

Before

UTTARANCHAL ELECTRICITY REGULATORY COMMISSION

In the matter of:

Misc. Applications No. 1 & 2 of 2004 dated 05-04-2004 filed by Uttaranchal Jal Vidyut Nigam Ltd, Dehradun seeking recall and stay of Commission's Order dated 19.03.2004.

Coram

Sri Divakar Dev Chairman

Date of Order 4th June 2004

ORDER

1. Uttaranchal Jal Vidyut Nigam Ltd. (UJVNL) has filed an application before the Commission on 05.04.2004 seeking recall of order dated 19.03.2004 wherein the Commission has directed UJVNL and Uttaranchal Power Corporation Ltd. (UPCL), the distribution licensee for the State to:

- a) Finalise the terms and conditions for sale of electricity by UJVNL to UPCL beyond 31.03.04 within 30 days.
- b) In the mean time energy generated from generating stations inherited by

UJVNL from UP, should not be sold to any party outside the State without first meeting fully requirement of the consumers of Uttaranchal.

2. Instead of complying with the above directions and finalizing the terms of sale the licensee, UJVNL has filed this application requesting the Commission to recall the above order for reasons listed out in their application. These mainly are that the Commission does not have the jurisdiction or authority to pass such an order; that the order has hurt commercial interests of the applicant; the order has been passed without going through any formal proceeding; and is speculative etc.

3. The application has been opposed by UPCL who has filed its objections on 13.05.2004. It has been alleged by UPCL that inspite of Government of India's Statutory Order dated 05.11.2001, State Government directives issued on 24.11.2003 and the Commission above direction, UJVNL has been avoiding finalizing the terms and conditions of sale to UPCL, who are the only licensee for supply of electricity to consumers in Uttaranchal. Further that the earlier agreement having expired on 31.03.04, if UJVNL's application is accepted and Commission's order dated 19.03.2004 is withdrawn, UPCL will not able to meet the requirement of the State's consumers and the cost of power available to them will also go up while cheaper power generated in the State will flow to consumers in other States. This could even lead to law and order problems in the State. Therefore in the interest of the State's consumers, the order should not be recalled and Power generated by the generating stations transferred to Uttaranchal State under Section 63 (1) of Uttar Pradesh Re-organization Act, 2000 through Government of India's Order dated 05.11.2001 should continue to be utilised to meet the requirement of State's own consumers before selling any portion of the same to any third party outside the State. Relevant extracts of Government of India's said order is reproduced below;

“Fixed assets (land and buildings, installed plants and machinery, transmission and distribution systems, etc) of Uttar Pradesh Power Corporation Ltd. and Uttar Pradesh Jal Vidyut Nigam Ltd. situated in Uttaranchal shall be transferred to Uttaranchal Power Corporation Ltd. and Uttaranchal Jal Vidyut Nigam Ltd. as the case may be.....”

“In exercise of the powers conferred under section 64 of the Uttar Pradesh Re-organization Act, 2000 the Central Government hereby orders that the State of Uttar Pradesh shall have the first right of purchase in respect of any surplus power left over from the power generated by the units of the Uttar Pradesh Jal Vidyut Nigam Ltd., existing as on date of this transfer after meeting the consumption requirements of Uttaranchal.”

4. UJVNL’s application and UPCL’s objections to the same were listed by the Commission for preliminary hearing on dated 17.05.2004. The applicant was represented by Hemant Sahai Associates. The Commission was assisted in the matter by Shri S.C. Virmani, the Commission’s counsel. It was argued on behalf of the applicant that the Commission should recall its above mentioned order because the same has been issued without holding formal proceeding; because the same hurts applicant’s commercial interest; because the Commission does not have the authority to pass such an order; and because the Commission has erred in interpreting Government of India’s Statutory Order dated 05.11.2001 and has based its order on possibilities which are not likely to develop.

5. The applicant was asked to specify the provisions of the Electricity Act, 2003 or any other applicable law under which the application is to be considered. The applicant has argued in this connection that under Section 95 of the Electricity Act, 2003, the Commission shall be deemed to be a civil court, which in turn has the inherent power to recall its order under Section 151 of the Civil Procedure Court, 1908 (CPC). No other specific provision of law has been shown. The learned Counsel for the petitioner cited A.I.R. 2003 Supreme Court, Page 2041, Canara Bank and others V/s Shri Debasis Das and others; A.I.R. 1971, Supreme Court, Page 1045, M/s D.N. Roy & Others-Vs. State of Bihar & others; (1999) 1 Supreme Court, Page 693 Vijaya Bai and others Vs. Shri Ram Tuka Ram and others; (1985) 3 Supreme Court, Page 545 Olga Tellis and others Vs. Bombay Municipal Corporation and others.

6. The thrust of the ruling cited above is on the procedures that should be followed in exercise of statutory or administrative powers by any authority. The

impugned order is only an interim order which merely directs the two companies to finalize their Power Purchase Agreement failing which the Commission will take action to determine the terms and conditions of such sales. The question of giving adequate opportunity to the two parties to put forth their claims in this regard before the Commission will arise if the two parties fail to resolve their differences and the Commission has to exercise its powers and initiates proceedings for settling the dispute between the two companies on this account. The order dated 19.03.2004 does not in any way determine or take a view on merits of the respective claims of the two companies and merely directs them to settle their dispute amongst themselves, which in Commission's view should not be difficult as both the companies are owned by the State Government. Pending such settlement the Commission has directed that the existing arrangement for sale of power for consumers in the State, which was coming to end in another 12 days, should not be disturbed. Given the seriousness and urgency of the situation, and in order to protect interests of the consumer of electricity in the State, the Commission has rightly asked the companies not to let the matter linger any further and settle the same. The Power Purchase Agreement under which such supplies were being made so far was coming to end in another 12 days, and in such a situation issuing directions of the kind that the Commission did was essential and could not wait for procedural niceties, particularly when the directions given merely reiterate the position already enunciated in Government of India's Statutory Order dated 05.11.2001.

7. The Commission has considered all the arguments presented by the applicant and has carefully gone through the record. It is pertinent to point out here that major part of electricity supplied for consumption within the State comes from the generating stations vested in UJVNL by Government of India's Order dated 05.11.2001 issued in exercise of statutory powers conferred on them under Sections 63 & 64 of Uttar Pradesh Re-organization Act, 2000. In spite of categorically spelt out position of this order, UJVNL and UPCL have so far failed to finalize the terms for sale of such power beyond 31.03.2004. On the contrary, both have been complaining from time to time about non-settlement of terms and conditions and putting the blame for the same entirely on the other party. Failure of the two companies to finalize and execute proper terms for sale could seriously jeopardize supply of power to consumers of Uttaranchal and such a

situation could create utter chaos and unrest, consequences of which would be dreadful. To prevent such a situation from developing and indeed to protect legitimate rights of consumers of electricity in the State, the Commission issued its directions contained in its interim order dated 19.03.2004. Lingering disputes and squabbles between two companies can not be allowed to hold at ransom legitimate rights and interests of about 1 million consumers of electricity in the State and any possible threat to the same had to be eliminated. Commission's order has, therefore, been passed to protect legitimate interests of the State's consumers and in discharge of functions assigned to it under the Electricity Act, 2003 and is in conformity with and in furtherance of the objectives of the same and only reiterates the position already enunciated by Government of India under the Uttar Pradesh Re-organization Act, 2000.

8. The Commission has carefully considered the objection raised by UJVNL that he was not heard before passing the order dated 19.03.04. Sub-section (2) of Section 94 of the Electricity Act, 2003 empowers the Commission to pass such interim order in any proceeding, hearing or matter before the Commission, as the Commission may consider appropriate. The passing of such interim order includes the passing of ex-parte ad interim order pending hearing of the concerned parties, if the Commission comes to the conclusion that there is a need to pass such ad interim ex-parte order. The circumstances mentioned in the order dated 19.03.04 clearly show that there existed compelling circumstances for passing of the ad-interim order. UJVNL and UPCL had failed to finalise the Power Purchase Agreement and the prevailing agreement/arrangement was coming to an end in just another 12 days creating serious apprehensions about continued availability of power for use by State's consumers thereafter. There were, therefore, good and overwhelming reasons for the Commission to intervene and give the order dated 19.03.04. Both the parties will now have full opportunity to put forth their case in the proceedings initiated by the Commission under section 86(f) of The Electricity Act 2003 and are hereby directed to file their pleadings on the next date of hearing.

9. The Commission, is of the view that the objection raised about the jurisdiction of the Commission to pass the interim order dated 19.03.04 without hearing UJVNL is misconceived and the same is not sufficient reason for the Commission to recall the said

order or entertaining any request for the same. The application filed by UJVNL in this connection being without merit is accordingly disposed off. UJVNL has also given an application requesting that during hearing of the recall application, operation of Commission's order dated 19.03.04 should be stayed. Since the recall application of UJVNL stands disposed, the question of staying operation of Commission's order does not arise and the application given in this connection is also rejected.

10. Before closing the matter the Commission would like to point out that it is possible to make a point forcefully and effectively even with temperance and restrain in language expected in such pleadings and hereby advices the officer who has signed this application to exercise greater caution in this regard so that these limits are not transgressed by him in future.

Divakar Dev
Chairman