

(2013) 09 AHC CK 0017

In the Allahabad High Court

Case No : C.M.W.P. Nos. 3466, 3467, 16216 and 44169 of 2008

Sigma Castings Limited and Another

APPELLANT

Vs

Purvanchal Vidyut Vitran Nigam Limited and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 11 ADJ 317 : (2013) 101 ALR 411 : (2014) 3 AWC 2484

Hon'ble Judges : Manoj Kumar Gupta, J;Ashok Bhushan, J

Bench : Division Bench

Judgement

Manoj Kumar Gupta, J.—The common question which arises for consideration in these writ petitions is the mode in which electricity load of 1000 KVA and above is to be released to the class of industries contemplated under Clause 3.4(a) of the U.P. Electricity Supply Code, 2005 (for brief, hereinafter referred to as "the Supply Code"). These industries are arc/induction furnaces, rolling mills, re-rolling mills and mini-steel plants. Whether Clause 3.4 of the Supply Code takes within it's ambit only request for new connections or also applications for enhancement of load. Certain other issues also arise for consideration in different writ petitions and which are peculiar to the facts of that particular case and will be dealt with separately. These writ petitions were connected with each other by different orders passed from time to time and with the consent of parties they were heard together and are being decided by a common judgment.

Facts of Writ Petition No. 3467 of 2008: Sigma Castings Ltd.

2. The petitioner-company is engaged in manufacture of MS Ingots by use of induction furnaces, and is thus an industry under Clause 3.4(a) of the Supply Code. The petitioner is having a contracted load of 2700 KVA since the time of erstwhile UPSEB. It was being supplied electricity through 33 KV Fatehpur feeder emanating from 132 KV sub-station, Malwan. The supply and voltage system falls under high-tension category i.e., 33000 volts. It made an application on 20th April, 2007 before the Executive Engineer (Distribution Division), Fatehpur for sanction of an additional load of 3000 KVA. Requisite processing fee was

deposited on 30th April, 2007. The U.P. Pollution Control Board, Lucknow has already granted no-objection certificate in this regard. On direction of Executive Engineer, the Sub-Divisional Officer has submitted a technical feasibility report dated 30th May, 2007 in favour of the petitioner. Another report by Assistant Engineer and Junior Engineer has been filed as Annexure-6 to the writ petition stating that the additional load of 3000 KVA can be released to the petitioner from 33 KV Fatehpur feeder. According to the said report, there are in all 5110 Industries connected with 33 KV Fatehpur feeder and the total load is 8250 KVA and it is possible to release load of 3000 KVA to M/s. Sigma Castings Limited by tapping 33KV Fatehpur feeder. However, when additional load as requested was not sanctioned, the petitioner-company was compelled to file Writ Petition No. 31754 of 2007, which was disposed of by a Division Bench of this Court vide order dated 17th July, 2007 requiring the concerned authority to dispose of the application for sanction of additional load within 7 days. According to the petitioner, the respondents have ultimately issued an office memorandum dated 4th December, 2007 whereby, the additional load of 3000 KVA has been sanctioned in favour of the petitioner subject to certain conditions. Condition No. 3 stipulates that additional load will be released to the petitioner by construction of a 33 KV independent feeder at 132 KV Malwan Sub-station and in this regard, the expenses are to be borne by the petitioner. Condition No. 6 requires the petitioner to furnish a bank guarantee of Rs. 3.74 crores in compliance of Clause 4.49 of the Supply Code. Condition No. 4 stipulates that additional load will be released only after enhancing the capacity of 40 MVA transformer at the Sub-station. The petitioner feeling aggrieved by condition Nos. 3 and 6 of the office memorandum has prayed for quashing the same and for a mandamus commanding the respondents to release additional load to the petitioner without requiring it to comply with these conditions and not to release new electric connection/additional load to any other consumer from 33 KV Fatehpur feeder.

Facts of Writ Petition No. 3466 of 2008: Kundan Castings (Pvt.) Ltd.

3. Petitioner is engaged in manufacture of MS Ingots by use of induction furnaces and is, thus, an industry under Clause 3.4(a) of the Supply Code. The petitioner company is having electric connection since the time of erstwhile UPSEB for a contracted load of 3410 KVA. It is being supplied electricity through 33 KV U.P.S.I.D.C. feeder, which also emanates from 132 KV Sub-station Malwan. It submitted an application for sanction of additional load of 3100 KVA on 20th April, 2007 and deposited the requisite processing fee of Rs. 3,000/- on 30th April, 2007. The petitioner also obtained a no-objection certificate from the U.P. Pollution Board, Lucknow in this regard. According to the petitioner, the Sub-Divisional Officer has submitted a feasibility report dated 30th May, 2006 (Annexure-5 to the writ petition). However, when additional load was still not sanctioned, it filed Writ Petition No. 31751 of 2007, which was disposed of by an order dated 17th July, 2007 directing the authorities to take appropriate decision within 7 days. Thereafter, by office memorandum dated 4th December, 2007, the respondents have sanctioned additional load in favour of the petitioner-company.

Condition No. 3 stipulates that additional load will be released by constructing an independent feeder at 133 KVA Malwan Sub-station and entire expenses in this regard are to be borne by the petitioner. Condition No. 4 stipulates that additional load will be released after enhancing the capacity of 50 MVA transformer installed at the Sub-station. Condition No. 6 requires the petitioner to furnish a bank guarantee of Rs. 3.74 crores being alleged dues on its sister concern M/s. Sigma Castings Limited, in compliance of Clause 4.49 of the Supply Code. The petitioner has approached the Court claiming identical reliefs as have been claimed by Sigma Castings Ltd. in W.P. No. 3467 of 2008.

Facts of Writ Petition No. 16216 of 2008: P.V.V.N.L. v. Vidyut Lokpal:

4. The petitioner, Purvanchal Vidyut Vitran Nigam Ltd. (for short referred to as "P.V.V.N.L.") which is a distribution licensee has filed the writ petition challenging the order dated 18th January 2008 passed by the Vidyut Lokpal (Electricity Ombudsman), Lucknow in Appeal No. 54 of 2007 whereby, the appeal filed by Gopal Krishna Gupta, Managing Director of M/s. Shyam Ferrous Limited, Fatehpur (for short referred to as "consumer") was allowed and a direction was issued to the petitioner to sanction new electric connection with load of 3000 KVA to the consumer by tapping 33 KV Fatehpur feeder. It appears that the consumer filed a complaint before the Consumer Grievance Redressal Forum, Fatehpur contending that earlier it was having sanctioned load of 3000 KVA for running furnace at its industrial unit at Fatehpur. Because of financial crunch, the consumer applied for temporary disconnection for 4 months on 20th July, 2006. However, such request was not possible and, therefore, the consumer submitted an application for permanent disconnection and in pursuance thereof, the electricity supply was disconnected on 30th July, 2006. The consumer had no outstanding electrical dues against it. After sometime, the consumer felt that now it is economically viable for it to resume its activities and, therefore, it applied for sanction of electricity connection of load of 3000 KVA. The consumer was informed by P.V.V.N.L. that the supply shall be released only from independent feeder to be constructed at 132 KV Malwan Substation. The consumer felt aggrieved by the aforesaid decision of P.V.V.N.L. as it wanted the new connection to be released by tapping 33 KV Fatehpur feeder, which is a mixed feeder belonging to P.V.V.N.L. According to the consumer, 5 induction furnaces and same number of rolling mills are already connected to Fatehpur and U.P.S.I.D.C. feeders and, as such, it should also be granted new connection by tapping these feeders. It cannot be made to bear the cost of an independent feeder. According to the consumer, application for sanction of load of 5 more units are pending and it is not possible to construct independent feeders for all of them as the same has to pass over the railway line and four kilometres of agricultural land. The consumer felt that apart from delay in constructing the independent feeder, it will also be unnecessarily burdened with about Rs. 50 lakhs likely to be incurred in constructing the independent feeder. It, therefore, approached the Consumer Grievance Redressal Forum, Fatehpur by filing complaint dated 3rd November, 2007. The Forum held that in view of Clause

3.4(a) of the Supply Code, load of 3000 KVA can only be released through an independent feeder. Aggrieved thereby, the consumer filed an appeal before the Electricity Ombudsman, Lucknow under Clause 7.7.2 of the Supply Code. In the appeal, the consumer contended that in case of M/s. Laxmi Cotsyn Limited, connection of 3000 KVA has been sanctioned on 17th November, 2007 pursuant to the directions of the Court by tapping 33 KV mixed feeder of the licensee. It was further contended that another consumer M/s. Nitin Spat was given connection of 3500 KVA by tapping the same feeder in pursuance of an order dated 5th March, 2005 and in such circumstances and also in view of the difficulties likely to be faced in constructing the independent feeder, direction be issued to P.V.V.N.L. to sanction the connection in its favour by tapping 33 KV Fatehpur feeder. The contention of the consumer found favour with the Electricity Ombudsman and it allowed the appeal vide its order dated 18th January, 2008 and directed P.V.V.N.L. to supply electricity to the consumer by tapping 33 KV Fatehpur feeder. Challenging the said order of the Electricity Ombudsman, the P.V.V.N.L. filed the instant writ petition.

5. The said writ petition was finally heard at the admission stage itself and was dismissed by a learned Single Judge of this Court vide judgment dated 2nd April, 2008. Aggrieved thereby, the P.V.V.N.L. filed Civil Appeal No. 5282 of 2010 before the Apex Court, which was allowed and the order of the learned Single Judge was set-aside on the ground that in Writ Petition No. 3467 of 2008, an interim order dated 18th January, 2008 was passed by a Division Bench of this Court restraining P.V.V.N.L. from giving any fresh or additional connection from the feeder in question and in view of it, the writ petition in question be also laid before the Division Bench having jurisdiction over the matter. Pursuant to the said direction, the present writ petition was placed for hearing before the Division Bench. On 11th January, 2012, the Division Bench on request of the parties directed Writ Petition No. 3467 of 2008 to be put up for hearing alongwith the present writ petition.

Facts of Writ Petition No. 44169 of 2008: M/s. Shyam Ferrous Ltd.

6. During the pendency of the Civil Appeal No. 5282 of 2010 filed by the P.V.V.N.L. before the Apex Court, it proceeded to issue an office memorandum dated 9th May, 2008 sanctioning additional load of 3000 KVA in favour of the consumer M/s. Shyam Ferrous Limited. According to condition No. 3, the load of 3000 KVA sanctioned in favour of M/s. Shyam Ferrous Limited will be released on construction of independent feeder in view of the interim order passed in Writ Petition No. 3467 of 2008. According to condition No. 4, the cost of construction of independent feeder has to be borne by the consumer. Condition No. 5 stipulates that the load will be released after enhancing the capacity of 40 MVA Transformer No. 2 installed at 132/33 KV Sub-station Malwan. Challenging condition Nos. 3, 4 and 5 of the office memorandum dated 9th May, 2008 and the consequential order dated 16th May, 2008 issued by the Executive Engineer, Vidyut Vitran Khand, UPVVL, Fatehpur, the consumer M/s. Shyam Ferrous Limited

through its Managing Director Ramesh Chandra filed the instant writ petition.

7. The common stand taken by M/s. Sigma Castings Limited, M/s. Kundan Castings Limited and M/s. Shyam Ferrous Limited is that they are entitled for release of new connection/additional load by tapping the mixed feeders of 33 KV belonging to the licensee, already in existence. Their contention is that they are/were being supplied electricity through the 33 KV feeders belonging to the licensee and there is no technical difficulty in granting a new connection/additional load as the feasibility report is in their favour. They further claimed that P.V.V.N.L. has released new connection of 3000 KVA to M/s. Laxmi Cotsyn Limited in pursuance of a direction of the High Court on 17th November, 2007 and to M/s. Nitin Spat on 5th March, 2005 and consequently they cannot be discriminated against. They further submitted that the P.V.V.N.L., has admitted that there is likelihood of delay in construction of an independent feeder as the same has to pass through the railway line and four kilometres of agricultural land and in such circumstances, P.V.V.N.L., which is under obligation to supply electricity without any delay, should have released the load from its existing 33 KV U.P.S.I.D.C./Malwan feeder. In the case of the M/s. Sigma Castings Limited and M/s. Kundan Castings Limited, an additional ground has been pressed viz., that their application is for sanction of additional load and not a new connection and, therefore, it has to be dealt with in the manner provided under Clause 4.43(b) and not under Clause 4.43(c), as it does not entail change in the system or voltage of supply.

8. The parties have exchanged their pleadings in respective cases and with their consent all the writ petitions were heard together. We have heard Sri B.C. Rai, Advocate on behalf of M/s. Sigma Castings Limited and M/s. Kundan Castings Limited and Sri J.P. Misra, Advocate for M/s. Shyam Ferrous Limited and Sri Mahboob Ahmad, Advocate appearing for P.V.V.N.L. and have perused the record.

9. Indisputably, all the petitioners need electricity supply for manufacturing MS Ingots by use of induction furnace, which is one of the industries envisaged by Clause 3.4(a) of the Supply Code. Their applications for sanction of new connecting/additional load were made in the following chronological order:

10. For answering the questions posed before the Court, it is essential to examine certain provisions of the Electricity Supply Act, 2003 (hereinafter referred to as "the Act") and the U.P. Electricity Supply Code, 2005 (hereinafter referred to as "the Supply Code").

11. Section 2(17) of the Act, defines a distribution licensee as under:

Section 2. Definitions

2(17) "distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply.

12. P.V.V.N.L. is a distribution licensee u/s 2(17) of the Act. It is entrusted with

the duty of supplying electricity to the consumers in its area of supply. Chapter VI of the Act deals with the duties and responsibilities of a distribution licensee. The relevant part of some of the provisions in so far as they have bearing to the controversy involved in this bunch of writ petitions are reproduced below:

Section 42. Duties of distribution licensee and open access

(1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.....

Section 43. Duty to supply on request

(1) [Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commissioning or within such period as may be specified by the Appropriate Commission.

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

[Explanation: For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, alongwith documents showing payment of necessary charges and other compliances.]

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

Section 45. Power to recover charges

(1) Subject to the provisions of this section, the prices to be charged by a

distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be-

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include -

(a) a fixed charge in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.

Section 46. Power to recover expenditure

The State Commission may, by regulations, authorise 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.

13. Evidently, it is the duty of the distribution licensee to supply electricity to the owner or occupier of a new premises without undue delay and in a nondiscriminatory manner. It is also the duty of P.V.V.N.L. to develop and maintain an efficient co-ordinated and economical distribution system in its area of supply. At the same time, it has been empowered to recover the expenses incurred in providing electricity plant and electric line, [section 43(2) proviso] as per rates approved by the State Commission [section 46]. For carrying out such objectives, the State Commission in exercise of its power u/s 50 of the Act has framed the Electricity Supply Code, 2005. Clause 4.1 of the Supply Code reiterates the obligations of a distribution licensee to supply electricity to the owner/occupier of a premises. Relevant part of it is reproduced below:

Clause 4.1 Licensee's Obligation to Supply:

The Licensee shall on an application by the owner or occupier of any premises, located in his area of supply, give supply of electricity to such premises within the one month after receipt of completed application showing payments of

necessary charges and other compliances:

Provided where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution Licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as specified by the Commission in Clause 4.8.

.....

14. Clause 4.2 cast obligation on the distribution licensee to extend the distribution system by upgrading, extending and strengthening the same in order to meet the demand for electricity in its area of supply. Clause 4.2 reads as follows:

Clause 4.2 Licensee's Obligation to Extend the Distribution System:

(a) The Licensee shall have obligation for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. Wherever the existing transformation capacity is loaded upto 80% of its capacity, the licensee shall prepare a scheme report for augmentation of such transformation capacity.

Provided that the responsibility of laying the distribution network for new street-lights shall be that of the concerned local body.

Provided also that for prospective connections in un-electrified areas in his area of supply, the Licensee may intimate to the Commission the details of such un-electrified colonies/areas alongwith approximate No. of prospective consumers. The licensee may also submit detailed plan for electrification of such areas by any licensee/developer/Authority/Private Colonizers/Promoters/local body or any collective body of the consumers. The plans may be updated each year before submission to Commission.

(b) The Licensee shall meet the cost for strengthening/upgradation of the system to meet the enhanced demand of the existing consumers as well as future growth in demand. Such expenditure shall be allowed to be recovered from the consumers through tariff subject to financial prudence check by the Commission.

15. Whereas, distribution licensee is under duty to supply electricity to owner or occupier and for the said purpose, it is obliged to upgrade, extend and strengthen the distribution system, but at the same time, it has been permitted to realise the cost of strengthening/upgradation through the tariff and other means subject to financial prudence check by the State Commission. In this regard, specific provisions has also been made in the Supply Code under Clause 4.6, which is reproduced below:

Clause 4.6 Estimate

(a) After sanction of load, an estimate shall be prepared, which shall remain valid for three months from the date of sanction letter to the applicant.

(b) The estimate shall include security deposit, charges for laying the service line, distribution mains (if required) and material, and system-loading charges etc, as determined by the Licensee with the approval of the Commission once in two years.

(c) After approval of the Commission, the Licensee shall publish a cost data book, and make it available to any interested person at a reasonable charge, and shall also place it on their website.

(d) The above estimate shall be based on Rs. /KW (or Rs. /KVA) of the sanctioned/contracted load, or on Rs. per service installation for specific bands of contractual load applied for OR sanctioned load at each voltage level up to 33 KV voltage on which supply is to be given. Beyond 33 KV voltage level, the charges for laying shall be based on actual estimates of the licensees:

Provided that the estimates for independent feeder shall be in accordance to requirements laid down in Clause 3.4 of this code.

Note:

Commission had specified a time frame for release of new connection in the Code subject to certain conditions. Commission observes that estimates to be made by licensee for the initial connection has uncertain elements ? the uncertainty of time, as well as uncertainty of what consumer has to pay. The Commission is therefore constrained to direct the licensee to notify in advance the normative estimated charges as specified above, within 3 months from the date of enforcement of this revised Code, failing which, the licensee shall charge on such provisional normative charges that may be specified by Commission.

(e) (i) LT loads upto 50 KW shall be developed by the licensee only, for which no supervision charges shall be applicable.

(ii) If the work is to be done by the developer/applicant/development authority, the Licensee shall charge supervision charges as a percentage as given below, of the normative estimate arrived at on KVA or KW basis as specified in cost data book, which shall be deposited with the licensee before work begins.

(a) For LT Loads up to 50 KW if the supply released on HT on the request of consumers (in such cases, metering will be done on LT and billing as per LT tariff) - 15%

(b) For Loads exceeding 50 KW (56 KVA) upto 3600 KW (4000 KVA) -15%

(c) For Loads exceeding 3600 KW upto 9000 KW (10,000 KVA):- 8%

(d) For Loads exceeding 9000 KW (10,000 KVA): - 5%

(iii) The Licencee shall commence work after the applicant has deposited the full amount of the estimates.

(f) Disputes regarding the estimate may be referred to the authority that is one

level higher than the sanctioning authority and if the applicant is still aggrieved he may approach the Consumer Grievance Redressal Forum for adjudication.

(g) A final bill shall be prepared after completion of the work by the Licensee.

- If the final bill exceeds the value of the estimate, the difference shall be deposited by the applicant before connection is energized.

- If it were less, the difference shall be adjusted in subsequent electricity bills or refunded by cheque within 60 days.

Provided further that, in case of revision of charges, if the estimates were sanctioned prior to the date of revision, the estimates in excess shall not be charged on completion of works on the basis of revised charge. However, if the work is completed at an estimate less than that prepared in revised charges, the excess amount deposited by the applicant on the basis of unrevised charges, shall be refunded within 60 days.

Provided also that if the licensee has published updated normative charges in the cost data book, and has included the same in preparing the estimate, the final bill and above proviso, shall not be necessary.

(h) Consumer's Share in the Cost Estimate

(i) The cost of extension and up-gradation of the system for meeting demand of new consumers/consumers desiring enhancement of load shall be deemed to have been recovered from them through system loading charges as approved by the Commission.

(ii) In areas where distribution mains do not exist, the costs for installation of new distribution mains shall normally be covered by grant from State Government or the local body or any collective body of the consumers or a consumer. The Licensee may also install new Distribution Mains from the surplus available with the Licensee after meeting all expenditure.

(iii) In all cases the applicant shall bear the cost of the extension of service line from the Distribution Mains to the point of supply.

16. The 1st proviso to Clause 4.6 stipulates that the estimates for independent feeder shall be in accordance with the requirements laid down in Clause 3.4 of the Supply Code. Clause 3.4 provides that load of certain class of industries viz., Arc/Induction furnaces, rolling mills and re-rolling milts and mini-steel plants of 1000 KV and above shall be released only through independent feeder. Clause 3.4 reads as under:

Clause 3.4 Supply through Independent feeders

(a) Load for Arc/Induction furnaces, Rolling Mills, Re-rolling Mills and mini steel plants, of 1000 KVA and above, shall be released only through an independent feeder and all necessary charges including the feeder cost shall be paid by the consumer.

(b) In other cases including townships/complexes, domestic or non-domestic or institutions, the supply may be given at independent feeder for load above 500 KVA, including those industries mentioned in Clause 3.4(a) above but having load less than 1000 KVA, at the request of the consumer/applicant, if he is willing to bear all applicable charges, subject to technical feasibility and availability of bay/corridor at the sub-station.

Provided that for releasing the supply to consumer/applicant on independent feeder, having load below 500 KVA, it shall depend on nature and purpose of supply such as emergency services, and such other reasons where continuity of supply is required by consumers, if the licensee so determines, the supply can be released depending on system constraints, technical feasibility, cost parameters as well as safeguarding the provisions of duty of supply on request as per Act.

(c) Deleted

(d) The licensee shall allow tapping of feeders supplying Arc/Induction furnaces, Rolling Mills, Re-rolling Mills and mini-steel plants, with either of these plants, and this shall not be construed as change in process. The tapping of the independent feeder shall be permitted by licensee to other connection having a similar process subject to the following conditions:

(i) Construction of separate feeder from the sub-station is not possible on account of non-availability of corridor, right of way and bay at the respective sub-station.

(ii) Consent of original consumer has been obtained by prospective consumer for cost sharing of common portion of feeder with the prospective consumer.

(iii) Quality of supply is not likely to be affected, and if technically feasible.

(iv) The outdoor metering at the tapping point, and the additional cost due to changes in system shall be done at the cost of prospective consumer. However the cost credit due to removal of the existing system shall not be given to the consumers.

(v) Deleted

Note: Process of use of electricity means the sub-category mentioned under applicability clause of appropriate tariff schedule as per the latest applicable Tariff Order of the Commission.

17. The word independent feeder" has been defined under Clause 2.2(ff) as follows:

Clause 2.2(ff) "Independent feeder" in case of 11 KV supply voltage shall mean a feeder emanating from 33 KV or higher voltage sub-station, and in case of 33 KV supply voltage shall mean a feeder emanating from 132 KV or higher voltage sub-station, for supplying electricity to a single consumer, or a group of consumers having similar process, on the same or contiguous premises.

18. It is evident from the facts admitted to all the parties that electricity is/was being supplied to the petitioners through 33 KV Fatehpur/U.P.S.I.D.C. feeder emanating from 132 KV Sub-station Malwan. The aforesaid feeders belongs to the distribution licensee (P.V.V.N.L.). It is also not in dispute that these feeders are supplying industries having different processes and for this reason these are being called "mixed feeders". There is also no dispute that these mixed feeders are in existence from the time of erstwhile UPSEB. At that time, there was no provision under the relevant statutes namely (1) Indian Electricity Act, 1910, or (2) The Electricity Supply Act, 1948 that load to such class of industries shall be released only through independent feeders. However, after the enforcement of the Act, 2003, and framing of the Supply Code, there is specific provision namely, Clause 3.4, which provides for supply through independent feeders in certain cases. Clause 3.4 aforesaid falls under Chapter III, which deals with system of supply and classification of consumers. It reveals that consumers of electricity of 1000 KVA and above running arc/induction furnaces, rolling mills and re-rolling mills and mini steel plants form a separate and distinct class by themselves. Whereas, sub-clause (a) mandates release of load of 1000 KVA and above to such industries only through an independent feeder and for which all necessary charges including the feeder cost is to be paid by the consumer; on the other hand, sub-clause (b) makes it optional to provide load above 500 KVA but less than 1000 KVA through independent feeder, at the request of the consumer/applicant and subject to technical feasibility and availability of bay/corridor at the sub-station. The proviso to sub-clause (b) gives further option to the distribution licensee to release supply to a consumer through independent feeder having load below 500 KVA depending on nature and purpose of supply, such as, emergency services and the like depending on system constraints, technical feasibility, etc.

19. It is pertinent to mention here that the none of the parties have challenged the classification of consumers made by Clause 3.4(a) or the validity and the legality of the said provision. In fact, the specific case of Sigma Castings and Kundan Castings is that load of 1000 KVA and above to class of industries referred to in Clause 3.4(a) can only be through an independent feeder. However, their contention is that Clause 3.4(a) is applicable only to new connections or only to such cases of enhancement of load where it results in change of system or voltage of supply, and which are to be dealt with as new applicants. In other words, their case is that for consumers falling under Clause 4.43(b), where there is no change in system or voltage of supply, the procedure prescribed for the new connection will not apply and consequently, Clause 3.4 will also not come into play, meaning thereby, that application for enhancement of load coming under Clause 4.43(c) resulting in change in system or voltage of supply alone are to be dealt with under Clause 3.4 by insisting for supply through independent feeder and not otherwise.

20. In this regard, it is stated that the petitioners are getting electricity from 33 KV Fatehpur/U.P.S.I.D.C. feeder emanating from 132 KVA sub-station Malwan at

the voltage of 33 KVA. The sanctioned load of M/s. Sigma Castings Limited is 2700 KVA and the request for enhancement is for 3000 KVA, which will bring the total load to 5700 KVA. Similarly, in the case of M/s. Kundan Castings Limited, the sanctioned load is 3410 KVA and even after enhancement, the total load will be 6510 KVA. According to the petitioners, the system of supply specified under Clause 3.1 and 3.2 will remain the same even after sanction of additional load. They will continue to fall under Clause 3.2(ii)(b) i.e., high-tension-contracted load exceeding 3000 KVA and up to 10000 KVA - 3 phase at 33 KVA. Consequently, Clause 4.43(b) will apply to their case and not 4.43(c). Their applications cannot be treated as new application and consequently Clause 3.4 will not apply.

21. On the other hand, Sri Mahboob Ahmad, Advocate for P.V.V.N.L. strenuously contended that though on sanction of additional load, the voltage will not change, but it will result in change in the system. According to him, the words "system" used in Clause 4.43(c) means "the distribution system" as defined in Clause 2(w), which means "the system of wires and associated facilities between the delivery point on the transmission lines or the generating station connection and the point of connection to the installation of the consumers. It shall also include electric line, sub-station and electrical plant that are primarily maintained for the purpose of distributing electricity in the area of supply of such distribution licensee notwithstanding that such line, sub-station or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines, or used incidentally for the purposes of transmitting electricity for others."

22. He submitted that for releasing additional load, the entire distribution system will have to be up-graded and strengthened and, therefore, the application for sanction of additional load is also to be treated as a new application. Alternatively, he submitted that Clause 4.43 only prescribes the time frames and the procedure to be followed while dealing with the application for enhancement of load and cannot whittle down the scope of Clause 3.4, which is a substantive provision dealing with release of load of 1000 KVA and above to a particular class of industries whether it is by way of new connection or additional load.

23. Clause 4.3 and 4.4 provides for the procedure to be followed while processing the applications for new connections. Clause 4.7 and 4.8 deals with two different situations viz., first, where extension of distribution mains or commission of sub-station/increasing capacity is not required and secondly, where extension of distribution mains or commissioning of new sub-station/enhancement of capacity of sub-station is required. Clause 4.7 and 4.8 are reproduced below for ready reference:

Clause 4.7 Release of Connection where extension of distribution mains or commissioning of sub-station/increasing capacity is not required:

(a) The Licensee shall intimate in maximum 10 working days of the site

inspection, the charges needed to be deposited by the applicant.

(b) The applicant shall deposit the charges within 7 working days of the receipt of the demand note, and furnish the right of way permission if the supply line passes over the property not belonging to the applicant.

(c) Licensee on request of consumer may extend the date of payment beyond 7 days, but this extended time shall not be counted for delay in connection u/s 43 of Act, and no compensation shall be paid during the said period.

(d) The applicant shall provide a board at the point of supply where meter and MCB shall be installed.

(e) The Licensee shall, upon completion of formalities as indicated in sub-clause (d), intimate the date when the meter shall be installed. The meter, MCBs etc. shall be installed and sealed in the presence of the applicant on the appointed date and the connection shall be energized immediately thereafter.

(f) The supply shall be given within 7 working days after the applicant deposits the charges, if a new pole or an underground cable is not required to be erected.

(g) (i) The applicant can procure the meter and MCB himself of approved make and specification fixed by the licensee as per Clause 5.4 of this Code.

(ii) The applicant shall deposit the meter and MCB, alongwith test charges with the Licensee. After testing/ensuring the accuracy of the meter, the Licensee shall install the meter and MCB.

Clause 4.8 New Connection where Extension of Distribution Mains or Commissioning of New Sub-Station/Enhancement of capacity of sub-station is required.

(a) Application in prescribed format in accordance to procedure as per Clause 4.4, shall be filed with the local office of the Licensee alongwith the documents, except that the work-completion certificate may not be attached, if the wiring has not been completed. The applicant may indicate in the application the time schedule in which load is required to be released. The applicant shall also submit Phasing Schedule for release of load in case of Phased Contracted Demand.

(b) Within:

(i) 15 days for request for supply on LT;

(ii) 30 days for request for supply on HT;

(iii) 60 days for request for supply on EHT,

the Licensee shall communicate to the applicant:

(i) whether the supply is technically feasible;

(ii) financial estimate for the works if feasible after sanction of load and

inspection of site;

(iii) estimated time to execute these works, after site inspection and load sanction;

(iv) date of site inspection, at least 7 days in advance when applicant/authorized representative shall be required to be present;

(v) security deposit and other applicable charges;

(vi) the point where meter is to be installed;

(vii) the civil/other works that are to be completed by the applicant for installation of meter cubicles and other electrical apparatus.

(c) Within 90 days validity period of the estimate, the applicant shall be required to deposit the estimated amount.

(d) (i) Change in site of the sanctioned load will not be permitted.

(ii) Change in purpose of use of power within same tariff schedule shall be permitted.

(iii) If the applicant opts for lesser load than the sanctioned load before signing of agreement, the agreement for the same shall be executed accordingly and the sanction of surrendered load shall stand forfeited.

(e) The Licensee shall execute the work expeditiously within-

(i) 45 days for loads to be connected With 400 V;

(ii) 60 days for loads to be connected at 11 KV;

(iii) 120 days to be connected at 33 KV;

(iv) 300 days for loads to be connected at 132 KV.

from the date of deposit of estimated charges:

Provided for connections requiring augmentation of distribution systems, the licensee shall inform the applicant maximum time frame for which load can be sanctioned as below:

- Where extension of lines or augmentation of Distribution Transformer is required.... 60 days,

- Where new Distribution Transformer is required... 120 days and

- Where existing 11 KV network needs to be strengthened or existing 66/33 KV substation needs to be augmented ... 180 days.

Also provided that the licensee shall electrify the un-electrified areas and release new connection therein as per the schedule given below:

(i) Where augmentation from newly existing work is possible ... 180 days;

(ii) Where new work or grid needs to be laid ... 1 year;

(iii) In case of Isolated Consumer ... 180 days;

(f) The applicant shall have the option to execute these works himself through LEC under the supervision of the Licensee for which supervision charges as specified in Clause 4.6(e) shall be payable to the Licensee.

(g) The applicant shall be responsible for getting the electrical works on his site inspected if required preferably 2 weeks prior to the scheduled date of completion of works relating to the distribution system, in accordance to the rules as framed u/s 53 of Electricity Act, 2003, and until framing of such rules, by the Electrical Inspector, and submit the inspection report to the Licensee. The HT or EHT applicants, upon demand of the Licensee, shall submit the test results of the manufacturers of the apparatus:

Provided that any delay due to non-submission of test results/NOC from Electrical Inspector/Work Completion certificate shall be attributable to the applicant's account.

(h) Upon satisfactory verification of the work completion certificate, test results, submission of security, by the applicant and completion of the distribution system related works, the Licensee shall intimate the date (not later than 7 days) when the connection shall be energized. The applicant or his authorized representative shall be present at the time of sealing of meter and energizing of the connection.

24. Perusal of these Clauses will show that they only deal with the time frames and the mode in which various work is to be carried out in order to ensure supply of electricity, without delay. While, in case where extension of distribution mains is not required, the time frame for completing formalities is much less but on the other hand, in cases where extension of distribution mains or commissioning of new sub-station is required, the time frame is much larger and extends up to 180 days where 11 KV net-work needs to be strengthened or existing 66/33 KV sub-station needs to be augmented and even extends up to one year in case where new work or grid needs to be laid. However, neither Clause 4.7 nor 4.8 speaks of expenditure to be incurred for getting new connections in either of the two situations. For the said purpose, there is separate Clause 4.6, which deals with all the situations and also cover cases where independent feeders are required to be constructed.

25. Clause 4.43 provides for the procedure to be followed in case of enhancement of load other than public lighting. It reads as follows:

Clause 4.43 Enhancement of Load for cases other than Public Lighting

(a) Applications for enhancement of load shall be filed in duplicate to the concerned Sub-Divisional Officer of the Licensee in the prescribed form (Annexure-4.10) alongwith the following:

- (i) Prescribed Registration-cum-processing fee as approved by the Commission from time to time.
 - (ii) Work completion certificate and Test report from a LEC (Licensed Electrical Contractor).
 - (iii) Letter of approval from the Electrical Inspector, if required.
 - (iv) Copy of the paid, latest electricity bills/arrears due.
 - (v) If matter related to dues is stayed by Court, the procedure as per Clause 4.49 may be followed.
 - (vi) Addendum to the Agreement to act as supplementary to the main agreement duly filled and signed by the consumer.
- (b) If the system and voltage of supply do not change as a result of requested enhanced load (Load after enhancement minus existing Load), the load enhancement shall be sanctioned by the concerned Executive Engineer or authority/Committee competent to sanction the load.
- (i) Within 7 days from the date of acceptance of application, if the metering and related apparatus does not need any change, subject to deposition of additional security and system loading charges.
 - (ii) Within 30 days from the date of acceptance of application where the metering and related apparatus needs to be changed, after deposition of additional security, system loading charges, and cost for new meter if supplied by Licensee. After carrying out inspection of the premises in presence of consumer's LEC or his representative, for which notice shall be served to the consumer, the meter with proper seals shall be fixed and the enhancement shall be effective immediately thereafter.
- (c) If there is a change in the system or voltage of supply, the authority competent to sanction the enhanced load shall follow the same time frames and procedure for sanction of new connection as detailed in Clause 4.8.
- (d) A fresh agreement for the enhanced load shall be executed for a minimum period of two years.
- (e) The application for enhancement of the sanctioned load will not be accepted if the consumer has any arrears of the licensee's dues.

26. Perusal of Clause 4.43 reveals that sub-clause (b) thereof regulates cases in which there is no change in the system or voltage of supply as a result of enhancement of load. Sub-clause (c) on the other hand deals with cases in which there is change in system or voltage of supply. It makes applicable the time frames and procedure for sanction of new connection as detailed in Clause 4.8 applicable to such cases. Clause 4.8 itself, does not deal with the extent of liability of a consumer or the expenditure to be incurred. For determining the estimate for expenditure, whether it be a case under sub-clause (b) or (c) of

Clause 4.3, recourse has to be taken to Clause 4.6. It visualises all contingencies including cases in which independent feeder is required to be constructed by adopting Clause 3.4 for such purpose. In this regard, Clause 3.4 is very explicit. It specifically deals with release of load of 1000 KVA and above. It does not make any distinction between new connection and an application for sanction of additional load. It is wide enough to cover both the situations. The use of word "only" fortifies the conclusion that there can be no exception to such Rule. Thus, after the enforcement of the Supply Code on 18.2.2005, wherever there is a request for release of load of 1000 KVA and above by industries contemplated under Clause 3.4(a), whether it be by way of new connection or for enhancement of load and whether or not, it results in change in the system or voltage of supply, it can only be through an independent feeder. Clause 4.43 cannot be read in isolation but alongwith Clause 3.4. Any other interpretation would render the word "only" used in Clause 3.4 "otiose". It is settled law of interpretation that a harmonious construction has to be made so that no provision is ignored nor any word is rendered redundant.

27. Thus, the irresistible conclusion is that in view of Clause 3.4 of the Supply Code, any request for supply of electricity of load of 1000 KVA and above, by class of industries contemplated thereunder, whether by way of new connection or by way of additional load and whether or not it results in change in the system or voltage of supply, it has to be through an independent feeder.

Other Issues:

Award of Electricity-Ombudsman - It's Legality?

28. Counsel for P.V.V.N.L. Shri Mahboob Ahmad advocate, submitted that impugned award by the Electricity Ombudsman is contrary to the specific provisions of the Supply Code. According to him, under Regulation 11 of U.P. Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation, 2007, the electricity ombudsmen can make only such award as is consistent with the Act and the Supply Code and has no power to issue directions contrary to it. He submitted that being a distribution licensee, it is bound by the provisions of Supply Code. According to him, the P.V.V.N.L. cannot be compelled to go beyond the mandatory requirement of Clause 3.4 which provides for release of load of 1000 KVA and above only through an independent feeder. He further submitted that the report submitted to the Electricity Ombudsman cannot be labelled as a feasibility report in the true sense as it only mentions about the existing loads but does not deal with the question as to whether it is technically feasible to sanction load of 3000 KVA in favour of M/s. Shyam Ferrous Limited or 4500 KVA in favour of M/s. Shanti Steels and 3000 KVA in favour of M/s. Sigma Castings Limited, who are stated to have made similar requests prior to M/s. Shyam Ferrous Limited.

29. Per contra, Counsel for the consumer M/s. Shyam Ferrous Limited submitted that in the past it was provided electricity through the mixed feeder of the

licencee. He has drawn the attention of the Court to the technical feasibility report submitted by the Junior Engineer and the Sub-Divisional Officer in pursuance of the directions given by the Electricity Ombudsman and according to which, the total number of industries connected with 33 KV Fatehpur feeder was six in number and the total load was 11250 KVA and the transformer capacity is 40 MVA and on basis whereof, it was contended that there will be no difficulty in releasing load of 3000 KVA in favour of M/s. Shyam Ferrous Limited. It has been further submitted that the authorities themselves in their letter dated 15.1.2008 to the Electricity Ombudsman have pointed out that the independent feeder has to be taken over railway track and agricultural land belonging to private persons which may cause certain difficulties and in such circumstances, there is no illegality in the order of Electricity Ombudsman for release of electric supply to it by tapping the existing 33 KV Fatehpur feeder.

30. The duties of the Electricity Ombudsman are laid down under Regulation 11 of U.P. Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation, 2007. It reads as under:

11.0 Duties of the Ombudsman-

(i) The Electricity Ombudsman shall-

(a) settle the grievance of the consumer who is aggrieved by non-redressal of his grievances by Consumer Grievance Redressal Forum on a representation made by such consumer within thirty days of the receipt thereof;

Provided that an Electricity Ombudsman shall not hear any matter, which pertains to matters mentioned in Regulation 5.1.

(b) receive representations against the order of the Consumer Grievance Redressal Forum and consider such complaints and facilitate to his satisfaction or settlement by agreement, through conciliation and mediation between a licensee and the aggrieved parties or by passing an award after hearing the parties in accordance with the Electricity Act, 2003, provisions of UP Electricity Reforms Act, 1999 not being inconsistent with Electricity Act, 2003, Rules or Regulations made there under particularly tariff orders, and Electricity Supply Code.

(c) settle the grievance of the consumer ordinarily within three months.

(d) deal with any other matter referred by the Commission.

(ii) The Electricity Ombudsman may, after hearing the Forum or other interested parties, if any, from time to time, issue such orders, instructions or direction to any forum for the performance of its function under these Regulation as may be deemed fit.

31. Regulation 12 provides for the procedure to be followed by the Electricity Ombudsman. Regulation 12.1(v) stipulates that the award passed by the Electricity Ombudsman shall be a reasoned one. Regulation 12.6 provides that order of electricity ombudsman shall set out-

- (i) issue wise decision;
- (ii) reasons for passing the order; and
- (iii) directions, if any, to the Distribution Licensee/consumer.

32. Regulation 12.8 makes it open to the consumer or distribution licensee, aggrieved by order of the Ombudsman, to approach any Court or Tribunal having jurisdiction in the matter.

33. Thus, it is evident that on receipt of representation against the order of Consumer Grievance Redressal Forum, the Electricity Ombudsman shall first endeavour to promote a settlement through conciliation or mediation. However, if the aforesaid effort fails, then he has to make an award which has to be a reasoned order and it has to be in conformity with the provisions of the Act and the Supply Code. He does not have power or jurisdiction to issue directions dehors the provisions of the Act and the Supply Code. Consumer or distribution licensee, aggrieved by award of the Ombudsman, has the remedy to approach any Court or Tribunal having jurisdiction in the matter.

34. In the instant case, the Electricity Ombudsman has issued direction for giving new electricity connection to the consumer by tapping 33 KV Fatehpur feeder emanating from 132 KV sub-station, Malwan. Admittedly, the load sought to be released is above 1000 KVA. It is also not in dispute that the consumer requires the electricity connection for manufacturing MS Ingots by induction furnaces, which is one of the industries covered by Clause 3.1 of the Supply Code. It has already been held above that load of 1000 KVA and above to such industry after enforcement of the Supply Code can only be released through an independent feeder. In view of it, the direction given by the Electricity Ombudsman is contrary to the specific provisions viz., Clause 3.4(a) of the Supply Code. Under Regulation 11, the award of the Electricity Ombudsman cannot be inconsistent with the provisions of the Act and the Supply Code. A fortiori, the direction given by the Electricity Ombudsman in its impugned award cannot be sustained.

35. Further, the award is absolutely vague. A perusal of the penultimate paragraph of the award conveys an impression that the new connection is to be supplied to the consumer by tapping 33 KV Fatehpur feeder as a temporary measure. It has not been provided in the award that for how long the aforesaid arrangement is to continue. It has also not been stipulated therein that such arrangement has to last only till the construction of independent feeder at the cost of consumer. On the contrary, a perusal of the pleadings made by the consumer before the Electricity Ombudsman and also before this Court in Writ Petition No. 44169 of 2008 filed by it, reflects that the consumer is not agreeable to bear the expense of construction of the independent feeder and to take supply of electricity by tapping of 33 KV Fatehpur feeder only as a temporary measure. Thus, the award of the Electricity Ombudsman being contrary to the specific provision of the Supply Code, cannot be sustained in law. The Electricity Ombudsman had exceeded its jurisdiction, in making such an award.

36. The Apex Court had the occasion to consider the scope and power of Electricity Ombudsman in the case of Punjab State Electricity Board v. Vishwa Calibere Builders Private Limited 2010 (79) ALR 18 (SC). In that case, the Electricity Ombudsman exercising power under the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulation, 2005 had issued a direction to regularise the unauthorised use of electricity by the respondent of the said case and for refund of alleged excess amount charged from him. The High Court in its writ jurisdiction had refused to interfere with the order of the Electricity Ombudsman. Before the Apex Court, the specific contention was that there is no provisions in the Electricity Act, 2003 and the Regulations framed for regularisation of unauthorised use of electricity which may confer any power on the Ombudsman to direct deemed regularisation of extra-load. The Apex Court after considering the provisions of Electricity Act, 2003 and the Regulations framed thereunder held as under:

13. We have considered the arguments of the learned Counsel and agree with him that in the absence of any provision in the Act or the Regulations framed by the appellant, the Ombudsman committed jurisdictional error by directing regularisation of unauthorised use of electricity by the respondent and refund of the alleged excess amount charged by the appellant.

15.This being the position, the fault, if any, for non-release of the balance load lay at the doors of the respondent and the Ombudsman committed serious error by directing the appellant to refund the alleged excess amount collected from the respondent on account of use of electricity over and above the sanctioned load.

37. In another judgment of the Apex Court in the case of Canara Bank Vs. P.R.N. Upadhyaya and Others, , the Apex Court was considering the scope of power of Banking Ombudsman appointed by virtue of scheme framed u/s 35(A) of the Banking Regulation Act, 1949. It was observed that the Banking Ombudsman is bound by the Circulars issued by the Reserve Bank of India and it cannot issue directions in ignorance of the said circulars and on the said ground the award was set-aside. It was held as under:

17.....Since, an Ombudsman is appointed by virtue of the Scheme framed u/s 35-A of the Banking Regulation Act, 1949, he is obliged to comply with the directions/circulars and notifications issued by the Reserve Bank of India u/s 35 or 21 of the Act. He is also required to issue directions to Banks, based on those directions/circulars and ensure their compliance. The learned Ombudsman could not have ignored the circulars and directions while dealing with the complaint filed by the respondent. The impugned award having been made ignoring various circulars/directions issued by the Reserve Bank of India, the same cannot be sustained.....

38. Thus, the Electricity Ombudsman has no power to give award de hors the provisions of the Supply Code.

39. It has been further argued on behalf of the consumer that the tapping is permissible under Clause 3.4(d) in case construction of a separate feeder from sub-station is not possible on account of non-availability of corridor, or right of bay, at the respective sub-station. According to him, the Electricity Ombudsman has recorded a specific finding in the impugned award that there is difficulty in construction of independent feeder for the consumer as it has to be taken over the railway line and 4 kilometres of agricultural land and which may delay the construction of the independent feeder. Perusal of Clause 3.4(d) will show that it does not apply to the mixed feeder of the distribution licensee. It relates to "independent feeder", which according to Clause 2(ff) means "the feeder emanating from 132 KV or higher voltage sub-station, for supplying electricity to a single consumer, or a group of consumers having similar process on the same or contiguous premises". In the instant case, the 33 KV Fatehpur feeder from which direction for tapping has been issued is a mixed feeder belonging to distribution licensee (P.V.V.N.L.). It is not an independent feeder belonging to any single consumer or group of consumers having similar process. Perusal of the report filed as Annexure-6 will show that in all 5110 industries of different kind are connected to the said feeder. In view of it, Clause 3.4(d) of the Supply Code cannot be taken resort to, for tapping the mixed feeder of the distribution licensee. The Electricity Ombudsman had misdirected itself in referring to Clause 3.4(d) of the Supply Code, while passing order for tapping mixed feeder of the distribution licensee, for releasing load to the consumer.

40. Counsel for the consumers have placed reliance on the judgment of this Court delivered on 9.10.2009 in Writ Petition No. 2309 of 2009 - M/s. Kesarwani Sheetalaya and others v. P.V.V.N.L. and others and Writ Petition No. 58652 of 2012 - M/s. Shree Parasnath Alloys Pvt. Ltd. v. P.V.V.N.L. and others delivered on 17.4.2013. Perusal of the aforesaid judgments would show that the dispute therein mainly revolves around the question whether the feeder from which supply is to be made was an independent feeder of a particular consumer or not and whether it can be tapped with or without its consent. The questions involved herein were not in issue in the aforesaid writ petitions and, therefore, the judgments rendered therein have no relevance to the question at hand.

41. In view of the aforesaid discussion, the award of the Electricity Ombudsman is wholly illegal, being inconsistent with the provisions of the Supply Code, and therefore cannot be sustained and is hereby quashed.

Plea of discrimination:

42. The Electricity Ombudsman has also held that since P.V.V.N.L. has supplied electricity to M/s. Laxmi Cotsyn Limited and M/s. Nitin Spat by tapping mixed feeder of the distribution licensee and, therefore, such direction can also be issued for supplying electricity to the consumer. Relying on the same, M/s. Sigma Castings Limited and M/s. Kundan Castings Limited also raised plea of discrimination against themselves.

43. M/s. Laxmi Cotsyn Limited through its director Pawan Kumar Agrawal appears to have filed Writ Petition No. 31019 of 2007 - Pawan Kumar Agrawal v. State of U.P. and others challenging the order dated 6th July, 2007 whereby, under Condition No. 3, it was provided that electricity connection of 3000 KVA will be supplied to it from an independent feeder to be constructed at its expense. This Court allowed the said writ petition by judgment dated 12th October, 2007 after recording categorical finding that M/s. Laxmi Cotsyn Limited, a textile dyeing industry is not one of the industries contemplated under Clause 3.4(a) and, therefore, it cannot be compelled to get an independent feeder constructed at its own cost. It was held that the said industry is entitled for new electricity connection from the existing mixed feeder of the distribution licensee. In compliance of the said judgment, which is stated to have attained finality, P.V.V.N.L. released connection of 3000 KVA to M/s. Laxmi Cotsyn Limited on 17th November, 2007. However, it is admitted to the petitioners M/s. Sigma Castings Limited, M/s. Kundan Castings Limited and M/s. Shyam Ferrous Limited that they are covered by Clause 3.4(a) being "industries" run on induction furnaces and, as such, they are not identically circumstanced and cannot set-up plea of discrimination on the said ground.

44. As regards release of electric connection on 5th March, 2005 to M/s. Nitin Spat, it was contended that the Electricity Supply Code came into force on 18th February, 2005 and it appears that by oversight, the required load was released in favour of M/s. Nitin Spat. It has been further submitted that the said mistake on part of P.V.V.N.L. cannot be made a ground for issuing direction in favour of consumer and, thereby, perpetrating illegality. In this regard, reliance has been placed on the decisions of this Court in The Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society Jaipur and Others, and Shiv Kumar Sharma Vs. Santosh Kumari, .

45. We have already held that after enforcement of the Supply Code on 18th February, 2005, load of 1000 KVA and above to the industries contemplated under Clause 3.4(a) of the Supply Code can be released only through an independent feeder. In view of it, release of load in favour of M/s. Nitin Spat on 5th March, 2005 from the mixed feeder was not permissible. Action of P.V.V.N.L. in this regard, whether inadvertent or deliberate, is of no consequence. The Apex Court in one of its recent decisions in the case of State of West Bengal and Others Vs. Debasish Mukherjee and Others, has held that plea of negative equality is not tenable in law. It was observed as under:

26. It is now well settled that guarantee of equality before law is a positive concept and cannot be enforced in a negative manner. If an illegality or an irregularity has been committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of Courts and Tribunals to require the State to commit the same irregularity or illegality in their favour on the reasoning that they have been denied the benefits which have been illegally

or arbitrarily extended to others. [See: Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, ; Union of India v. Kirloskar Pneumatics Ltd. 1996 (4) SCC 433, Union of India (UOI) and Another Vs. International Trading Co. and Another, , and State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, .

27. This question was exhaustively considered in Chandigarh Administration and another Vs. Jagjit Singh and another, , wherein this Court explained the legal position thus: (SCC p. 750, para. 8)

8..... The basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Generally speaking, the mere fact that the authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court cannot be exercised for such a purpose. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law.

46. Similar view has been taken by the Apex Court in the case of State of Orissa and Another Vs. Mamata Mohanty, . After considering various earlier judgments, it was observed as under:

56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Administration and another Vs. Jagjit Singh and another, ; Yogesh Kumar and Others Vs. Government of NCT, Delhi and Others, ; Anand Buttons Ltd. Vs. State of Haryana and Others, ; K.K. Bhalla Vs. State of M.P. and Others, ; Maharaj Krishan Bhatt and Another Vs. State of Jammu & Kashmir and Others, ; Union of India (UOI) and Another Vs. Kartick Chandra Mondal and Another,).

47. From the law enunciated by the Apex Court, it is clear that plea of negative discrimination cannot be made a ground to claim similar treatment under Article 14 of the Constitution of India. In the instant case as well, directing P.V.V.N.L. to

release load of 1000 KVA and above to the consumers in this bunch of writ petitions as has been done in case of M/s. Nitin Ispat, will be contrary to specific provisions of law and therefore cannot be done. The award of the Electricity Ombudsman based on plea of negative discrimination is, therefore, contrary to the settled position of law and cannot be sustained. The consumers in other writ petitions also cannot set-up plea of discrimination in their favour on the said ground and their contention in this regard is hereby turned down.

Challenge to condition No. 6 of impugned O.M:

48. Counsel for the petitioners M/s. Sigma Castings Limited and M/s. Kundan Castings Limited had challenged Condition No. 6 in the office memorandums dated 4.12.2007, whereby they were required to furnish a bank guarantee of Rs. 3.74 crores in compliance of Clause 4.49 of the Supply Code. In this regard, it has been brought to the knowledge of this Court that bank guarantee for the aforesaid amount was directed to be furnished as according to P.V.V.N.L., such sum was to be recovered from M/s. Sigma Castings Limited as arrears of electricity dues. It has been contended that the said condition is patently illegal as at present no such sum is due or payable to P.V.V.N.L.

49. Attention of this Court has been drawn to an assessment order dated 28.3.1995 issued against M/s. Sigma Castings Limited whereby a demand of Rs. 3,39,07,126/- was made on basis of presumed theft of electricity. Challenging the same, M/s. Sigma Castings Limited filed Writ Petition No. 10384 of 1995 in which direction was issued to the Superintending Engineer to decide the objections filed against the assessment bill dated 28.3.1995. Pursuant to the directions of this Court, M/s. Sigma Castings Limited filed objections against the assessment order dated 28.3.1995. The Superintending Engineer thereafter required the Executive Engineer to pass appropriate orders in accordance with the Electricity Supply (Consumers) Regulations, 1984. Vide assessment order dated 11.3.1998, the Executive Engineer revised the earlier assessment bill dated 28.3.1995 from Rs. 3,39,07,126/- to Rs. 9,67,966/- Copy of the revised assessment order has been filed as Annexure-12 to the Writ Petition No. 3467 of 2008. The petitioner M/s. Sigma Castings Limited accepted the revised assessment order and deposited Rs. 9,67,966/- as per receipt Annexure-13. UPPCL challenging the revised assessment order dated 11.3.1998 by filing Writ Petition No. 55790 of 2000 which was dismissed by this Court vide order dated 17.7.2006. According to the petitioner, the said order has attained finality. In the counter-affidavit filed by P.V.V.N.L., assertions made in this regard have not been denied; rather they accepted the factum relating to passing of fresh assessment bill and deposit of requisite amount in pursuance thereof and dismissal of the writ petition filed by UPPCL vide order dated 17.7.2006. In view of it, the demand of the bank guarantee of Rs. 3.74 crores from M/s. Sigma Castings vide condition No. 6 of Office Memorandum in W.P. 3467 of 2008 cannot be sustained, and is hereby quashed.

50. However, P.V.V.N.L. has taken a new plea that M/s. Sigma Castings Limited is

in arrears of other dues under various heads, such as, sum of Rs. 71,44,489/- as against dishonoured cheques, a sum of Rs. 6,87,000/- as penalty for violation of peak hours restriction and surcharge thereon. It is contended that monthly bill of August, 2009 for a sum of Rs. 49,28,371/- has also not been deposited. In response to it, Counsel of M/s. Sigma Castings Limited submitted that the alleged liability is denied and in any case aforesaid amounts have allegedly fallen due after issuance of office memorandum dated 4.12.2007 and the P.V.V.N.L. cannot be permitted to support the order on new facts and grounds. To buttress his submission, Counsel for the consumer Sigma Castings has placed reliance on judgments of the Apex Court in the case of T.N. Rugmani and Another Vs. C. Achutha Menon and Others, and in the case of Chandra Singh Vs. State of Rajasthan and Another, . There is no quarrel to the legal proposition, aforesaid. However, we find that since issuance of office memorandum dated 4.12.2007, considerable time has passed. The consumer has not accepted the proposal for supply in terms thereof, but has come up in writ petition before this Court. In such circumstances, if in the meantime, any sum has fallen due on the consumer M/s. Sigma Castings Limited, the distribution licensee can always insist upon the consumer to clear of such dues and if there is any Stay by the Court, to furnish a bank guarantee for such amount. This is also the obligation of P.V.V.N.L. under Clause 4.49 of the code. Such plea does not amount to an effort to support the order on grounds not disclosed in the order itself. In view of it, it is made open to the P.V.V.N.L. to issue fresh orders in this regard after examining the records.

51. Bank guarantee of similar amount of Rs. 3.74 crores is being demanded from consumer M/s. Kundan Castings Limited, alleging that M/s. Sigma Castings Limited is it's sister concern. Apart from raising specific plea that no such sum is due against M/s. Sigma Castings Limited as under the revised assessment order, the entire amount stands already paid, a further contention has been made on behalf of the petitioner M/s. Kundan Castings that it is a "company" incorporated under the Companies Act, 1956 while M/s. Sigma Castings Limited is a separate "company" and is neither an "associate" nor "a relative" of the defaulting company nor is "controlled" or having "controlling interest" in the defaulting company. It cannot be compelled to submit bank guarantee for the alleged electricity dues of M/s, Sigma Castings Limited.

52. It has already been held that demand of bank guarantee of such sum from M/s. Sigma Castings is illegal and consequently, no such demand can either be made from M/s. Kundan Castings Limited. In view of it, alternate argument that the petitioner is not an associate or a relative of the defaulting company, is not being gone into. As a result of the aforesaid discussion, Condition No. 6 in the office memorandum dated 4.12.2007 in Writ Petition No. 3455 of 2008 is hereby quashed.

53. No other point has been pressed by the Counsel for the parties.

54. However, before parting, it would be fruitful to refer to a proposal dated 24th January, 2012 given by P.V.V.N.L. to the consumers for construction of a single

independent feeder instead of separate independent feeders for all of them, by tapping 132 KV sub-station at Malwan. The said letter has been filed as Annexure-1 to the supplementary-affidavit in Writ Petition Nos. 3467 of 2008, 3466 of 2008 and 44169 of 2008. According to it, the cost likely to be incurred in this regard, is Rs. 1.8 crores and P.V.V.N.L. has proposed to undertake supply through such independent feeder to all the consumers in case they are ready to share the expenses amongst themselves and convey their acceptance within 10 days. Thereby, the expense of construction of independent feeder for each of the consumers separately, has to a great extent, been brought down. However, it appears that on account of such offer being made during pendency of the present litigation before this Court and also in view of interim orders passed in Writ Petition No. 3467 of 2008, the consumers did not respond to it and the period of 10 days contemplated thereunder and as extended by letters dated 23.4.2012 and 25.5.2012 had expired. In these circumstances, it will be in the fitness of the things that the period for acceptance of the said proposal, is extended. Consequently, it is directed that, in case, the consumers in the present writ petitions are ready to accept the said offer, they may convey their acceptance to P.V.V.N.L. within a period of three weeks from today and in that case, P.V.V.N.L. will proceed to construct the independent feeder adhering strictly to the time-frame provided under the Act and the Supply Code.

55. In view of the above discussions:

(a) Writ Petition No. 3467 of 2008 is allowed in part and Condition No. 6, which requires the petitioner to furnish bank guarantee of Rs. 3.74 crores in compliance of Clause 4.49 of the Supply Code is quashed. However, challenge to Condition No. 3 fails but subject to the modification made by P.V.V.N.L. itself as per proposal contained in its letter dated 24th January, 2012 (Annexure-SA-1).

(b) Writ Petition No. 3466 of 2008 is also allowed in part and condition No. 6 requiring the petitioner to furnish the bank guarantee of Rs. 3.74 crores is quashed. However, challenge to Condition No. 3 fails but subject to the modification made by P.V.V.N.L. itself as per proposal contained in its letter dated 24th January, 2012 (Annexure-SA - 1).

(c) Writ Petition No. 16216 of 2008 is allowed and the award of the Electricity Ombudsman dated 18th January, 2008 is hereby set-aside.

(d) Writ Petition No. 44169 of 2008 is dismissed. However, the offer made by P.V.V.N.L. vide its letter dated 24th January, 2012 shall be available to the petitioner in case it accepts the offer within the time frame provided here in above.

No orders as to cost. Let copy of this order be placed on record of each connected writ petition.