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

Reserved on: 07.03.2024
Pronounced on: 09.12.2024

1. LPA-509-2015 (O&M)

M/s Malwa Cotton Spinning Mills Ltd and others
...Appellants

Vs.

Punjab State Power Corporation Ltd. and another
...Respondents

2. LPA-510-2015 (O&M)

M/s Malwa Cotton Spinning Mills Ltd and others
...Appellants

Vs.

Punjab State Power Corporation Ltd. and another
...Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Puneet Jindal, Sr. Advocate with
Mr. Arshnoor Singh Chugh, Advocate
for the appellant(s).

Mr. Sapan Dhir, Advocate
for respondent No.1.

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<u>DEEPAK MANCHANDA, J.</u>

For the adjudication of the controversy involved in the present two similar appeals, i.e. LPA No.509 of 2015 and LPA No.510 of 2015, facts are being taken from LPA No.509 of 2015.

2. Through this intra-court appeal, the appellants have assailed the impugned judgement dated 24/02/2015 passed by a learned Single Judge of this Court, whereby respondent No.1, i.e. Punjab State Power Corporation Ltd., had filed a CWP No.27236 of 2013 challenging the order dated 20/08/2013 by respondent No.2, i.e. the Ombudsman, Electricity, Punjab, wherein respondent No.2 decided that the demand made on the appellants requiring them to pay the Monthly Minimum Charges (MMC) for the supply of electricity through 11 kVA electricity supply is not tenable. The learned Single Judge vide the impugned judgment dated 24.02.2015 modified the said order dated 20/08/2013 passed by respondent No.2 by upholding the contentions of respondent No.1 regarding its entitlement to levy Monthly Minimum Charges (MMC) for each industrial consumer, who were the constituent members of the cluster formed by the appellants.

3. The outlined facts emanating from the record are that the appellants filed an Appeal No.21/2013 before respondent No.2 challenging the order dated 13/09/2012 passed by the Grievances Redressal Forum, upholding the decision dated 26.10.2010 of the Zonal Dispute Settlement Committee (ZDSC), (both Public Grievance Authorities constituted by respondent no.1) confirming levy of Minimum Monthly Charges (MMC) against the appellants for the period 09/2009 to 11/2009 amounting to Rs.8,32,180/- and for the period 02/2006 to 08/2009 amounting to Rs.1,15,30,374/-. It was the pleaded case of the appellants before respondent No.2 that the appellants and its other sister companies were having separate industrial connections of 11 KV supply voltage and under the Policy of then PSEB (now PSPCL) and that the appellant and its other allied Units had applied to form a cluster substation with 66 KV

supply voltage. After due approval, an agreement dated 16/11/2000 was executed between the constituent Units of the appellant and respondent No.1 (the then PSEB). Sub-clause (c) of Clause-3(vi) of the said agreement, which deals with the issue of metering, describes that the reading of 66 KV and 11 KV meters installed on individual feeders would be taken by respondent No.1 along with the representatives of the cluster of consumer/CBC and the energy charges worked out based on said meters installed on 66 KV supply points would be apportioned in the ratio of consumption recorded on individual 11 KV supply points. Further, the maximum demand surcharge and power factor surcharge, if any, would be levied to individual consumers based on readings recorded on 11 KV feeders. The said electric connection was made operational in August/September 2011 and after inception of the cluster substation, as per records, a single bill at 66 KV meter used to be raised in light of sub-clause 3(vi)(c) of the agreement, which was always paid by appellant No.1 being the cluster head. Subsequently, appellant No.2 joined as the 4th constituent of said cluster substation after completing due formalities with PSEB and based on cluster CD, the requirement of MMC was being fulfilled where a common account number, i.e. R-55-MW 01-00017 was also issued to the cluster in the name of appellant No.1. Initially, the load was sanctioned as 7009.815 KW and then 7450 KVA. It is to be noted that appellant No.1 received a bill dated 14/12/2009 wherein instead of charging MMC on the CD (contract demand) of 66 KV meter, which had been the practice since 2001, surprisingly respondent No. 1 (the then PSEB) charged MMC against each constituent of the cluster as a separate unit. It was also pleaded through appeal that two constituent units were treated as individual units for separate MMC qua their Contract Demand (for short 'CD'), and the cluster with allocated Account No.LS–17 had been consuming more than the minimum energy for the entire cluster itself; hence no MMC could have been levied against any of the constituent separately. Thereafter, a dispute was raised before the Zonal Dispute Settlement Committee (ZDSC) constituted by respondent No.1 because before changing the conditions of supply and before levying MMC qua each constituent separately rather than the entire Cluster, no show cause notice or opportunity of hearing had been afforded to appellant No.1. By way of Appeal No.21/13 filed before respondent No.2, appellants raised a challenge in respect of the demand of ₹8,32,180/- towards MMC for the period 09/2009 to 11/2009 and a demand of Rs.1,15,30,374/- for the period 02/2006 to 08/2009, which was decided by respondent No.2 vide order dated 20.8.2013 by partly allowing the same in favour of the appellants.

4. Aggrieved by the order dated 20/08/2013 passed by respondent No.2, respondent No.1 challenged the same through CWP No.27236 of 2013. However, the learned Single Judge modified the said order vide impugned judgement dated 24/02/2015, which has now been challenged by way of the present intra-court appeal(s).

5. Learned Senior counsel for the appellants contends that the learned Single judge misinterpreted the agreement entered into between the parties, which should have been read along with condition No.2 incorporated in the feasibility clearance granted by respondent No.1 (the then, PSEB) vide it's letter dated 06/11/2000 wherein it is categorically mentioned that metering of the entire cluster substation would be done at *"point one only for all constituent of the cluster substation*". Learned Senior counsel further contends

that the learned Single Judge, while noticing clause(vi) in the agreement, failed to consider clauses (a) and (g) and has emphasised that at no point of time it was found that the billing at single-point is unworkable. Learned senior counsel has contended that the monthly bill to the appellants categorically contained a declaration about MMC on the bills itself, which was specifically mentioned based on 66 KV sub-station and the total sanctioned load/contract demand, but the learned Single Judge has wrongly interpreted that individual constituent members are liable for MMC in respect of their connected loads. He has further argued that the appellant installed the cluster substation at their own expense and has referred to Regulation 5.7 of Electricity Supply Regulation (2005) and a letter dated 22/02/2012 (Annexure P-9) by saying that respondent No.1 has tried to misinterpret the expression, i.e. other charges mentioned in the Regulation 5.7.1, whereas even the letter dated 22/02/2012 also reveals that the Minimum Monthly Charges (MMC) were neither mentioned in the agreement nor in the statements dated 28/07/2011 and 18/08/2011 made before the Consumer Grievance Redressal Forum at Patiala by officials of respondent No.1, but somehow these facts were not appreciated by learned Single Judge. Learned Senior counsel submits that a perusal of aforesaid statements shows that the levy of MMC is only based on the misinterpretation of expression, i.e. other charges. Learned senior counsel also argued that monthly consumption bills right from the beginning reflect that it is only consolidated MMC which was notified and no individual MMC qua separate constituent members based on 11 KV reading were ever notified. He argued that the learned Single Judge ignored the relevant material on record because the cluster substation is operational since 2001, and after the gap of 9 years, for the 1st time on

14/12/2009, respondent No.1 raised separate demands for MMC qua individual constituent members of the cluster substation from 09/2009 to 11/2009. To support his contentions, he has relied upon the judgements passed by the Hon'ble Supreme Court in ***Bharat Sanchar Nigam Ltd. &Ors. vs. M/s Tata Communications Ltd., Civil Appeal No(S).1699-1723 of 2015 decided on 22.9.2022, Kandivali Cooperative Industrial Estate vs. Municipal Corporation of Greater Mumbai (SC), AIR 2015 SC 1434, Municipal Committee, Hoshiarpur vs. Punjab State Electricity Board, 2019(13) SCC 216, Bihar State Electricity Board, Patna Vs. M/s Green Rubber Industries, 1990(1) SCC 731*** and judgement passed by the Jharkhand High Court in ***Bokaro Steel Employees Co-operative House Construction Society Ltd. vs. Steel Authority of India Ltd., 2003(4) J.C.R. 716***.

6. On the other hand, learned counsel for respondent No.1 submits that as per the agreement, all the constituent members were jointly and severally responsible for the payment of charges for the supply of electricity and other charges as amended by PSEB from time to time. Learned counsel for respondent No.1 has further submitted that whenever consumption from all the 11 KV and 66 KV came down below the MMC, the same was incorporated in the Sundry Column and appellants had been paying the same without raising any objection, which is evident from a bare perusal of the bills prior to 09/2009. Learned counsel has argued that a wrong interpretation of ESR 5.7.1 has been made, whereas an apportionment of energy and other charges were to be levied in proportion to the reading of the meters installed at 11 KV feeders for each individual consumer and_now, appellants cannot back out from the agreed terms and conditions of the agreement and must abide by the same as

stipulated from time to time. He has further argued that the appellants are misinterpreting the agreement's clauses and provisions of electricity supply regulations, where all individual consumers forming a cluster have individual entities and are different consumers with separate individual agreements. To support his contentions, he has referred to clause (iii) of the agreement (Annexure P-2) and has relied upon the judgements passed by the Hon'ble Apex Court in ***M/s Raymond Ltd. vs. Madhya Pradesh Electricity Board, 2001(1) RCR(Civil) 330***, and the judgement passed by the Andhra Pradesh High Court in ***M.K. Gold Paints (P) Ltd. vs. Assistant Accounts Officer, Electricity Revenue Office, Eastern Power Distribution Co. of A.P. Ltd., 2005(42) RCR (Civil) 903***.

7. We have heard the learned counsel for the parties and have perused the material on record.

8. A perusal of the record would show that the controversy revolves around the levying of Monthly Minimum Charges (MMC) on the appellants where, after accepting the contentions raised by respondent No.1, the learned Single Judge modified the order dated 20/08/2013 passed by respondent No.2, i.e. the Ombudsman, and as argued by learned counsel for the respondent No.1 upheld the entitlement to levy MMC for each industrial consumer. We believe that to adjudicate the controversy involved in the present appeals, we need to dissect the order dated 20.8.2013 challenged in the writ petition wherein respondent No.2 dealt with the whole issue meticulously and held that MMC so charged for a period before 14/12/2009 is not recoverable and ordered for refunding the same to the appellants with interest. The findings recorded by respondent no.2 are reproduced below for ready reference:-

" Xxxxxxx

After careful consideration of the submissions of both the parties, in respect of ESR 5.7.1, I am to observe that there is merit in the contentions raised by the counsel of the petitioner. The expression "other charges" appearing in ESR 5.7.1 merely refers to electricity duty, octroi and fuel surcharges mentioned in the first part of ESR 5.7.1. The Chief Engineer/ Commercial has also conceded that MMC is not mentioned in ESR 5.7.1. There is no direction in this ESR to charge MMC based on readings recorded at 11 KV supply. Further whereas it is specifically mentioned explicitly that demand surcharge and power factor surcharge will be charged based on readings recorded on 11 KV meters, there is no such mention of MMC. Similarly, the clauses of the agreement are based mainly on ESR 5.7.1 and incorporate the provisions contained in the said ESR. The letter of the Chief Engineer/ Commercial which had been issued much later is also of no help to the respondents on this issue. Firstly, the issue of letter is an after thought and the clarification contained therein had not been brought to the notice of the petitioner at the time of execution of the cluster agreement. Secondly, the clarification is based on ESR 5.7.1 which has already been discussed above. Therefore, from the perusal of all the relevant provisions, it cannot be said with certainty that any provision clearly provides for levy of MMC based on 11 KV readings. At the most, it can only be inferred that all these provisions are silent on this issue.

During the course of proceedings, the Sr. Xen argued that all constituent members of the cluster are individual consumers of the PSEB. They have executed separate agreements with the Board. In the individual A&A Forms, they undertook to abide by all the rules and regulations framed by the PSEB. Clause-3 (iii) of the agreement executed at the time of forming the cluster also mentions joint and several liability of the members for payment of charges for supply of electricity and other charges. Each member was sanctioned separate contract demand. They were bound to pay MMC with reference to 11 KV meter readings. The counsel of the petitioner on the other hand argued that there is no provision either in the relevant ESR or the agreement for charging of MMC based on 11 KV meter readings. In the agreement energy charges are to be worked out on the basis of meter installed on 66KV supply point only. This procedure of billing was consistently being followed till Septernber, 2009. Clause-3 9vi) (g) of the same agreement further provided that in case this procedure of billing is found unworkable, it will be reviewed by the SE/ Operation. This procedure was ever given to the petitioner. The petitioner and other members had followed all the *provisions pertaining to the cluster substation as well as of the agreement of the cluster substation. Hence charging of MMC based on 11 KV meter readings, charging the existing method of billing without giving any notice to the petitioner or to the constituent members was illegal and unjustified. Another contention raised by him was that the respondents never informed the petitioner that MMC was chargeable based on 11 KV meter readings of individual meter. Had the respondent informed the petitioner, he might have taken corrective steps to re-arrange the load and save avoidable expenses. Every consumer must know in advance, about the charges to be paid by him. No charges can be levied without informing the consumer. Responding to these contentions, the Sr.Xen argued that provisions of the agreement were well within the knowledge of the petitioner and they were aware that they were liable to pay MMC in case the billing amount was less than the MMC.*

The rival contentions of both the parties raise the next issue for consideration, whether levy of MMC was justified without giving any notice to the petitioner after a period of about 9 years after the cluster was formed. It is not disputed by the respondents that till September 2009, one single bill was being issued based on 66 KV readings mentioned combined CD of all members and MMC charges based on combined CD. It is also not disputed that both 66 KV meter readings as well as 11 KV meter readings were being recorded. It has also been brought out above, that there is no specific provision according to which MMC is to be charged on the basis of 11 KV reading and not on 66 KV readings. In fact there no mention of MMC in any of the provision relating to Cluster Substation. Reading of ESR 5.7.1 do read to an inference that MMC has been considered in the energy charges which are to be billed according to 66 KV meter readings.At the most it can be said that the provisions are silent on this issue. No clarification in this regard was ever issued by the respondents to the petitioner, either at the time of executing cluster agreement or subsequently. There is no reference of MMC in the cluster agreement. Considering all these facts, I am of the view, that it was reasonable on the part of the petitioner to presume that MMC was leviable with reference to combined CD mentioned on the bills issued to the petitioner. This presumption of the petitioner was never rebutted by the respondents by issuing any subsequent or separate bill charging MMC based on 11 KV readings of individual members even when the same were available with them till the issue of supplementary bill dated 14.12.2009. I also do not find merit in the contention of the Senior Xen that all members of the cluster are individual consumers of the PSEB and provisions relating to levy of

MMC on the basis of reading of 11 KV meter were in their knowledge, because the respondents themselves had not been treating each member of the cluster as individual consumer. Only combined bills were issued in the name of the petitioner mentioning combined CD and MMC. No bill either for energy charges or of MMC was ever issued to the individual member based on readings of 11 KVG meters. Therefore, I am of the view that there was sufficient reason for the petitioner to believe that MMC was to be levied on the basis of reading of 66 KV meter and was not leviable to the individual member sub-station is a facility provided to a group of consumers. The PSEB has a prerogative to impose any conditions at the time of allowing such facility. No such condition of charging MMC to individual members based on 11 KV reading stands incorporated in the cluster agreement executed on 11 KV reading stands incorporated in the cluster agreement executed on 16.11.2000. Under such circumstances it was incumbent upon the respondents to bring, any proposed changes in the procedure for billing being followed to the notice of the petitioner either through monthly bill of MMC based on 11 KV readings or a separate letter in advance. This was necessary to enable the individual members either to re-arrange their sanctioned CD or to consume energy to fulfill the MMC requirement. Giving of due notice, in this respect, was all the more necessary because of lack of clarity in the provisions dealing with cluster sub-stations regarding MMC and the conduct of the respondents in issuing single bill mentioning combined CD and MMC and further not charging MMC based on reading of 11 KV meters up till September 2009. The petitioner is fulfilling the said MMC requirement after the issue of first bill dated 28.12.2009. Therefore, the contention of the counsel of the petitioner that due notice was necessary regarding change of billing procedure before levy of MMC based on reading of 11 KV meters is justified. Admittedly, no such notice was ever issued or it was brought to the notice of the petitioner that MMC requirement is to be fulfilled by each cluster member individually and is to be levied based on 11 KV meter readings. I also find merit in the submissions of the counsel that no loss of revenue has been caused to the respondents. One of the objects and purposes of levy of MMC is to ensure that the distribution licensee receives minimum guarantee return upon the investments made by the distribution licensee. The PSEB was receiving minimum guarantee return right from the installation of cluster sub-station because MMC condition was being fulfilled by the petitioner. No further investment has been made by the PSEB. Thus, no loss has been caused to the respondent as all the cluster units, in totality, had ensured payment/

consumption of MMC keeping in view the combined CD. Therefore, I am of the view that charging of MMC to individual members based on 11 KV meter readings and individual CD for any period before 14.12.2009, was not justified considering that no specific provision for such levy has been brought on record, such levy is not covered under ESR 5.7.1 or in the cluster agreement, the respondents were issuing only single bill mentioning combined CD and MMC and no notice, specific or implied, was given to the petitioner bringing to his notice change in billing procedure and charging of MMC to individual members based on 11 KV meter readings. Therefore, MMC so charged for any period before 14.12.2009, when first supplementary bill was issued which could be treated as a notice, is held not recoverable. To conclude, it is held that MMC charged for any period before 14.12.2009 is not recoverable from the petitioner. Accordingly, the respondents, if any, may be recovered/refunded from/to the petitioner with interest under the relevant provisions.
8. The appeal is partly allowed."

9. To conclude, respondent No.2 also dealt with Electricity Supply Regulations (ESR) 5.7.1 coupled with the terms of the agreement; the same are reproduced herebelow**:-**

"(a) "ESR 5/7- Facility of cluster substation;
New/existing consumers with contract demand above 2500 KVA may jointly install a 66 KV cluster substation to be owned and maintained by them for which supply can be given by the Board for the said group of consumers at 66 KV.
5.7.1 Billing shall be carried out on the basis of consumption recorded by 66KV meter for purpose of computing the net energy charges along with electricity duty, octroi and fuel surcharge. Appointment of energy and other charges to the individual consumers will be done in proportion to the reading of meters installed at 11 KV feeders for each individual consumer. Demand surcharge and power factor surcharge, if any, shall be levied on the basis of readings recorded at 11 KV.
5.7.2 Procedure under Para 5.7.1 shall be subject to execution of an agreement by all the participating consumers of the cluster substation with the board to ensure payment of all bills relating to supply at 66 KV as per the readings of meter installed for recording consumption at 66 KV."
b) Copy of Chief Engineer/ Commercial (Sales --II), PSPCL Patiala's letter dated 22.02.2012.

> *"Regarding subject cited above, it is intimated that MMC based on the individual 11 KV readings is chargeable and though it is not specifically mentioned in ESR 5.7.1 but is covered under charges. Further, it is clarified that all the individual consumers framing cluster have individual entity as such all of them are different consumers with separate individual agreement therefore, they are liable to be treated as individual separate consumers for all purposes."*
>
> *(c) Clause-3 (iii) of the Agreement.*
>
> *"We undertake that we are jointly and separately responsible, subject to other conditions, for the payment of charges for the supply of electricity and other charges as amended by P.S.E.B. form time to time. However, M/S Malwa Cotton Spinning Mills Ltd., (Worsted Division) shall be our leader who will deal with PSEB for all matters including payment of energy bills."*
>
> *d) Clause-vi (c) of the Agreement.*
>
> *"Readings of 66 KV and 11 KV meters installed on individual feeders will be taken by PSEB alongwith representatives cluster consumer/CBC. Energy charges worked out on the basis of meter installed on 66 KV supply point will be apportioned in the ratio of consumption recorded on individual 11 KV supply points. Maximum demand surcharges and power factor surcharge, if any, shall be levied to individual consumers based on readings record on 11 KV feeders.*"

10. Thereafter, the findings above contained in the order dated 20/8/2013 were modified through impugned judgement dated 24/02/2015, passed by the learned Single Judge, and are also reproduced below-

> "*10. The order of the Ombudsman is modified and the writ petitions are ordered upholding the contentions of the Electricity Board as regards its entitlement to levy MMC for each of the individual industrial consumers.*"

11. Learned counsel for respondent No.1 has emphasized that other charges appearing in ESR 5.7.1 includes MMC, therefore, apportionment is to be done in proportion to the reading of metres installed at 11 KV feeder for each consumer. For adjudication, we have also gone through the Electricity Supply Regulations (ESR), and found that respondent No.2 while passing the order dated 20/08/2013 thoroughly discussed the regulations and only

concluded that the expression 'other charges' appearing in ESR 5.7.1 is about electricity duty, octroi and fuel surcharges mentioned in the 1st part of ESR 5.7.1 and not as being interpreted by learned counsel for the respondent no.1. Even during proceedings before respondent No.2, the Chief Engineer Commercial a representative for respondent no.1 also conceded that MMC is not mentioned in ESR 5.7.1 and there is no direction in the ESR to charge MMC based on readings recorded at 11 KV supply. Respondent No. 2, after specifically endorsing the same view, mentioned in it's order dated 20.08.2013 that demand surcharge and power factor surcharge would be charged based on the readings recorded at 11 KV metres, and there is no such mention of MMC. We have also gone through the clauses of the agreement which are mainly based on ESR 5.7.1 provisions and agree with the observations made by respondent No.2 that no provision provides for a levy of MMC based on 11 KV readings. Further, there was no mention of MMC in any of the provisions relating to cluster substation. Even the reading of ESR 5.7.1 does lead to an inference that MMC has been considered in the energy charges, which are to be billed according to 66 KV meter readings. As observed by respondent no.2, MMC was leviable concerning combined CD mentioned on the bills issued to the appellants and respondent No.1 never rebutted the said fact by issuing any subsequent or separate bill charging MMC based on 11 KV readings of individual members when the same were available with them till the issue of supplementary bill dated 14.12.2009. The material on record also transpires that only combined bills were issued to the appellants and no bill for energy charges or MMC was ever issued to the individual member based on readings of 11 KV meters. Also, there is nothing on record to show that any such condition of charging MMC to individual members based on 11 KV reading stands incorporated in the cluster agreement executed on 16.11.2000. Admittedly, no such notice was ever issued, nor was it brought to the notice of the appellants that the MMC requirement is to be fulfilled by each cluster member individually and is to be levied based on 11 KV meter readings for any period before 14.12.2009. No specific provision for such levy has been brought on record, and the respondents were issuing only single bill mentioning combined CD and MMC where no notice, specific or implied, was given to the appellants. Going through the entire pleadings, it can be safely drawn that after the cluster's formation, MMC was first time charged in 2009, which is not justifiable. A perusal of the impugned judgement dated 24/02/2015 would show that learned Single Judge passed the impugned judgement relying upon the agreement and the Electricity Supply Regulations (ESR), which became the sole basis for the adjudication of the controversy involved in the present intra-court appeals. Similarly respondent No.2, i.e. the ombudsman while passing the order dated 20/08/2013, impugned in the writ petition, elaborately discussed both, the agreement as well as ESR to reach at conclusion but with different views. Learned Single Judge vide impugned judgement without appreciating the findings given by respondent No.2 adjudicated the issue of MMC by saying that MMC is provided under the Regulations and the agreement provided for installation of metre for each substation and MMC will be collected from each industrial consumer if their consumption exceeds the minimum. In the same way, they would also become liable for the surcharge if their consumption was above CD. Since, we have already gone through the contents of agreement as well as the Regulations, we do not find any such word 'MMC' in both the documents which became the baseline for adjudication by the learned Single Judge and moreover, learned Single Judge has not given any finding qua clauses (a) to (g) of the agreement entered into between the appellant and the respondent No. 1, the same are mentioned below:-

> *"<u>METERING</u>*
>
> *a) We agree to pay all consumption based charges on the basis of meter reading taken by PSEB installed at our premises at the 66 KV supply points in the Cluster Sub Station.*
>
> *b) The metering at 66 KV shall be done by providing electronic meters of approved make in a separate metering room freely accessible to PSEB. 11 KV meters/ metering equipment and CTS/ PTs shall be installed in 11 KV vacuum circuit breakers for each individual consumer of the cluster in the main 66 KV substation control room. All out going 11 KV cables for feeding individual loads shall pass through these vacuum circuit breakers, 11 KV meters/ metering equipment shall be approved by PSEB all the time to approval of total layout of the 66 KV substation prior to construction of sub-station and erection of equipment.*
>
> *c) Reading of 66 KV and 11 KV meters installed on individual feeders will be taken by P.S.E.B. along with representatives of cluster of consumer/ CDC. Energy charges worked out on the basis of meter installed on 66 KV supply point will be apportioned in the ratio of consumption recorded on individual 11 KV supply points. Maximum demand surcharge and power factor surcharge if any shall be levied to Individual consumers on the basis of readings recorded on 11 KV feeders.*
>
> *d) All the 11 KV feeders to individual constituent consumers shall be erected by individual consumer with 11 KV vacuum circuit breakers and XLPE 11 KV*

cable for each unit from cluster substation. Operation and maintenance of these feeders shall be done by consumer.

e) In case of my default on the part of any of the constituent consumers, which warrants disconnection, shall be carried out of the defaulting consumer by opening the outgoing cable from his feeder from Cluster Sub Station.

f) In case of slowness and fastness the consumption on all KWH meters shall be worked out as per standing instructions. In case of dead stop and burnt 11 KV meter the consumption shall be worked out on the basis of average consumption of proceeding months or the month of previous year etc. as per the standing instructions, in case such consumption is not available the same shall be worked out with the approved load factor/ demand factor or (on the basis of working hour if they can be property ascertained) in all such eventualities, the constituent consumer shall be responsible to pay the electricity bill for the consumption recorded at 33/66/192/200 KV meter.

g) Above procedure of billing may be reviewed by SE/ operation if the same is found to be unworkable. In such a situation single bill be raised on the cluster on the basis of 66 KV meter sharing amount cluster partners to be decided amongst themselves. The payment shall be made by leader M/s Malwa Cotton Spinning Mills Ltd. (Worsted Division) as per the provision contained in Clause (III) ibid. We hereby undertake to indemnity the Board against any effect of various disputes regarding supply of electricity and charges relating thereto amongst the constituent consumers."

12. Further, the learned Single Judge ignored the aspect that no bill was ever raised on any of the 11 KV installed against individual constituent industrial members before 2009, which had been rightly observed by respondent No.2 in its order dated 20/08/2013 and this Court is also in

agreement with the arguments raised by the learned senior counsel for the appellants that there is nothing on record to show the monthly bill supplied to the appellants categorically contains declaration with regard to MMC on the bills itself and the said MMC was being mentioned only on the basis of 66 KV substation total sanctioned load/contract demand. In such circumstances, there could have been no interpretation that individual constituent members are liable to or could be held liable for MMC in respect of their individual connected load as has been now interpreted by the learned Single Judge. After analyzing the record as well as pleadings, we are of the view that learned Single Judge failed to read and interpret the relevant Regulation, i.e. Regulation 5.7 of Electricity Supply Regulation (2005) and has misconstrued the same, thus neither under the agreement nor under the Electricity Supply Regulation (2005) (para-5.7 and para-5.7.1) anything is suggesting for levying of MMC on individual constituent members. Learned counsel for respondent No. 1 has misread and misinterpreted the expression 'other charges' given in regulation 5.7.1 to include minimum monthly charges (MMC), although even as per the Regulation, expression 'other charges' means electricity duty, octroi and fuel surcharge and same cannot be equated with the MMC. We cannot lose sight of the fact that the learned Single Judge ignored the relevant material on record to the effect that though the cluster substation has been in operation since the year 2001, and it is only after a gap of 9 years for the first time on 14/12/2009, respondent No. 1 raised separate demand for MMC qua individual constituent member of the cluster substation for a period from 09/2009 to 11/2009 and the supplementary bill was raised in respect of appellants especially even as per agreement there was no stipulation of levy of MMC payable qua the individual connected load. Therefore, in such circumstances the action of levying individual MMC is unsustainable. The learned Single Judge brushed aside the detailed findings given by respondent No.2, i.e., the ombudsman, where neither in the original agreement (Annexure P-2) nor in Regulation 5.7 ESR (2005)/9.3 E SIM (2011) there is any mention of MMC to be charged on 11 KV metres installed at individual constituent industrial consumers. Learned counsel for the appellants, to support his contentions, has relied upon the judgements mentioned in preceding paras, which are much more convincing than the law cited by the learned counsel for respondent No. 1 in their favour. Secondly, the appellants, through CWP No. 2925 of 2014 have challenged the order dated 20/08/2013 passed by respondent No.2 only to the extent that the MMC charged after 14/12/2009 is held to be recoverable and have prayed for refund of the MMC charge/got recovered from the appellants during the pendency of period from 11/2009 to May/2013 amounting to ₹58,90,379/- and ₹5,82,400/- for the month of August 2013 alongwith interest @ 18% and also to refund the amount of ₹ 13,19,479/- deposited by the appellants for adjudication of the dispute before Committees along with interest @ 18% with the further prayer for not imposing MMC upon any of the constituent units of the 66 KV cluster keeping in view the mutual agreement read with ESR 5.7.1 apart from provisions contained in ESR 82.7.8. The learned Single Judge, while dealing with the pleadings of both the matters raised through the writ petitions, which were ultimately decided by a common impugned judgement dated 24/02/2015 where the order dated 20/03/2013 passed by the respondent No.2 was modified and upheld the contentions of respondent No.1/Electricity Board regarding its entitlement to levy MMC for each of the Individual Industrial Consumers.

13. Given the above discussion, we do not find any justification by the learned Single Judge for modifying the order dated 20/08/2013 passed by respondent No.2-ombudsman by upholding the entitlement of respondent no.1 to levy MMC for each of the Individual Industrial consumers. Consequently both the Intra-Court appeals are allowed. The impugned judgement dated 24.2.2015, passed by the learned Single Judge is set aside. Further, findings recorded by respondent No.2 vide its order dated 20/8/2013 qua recovery are restored. Furthermore, liberty is granted to the appellants to avail of appropriate remedy before Zonal Dispute Settlement Committee being the competent authority qua the amount charged/deposited as raised by them through CWP No. 2925 of 2014, which has not been adjudicated till today.

(DEEPAK MANCHANDA)
JUDGE

(DEEPAK SIBAL)
JUDGE

9th December, 2024
vanita/Gulati

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