

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL NOs. 108 of 2015

Dated: 2nd March, 2016

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER**

In the Matter of:
M/s Dada Ganpati Guar Products Pvt. Ltd.
Village Moriwala
Hisar Road, Sirsa - 125055

... Appellant (s)/Petitioner

Versus

- 1) Haryana Electricity Regulatory Commission
Bays 33-36, Sector 4
Panchkula, Haryana – 134109**
- 2) Haryana Vidyut Prasaran Nigam Ltd.,
Shakti Bhawan
Panchkula – 134109**
- 3) Dakshin Haryana Bijli Vitran Nigam Ltd.,
Vidyut Sadan, Vidyut Nagar
Hisar - 125005**

... Respondent(s)

Counsel for the Appellant(s) : Ms. Pallavi Mohan
Ms. Adrija Das
Mr. A. Das
Ms. Raveena Dhamija

Counsel for the Respondent(s): Mrs. Swapna Seshadri for R-2
Mr. Sandeep
Mr. Ishaan Mukherjee for HPVNL
Mr. Anand K. Ganesan for R-2
Ms. Akshi Seem

ORDER

PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

1. This Appeal has been filed by the Appellant, Dada Ganpati Guar Products Pvt. Ltd. (“**DGGP**”) under Section 111 of the Electricity Act, 2003 challenging the Order dated 30.12.2014 passed by Ld. Haryana Electricity Regulatory Commission (“**Ld. Haryana Commission**”) in Case No. PRO 25 of 2014.
2. In the Impugned Order, the State Commission disallowed the prayer of the Petitioner regarding share cost of augmentation of power transformer 10/16 MVA to 20/25 MVA at 132/33 KV sub-station Sikanderpur. The State Commission holds in the Impugned Order dated 30.12.2014 that the recovery of proportionate cost of Rs. 22,50,060/- for augmentation of the power transformer at 132 KV sub-station Sikanderpur incurred for the supply of power to the Appellant/Petitioner is in lines with the Regulations 4.5.2, 4.5.4 and 4.10.4 of the Haryana Electricity Regulatory Commission (Duty to Supply Electricity on request and Power of recover Expenditure) Regulations 2005.
3. The Appellant, Dada Ganpati Guar Products Pvt. Ltd. (“**DGGP**”) is a large Supply Industrial Consumer of Dakshin Haryana Bijli Vitran Nigam Limited, Hisar engaged in the business of producing Guar products, which account for major export purposes.
4. Respondent No. 1 is Haryana State Electricity Regulatory Commission, which was established in August 1998 under the provisions of Haryana Electricity Reform Act, 1997 to regulate power sector in the State of Haryana and continues to exercise jurisdiction as the State Regulatory Commission under Section 82 of the Act. The Respondent No. 2 is Haryana Vidyut Prasaran

Nigam Ltd. (“HVPNL”) is a State Government owned company registered under the Companies Act, 1956. It is presently engaged in the business of transmission in the State and is also operating State Load Despatch Centre (SLDC) at Sewah in District Panipat. The Respondent No. 3 is Dakshin Haryana Bijli Vitran Nigam Ltd. (“DHBVN”) is a Government of Haryana owned and controlled company head-quartered in Hisar and is responsible for distribution and retail supply of electricity within its jurisdiction comprising of nine districts.

5. Brief Facts of the Case

- 5.1 In 2012, the Appellant approached Respondent No. 3 for an electric connection with a Contract Demand of 1500 KVA on 33kV voltage level.
- 5.2 On 25.06.2012, Superintendent Engineer (SE), Op. Sirsa of Respondent No. 3 prepared a technical justification sheet showing the connectivity of the Appellant’s plant to the substation at Rasulpur with a relevant technical details and it was categorically stated that the existing power transformer could take the load of the Appellant.
- 5.3 Based on the technical justification established by the Field Officers in favour of the Appellant, on 09.08.2012, the Respondent No. 3 sanctioned a load of 1300 kW with Contract Demand of 1445 KVA in favour of the Appellant and justified the following points in the sanctioned letter:

“1. No Objection Certificate is required from CE/Planning, HVPN, Panchkula to connect 1445 KVA demand of Dada Ganpati Guar at 33 kV S/Stn. Rasulpur, Theri before start of work.

...

3. Conductor is to be augmented from Dog 100 mm² to Wolf 150 mm² between the line connecting 132 kV Sikanderpur to 33 kV S/Stn. Rasulpur, Theri”.

The above points of the sanctioned letter dated 09.08.2012 were amended in the following terms:

“Point No. 1:-

*There is requirement to send the case to CE/Planning, HVPN, Panchkula. However, the approval of this reflection i.e. 1.5 MVA load will be taken care of at the time of submission of the proposal of augmentation of 10/16 MVA to 20/25 MVA, 132/33 kV T/F at 132 kV Sub-Station, Sikanderpur. **The consumer load can be connected now at the 33 kV sub-Station, Rasulpur, Theri.***

Point No. 3:-

There is no need for augmentation of conductor from Dog 100 mm² Wolf 150 mm² at present for releasing this connection now.”

- 5.4 The Distribution Licensee prepared estimate of Rs. 26,50,000/- for interlinking the 33 kV Substation at Rasulpur, Theri and the premises of the Appellant with a 3.1 km dedicated line, and installation of the terminal equipment and metering equipment of 33 kV at both ends.
- 5.5 The Appellant/Petitioner decided to execute the 3.1 km line from Rasulpur sub-station to their Industrial premises by themselves and deposited a sum of Rs. 39,750/- as supervision charges.
- 5.6 On 05.10.2012, Chief Engineer/P&D, DHBVN, Hisar informed the Chief Engineer/Planning, HVPN, Panchkula regarding approval to the Respondent No. 3 to go ahead with the works. Accordingly, on 10.12.2012, Respondent No. 3 informed the Appellant that the approval had been granted and issued a Demand Notice asking the Appellant to deposit Rs. 26.5 lakhs towards Deposit Estimate based on the sanctioned load.

- 5.7 On 02.03.2013, connection to the Appellant was released by Respondent No. 3.
- 5.8 On 26.04.2013, Respondent No. 2 intimated its decision regarding the proposal for augmentation of power transformer of capacity 10/16 MVA to 20/25 MVA at 132/33 KV sub-station, Sikanderpur and requested Respondent No. 3 to collect proportionate share cost corresponding to Appellant's Contract Demand of 1.5 MVA.
- 5.9 On 20.06.2013, the Appellant applied to Respondent No. 3 for short term open access in the prescribed formats.
- 5.10 The Assistant Executive Engineer, Respondent No. 2, Sirsa informed to SDO S/U Sub-Division of Respondent No. 3, Sirsa to obtain undertaking from the Appellant to deposit the share cost. The relevant part of the aforesaid letter is quoted below:
- "...the estimated cost of providing additional 20/25 MVA, 132/33 KV T/F have been worked out to Rs. 41187468/-. As per condition of the concurrence for connectivity, the firm has to deposit proportionate cost corresponding to contract demand of 1.5 MVA which comes out to Rs. 2471249/-. It is, therefore, requested to take necessary action after obtaining the undertaking from the firm"*
- 5.11 Accordingly on 05.07.2013, Respondent No. 3 informed the Appellant to deposit proportionate share cost corresponding to its Contract Demand of 1.5 MVA which is Rs. 24,71,249/-.
- 5.12 On 12.07.2013, the Appellant responded to the letter dated 05.07.2013 and protested for payment of the share cost towards augmentation of the Power Transformer.
- 5.13 On 31.10.2013, the Petitioner deposited the demanded amount of Rs. 22,50,060/- towards share cost for augmentation of power transformer at 132 KV/ 33 KV sub-station Sikanderpur under protest.

- 5.14 On 15.04.2013, the Appellant filed a Petition in HERC in Case No. HERC/PRO – 25 of 2014 seeking refund of share cost deposited with Dakshin Haryana Bijli Vitran Nigam Limited.
- 5.15 On 30.12.2014, the State Commission passed Impugned Order and dismissed the Petition and directed not to refund the share cost of Rs. 22,50,060/- paid by the Appellant to Respondent No. 3.
- 5.16 Aggrieved by the Impugned Order, the Appellant/Petitioner filed this Appeal No. 108 of 2015 seeking the following reliefs:
- a) *Allow the Appeal and grant relief as prayed for above;*
 - b) *Set aside the Impugned Order dated 30.12.2014 to the extent challenged in the above paragraphs;*
 - c) *Pass such other or further orders as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
6. Heard the arguments of Ms. Pallavi Mohan, Learned Counsel for the Appellant and Ms. Swapna Seshadri, Learned Counsel on behalf of Respondent No. 2.
- After going through the submissions made by the rival parties including submissions filed by the contesting parties and also going through the Impugned Order, the following issues arise for consideration:
- Issue No. 1: Whether the Consumer of a Distribution Licensee is liable for the payment of augmentation of power transformer of a Transmission Licensee as per the Haryana Electricity Regulatory Commission's Electricity Supply Code 2014?**
- Issue No. 2: Whether the State Commission erred in directing the Appellant/Petitioner made liable for the proportionate share cost of the augmentation of the power transformer of the Transmission Licensee and directing the Respondent No. 3, Dakshin Haryana Bijli Vitran Nigam Ltd. not to release the share cost of 20/25 MVA power transformer to the Appellant/Petitioner?**

7. Issue Nos. 1 & 2 are interwoven and hence both the issues will be taken up together.

8. **The following are the submissions made by the Counsel of the Appellant:**

8.1 that the Distribution Licensee can recover only such expenditure from the Consumer which it has incurred in the supply of electricity to such Consumer as per Section 45 and 46 of the Electricity Act 2003 and as per Regulations 4.1, 4.2 and 4.3 of the Duty to Supply Regulations.

In terms of the aforesaid provisions that the Appellant had already deposited the estimate prepared by Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVN) and the connection was accordingly released.

8.2 that the Transmission Licensee has no privity or relationship with a Consumer availing supply from a Distribution Licensee, therefore, Transmission Licensee cannot recover/seek any charges from the Consumer for augmentation of its transmission system and the consumer cannot be penalized for departmental misunderstanding and for inaction of the Distribution Licensee.

8.3 that the Appellant had deposited an estimate of Rs. 26.5 lakhs as per the estimate prepared by the Delhi Haryana Bijli Vitran Nigam Ltd., (DHBVNL) on 31.08.2012 for interlinking the 33kV substation at Rasulpur Theri with the Appellant's premises with a 3.1 km dedicated line.

8.4 that the Haryana Vidyut Prasaran Nigam Ltd., (HVPNL) as a transmission licensee is already recovering expenses incurred for routine augmentation of its system through its Annual Revenue Requirement as allowed by the Learned Commission as well as for the use of its network through transmission tariff. It is submitted that there is no other charges/recovery of

expenditure permitted to HVPN under the Electricity Act, 2003 or the HERC Regulations framed thereunder.

- 8.5 that the Haryana Vidyut Prasaran Nigam Ltd., (HVPNL) is erroneously relying of Regulation 3.4 of the Duty to Supply Regulations to state that necessary commercial arrangements were required to be made by the Distribution Licensee with the Transmission Licensee to ensure the required supply for Extra High Tension (EHT) consumer was available.
- 8.6 that the Regulation 3.4 of Duty to Supply Regulations states that the commercial arrangements (if any) between the Distribution Licensee and the Transmission Licensee are required to be completed within the period specified in Regulation 3.3. Therefore, in case of EHT consumers like the Appellant the period within which the commercial arrangement was required to be completed is 180 days.
- 8.7 that the Appellant ought not to be penalized for the wrong actions of Dakshin Haryana Bijli Vitran Nigam Ltd., (DHBVNL) as the existing transformer of 132/33 KV Sikanderpur is having sufficient capacity to undertake the Appellant's load. The Appellant agreed to pay the Deposit Estimate for the works required for supply of electricity. At that stage, if the Appellant was aware that any subsequent charges for augmentation may arise, the Appellant may have contemplated in reducing its load, or taking any other action, etc. However, retroactively penalizing the Appellant once connection has been released is contrary to all settled principles of law.
- 8.8 that the Haryana Vidyut Prasaran Nigam Ltd., (HVPNL) wrongly submits that the Appellant was aware at the time of sanction of load that subsequent share cost may arise the aforesaid submission of counsel of HVPNL is erroneous as

the amended sanction letter dated 17.08.2012 states that the approval of the Appellant's load of 1.5 MVA would be taken care of at the time of submission of proposal for augmentation.

- 8.9 that the condition 12 of the sanction letter dated 09.08.2012, on which HVPNL is relying, states that that regarding share cost of main sub-station, the applicant shall comply with the formalities and instruction issued of the Nigam issued from time to time. It is submitted that the counsel for HVPNL is confusing the networks of the transmission licensee and the distribution licensee. It is submitted that the sub-station mentioned in the sanction letter is a reference to the sub-station belonging to DHBVNL and which is a part of the distribution network, i.e. the sub-station at Rasulpur Theri.
- 8.10 that the Haryana Vidyut Prasaran Nigam Ltd., (HVPNL) is wrongly contending that the augmentation of the transformer at Sikanderpur substation was due to the load of the Appellant and was not a matter of routine augmentation.
- 8.11 that the memorandum and proposal dated 05.10.2012 nowhere states that augmentation of 132 KV substation at Sikanderpur is due to the connectivity of load of the Appellant from the said substation. The proposal merely states that approval for the load of Appellant may be granted.
- 8.12 that the augmentation of the transformer at Sikanderpur substation was a routine process and not caused due to the connectivity of the Appellant's load. It is further submitted that the counsel for HVPNL is wrongly contending that general body of consumers will be cross subsidizing the cost of connecting the Appellant's load. HVPNL recovers the cost of augmentation and other works from the transmission tariff as fixed by the Learned Commission, which

is paid by other licensees, therefore there is no question of general body of consumers having to pay for the augmentation work.

8.13 that the Haryana Vidyut Prasaran Nigam Ltd., (HVPNL) has wrongly contended that it has not recovered any sum from the Appellant and rather the payment has been made only to DHBVN.

8.14 that the first time the question of payment of share cost arose was when the Appellant applied to HVPNL for availing short term open access. At that stage, the Appellant was informed that it would have to pay the share cost for grant of open access. The Appellant paid the share cost only under protest, and it is not aware whether the amount paid is with DHBVNL or HVPNL.

8.15 that the Dakshin Haryana Bijli Vitran Nigam Ltd., (DHBVNL) by its letter dated 19.09.2014 has supported the position of the Appellant. The finding of the Ld. Commission in this regard is that the said letter has been issued in ignorance of facts. It is submitted that DHBVNL has not appeared before either the Ld. Commission or this Hon'ble Tribunal to clarify its position. In view of the same, the Appellant ought not to be penalized for the miscommunications between HVPNL and DHBVNL.

9. **Per Contra**, the following are the submissions made by the Counsel of the Respondent No. 2:

9.1 that it is not after the connection was released to the Appellant, the licensees have sought to fasten the share cost of the upgradation of the Sikanderpur Substation on the Appellant. Both in the letters dated 09.08.2012 and 17.08.2012, the specific condition of NOC / Approval from the Transmission Licensee had been provided for.

- 9.2 that the principle on which the share cost has been applied is strictly in accordance with the Supply Code. It is not that the Transmission Licensee has raised any direct demand on the consumer. When the proposal for upgradation was submitted to the Transmission Licensee, it pointed out to the Distribution Licensee that share cost would have to be paid by the Appellant.
- 9.3 that the augmentation involved for release of load to the Appellant was augmentation of EHT supply transformer which was part of transmission system of the Transmission Licensee. The distribution licensee is empowered under Regulation 4 of the Supply Code to recover expenditure sustained in the enhancing the capacity of existing power transformer or provide fresh load to the consumer and in this case is the EHT transformer where capacity was to be augmented by Transmission Licensee. Therefore, the share cost of augmentation of transformer had to be paid by the Appellant.
- 9.4 that it is not the case that the routine augmentation of the transmission licensee's system has been charged on the Appellant. Whatever is the proportionate share cost of the augmentation of the Sikanderpur Sub-Station of the Transmission Licensee to extend the load to the Appellant has only been charged on the Appellant.
- 9.5 that the Distribution Licensee in both the letters dated 09.08.2012 and 17.08.2012 had specifically mentioned that the reflection of the load of the Appellant would be considered at the time of sending the proposal of augmentation of the 10/16 MVA, 132/ 33 KV power transformer of 132 KV sub-station Sikanderpur, which was feeding the 33 KV sub-station RasulpurTheri and consent is required of CE/Planning HPVN, Panchkula.

9.6 that the release of connection to the Appellant was on certain prior terms and conditions and regarding the recovery of proportionate share cost was initiated by the Respondents to the Appellant much prior to seeking Open Access in letter dated 09.08.2012, which was as under -

“.....Accordingly same is sanctioned subject to fulfilment of following conditions.

2. NOC is required from CE/Planning, HPVN, Panchkula to connect 1445 KVA demand by Dada Ganpati Guar at 33 KV S/Stn. Rasulpur Theri before start of work.

3. Conductor is to be augmented from Dog 100 mm to Wolf 150 mm between the line connecting 132 KV Sikanderpur to 33 K/v S/Stn. Rasulpur Theri.

13. Regarding share cost of main sub-station applicant shall comply with the formalities as per instruction of the Nigam issued by this office time to time.

18. The erection / any augmentation if any shall be at the consumer cost as per Nigam specification / instructions.

.....

9.7 that the Appellant is liable to pay share cost of augmentation as proposal for augmentation of 132/33 KV transformer at 132 KV sub-station, Sikanderpur also covered release of 1.5 MVA contract demand to the Appellant.

9.8 that it is not that, this demand has been raised after giving the load to the Appellant. Simultaneously when the load was release, it was told to the Appellant that its load would be covered by the upgradation of the 132/33 KV sub-station at Sikanderpur and subject to the consent and conditions as imposed by the Transmission Licensee.

9.9 that the Transmission Licensee has at no point of time withheld the NOC for grant of Open Access. It was the Distribution Licensee which was unwilling to

grant NOC till the Appellant cleared its past dues towards augmentation charges.

9.10 that the Distribution Licensee directed the outstanding dues be recovered from the Appellant to enable the Appellant to be eligible for grant of Open Access. It is material to note that the disputed amount was recovered by the Distribution Licensee and no amount has been received by the Transmission Licensee.

9.11 that it is pertinent to note that as per Regulation 8 (5) of the Haryana Electricity Regulatory Commission (Terms and condition for grant of connectivity and Open Access for intra state transmission and distribution system regulation), 2005 provides that a person having been declared insolvent or bankrupt or having outstanding dues against him for more than two months billing of the distribution / transmission licensee at the time of application shall not be eligible for open access.

9.12 that in terms of the above, it is humbly submitted that the appeal has no merits and is liable to be dismissed with costs and share cost charged to the Appellant is in accordance with the Statutory Regulations framed.

10. **Our Consideration and Conclusion on these Issues**

10.1 We have in the upper part of the Judgment given the details of the facts of the Appeal before us, rival submissions made by the parties on the issues involved in their Appeal. Hence, we do not feel any need to reproduce the same here again. Hence, we directly proceed towards our consideration and conclusion on the said aspects of the order.

10.2 The contention of the Appellant/Petitioner is that the DHBVNL unnecessarily charged the share cost of augmentation of power transformer from 10/16 MVA to 20/25 MVA in the sub-station of Transmission Licensee i.e.132 KV Sikanderpur sub-station and the State Commission directed DHBVNL not to refund the share cost of Rs. 22,50,060/- towards augmentation of power transformer.

10.3 Let us examine the relevant facts leading to the dispute, which are as under:

- a) On 09.08.2012, the Appellant's industrial load was sanctioned by Chief Engineer (Commercial), DHBVNL, Hisar and intimated to Chief Engineer (Operation), DHBVNL, Hisar.

In the sanction letter, it was decided that the supply to the Appellant's load has to be extended from 132/33 KV Sikanderpur sub-station through 33/11 KV sub-station Rasulpur Theri by augmenting the existing line from 132 KV sub-station Sikanderpur to 33/11 KV sub-station Rasulpur Theri from 100 mm² to 150 mm² Wolf conductor and a copy of the letter was addressed to the party.

- b) On 17.08.2012, the Chief Engineer (Commercial), DHBVNL, Hisar wrote a letter to Chief Engineer (Operation), DHBVNL, Hisar regarding amendment of the original load sanctions. In the Amendment, it is mentioned that there is no need for augmentation of conductor from Dog 100 mm² to Wolf 150mm² at present for releasing this connection. It was not mentioned to the party at this stage regarding share cost of augmentation. It is only suggested that the reflection of this consumer load (1.5 MVA) will be taken care at the time of submission of the

proposal for augmentation of 132 KV Sikanderpur sub-station, as the consumer load is to be fed from 132 KV Sikanderpur sub-station.

- c) On 05.10.2012, the Chief Engineer (P&D), DHBVNL, Hisar submitted proposal of augmentation of 132/33 KV Sikanderpur sub-station along with other augmentation works as approved by the Whole Time Directors in their meeting held on 28.09.2012.
- d) On 20.06.2013, Assistant Executive Engineer, S/D No. 1, HVPNL, Sirsa intimated to SDO/SU, towards sharing cost that the firm has to deposit Rs. 24,71,249/- towards share cost of augmentation of power transformer and in turn SDO/SU, DHBVN intimated to Appellant on 05.07.2013 to deposit Rs. 24,71,249/- towards share cost of transfer.
- e) The Appellant submitted a letter to SDO/SU Sub-Division, regarding objection for payment of share cost on 12.07.2013. Further, the Appellant also written a letter to SDO/DHBVNL on 13.08.2013. The Appellant finally deposited the share cost under protest to grant NOC for short-term open access.
- f) On 01.09.2013, the Chief Engineer (Commercial), DHBVNL, Hisar wrote a letter to Chief Engineer (Planning), HVPNL, Panchkula stating that demand of share cost by HVPNL from consumer is not legally justified as it is outside the purview of the power conferred to the transmission utility of the state by Hon'ble Commission.

10.4 Let us examine the relevant sections of the Electricity Act 2003 with respect to Transmission Licensee:

Section 39 (2) *The functions of the State Transmission Utility shall be-*

- a) *to undertake transmission of electricity through intra-state transmission system;*

b) *to discharge all functions of planning and co-ordination relating to intra-State transmission system.*

Section 40: Duties of Transmission Licensees – *It shall be the duty of a Transmission Licensee-*

- a) *To build, maintain and operate an efficient, co-ordinated and economical inter-State transmission system or intra-State transmission system, as the case may be;*
- b) *-----*
- c) *To provide non-discriminatory open access to its transmission system for use by –*
 - i) *any licensee or generating company on payment of the transmission charges; or*
 - ii) *any consumer as and when such open access is provided by the State Commission under sub-section (2) of Section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission.*

Thus, it is the responsibility of the Transmission Licensee to build and maintain the intra-State Transmission system to maintain reliable and quality supply to the consumers of the licensed area.

Further, the Transmission Licensee has to plan future growth of the Distribution Licensee's area duly obtaining the proposals from the Distribution Licensee. The capitalization plan has to be prepared and execute the works after obtaining the approval of the State/Central Commission.

10.5 Let us examine the relevant sections of the Electricity Act 2003, which is as under:

Section 42 (1) – *It shall be the duty of a Distribution Licensee to develop and maintain an efficient coordinated and economic distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.*

Section 46. Power to recover expenditure – *The State Commission may, by regulations, authorize a Distribution Licensee to charge from a person requiring a supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.*

Thus, the Act clearly specifies that the Distribution Licensee's duty to release supply to the consumer with reasonable cost and make the Regulations accordingly.

- 10.6 In exercise of the powers conferred under section 50 and Clause (a) of sub-section (2) of 181 of the Electricity Act 2003, the Haryana Electricity Regulatory Commission passed the following Regulations on Electricity Supply Code (8th January 2014) and another Regulation regarding Duty to Supply Electricity on Request, power to Recover Expenditure incurred in providing supply and power to require security dated 26th July 2005.
- 10.7 The relevant sections of the HERC (Duty to Supply Electricity on request and Power of recover Expenditure) Regulations 2005 for the instant case are as under:

“ 3.2 - Where supply of electricity requires any Extension of Distribution System and the applicant opts for self-execution of work for such Extension of Distribution System, he shall inform the licensee in writing about his readiness for availing power supply after getting the work executed. The licensee shall issue the service connection order within 15 days from the date of receipt of the intimation from the consumer regarding his readiness for availing power supply. Thereupon, the timeframe for release of electric connection to such consumer and completion of applicable outstanding activities shall be as specified under regulations 3.1.

3.4 – It shall be the responsibility of the Licensee to have necessary commercial arrangements with the respective transmission Licensee(s) to ensure that the required supply at Extra High Tension (EHT), i.e. above 33 KV, is made available within the time frame specified under regulation 3.3 above.

4. Recovery of Expenditure

4.2 – The Licensee shall not claim any payment or reimbursement from the applicant for any expenditure incurred or to be incurred by the Licensee in terms of or under any scheme approved by the Commission or when such expenditure is otherwise allowed to be recovered through tariff by the Licensee as a part of the revenue requirements of the Licensee.

4.3 – Subject to the provisions of the Act and these regulations and subject to such directions, orders or guidelines issued by the Commission, every Licensee is authorized to recover, from an applicant requiring supply for electricity any expenditure that the Licensee shall be required to reasonably incur in providing any electric line or electric plant in addition to those specified in sub-regulations 4.1 & 4.2 for the purpose of giving such supply to the applicant. Such charges shall be calculated in accordance with these regulations and shall be termed as Service Connection Charges”.

10.8 The relevant Clauses of the HERC Electricity Supply Code Regulations 2014 are quoted below:

1.3 These Regulations shall be applicable to all Distribution Licensees including deemed Licensees and all consumers in the State of Haryana.

Thus, the Supply Code Regulation is applicable to Distribution Licensees and not for Transmission Licensees.

4.2.1 The licensee is responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply including the growth of such demand.

4.2.2 The licensee shall bear the cost for strengthening, augmentation and up-gradation of the system, to meet the demand of general areas, through its annual revenue requirements (ARR) and the licensee shall seek to recover these costs from the consumers by submitting appropriate tariff proposal before the Commission while submitting the ARR. However, for individual consumers, the provisions of Regulation 4.2.3 and 4.2.4 shall apply.

4.2.3 The cost of extension of distribution main and its up-gradation up to the point of supply for meeting demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding sub-station for giving supply to that consumer, shall be payable by the consumer or any collective body of such consumers as per the Regulations framed by the Commission under Section 46 of the Act.

The instant case is covered under Clause 4.2.3 of Supply Code Regulation and 4.3 of Duty to Supply Regulations, it specifies that the consumer is liable to pay the cost of extension of distribution main and upgradation of distribution main upto the point of supply for meeting demand of a consumer, whether new or existing and any strengthening/augmentation/upgradation starting from

the feeding sub-station for giving supply to the consumer shall be payable by the consumer or any collective body of such consumers as per the Regulations framed by the Commission.

It is true that the Appellant's load is being fed from 132 KV sub-station Sikanderpur through 33 KV sub-station Rasulpur Theri and hence the Appellant/Petitioner is liable to pay the cost of distribution network from the feeding sub-station to the consumer's load point including cost of strengthening/upgradation/ augmentation, etc. Accordingly, the consumer met the cost of the transmission line from 132 KV sub-station to consumer's premises as follows:

Initially, the existing line conductor from 132 KV Sikanderpur to Rasulpur was decided to augment the conductor of size 100 mm² to 150 mm², but subsequently, it was amended and decided that the existing conductor is sufficient to cater to the existing load along with Appellant's industrial load. Hence, the augmentation of conductor from 132 KV sub-station to 33 KV Rasulpur Theri was not done. Further, the line from 33 KV Rasulpur Theri to Appellant's premises was erected by the Appellant/Petitioner as per the approved estimate duly paying supervision charges to Distribution Licensee DHBVN.

Thus, the consumer's liability towards transmission line part from the feeding sub-station to consumer's/Appellant's load point is met by the Appellant/Petitioner as per Clause 4.2.3 of Supply Code Regulations.

Hence, the consumer fulfilled the liability of transmission line charges from feeding sub-station to Appellant's load point.

10.9 Let us examine the augmentation of power transformer at 132 KV Sikanderpur sub-station:

- a) Regarding augmentation of power transformer at 132 KV Sub-Station Sikanderpur, the Chief Engineer, DHBVNL prepared a proposal for augmentation of 132 KV Sub-Station Sikanderpur along with other works (mentioned in the Memorandum of Proposal) and the same was approved by the Whole Time Directors in its meeting held on 28.09.2012 and approved the proposal and for referring the same to the Respondent No.2 (HVPNL) for approval, as the 132 KV sub-station is owned and operated by Respondent No.2, (HVPNL).
- b) We have gone through the proposal as contained in the memorandum communicated from Chief Engineer(P&D), DHBVNL, Hisar to the Chief Engineer (Planning), HVPNL, Panchkula dated 05.10.2012, that various other works was incorporated apart from petitioner's sanctioned load of 1.5 MVA, such as connectivity of existing 33 KV Sub-Station Kasumbi (existing feeding arrangement from 132 KV DING sub-station) having capacity of 6.3/8 MVA power transformer to 132 KV Sikanderpur due to overloading of 132 KV Sub-Station DING and proposed augmentation of 6.3/8 MVA power transformer to 10 MVA at 33 KV Rasulpur Theri sub-station and other augmentation works of the licensed area.
- c) Thus, the Transmission Licensee has proposed to undertake the augmentation of 132 KV sub-station Sikanderpur to accommodate all the works mentioned in the Memorandum of proposal sent by Chief

Engineer (P&D), DHBVNL, Hisar to Chief Engineer, HVPNL, Panchkula in his letter dated 05.10.2012.

This clearly indicates that the proposed augmentation works at 132 KV Sikanderpur is not only due to Appellant load of 1.5 MVA but also due to various other improvement works. Hence, we are disagreeing with the contention of the Commission regarding the obligation of Appellant with respect to share cost of the proposed augmentation of 10/16 MVA to 20/25 MVA power transformer at 132 KV Sikanderpur.

10.10 As per Regulation 4.3 of HERC Supply Code Regulation, the erection of 33 KV line from 33 KV Rasulpur Theri to consumer's load point (3.1 kms line) was completed by the Appellant duly paying the supervision charges of Rs. 39,750/- and completed the line work including erection of 33 KV VCB and other metering cubicles etc. at 33/11 KV sub-station at Rasulpur Theri at Appellant's cost.

Regarding the share cost of augmentation of power transformer (10/16 MVA to 20/25 MVA) at the feeding sub-station i.e. 132 KV Sikanderpur. The Chief Engineer (Commercial), DHBVN, Hisar clearly mentioned in his letter dated 19.09.2013 to Chief Engineer, HVPNL, Panchkula that the existing power transformer is capable/sufficient to feed the Appellant's load.

Thus, the Appellant/Petitioner as per the Clause 4.3 of the Duty to Supply Electricity on Request Regulations (HERC/12/2005) and Clause 4.2.3 of HERC Supply Code Regulations paid towards transmission cost from feeding sub-station i.e. 132 KV Sikanderpur to consumer's premises and

the Appellant is not responsible for augmentation works at 132 KV sub-station of Transmission Licensee.

- 10.11 The State Commission in the Impugned Order holds that the recovery of the proportionate cost for augmentation of the power transformer at 132 KV sub-station Sikanderpur incurred for the supply of power to the Appellant/Petitioner is in lines with the Regulations 4.5.2, 4.5.4 and 4.10.4 of the Haryana Electricity Regulatory Commission (Duty to Supply Electricity on request and Power of recover Expenditure) Regulations 2005 and need not be refunded to the Appellant, Dada Ganpati Guar Products Pvt. Ltd. (“**DGGP**”).

Let us examine the clauses mentioned by the State Commission, which are as under:

- a) Regulation 4.5.2 deals with any extension of distribution system to be carried out by the Licensee shall be as per the cost data of the Licensee or if it is to be carried out by the Appellant/consumer, the consumer is liable to pay the supervision charges.

In the instant case, the Appellant executed the transmission line extension work (3.1 KM) from the 33/11 KV sub-station Rasulpur Theri to consumer’s premises by himself after depositing the supervision charges.

- b) Regulation 4.5.4 – In case of independent feeder, the consumer is liable to pay the charges regarding circuit breaker, metering equipment (CT & PT) and meter and terminal equipment at both ends of the sub-station and consumer’s end.

In the present case, the Appellant by himself erected 33 KV V.C.B, bay extension at 33 KV Rasulpur Theri sub-station and metering equipment (C.T & P.T.), terminal equipment etc. on both sides of the 33 KV dedicated feeder i.e. 33 KV sub-station Rasulpur Theri at consumer's end by his own cost.

- c) Clause 4.10.4 – The cost data pertains to Extra High Tension works will be prepared by the Licensee in consultation with the State Transmission utility.

In the instant case, the Appellant/Petitioner is a 33 KV consumer, as per HERC Supply Code Regulations, the consumer comes under H.T. category [H.V means a voltage-level above 650 volts and upto 33000 volts as per Regulation 2.3 (14) and EHT means a voltage exceeding 33000 volts as per Regulation 2.3(29)]. Thus, the consumer does not fall under EHT category and thereby the Regulation 4.10.4 does not apply to the Appellant/Petitioner.

- 10.12 Further, to cater to the load of 1.5 MVA of Appellant there is no need for augmentation of the existing power transformer at 132 KV sub-station Sikanderpur. This is clearly supported by the Chief Engineer (Commercial, DHBVNL, Hisar vide his letter dated 19.09.2013 addressed to Chief Engineer (Planning), HVPNL, Panchkula, the relevant part of the letter is quoted below:

“Please refer to AEE Const. HVPN, Sirsa Memo No. 1185 dated 20.06.13 regarding depositing of proportionate cost of transformer by subject cited firm.

In this connect, it is submitted that recovery of capital expenditure incurred in providing power supply to consumer is governed by Regulation No. HERC/12/2005 dated 26-Jul-2005. The regulation has stipulated its applicability as follows:

1.2 “These regulations shall be applicable to all distribution & retail supply Licensees in their respective Licensed Area of Supply in the State of Haryana”.

It can be understood from above that the Hon’ble Commission has delegated the authority to recover any charges from consumer to distribution licensee only.

2.16 “Licensee means a Distribution Licensee authorized to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply”.

In Light of above definitions provided by the Hon’ble Commission it can be comprehended that demand of sharing cost by HVPN from consumer is not legally justified as it is outside the purview of the power conferred to the transmission utility of the state by Hon’ble Commission.

Further, we would like to submit that the capital expenditure incurred by transmission utility is reflected in the transmission tariff as approved by Hon’ble Commission. Also, based on the transmission charges, DHBVNL make the payments towards the transmission licensee which is reflected in the ARR. Demanding additional capital on consumers accounts will lead to the error of double accounting and is not admissible under any applicable regulation. In this regard, the Hon’ble Commission also stipulated following guideline for distribution licensees as:

4.2 “The Licensee shall not claim any payment or reimbursement from the applicant for any expenditure incurred or to be incurred by the Licensee in terms of or under any scheme approved by the Commission or when such expenditure is otherwise allowed to be recovered through tariff by the Licensee as a part of the revenue requirements of the Licensee”.

Moreover, the case of augmentation of 132/33 KV, 10/16 MVA power transformer was already under the process (since February 2011) which was very much before the application submitted by the consumer. The augmentation of the existing transformer was already under proposed augmentation irrespective of the existence of connectivity of present consumer under dispute

In view of above, it is not justified to raise the demand of sharing cost by HVPN for recovery of Rs. 24.71 lakhs.”

The Commission’s view in the Impugned Order is that the letter of Chief Engineer (Commercial), DHBVNL is incomplete ignorance of the facts.

The view of the Commission cannot be accepted because the load sanction of the Appellant had been done by Chief Engineer (Commercial) and the Chief Engineer is the authority to scrutinize all commercial matters of the Distribution Company including extension/augmentation works etc.

- 10.13 The Regulation 12(3) of HERC (terms and conditions for grant of connectivity and open access for intrastate transmission and distribution system) Regulations dated 11.01.2012, provides in case short-term open access, the State Transmission Utility (STU) shall convey its consent or otherwise as per the provisions of CERC Regulations, 2008, or their statutory re-enactments, as amended from time to time.

In case of short term open access, the said distribution licensee shall convey its consent or otherwise within three (3) working days of receipt of request of the applicant through STU.

In this case, the Petitioner/Appellant applied to DHBVNL for short term open access on 20.06.2013. The Appellant was not informed within 3 days of receipt of application regarding consent or otherwise, but informed to the appellant on 05.07.2013 after the information received from HVPNL to DHBVNL regarding share cost of proposed augmentation power transformer at 132 KV Sikanderpur, and demanded to deposit proportionate cost to its contract demand of 1.5 KVA which is Rs. 22,50,060/-/-.

- 10.14 Further, we have observed that the Distribution Licensee gave its consent (No Objection Certificate) for short term open access after the Appellant/petitioner deposited the amount to DHBVNL and the Distribution Licensee termed this share cost as outstanding dues. The share cost cannot

be treated as outstanding dues. Outstanding dues refer to electricity consumption charges, etc.

10.15 In our opinion, for augmentation of power transformer, consumer is not liable to pay the share cost of the power transformer. Thus, the Licensee, DHBVNL, holds the issue of NOC for short-term open access beyond the specified number of working days, which is not legally correct on the part of the Distribution Licensee, DHBVNL and thus the Distribution Licensee violated the Rules/Regulation of HERC.

Further, Section 43 (2) of Electricity Act 2003 clearly specifies that the State Commission has to encourage open access system. In the instant case, if the open access is permitted to the Appellant, the Transmission Licensee and Distribution Licensees are benefitted as under:

1. The Appellant's load on the power transformer at 132 KV Sinkanderpur sub-station will be reduced and thereby the Distribution Licensee can utilize the power transformer capacity for release of supply to another consumer, thereby extra revenue earnings.
2. The consumer is liable to pay the wheeling/transmission charges to the licensees and thus there is revenue with respect to additional surcharge on wheeling charges etc. as specified by the State Commission.

10.16 Thus, after going through all the above submission, facts, materials and other documents placed before this Tribunal, we feel levying of share cost towards augmentation of power transformer by the DHBVNL on the Appellant is legally not correct and hence, the Impugned Order is set aside. Consequently, the Appeal is liable to be allowed.

ORDER

10.17 The Appeal No. 108 of 2015 is allowed and the Impugned Order dated 30.12.2014 is set aside. The Respondent No. 3 Dakshin Haryana Bijli Vitran Nigam Ltd. is directed to refund the amount of Rs. 22,50,060/- within two months from today failing which the Respondent No. 3 is liable to pay the interest at the rate of 7%.

No order as to cost.

Pronounced in the Open Court on this day of 2nd March, 2016.

(T Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

Dated, the 2nd March, 2016.

REPORTABLE / ~~NON-REPORTABLE~~

