IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203

Judgment reserved on : 16.10.2024
Judgment pronounced on: 23.10.2024

(1) **CWP-2386-2013 (O &M)**

DAKSHIN HARYANA BIJLI VITRAN NIGAM (DHBVN), GURGAON

......Petitioner

VERSUS

ELECTRICITY OMBUDSMAN HARYANA AND ANOTHER

.......Respondents

(2) **CWP-19607-2013**

M/S RICO AUTO INDUSTRIES LTD. ......Petitioner

VERSUS

ELECTRICITY OMBUDSMAN HARYANA AND ANOTHER

.......Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. M.L. Sagggar, Senior Advocate with
Mr. Sunny Saggar and Ms. Armaan Saggar, Advocates
for the petitioner in CWP-2386-2013
and for respondent No.2 in CWP-19607-2013.

Mr. Kamal Sehgal, Advocate and
Mr. Ravinder Pankaj, Advocate
for the petitioner in CWP-19607-2013 and
for respondent No. 2 in CWP-2386-2013.

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VINOD S. BHARDWAJ, J.

Arising from a common order dated 20.09.2012 passed by the Electricity Ombudsman, both these writ petitions are being decided by common judgment. For the facility of reference, facts are however being referred to from ***CWP-2386-2013*** titled ***as "DHBVN versus Electricity Ombudsman Haryana and another".***

FACTS:-

2. The respondent No.2-M/s RICO Industries Ltd., hereinafter referred to as "RICO" had been released a sanctioned load of 9000 KW i.e. 9 MW with a contract demand of 10000 KVA i.e. 10 MW. The 'RICO' requested for the sanction of an extension of load from 9000 KW to 18000 KW i.e. 18 MW with a contract demand enhancement from 10000 KVA to 20000 KVA whereupon the sanctioned load of the company was enhanced. However, the sanctioned contract demand could not be released from 66 KV, Sub Station, Mehrauli Road, Gurgaon, hence, the contract demand of 18000 KVA equal to 18 MW was sanctioned, as a temporary arrangement, from the above said Sub Station. The applied contract demand of 20000 KVA equal to 20 MW was to be later supplied from the new 66 KV, Sub Station, Sector-38, Gurgaon, which was then under construction. The Construction of "Bay" at the 66 KV Sub Station, Sector-38, Gurgaon and erection and laying of 66 KV line from Sector-38 Sub Station to the premises of the company was to be undertaken before supply could be released from the said Sub Station. The cost of the construction of the Bay and the Service Line, for the direct supply of electricity from the Sub Station, Sector-38, Gurgaon was to be borne by RICO. It was at liberty to get the Bay constructed at his own costs or to deposit the cost with the petitioner-distribution licensee. It is alleged that no Bay or the transmission

Line had been constructed, at the instance of RICO to avail supply of the contract demand of 20000 KVA due to which only the contract demand of 18000 KVA equal to 18 MW was sanctioned from the 66 KV Sub Station at Mehrauli Road Gurgaon as a temporary arrangement.

3. It is further averred that to avoid misuse of electric supply by the industry, consumption of the electricity by the industrial concern is recorded through HT-Trivector electric meters. The main feature of the said electric meter is that it records the real time quantity of electricity supplied to the respective industry every 15 minutes. The data regarding the said supply remains stored in the electric meter for a certain duration. The above said HT-Trivector electric meters, popularly called as 'Consumer Energy Meter' (CEM) is an all electronic, solid state poly-phase energy meter which accurately measures all parameters of the supply, voltage, current, power factor, active load, reactive load, apparent load etc. in addition to active, reactive and apparent energies.

4. In order to check electricity supply to the industrial units, the distribution licensee has constituted a "Metering & Protection Team (hereinafter referred to as the 'M&P Teams'). The said teams check the consumption, its accuracy and other energy parameters as recorded in the CEM installed in the industrial unit apart from the monthly consumption reading taken by the office of the Sub Divisional Officer of the area. Whenever the M & P Team visits the industrial concern, a representative of the industrial concern is associated with the checking and the same is conducted in his presence. The proceedings thereof are recorded at the spot

and are to be signed by the representative so that no later dispute can be raised by the consumer. The results of the checking regarding accuracy and other energy parameters of the electricity connection are verified to ascertain whether the same are within the sanctioned load or reflect an excess load. The Sub Divisional Officer is also informed of the findings by the M & P Team for further necessary action.

5. It is stated that the record of the respective industrial concerns regarding their sanctioned load, in the office of the Sub Divisional Officer was being maintained manually and during the carry forward of the entry in the new register in the new ledger account of RICO, the contract demand in July, 2008 was inadvertently recorded as 20 MW instead of the actually sanctioned contract demand of 18 MW. It is further stated that in the meanwhile, to deal with the key consumers under the HT category a separate Key Consumer Group Division (KCG) was established in September-2009. The case of RICO company was transferred from the Sub Division to the said new KCG Division. Even though the reports of checking on 28.01.2010 were forwarded by the M & P Team to the office of KCG division, however, the bills continued to be issued regarding consumption of electricity considering the contract demand as 20 MW, as had been recorded in the ledger.

6. When the said fact came to the notice of the distribution licensee that the sanctioned contract demand was actually 18 MW and not 20 MW, the correction was accordingly made to the ledger account of the company. It then transpired that there was recording of excess load on

23.01.2010 at 9:30 A.M., when inspection of the premises was conducted in the presence of representative of the company and proceedings were duly recorded. Accordingly, a notice dated 06.05.2011, for assessment on account of Maximum Demand Indicator (MDI) penalty was sent to the RICO company specifying that in the month of July, 2008, the contract demand was inadvertently mentioned as 20,000 KVA instead of 18,000 KVA and that after the same, the consumption of electricity exceeded the contract demand since January, 2010 and the penalty on account of increase of MDI was accordingly conveyed from the month of January, 2010 to April, 2011 on increase of MDI and Peak Load Exemption Charges (PLEC) which is tabulated as under:-

MDI Penalty	Rs. 56028471.00
Difference of PLEC	Rs. 1436000.00
Less fixed charges charged extra	Rs. 1440000.00
Total Amount	Rs. 56024471.00

7. The RICO company was asked to pay the amount of Rs. 5,60,24,471/- and liberty was granted to raise objections, if any, to the demand so raised.

8. A reply dated 25.05.2011 was sent by the RICO Company claiming that it had already applied for extension of load from 9,000 KVA to 18,000 KVA with an enhancement in contract demand from 10000 KVA to 20000 KVA on 21.10.2005 which was also sanctioned on 24.02.2006. It was

also claimed that the temporary arrangement of electricity from the 66 KV Sub Station, Mehrauli Road, Gurgaon continued till completion of 66 KV Bay at 66 KV Sub Station, Sector-38, Gurgaon and the connecting transmission line. It was claimed by RICO Company that the entire cost for construction of Sub Station and Line had been deposited by it in November, 2008 with the distribution licensee and the extension of the sanctioned load of 18000 KVA equal to 18 MW was shifted to the 66 KV Sub Station, Sector-38, Gurgaon in the month of November, 2008 and thereafter a tripartite agreement was also executed on 03.08.2009. The bills were also being issued to the RICO company on the sanctioned load as 20,000 KVA and thus the sudden reduction of sanctioned load from 20 MW to 18 MW by the distribution licensee was arbitrary. The assessment was thus claimed to be illogical and unjustified and the demand was asserted or being liable to be set aside.

9. On the consideration of the reply, the order of assessment was affirmed and the objections were dismissed. The RICO company was asked to deposit the sum of Rs. 5,60,24,471/- vide order dated 10.06.2011. An appeal was also preferred against the said order of assessment which was also dismissed on 26.08.2011.

10. Aggrieved, the RICO company filed Civil Suit No. 328 dated 14.10.2011 in the Court of Civil Judge (Senior Division), Gurgaon claiming a declaration alongwith consequential relief of permanent injunction to the effect that the demand raised vide notice dated 06.05.2011 and 10.06.2011 is unjust and illegal. The said Civil Suit was contested by the petitioner-

distribution licensee by raising specific plea that the Director, Operation, Hisar had only sanctioned the extension of load from 9000 KVA to 18000 KVA but the sanctioned contract demand was inadvertently recorded as 20000 KVA instead of 18000 KVA. The load used by the company had been unauthorizedly exceeded against the contract demand by more than 5% limit of the sanctioned contract demand, therefore, a notice for assessment of loss caused to the petitioner distribution licensee was served upon the company. An objection to the jurisdiction of the Civil Court to entertain the suit was also raised. Issues were framed in the said Civil Suit on 21.10.2011.

11. Alongwith the plaint, an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 had also been filed by the RICO Company seeking an interim relief, which was decided by the Civil Court vide order dated 21.10.2011. It was noticed in Para No.8 of the said interim order passed by the Civil Court that service sanction order dated 29.05.2006 regarding the extension of load from 9000 KVA to 18000 KVA with contract demand of 10000 KVA to 18000 KVA was approved. The Civil Court observed that interest of justice would be met if the petitioner-Distribution Licensee would reconsider the reply filed by the respondent- RICO Company to the demand notice dated 06.05.2011 and then pass a fresh final order of assessment, on merits, after granting of opportunity of hearing. The application for temporary injunction was accordingly disposed of with the above direction. In compliance thereto, the respondent-RICO company was granted an opportunity to submit a detailed response and personal hearing was also granted. The record of the

department including the test report and the summary job order for release of extension of load from 9000 KVA to 18000 KVA with contract demand from 10000 KVA to 18000 KVA was got verified. It was also noticed that during the month of July, 2008, due to some clerical mistake, contract demand was mentioned as 20000 KVA instead of 18000 KVA in the manual ledger maintained by the Sub Divisional Officer. Even on the date of release of extension of load on 22.06.2006, the contract demand of 18000 KVA was mentioned clearly in the record. The M & P reports about consumption was being prepared in presence of representatives of RICO and the contract demand of 18000 KVA was mentioned very clearly. Hence, the respondent No.2-RICO was well aware of release of contract demand of 18000 KVA only. It was also noticed that respondent No.2 had exceeded the contract demand, in the month of January, 2010 i.e. on 23.01.2010 at 9:30 A.M. After recording of exceeded consumption beyond Contract Demand, the premises was inspected by expert wing of DHBVN on 28.01.2010. The violation thus was duly recorded and conveyed to the RICO-Company for the period from January, 2010 to February, 2011 on the basis of load survey taken from the CEM Meter for an interval of 15 minutes. The violations/excess consumption beyond the contract demand was noticed for a period of 07 months on the basis whereof the demand of Rs. 5,60,24,471/- was assessed. The order dated 09.12.2011 was accordingly passed. The respondent No.2 was accordingly directed to deposit the amount within a period of 07 days vide order dated 25.11.2011 conveyed vide letter dated 09.12.2011.

12. The respondent No.2- RICO Company thereafter filed an application under Section 86 (1)(a)(e) read with Section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 78 of HERC (Conduct of Business) Regulations, 2004 seeking to quash the order dated 25.11.2011. The said application was registered as case No. 33 of 2011 and was heard on several occasions. The Civil Suit, preferred earlier by the respondent No.2- RICO Company, was withdrawn on 16.01.2012 to pursue the other remedies. The Haryana Electricity Regulatory Commission finally held that the petition under Section 86 (1) (a) of the Electricity Act, 2003 was not maintainable as the same pertains to the power of Commission to determine the tariff while sub Section (e) of Sub Section 1 of Section 86 dealt with promotion of co-generation and generation of electricity. It was also observed that Section 91 (4)(f) of the Act read with Regulation 78 of the Regulations of 2004 dealt with the power of Commission to review which was not applicable. The petition was accordingly dismissed vide order dated 06.03.2012.

13. Respondent No.2-RICO Company thereafter filed a petition before the Consumer Grievance Redressal Forum, Hisar which was registered as case No. 546 of 2012 on 12.03.2012 seeking the following relief :-

> *i. Notice for short assessment raised by XEN, KCG Divn. DHBVN Gurgaon for Rs. 5,60,24,471/- on account of MDI penalty be quashed.*
>
> *ii. Even if it is concluded that the petitioner exceeded the sanctioned contract demand in any month, it*

should be reckoned from the month when notice of assessment was issued for exceeding the contract demand and MDI was reset to zero and not from any previous date.

iii. *The Nigam be restrained from disconnecting the electricity connection and/ or recovering these unlawful and illegal charges on a wrong pretext and save the petitioner company from this unnecessary financial burden.*

14. The submissions advanced on the above, by the respondent No.2- RICO Company are summarized hereinafter below:-

i. *Revised sanctioned letter was not issued, showing reduced contract demand of 18 KVA.*

ii. *No action was taken on the M&P reports of January & April, 2010. Had the notice been issued in Jan., 2010, the petitioner would have restricted its power drawl within the restricted contract demand till the matter was settled or used captive generators.*

iii. *The MDI was not reset to zero at each instance and assessment orders issued. No mention of exceeding MDI in M&P report of July, 2010. Monthly energy bills issued with fixed charges on CD taken as 20000 KVA. In tripartite agreement dated 03.08.2009 the CD was mentioned as 20000 KVA and mentioned the same in open access permission and approval of special dispensation during peak load hours.*

15. The Consumer Grievance Redressal Forum considered the rival submissions advanced on behalf of the parties and observed in its order that during the month of January, 2010, the contract demand reached at 19300 KVA which was more than 5% of the allowed limit of sanctioned KVA. Even on 28.01.2010, a similar phenomenon occurred. The report was duly witnessed by the Company representative and due to wrong entry in the ledger of the contract demand of 20000 KVA, the amount could not be charged in the monthly bill of January, 2010 and on subsequent occasions when it exceed due to the mistake in the ledger. Accordingly, a penalty of 25% SOP was imposed upon the respondent No2- RICO company. It was also recorded that the respondent No.2-Company had been fully aware of the contract demand being of 18000 KVA since it had applied for extension of contract demand from 18000 to 25000 KVA on 05.09.2008 which was sanctioned by the Chief Engineer/Operations Delhi on 27.01.2009. Hence, the respondent No.2- RICO Company cannot thus claim that a contract demand of 20000 KVA had been sanctioned in its favour in the year 2006 since had that been the case there was no occasion for the respondent-RICO company to refer to increase in the contract demand from 18000 KVA to 25000 KVA in the year, 2008. It was further recorded that under the voluntary disclosure scheme, the respondent No.2- RICO Company again declared its contract demand on 12.12.2011 as 18000 KVA. It was, on the abovesaid findings that the petition was dismissed by the Consumer Court after holding that case was one of unauthorized extension of load and in violation of the sale Circular No. D-43 of 2005, para (I) (C), as amended

vide Sale Circular No. D-37 of 2007. It was also held that the Forum did not have the jurisdiction to entertain the claim under the Haryana Electricity Regulatory Commission regulations.

16. Hence, the RICO Company preferred an appeal against the order of assessment before the Electricity Ombudsman. The said appeal was party allowed by the Electricity Ombudsman and it was held that the Distribution licensee was entitled to charge penalty against the respondent-company on account of exceeded MDI only for the month of January, 2010 and was further directed to refund the penalty amount charged against the respondent-Company on account of exceeded MDI beyond the period of January, 2010 to May, 2011. The surcharge on the disputed amount was also waived off. The operative part of the order passed by the Electricity Ombudsman, Haryana is extracted as under:-

> *From the contents of the appeal filed by the appellant, reply submitted by the respondent, examinations, cross examinations, discussions held during the hearings and the rejoinder submitted by the appellant the following facts are established:*
>
> *1) That the respondent sanctioned extended load of 18000 KW and extended contract demand of 20000 KVA to the appellant in February, 2006.*
>
> *2) That partial demand of 18000 KVA was allowed in June, 2006 vide SJO No. 85 dated 29.05.2006 keeping in view the constraints on the Badshahpur Mehrauli Road Line.*

3) *That after the sanction of partial demand of 18000 KVA, due entry of extended load and extended contract demand should have been made in the ledger by the concerned SDO so that monthly bills to the consumer could be issued in line with the extended load and extended contract demand. In the present case the extended contract demand of the appellant has been recorded is 20000 KVA in the ledger instead of 18000 KVA which was actually released during June, 2006. This non recording of actual released contract demand of 18000 KVA in the ledger is a gross negligency and deficiency in service on the part of the concerned SDO who is responsible for upkeep and maintenance of proper record of HT consumers and specially this consumer who is having a load to the tune of 20 MVA.*

4) *The monthly readings of the HT consumers are recorded by the concerned SDO and the bill to the consumers are issued on the spot on the date of reading itself on the basis of the consumption recorded and other para meters related with the bill. If the MDI exceeds the permissible limit, then the penalty on account of exceeding MDI is to be levied and the penalty amount is to be indicated and included in the bill to be issued to the consumer. The MDI is to be reset to zero.*

5) *In the present case the MDI at the consumer's premises exceeded more than 5% of the permissible limit on 23.01.2010. The meter installed at the premises of the appellant was*

checked on dated 28.01.2010 by the officers and the staff of the M&P Division, DHBVNL, Gurgaon. The observations made by M&P Division during checking on 28.01.2010 are as under:

Contract Demand as per Bill	*20,000 KVA*
Contract Demand as per M&P record	*18,000 KVA*
MDI	*19.02 MVA*
MDI (Cumm.)	*19.07 MVA*

Accuracy of the meter checked and found working within permissible limit.

Temper data taken in MRI

MDI found exceeded. Action may be taken as per Nigam's rules.

The copies of this checking report was sent to

1. SDO/JE (Op) DHBVNL

2. XEN (OP) DHBVNL

3. SE (OP) DHBVNL, Gurgaon

4. SE (M&P) DHBVNL, Gurgaon

5. Chief Auditor, DHBVNL, Hisar

No copy of the checking report was given or sent to the appellant.

The MDI was not reset to zero by the concerned SDO after the checking which was mandatory on the part of the SDO.

6) The subsequent checking was made by M&P Wing in April, 2010 and July, 2010. The observations made by M&P Wing during these checkings are as under:-

April, 2010

Contract Demand as per Bill	*20,000 KVA*
Contract Demand as per M&P record	*18,000 KVA*
MDI	*19.02 MVA*
MDI (Cumm.)	*19.07 MVA*

Visited the site for periodical checking and the accuracy of the meter checked and found working within permissible limit.

Load survey taken in CMRI

MDI found exceeded. So amount to be charged as per Nigam's rules.

July, 2010

Contract Demand as per M&P	*18,000 KVA*
MDI	*19.07 MVA*
MDI (Cumm.)	*19.01 MVA*

Checked the accuracy of the meter and found within limit.

Load survey taken in CMRI.

(Nothing was mentioned by the M&P wing in this report about MDI having been exceeded)

7) *The copies of the checking reports conducted by M&P Wing during April, 2010 and July, 2010 were sent to SDO/JE (Op) DHBVNL, XEN (OP) DHBVNL, SE (OP) DHBVNL, Gurgaon, SE (M&P) DHBVNL, Gurgaon and Chief Auditor, DHBVNL, Hisar. No copy of report was given and sent to the appellant. Proper action was required to be taken on the checking reports of M&P wing*

by Operation Officer's but none bothered to take action as per Nigam's Rules on the report of M&P Wing. Even the Chief Auditor, DHBVNL, Hisar to whom the copies of M&P report had been sent did not bother to ensure that the amount recoverable if any was actually charged by the field officers to the consumer or not. This clearly indicates pure apathy and inaction of the officers of the respondents-Nigam.

(8) Non Complying with the repeated observations of the M&P wing about taking action on MDI found exceeded in January, 2010 and then in April, 2010 as per Nigam's rules, charging amount as per Nigam's rules and non resetting the MDI to Zero when the MDI was found exceeded, was the severest gross negligency on the part of the concerned officers/officials of the Nigam and deserve to be suitably punished.

9) Not charging the penalty for exceeding MDI during January, 2010 and thereafter till May, 2011 on the exceeded MDI and not informing the consumer about MDI having been found exceeded on the very first defauit is the severe most negligency on the part of respondents. Having committed these repeated serious gross mistakes, the respondents cannot justify their inaction and then try to call these as correct.

10) The consumer/ appellant cannot be held responsible for repeated mistakes/ inaction of the DHBVNL officers/staff and to panelize the consumer to cover up their own mistake is not in *order at all. Rather it is a financial harassment and mental torture to the appellant.*

11) *The payment/demand raised by the respondents in May, 2011 for the exceeded MDI w.e.f January, 2010 to May, 2011 is purely an afterthought to cover up their own earlier mistakes and not based on actual facts. The actual fact is that the MDI should have been reset to zero in January, 2010 and penalty for exceeding MDI should have been levied in the bill of January, 2010 itself. If the appellant/consumer exceeded his contract demand more than the permissible limit after January, 2010 after levying of penalty on account of exceeded MDI and resetting the MDI to zero, he was liable to pay the penalty on account of exceeded MDI for every period in which the MDI exceeded. After conveying of the exceeding MDI to the appellant by the respondent in May, 2011. there has not been even a single instance when the appellant exceeded his MDI beyond 18000 KVA.*

12) *The appellant has got 100% backup of captive D.G sets having capacity of 20 MVA which are used in case of demand being higher than the sanctioned contract demand. Had the respondent been prompt in taking action against the appellant for exceeded MDI on the very first instance in January, 2010, the appellant would not have allowed MDI to exceed beyond permissible limit thereafter. There is no justification on the part of the respondents for not having taken action for a long period right from January, 2010 to May, 2011.*

17. Aggrieved of the said order dated 20.09.2012 passed by the Electricity Ombudsman reducing the demand for a period of one month only, the petitioner-Distribution licensee as well as the respondent No.2-Company are before this Court in these two writ petitions.

18. Written statement had been filed on behalf of respondent No.2-RICO Company wherein it is claimed that conversion factor 0.9 is used for changing KVA to KW. Hence, a connected load of 9000 KW of a consumer would equal to 10000 KVA. It is stated that vide sanction letter dated 24.02.2006, the sanctioned load and contract demand of the respondent No.2- RICO Company was approved as 18 MW and 20 MVA respectively with a rider that the same was to be made available after commission of new 66 KV substation, Sector-38, Gurgaon and upon transfer of load of the RICO Company to the said Sub Station. The said sanctioned load and the contract demand was repeatedly mentioned in the monthly bill issued in July, 2006 and subsequently upto the month of May, 2011. Hence, the distribution licensee was fully aware of all facts and it was not a mistake as claimed. It was further averred that the petitioner-distribution licensee cannot claim benefit of its own lapse more so when it was in the knowledge of all the facts and acknowledged the same on different occasions. The same are extracted as under:-

> *i) At the time of execution of tripartite agreement dated 03.08.09 with HVPN, which owned the power network at 66 KV voltage level, the sanctioned connected load /contract demand of the*

respondent was mentioned as 18 MW and 20 MVA respectively.

ii). At the time of conveying approval for Special Dispensation during Peak Load Hours on 17. 09. 2010. It was mentioned similarly.

iii). Except for report January 2010 and April 2010, the exceeding of MRI was not mentioned in M & P report 25.07.2010 and, thereafter. It can be concluded that all the concerned officers of the petitioner accepted the authenticity of the connected load /contract demand.

iv). That the respondent cannot be penalised for repeated in- action/non-action by the officers of the petitioner and made to suffer an unjustified demand of the more than Rs.5 crores. It needs mention that the respondent has a Captive Generating Capacity of 20 MW and the respondent had been making use of the same as and when there is no power supply from the petitioner for different reasons. It is also worth noting that the respondent has remained within the sanctioned contract demand when the petitioner raised the dispute in May 2011. It is natural to presume that had the petitioner raised the point in January 2010 immediately after the report by M & P team, the demand and consequent litigation would never have arisen.

v. while conveying the approval for Open Access in the Transmission and Distribution system of the

> *state on 11.04.2011, the sanctioned load was mentioned as 18 MW.*

19. It was admitted by the RICO Company that it had a sanctioned connected load of 9000 KW and contract demand of 10000 KVA prior to February, 2006. It had applied for extension load in November, 2005 from 9000 KW to 18000 KW and sanctioned contract demand from 10000 KVA to 20000 KVA which was duly sanctioned by the distribution licensee vide its sanction letter dated 24.02.2006 with a rider to allow the release of sanctioned load, after the establishment of 66 KV Sub Station in Sector-38, Gurgaon, and to grant temporary connection till then from the existing 66 KV Mehrauli road sub station. The cost of the Bay as conveyed, was also deposited by RICO Company and no further act was required to be discharged but it. It is claimed that the new Sub Station was also commissioned in November, 2007 and power supply to the industrial unit of the RICO Company commenced from the said Sector-38, Sub Station in November, 2008. Hence, the line constraint mentioned in the said letter was removed. It was averred that the contention of the distribution licensee that the Bay had not been constructed was wrong since it was in existence in the year 2009 and the increased power supply was being released to the RICO company from the said Sector 38, Sub Station, Gurgaon since November, 2008. It was also averred that even though a junior level employee of the company was available at the time of M & P Checking, however, no inspection report had been handed over to the said employee. That averments contained in the writ petition were also denied and it was

submitted that the Sub Divisional Officer of the petitioner Corporation was required to take various steps on detection of the violation of the MDI (Maximum Demand Indicator) which he did not. The required steps to be taken and which he has failed to do are extracted as under"-

> *i) To re-set the MDI to "zero" so that next instance of exceeding of MDI is recorded thereafter.*
>
> *ii) To issue a notice of exceeding the MDI to the defaulting consumer.*
>
> *iii) To charge penalty @ 25% of the monthly bill in case the MDI exceeds beyond 5% of the Sanctioned Contract Demand.*

20. It was thus submitted that the writ petition filed by distribution licensee was liable to be dismissed and the ***CWP-19607-2013*** titled as ***"M/s Rico Auto Industries Ltd. versus Electricity Ombudsman Haryana and another"*** filed by the respondent No.2-Company, deserved to be allowed as the demand of the distribution licensee for allegedly exceeded MDI for January, 2010 i.e. even for one month has also been wrongly allowed.

21. Replication to the written statement was filed on behalf of the distribution licensee controverting the averments.

ARGUMENTS ON BEHALF OF THE PETITIONER

22. Learned Counsel for the petitioner has argued that the Electricity Ombudsman, Haryana fell in an error in partly allowing the appeal and set aside the assessment and restricted it for a period of one month only for the reasons mentioned in Para 27 of the order by recording alleged lapses on the part of the distribution licensee notwithstanding that in

the subsequent para of the order the Ombudsman specifically recorded that the distribution licensee did not dispute the enhancement of contract demand of 20000 KVA till May, 2011 and it was only after the above said error was detected that the need for carrying out the correction arose. Hence, the lapses up to May, 2011 are inconsequential and could not be countenanced as reasons to set aside a decision of the assessing officer since the earlier actions and bills raised were based on a presumption of the sanctioned contract demand of 20000 KVA. It is also argued that the Electricity Ombudsman was also in an error in directing the distribution licensee to charge the penalty on account of exceeded MDI only for one month i.e. January, 2010 and waiving of the penalty for the subsequent period alongwith surcharge which amounts to giving a premium to a violator. It was emphatically argued that when the new ledger of the Account of respondent No.2-Company was prepared in July, 2008, the sanctioned contract demand was inadvertently recorded as 20000 KVA and that the above said inadvertent mistake continued to reflect as such. On the said mistake in the billing system being detected, the demand had been rightly raised and that the Ombudsman erred in not accepting the genuine mistake on the part of the distribution licensee.

ARGUMENTS BY RESPONDENT No.2-RICO

23. Counsel for the respondent No.2- RICO Company on the other hand, has vehemently argued that the RICO-Company had initially been released a sanctioned load of 9000 KW with a contract demand of 10000 KVA and in its application, the sanctioned load was increased from 9000

KW to 18000 KW and the contract demand was increased from 10000 KVA to 20000 KVA on 24.02.2006, subject to certain conditions detailed out in the said sanction letter, which also included demand of statutory charges and expenses. As a stop gap arrangement, the supply was made through the 66 KV, Mehrauli Road, Sub Station and that the supply of electricity was to be eventually released from the 66 KV Sub Station at Sector-38, Gurgaon, which was then under construction and was completed later. The requisite statutory charges and expenses were duly deposited by the RICO Company its load was shifted to the said Sector-38, Sub Station in November, 2008, after its completion. He contends that even though, the contract demand was sanctioned at 20000 KVA in favour of the company as per the letter dated 24.02.2006, yet, the release of load was limited to a contract demand of 18000 KVA, as an interim arrangement and on account of the limited capacity of 66 KV Sub Station, Mehrauli Road, Gurgaon. The extension of the contract demand was thus scaled down to the extent of capacity of the existing system. It was thus not a case of the contract demand having been sanctioned to 18000 KVA but only its temporary usage was limited to 18000 KVA so long as the demand was being met from the 66 KV Sub Station, Mehrauli Road, Gurgaon and that upon shifting of the load of the RICO Company from the above said Sub Station to Sector-38, Gurgaon, the said restriction on the contract demand ceased to exist and by necessary implication, the contract demand was to be deemed as 20000 KVA in terms of the approval letter dated 24.02.2006. He further submits that the RICO company had deposited a sum of Rs.37.486 lakhs towards creation of a new

66 KV Bay for the 66 KV Sub Station, Sector-38, Gurgaon. The Chief Engineer planning and Commission of the distribution licensee confirmed vide letter dated 19.06.2006 that the ultimate contract demand of the RICP Company was to be 20000 KVA on connecting the premises to be 66 KV Sub Station at Sector-38, Gurgaon. After completion of the said Sub Station, the RICO Company requested the SE/T&S, HVPN, Gurgaon for shifting its supply from Mehrauli Road Sub-Station to Sector-38, Gurgaon Sub-Station which was eventually done in November, 2008 and as such, the system constraint limiting the sanctioned contract demand ceased to exist. The RICO Company was thereafter entitled and free to utilize its total sanctioned contract load of 18000 KW and contract demand of 20000 KVA instead of 18000 KVA. He further submits that before shifting of its load to Sector-38 Sub Station, the RICO company was required to enter into tripartite agreement with the State transmission licensee as well as the distribution licensee which was duly executed on 03.08.2009 and there is a specific reference to the contract demand of 20000 KVA therein as well. He further argues that Superintending Engineer/Operations of the distribution licensee allowed dispensation of 40% sanctioned contract demand i.e. 8000KVA as special dispensation during peak load hours/load restriction for a period of one year i.e. up to 16.09.2011 which show that in the year 2010 itself the officers of the distribution licensee admitted the contract demand of the company as 20000 KVA. Regular monthly bills from 2010 to May, 2011 were being sent reflecting the contract demand of the petitioner as 20000 KVA and payments were made accordingly without raising any dispute. If

the contract demand was 18000 KVA then the special dispensation of load during peak look hours would have been 7.2 MV instead of 8000 MVA, as sanctioned by the authorities themselves. It is also contended that the RICO-company had also been charged by the distribution licensee for fixed charges corresponding to the contract demand of 20000 KVA since October, 2010 and till introduction of the new traffic. Hence, the distribution licensee benefited itself by leveling the tariff charge on the contract demand of 20000 KVA alongwith the fixed charges and said aspect is now being sought to be disputed and that the same cannot be permitted.

24. No other arguments have been raised by the parties.

25. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition.

26. Before proceeding further into the matter, it would be essential to refer to the sanction letter dated 24.02.2006 whereby the sanction was granted for extension of load from 9000 KW to 18000 KW with a contract demand of 10000 KVA to 20000 KVA. The relevant extract of the said reads thus:-

From

GM/Commercial,
DHBVNL Hissar.

To

The Executive Engineer,
City Division, DHBVN, Gurgaon.

Memo No Dated: 24.02.2006

Subject: Sanction for extension of load 9000 KW to 18,000 KW with Contract Demand 10,000 to 20,000 KVA on 66 KV Side to Rico Industries Ltd Delhi - Jaipur Highway Gurgaon.

Sanction for extension of load 9000 KW to 18,000 KW with contract demand 10,000 kVA to 20,000 kVA on 66 KV side to Rico Industries Ltd Delhi --Jaipur Highway Gurgaon under industrial subdivision DHBVN, Gurgaon is hereby accorded as per approval accorded by Director /Operation DHBVNL, at NP 4 in file No. SE/Commercial No. 342/05 subject to the following conditions: -

1. *In view of Chief engineer/Planning and Commercial HVPN Panchkula memo number 339/CH.120/406/K 130 dated 3.2.2006, the additional load for the time being is hereby allowed from 66 KV substation Maruti Road Gurgaon as a temporary arrangement.*

2. *As a final arrangement, the load will be supplied from 66 KV substation sector 38 where, one circuit of 66 KV sector 38 Rico B. C. Line will be dedicated to the load of the consumer while the other sector shall be used by HVPNL at his discretion, as and when the load demands.*

3. *Construction of 66 KV S/C line on D/C towers from 66 KV substation sector 38 Gurgaon to M/S Rico Auto Industries Ltd with 0/.2 sq. ACSR by the firm (M/S Rico Auto Industries Ltd). The path route of proposed 66 AKV NINE, SECTOR 38 Gurgaon to to M/S Rico Auto Industries Ltd shall have to argument present feeding arrangement on single rail pole to power structure from*

0.2sq ACSR from T point (connectivity from sector 38 substation up to firms premises.)

4. *Creation of one number 66 KV bay at 66 KV substation sector 38 Gurgaon for accommodating above line as deposit work of to M/S Rico Auto Industries Ltd.*

5. *The above approved works shall be executed by the firm matching with the commissioning of 66 KV substation Sector 38 Gurgaon, targeted in June 2006.*

6. *Before execution of works M/S Rico Auto Industries Ltd shall sign the agreement among DHVBNL firm and HVPN Re: commercial aspects, involving security, contract demand, deposit work post, ACD revenue collection, joint meter reading on regular basis, maximum/minimum load on feeder, extent of user system/feeder at present or in future."*

27. It is evident from perusal of the above that an extension of the contract demand had been approved from 10000 KVA to 20000 KVA alongwith sanctioned load of 9000 KW to 18000 KW and that as a temporary measure the supply was being released from the 66 KV Sub Station, Mehrauli Road, Gurgaon and as a final arrangement to be supplied from the 66 KV Sub Station, Sector-38, Gurgaon where one circuit was to be dedicated for the RICO-company. It is also not disputed that the Sector-38, Sub Station was commissioned in November, 2007 and that electricity supply of the RICO Company was shifted to Sector-38 Sub Station, Gurgaon in November, 2008. The tripartite agreement, reflecting the contract demand of 20000 KVA was also mentioned in the tripartite agreement dated 03.08.2009. The claim of the petitioner that all statutory charges and

advanced consumption deposit was made by the respondent-Company has also not been disputed by the distribution licensee. It is further evident from a perusal of memo No. CH-17/SE/Commercial/342/05 dated 12.05.2006 issued by the Director, Operations/UHBNL, Hisar to the Chief Engineer/Operations, HVPNL, Delhi that due to capacity limitations of 66 KV Sub Station, Mehrauli Road, Gurgaon, the extension in the load of RICO company was scaled down to the extent of the existing system could service. Hence, additionally the contract demand load upto 8 MVA equal to 8000 KVA was held to be safely fit from the existing system, hence, the release of an additional 08 MVA contract demand was accorded. The said letter is extracted as under:-

> *"From*
>
> *The Director/operations,*
> *DHBVNL, Hisar.*
>
> *To*
>
> *The Chief Engineer/Op*
> *DHBVNL, Delhi*
>
> *Memo No. CH-17/SE/comm. /342/05 dated 12/05/06*
>
> *Sub: Release of an additional load of 9000 Kw of industrial load on 66 kv with contract demand of 20,000 KVA M/s Rico Auto Industries Ltd. Delhi Jaipur highway Gurgaon.*
>
> Ref: T/O consent No. C1-9/cool/342/05 dated 24-2-06.
>
> *This has reference to your no. CH-90/W-DRW-611 Gurgaon dated 22. 11. 2005 vide which the request of M/S Rico auto for extension of load from 10 MVA to 20*

MVA with corresponding increase in the maximum demand was forwarded to this office for sanction. The matter was taken with HVPNL to examine the system para meters to take on this additional demand whereupon the HVPNL responded by saying that the load for the time being can be met from the 66 KV Mehrauli Road though they would eventually like to shift the road to a new 66 KV substation under construction in sector 38. They also proposed certain investment by M/S Rico Auto for catering to their load from the new substation i.e. the sector -38.

M/S Rico thereupon requested that the extension in their load be scaled down to the extent the existing system can service.

A perusal of documents furnished with the application indicate that a load up to8 MVA can safely be fed from the existing system without any augmentation. As such, approval for the release of additional 8 MVA is hereby accorded.

Director/operations
DHBVNL, Hissar

28. The said decision stand reiterated in the letter bearing Memo No. CH/133/406/K-130 dated 19.06.2006 sent by the Chief Engineer (Planning & Commercial) to the Superintending Engineer, HVPNL. The relevant extract of the same reads thus:-

"Subject: Extension in load of M/S Rico Auto from 9000 KW with corresponding increase in the contract demand to 20,000 kVA.

> *This office had approved supply of increased demand in power to M/S Rico Auto from under construction substation, sector 38 Gurgaon as a long-term arrangement, but as a temporary measure. They were allowed to continue to draw their demand through existing arrangement i.e. Mehrauli Road over the single rail pole line. Subsequently, DHBVN allowed additional eight MVA load to M/S Rico Auto on the existing line itself vide letter No. CH-17/SE/commercial/342/05 dated 12. 05. 2006 at confirmed through their letter No. CH17/SE/commercial/342/05 dated 12. 05. 2006 at confirmed through their letter no. CH-18/SE/commercial/342/05 dated 12.05.2006."*

29. The claim of the RICO company about having deposited the monthly minimum charges and all other statutory dues and expenses on a contract demand of 20000 KVA since 2006 have remained uncontroverted.

30. In the said background, it stands established that the claim of the distribution licensee that only a contract demand of 18000 KVA was sanctioned vide letter dated 24.02.2006 is factually incorrect. Invariably, the said contention has been raised by the distribution licensee by a mis-applied interpretation of the letter dated 12.05.2006 whereby the RICO-Company accepted the request to scale down its contract demand so as to prevent any damage to the existing infrastructure of 66 KV Sub Station, Mehrauli Road, Gurgaon. Such an act cannot be construed as an alteration of the sanctioned load and contract demand of 20000 KVA respectively to 18000 KVA. I am further strengthened in the above said view by the reason that the respondent-Company continued to pay all statutory charges as per the tariff

approved by the appropriate Commission and as applicable against contract demand of 20000 KVA even though it was using a scaled down contract demand.

31. Further, a perusal of the sanction letter also clearly shows that the said sanction, while approving the contract demand to 20000 KVA and sanctioned load of 18000 KW agreed to provide the sanctioned load from the existing infrastructure till the regular Sub Station was commissioned in Sector-38, Gurgaon and that the scale down of the contract demand to 18000 KVA was only as a temporary measure. It is further evident from the correspondence dated 12.05.2006 sent by the Director (Operations), DHBVNL to the Chief Engineer, DHBVNL that the RICO Company had proposed investment for catering to their load from the new Sub Station in Sector 38, Gurgaon and that upon transfer of the electricity supply of the respondent-company to the 66 KV Sub Station in Sector-38, Gurgaon, all the terms and conditions, as contained in the sanction letter dated 24.02.2006, stood complied with. It is not the case of the distribution licensee that any of the other conditions set out in the letter granting sanction to an extension of load and contract demand on 24.02.2006 had not been met or fulfilled. It also needs to be kept in mind that the standard conversion formula is a multiplication of .9 while converting a load from KVA to KW. It would be inherently absurd and contradictory on the part of the distribution licensee to contend that even though the sanctioned load was 18000 KW but its contract demand was also 18000 KVA. The corresponding contract demand to a sanctioned load of 18000 KW has to be 20000 KVA. The undisputed

documents of the distribution licensee rather correspond to the explanation put-forth by the respondent-Company of having scaled down its consumption within the augmentation limits of the 66 KV Mehrauli Road, Sub Station till transfer of its load to the 66 KV Sub Station at Sector-38, Gurugram.

32. Once the abovesaid aspect is accepted, the order passed by the Electricity Ombudsman partly allowing in the claim of the RICO-Company and upholding levy for a period of one month becomes liable to be set aside since the assessment has been made on a consumption of 19300 KVA which was stated to be more than 5% of the allowed limit of sanctioned load and the same had been derived by treating the sanctioned contract demand at 18000 KVA in January, 2010. However, in case, the entire chronology is seeing from the sanction granted on 24.02.2006 followed by the letter of 12.05.2006 whereby the respondent-Company limited its consumption to 18000 KVA taking into consideration the capacity of the 66 KV Sub Station and then followed by the commissioning of 66 KV Sub Station, Sector-38, Gurgaon in November, 2007 and eventual transfer of load of the respondent Company to the said Sub Station in November, 2008 followed by the execution of the tripartite agreement in the year 2009 and all charges be demanded by the distribution licensee by treating the contract demand at 20000 KVA, it has to be accepted that the respondent-Company was entitled to the contract demand and consume its contracted capacity of 20000 KVA, as sanctioned by the competent authority and as agreed in the tripartite agreement. Hence, the consumption of 19300 KVA noticed on 23.01.2010,

which is being construed being beyond 5% of the contract demand computed at 18000 KVA, is in fact fallacious since the contract demand has to be deemed as 20000 KVA after the transfer of load to the 66 KV Sub Station, Sector-38, Gurgaon.

33. The above said understanding between the parties was clearly reflected in their contemporary conduct and correspondence and that it cannot be presumed to be a mere mistake in the ledger to mention that the contract demand was 20000 KVA rather, it was a correct incorporation of the contract demand in the ledger. Once the contract demand is perceived as 20000 KVA, the consumption of 19000 KVA cannot be held to be in excess of the contract demand.

34. I am thus of the view that the Electricity Ombudsman fell in an error in not appreciating the entire contemporary correspondence in its true perspective. **The *CWP-19607-2013*** titled as ***"M/s Rico Auto Industries Ltd. versus Electricity Ombudsman Haryana and another"* is accordingly allowed and the order dated 20.09.2012 passed by the Electricity Ombudsman allowing the DHBVNL to demand the MDI one month i.e. for January, 2010 is set aside.** Consequently, the assessed demand conveyed by the DHBVNL vide the impugned short assessment is also set aside. **The *CWP-2386 of 2013* titled as *"Dakshin Haryana Bijli Vitran Nigam (DHBVN), Gurgaon versus Electricity Ombudsman Haryana and another"* filed by the distribution licensee is accordingly dismissed.**

35. The distribution licensee is further directed to adjust the amount deposited by the respondent-Company against the above said short

assessment under the threat of disconnection or pursuant to any interim order passed by the Court against the bills of the respondent No.2-RICO-Company within a period of four months of receipt of certified copy of this order.

Ordered accordingly.

(VINOD S. BHARDWAJ)

OCTOBER 23, 2024 **JUDGE**

Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No