to its connection from the date of the said checking.

(vi) The Petitioner was also served with a Supplementary Notice, vide Memo No.4466 dated 22.10.2018, to deposit Rs.1,89,132/- by overhauling the account of the Petitioner from 12/2011 to 08/2018 on account of difference of Tariff between MS Category and NRS category as NRS Tariff was applied to the Petitioner in view of the observations of the Enforcement, vide ECR No.03/2126 dated 02.10.2018, after checking by the AEE/Enforcement-II, Bathinda.

1. The Petitioner did not agree with the said Supplementary Notice

and filed a Petition in the Forum, who, after hearing, passed the order dated 24.01.2019.

1. The decision of the Forum was illegal and arbitrary as the Forum

could not direct the Petitioner to sign revised A&A under NRS category as the Respondent and Petitioner had already agreed for supply of power under Small Power/Medium Supply Industrial Category. At this stage, the Petitioner should not be asked to sign new A&A under NRS category as the original Agreement signed by both the parties i.e Ganpati Creations and PSPCL was binding on both the parties. The same was signed after going through all the departmental formalities, verification, checking and Verification of Test Report by the authorities of the PSPCL. Therefore, change of Tariff by the Licensee at this stage was illegal and arbitrary as the Petitioner had got installed SP/MS Category connection and started the business of Textile Embroidery and could not afford to pay NRS category Tariff.

1. The Petitioner’s Unit was a manufacturing unit carrying out the

manufacturing process i.e. textile embroidery in its premises. Manufacturing was a process of changing the nature of the product using raw material, labour, machinery and power to finish goods as per copy of Resolution dated 04.10.2013 (Page 11, 4.4) of Ministry of Textiles, Government of India describing the manufacturing nature of the Petitioner Industry.

1. As such, the action of the Respondent to apply Tariff as per

provisions of SV 1.1 to the Petitioner was not in order. The Schedule of Tariff under SV 1.1 was specifically applicable to NRS Categories which were Commercial Establishment and where some Electrical Appliances were installed for the purpose after then Lighting, Fans etc. were covered under NRS Category Tariff. Moreover, the Commercial Establishments were doing commercial business and some Electrical Appliances installed by them i.e. small lathe, welding set etc. to assist their business as additional accessories were part of their commercial activities / business whereas the Petitioner had intended to obtain electricity connection for doing manufacturing of Textile Embroidery which was not a Commercial Unit and in the case of the Petitioner’s manufacturing unit, the sole objective of the Petitioner taking the load was to manufacture the Textile embroidery.

1. There were more than 5000 units of Embroidery running in Punjab

under SP/MS/LS category. But in the case of the Petitioner’s Unit, discrimination/disparity/biasedness was clearly visible.

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

allowed.

1. **Submissions of the Respondent:**

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

1. The Petitioner was presently having an electricity connection

bearing Account No. 3002963228, under MS Industrial category with sanctioned load of 33.500 kW.

1. The connection of the Petitioner was checked, vide ECR No.03/2126

dated 02.10.2018, by the AEE/Enforcement-II, PSPCL, Bathinda, who observed that the connection was being used for embroidery by using embroidery machines. As per Clause SV 1.1 of Schedule of Tariff for Non Residential Supply (NRS), the connection was to be charged as per NRS Tariff, but it was being charged at MS Industrial Category Tariff. Therefore, the account of the Petitioner was overhauled from 12/2011 to 08/2018 and a sum of Rs.1,89,132/- was charged to the Petitioner and Notice bearing No.4466 dated 22.10.2018 was issued to the Petitioner.

1. In the Notice ibid, it was mentioned that the connection was being used for embroidery by running embroidery machines. As per provisions contained in Clause SV 1.1 of Schedule of Tariff for Non-Residential Supply (NRS), the connection was to be billed under Commercial category as the provisions clearly mentioned that *supply to non-residential premises such as business houses, cinemas, clubs, offices, hotels / motels, marriage palaces, departmental stores, shops, guest houses, restaurants for lights, fans, appliances like pumping sets & airconditioning units/ plants, lifts, welding sets, small lathes, electric drills, heaters, EV Charging Stations, battery chargers,* ***embroidery machines****, printing presses, ice candy machines, dry cleaning machines, power presses, small motors etc.*
2. Aggrieved with the said Notice, the Petitioner filed a Petition in the

Forum, who, after hearing, decided that the Petitioner be billed on the basis of NRS Tariff applicable to the Petitioner from the date of checking by the AEE/Enforcement-II, PSPCL, Bathinda and directed the Respondent to get revised A&A completed from the Petitioner under NRS category.

1. The Forum, in its order dated 24.01.2019, clearly held that the

Petitioner was to be billed on the basis of NRS Tariff from the date of checking dated 02.10.2018 by the AEE/Enforcement-II, PSPCL, Bathinda. Therefore, the application of NRS Tariff was correct, legal and as per PSPCL’s instructions.

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

dismissed.

**4.** **Analysis:**

The issues requiring adjudication are the legitimacy of the :

1. Billing of the Petitioner’s connection based on difference of Tariff between Medium Industrial Supply (MS) and Non-Residential Supply (NRS) Category Tariff from the date of checking dated 02.10.2018 by the AEE/Enforcement, Bathinda.
2. Issuance of directions for submission of revised Application and Agreement mentioning NRS (instead of MS) Category for the Petitioner’s Unit.

*The issues emerged in the case are deliberated and analysed as under:-*

**Issue No.(i)**

**(a)** In the present case, the Petitioner initially submitted Application & Agreement (A&A) No.36648, dated 20.02.2009 for new connection under Small Power Category for 17.990 kW load by specifying nature of work as **“Embroidery Cloth”** and establishment of  **“**Embroidery Unit”. Thereafter, the Petitioner applied for extension in load from 17.990 kW to 33.500 kW on 01.08.2011 alongwith change in category of connection from Small Power (SP) to Medium Supply (MS) Industrial Category. The connection was checked, vide ECR No. 03/2126 dated 02.10.2018, by the AEE/ Enforcement-II, PSPCL, Bathinda who observed that the connection was being used for embroidery machines. According to SV 1.1 of Schedule of Tariff of NRS Category connection, Tariff for NRS Category was to be charged to the Petitioner who was being charged at Medium Supply (MS) Category Tariff rates. In view of the above checking, the account of the Petitioner was overhauled from 12/2011 to 08/2018 and an amount of Rs. 1,89,132/- was charged to the Petitioner vide Supplementary Notice bearing No. 4466 dated 22.10.2018

**(b)** Petitioner’s Representative (PR) submitted that the decision of the

Forum was illegal and arbitrary as the Forum could not direct the Petitioner to sign revised A&A under NRS category as the Respondent and the Petitioner, by signing Application and Agreement, had already agreed for supply of power under Small Power/Medium Supply Industrial Category. At this stage, the Petitioner should not be asked to sign new A&A under NRS category as the original Agreement signed by both the parties i.e Ganpati Creations and the erstwhile PSEB (PSPCL) was binding on both the parties. The same was signed after going through all the departmental formalities, verification, checking and Verification of Test Report by the authorities of the PSPCL. Therefore, change of Tariff by the Licensee at this stage was illegal and arbitrary as the Petitioner had got installed SP/MS Category connection and started the business of Textile Embroidery and could not afford to pay NRS category Tariff. The Petitioner’s Unit was a manufacturing unit carrying out the manufacturing process i.e. textile embroidery in its premises. As such, the action of the Respondent to apply SV 1.1 Tariff to the Petitioner was not in order. **The Schedule of tariff under SV 1.1 was specifically applicable to NRS Categories which were Commercial Establishment and where some Electrical Appliances were installed for the purpose i.e. Lighting, Fans etc., were covered under NRS Category Tariff**. Moreover, the Commercial Establishments were doing commercial business and some Electrical Appliances installed by them i.e. small lathe, welding set etc. to assist their business as additional accessories were part of their commercial activities / business whereas the Petitioner had intended to obtain electricity connection for doing manufacturing of Textile Embroidery which was not a Commercial Unit and in the case of the Petitioner’s manufacturing unit, the sole objective of the Petitioner for load was for manufacturing process with regard to Textile Embroidery.

**(c)** The Respondent, in its defence, stated that in the Notice dated 22.10.2018 issued to the Petitioner by the Respondent, it was mentioned that the connection was being used for embroidery by running embroidery machines. As per provisions contained in Clause SV 1.1 of Schedule of Tariff for Non-Residential Supply (NRS), the connection was to be billed under Commercial category as the provisions clearly mentioned that *supply to non-residential premises such as business houses, cinemas, clubs, offices, hotels / motels, marriage palaces, departmental stores, shops, guest houses, restaurants for lights, fans, appliances like pumping sets & airconditioning units/ plants, lifts, welding sets, small lathes, electric drills, heaters, EV Charging Stations, battery chargers,* ***embroidery machines****, printing presses, ice candy machines, dry cleaning machines, power presses, small motors etc.*

**(d)** During the course of hearing on 09.05.2019, Petitioner’s Representative reiterated the submissions already made in the Appeal and also placed reliance on letter no. PSIEC/ Estate/ EO/ IV/ 12391 dated 08.01.2009 vide which, transfer of Plot No.K-65, in Industrial Focal Point, Industrial Growth Centre (IGC) Bathinda measuring 250 Sq.Yds in favour of the Petitioner on 99 years Lease-hold basis for the manufacture of Cloth Embroidery was allowed.

 Petitioner’s Representative (PR) was, then, directed orally and also in writing, vide Memo No.548/ OEP/ A-15/2019 dated 09.05.2019, to bring on record the requisite documentary evidence in support of its contention that some subsidy amount had been credited to its Bank Account. In response, the Petitioner sent e-mail daed 14.05.2019 forwarding therewith a copy of certificate dated 14.05.2019 from the State Bank of India, Main Branch, Bathinda certifying as under:

*This is to certify that the following TUFS (Technology Upgradation Fund Scheme) subsidy amounts had been credited to the following Term Loan accounts of Ganpati Creations.*

|  |  |  |  |
| --- | --- | --- | --- |
| *Sr.No* | *Account Number* | *Amount* | *Dated* |
| *1* | *30928338056* | *1,10,000/-* | *18.03.2010* |
| *2* | *30765336801* | *92,000/-* | *18.03.2010* |
| *3* | *31881024278* | *91,000/-* | *01.09.2014* |

 (e)For adjudication of the present dispute, it is necessary to peruse SV 1.1 of the Tariff Order Financial Year 2018-19, Schedule of Tariff- Availability which reads as under:

 *“****SV.1.1*** *This tariff shall apply to* ***non-residential******premises*** *such as business houses, cinemas, clubs, offices, hotels / motels, marriage palaces, departmental stores, shops, guest houses, restaurants* ***for*** *lights, fans, appliances like pumping sets & air conditioning units/ plants, lifts, welding sets, small lathes, electric drills, heaters, EV Charging Stations, battery chargers, embroidery machines, printing presses, ice candy machines, dry cleaning machines, power presses, small motors etc., Private hospitals (other than charitable), Private unaided educational institutions i.e. schools, colleges and universities, hostels and residential quarters attached thereto where such institutions / installations are not covered under Schedule DS / BS, Telecommunication /Cellular Mobile Phone Towers and all private sports institutions/facilities including gymnasiums”.*

 I find that the Forum erred in interpreting correctly the provision ibid and also in arriving at proper conclusion about the applicability of Tariff ( NRS) to the Petitioner’s Unit despite the fact that the Petitioner’s Embroidery Unit was an exclusive Embroidery Unit and that the Petitioner had not undertaken Embroidery work in any other Commercial Establishment/Unit dealing with other activities . If the provision ibid is carefully gone through, it would be seen that the very purpose of use of electricity for undertaking business activity by the Petitioner is not covered under Non Residential Supply Category.

I also find that Ministry of Micro, Small & Medium Enterprises (MSME) has also issued Udyog Aadhaar, bearing No. PB03A0003500 (being issued to Industries), to the Petitioner’s Firm whose major activity was manufacturing. Besides,, Punjab Small Industries and Export Corporation Limited (PSIEC), vide letter No. PSIEC/ Estate/ EO/IV/12391 dated 08.01.2009, allotted an Industrial Plot to the Petitioner in Industrial Focal Point, Bathinda for manufacture of **Cloth Embroidery** thereby categorising the Petitioner as an Industry**.** At the same time, the Petitioner has been exempted from No Objection Certificate by the Punjab Pollution Control Board (PPCB) being an Industry. Summarising that the Petitioner falls in the category of Industry for all intents and purposes.

 In view of the above, I am of the view that it is not fair and appropriate to treat the Petitioner’s Unit under Non Residential Supply (NRS) Category and charge the Petitioner, for the difference of Tariff between NRS and MS Category from the date of checking its connection on dated 02.10.2018, as thus the decision of the Forum dated 24.01.2019 needs to be set-aside.

 **Issue No.(ii)**

As per the foregoing discussion on Issue No.(i), the decision dated 24.01.2019 of the Forum relating to issuance of directions to the Petitioner to submit a revised Application and Agreement for its connection under NRS category is also without merit**,** hence, not sustainable.

**5. Conclusion**:

From the above analysis, it is concluded that :

1. The Petitioner is not liable to be charged the Tariff applicable to NRS Category connection and is required to pay Tariff applicable to MS Category connection as discussed in para 4 { Issue No(i)} above.
2. Revised Application and Agreement under NRS Category is not required to be submitted by the Petitioner in terms of provisions of SV 1.1 of the Tariff Order FY 2018-19, Schedule of Tariff – availability{ Issue No.(ii)} .

**6.** **Decision:**

**As a sequel of above discussions, the order dated 24.01.2019 of the CGRF, Patiala in Case No. CG- 434 of 2018 is set-aside. It is held that the Petitioner being essentially an Industry, MS Category Industrial Tariff, instead of NRS Tariff, shall be applied to the Petitioner’s Unit and its A & A form for MS Category need not be got revised as concluded in Para 5 above. Accordingly, the Respondent is directed to recalculate the demand and refund/recover the amount found excess/short, if any, after adjustment, without interest.**

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

**8.** 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)

May 28, 2019 Lok Pal (Ombudsman)

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