

**Before**

**UTTARANCHAL ELECTRICITY REGULATORY COMMISSION**

**Petition No.: 06 of 2003**

**In the matter of:**

M/s Garhwal Rolling Mill Pvt. Limited, Rishikesh.

.....Petitioner

**Vs.**

- 1) Uttaranchal Power Corporation Ltd. Urja Bhawan, Kanwali Road, Dehradun.
- 2) State of Uttaranchal through its Secretary, Energy Dehradun.
- 3) Executive Engineer, Electricity Distribution Division (Rural), UPCL, Dehradun.

.....Respondents

**In the matter of:**

Penalty imposed by UPCL and demanded by the Executive Engineer, Distribution Division (Rural) Dehradun for use of Electricity by the Petitioner during peak hours.

**Coram**

**Sri Divakar Dev**

**Chairman**

**Date of Order 20<sup>th</sup> February 2006**

**ORDER**

This is a petition filed by M/s Garhwal Rolling Mill (P) Ltd. Rishikesh against Uttaranchal Power Corporation Ltd. (UPCL), Urja Bhawan, Dehradun & its officers, admitted on 05.06.2003. The petition was contested by the respondents who filed their response through their counter affidavit dated 04.08.2003. Petitioner's rejoinder

to UPCL's submissions was filed on 06.10.2003. Thereafter, UPCL sought permission to file another detailed reply to the points raised in the petition and the same was allowed on 24.11.2003. The Petitioner then wanted an opportunity to file a rejoinder to the detailed written statement filed by UPCL. Opportunity for this was also given and another rejoinder was filed on 18.03.2004. The parties could not agree on the issues to be addressed and gave their own lists of such issues. Arguments on behalf on the Petitioner were heard on 09.08.2004 & on behalf of UPCL, partly on 25.10.2004 and then after number of adjournments on 17.11.2005. During the arguments it was claimed that the Petitioner's unit is located in the hill region of erstwhile U.P., which was contested by UPCL. The Commission, therefore, directed the parties to file their position supported by their affidavits and other documentary evidence. Instead of doing so, on 04.01.2006 UPCL moved an application seeking to amend its earlier submission and clarify the position regarding applicability of the 1977 order of U.P. Government. UPCL's request was allowed in the interest of justice and the case was finally heard on 24.01.2006.

2. The Petitioner has submitted that UPCL had been levying and realizing from the Petitioner penalties for violation of restrictions placed on consumption of electricity by the U.P. Electricity (Regulation of Supply Distribution, Consumption and Use) Order, 1977 issued under section 22-B of the Indian Electricity Act, 1910 hereafter referred to as the 1977 Order. The alleged violations and the penalties imposed for them have been listed out in the petition. These violations pertain to the:

- (i) directions regarding weekly closure given in the 1977 Order.
- (ii) restrictions placed on consumption of electricity during peak hours by the 1977 Order.

3. It has been argued on behalf of the Petitioner that the 1977 Order has been amended from time to time and the last amendment to the same was made in 1984. The requirement of weekly closure contained in the 1977 Order was done away with in the 1984 amendment. The said requirement having been removed, the question of its violation by the Petitioner and resultant penalties did not arise. This point was

conceded on behalf of UPCL and the Commission was informed that necessary relief on this account has been given to the Petitioner.

4. With respect to the restrictions on consumption of electricity during peak hours, it has been argued on behalf of the Petitioner that these restrictions do not apply on the Petitioner's unit. The reasons for this claim that have been given are that the Petitioner's unit is a continuous process unit and this restriction did not apply on such industries, and that the restrictions on consumption of electricity during peak hours placed in the 1977 Order as amended in 1984 were not applicable in the hill regions of undivided UP. The Petitioner's unit being located in Tehri Garhwal district falls in the hill region and is, therefore, exempted from these restrictions. Both these contentions have been disputed by UPCL. It has been argued that the Petitioner's unit is not a continuous process industry as it does not have any induction furnaces. The furnaces used the Petitioner are oil fired and Petitioner's claim in this regard is factually incorrect and the Petitioner has not been able to produce any reliable evidence in support of this claim. UPCL had initially contested the Petitioner's claim that its unit is located in the hill region of UP. When required to file documentary evidence in support of its position, UPCL changed their stance and in the submission dated 04.01.2006 have stated that the exemption for the hill region in the amendment order of 1984 related only to restrictions placed under clause 8(d) of the 1977 Order and not on the restrictions placed under clause 8(a) of that order. In this connection, photocopies of the 1977 Order and amendment order have been filed.

5. The Commission has carefully considered the arguments presented by the two parties and has examined the documents filed before it. Clause 8(a) of the 1977 Order stipulated that all non continuous process industries, other than those exempted therein, will not use electricity between 1800 hrs to 2200 hrs. Annexure-2 of the said order lists out the continuous process industries and at serial 09 of this list, "induction heating running on continuous basis" is mentioned. The Petitioner's claim is that his unit is induction heating unit running on continuous basis and is, therefore, exempted from this restriction. In support of this claim extracts from

some textbooks and journals relating to such process have been filed. These extracts deal with the concepts of galvanizing, heat treatment, induction heating etc. but do not, in any way, support the claim that this particular unit uses what has been termed as “induction heating running on continuous basis” in serial 09 of Annexure-2 of the 1977 Order. No other evidence has been produced to support this claim.

6. On the contrary, it has been stated on behalf of UPCL that the Petitioner himself had shown his unit to be a non continuous process industry while seeking enhancement of load from 700 KVA to 1000 KVA. This additional load was sanctioned on 05.08.1994 and the sanction letter clearly treats the unit as a non continuous process industry and states that the unit will not use electricity during the peak hours. Further the Petitioner unit has always been billed on rates applicable to non continuous industries. All these facts belie the Petitioner’s claim that his industry is a continuous process industry. The Commission agrees with UPCL’s contention and is of the view that the Petitioner has failed to substantiate his claim that his industry is a continuous process industry and, therefore, exempted from the restrictions on consumption of electricity between 1800 hrs to 2200 hrs, placed by clause 8(a) of the 1977 Order.

7. A careful reading of the 1977 Order and its amendment of 1984 shows that clause 8(a) of the 1977 Order deals with the issue of non continuous industry using electricity between 1800 hrs to 2200 hrs, generally referred to as peak hours. In addition to this, clause 8(d) substituted in 1984 deals with the issue of regulating hours of supply in different areas of the State. Unlike the restrictions under clause 8(a), the restrictions under clause 8(d) apply to all consumers located in a specified area, district, town, etc. other than those exempted therein. These restrictions are detailed in sub clauses (i) to (vi) of clause 8(d). Further, sub clause (vii) of clause 8(d) of the 1977 Order is as reproduced below:

*“(vii) The schedule of supply for rural areas and cut in towns as aforesaid shall not be applicable to Hill and Bundelkhand regions.”*

8. The 1984 amendment did not in any way alter clause 8(a) of the original 1977

Order which dealt with restrictions on use of electricity by industries during the peak hours. The 1984 amendment inserted clause 8(d) which dealt with the issue of regulating supply of electricity in different parts of the State, without altering in any manner, the restrictions placed under clause 8(a) of the original 1977 Order. These restrictions on supply have been qualified by sub clause (vii) reproduced above. The exemption contained in this sub clause is therefore from the cuts in power supply envisaged in the other sub clauses (i) to (vi) of clause 8(d) of the amended 1977 Order. The Petitioner's contention that the exemptions contained in clause 8(d)(vii) exempt his unit from peak hours restriction placed under clause 8(a) of the same order is misconceived and not supported by the order itself. The Commission is, therefore, unable to accept the Petitioner's contention that clause 8(d)(vii) grants his unit exemption from the peak hours restrictions placed under clause 8(a) of the 1977 Order.

9. In view of what has been stated above, there is no doubt that the Petitioner was required to observe the peak hour's restrictions placed by clause 8(a) of the 1977 Order. It is not disputed that the Petitioner's unit was found to have consumed electricity during these hours. Hence the penalties imposed by UPCL are justified and in accordance with law. In this connection, it has been argued that the penalties imposed for these violations by UPCL are at variance with the order of the Hon'ble Allahabad High Court. This has been denied by UPCL. If the penalties imposed on the Petitioner do violate the Hon'ble High Court's orders, UPCL would be guilty of committing contempt of the Hon'ble High Court, and attract punitive action for their conduct. However, it is not for this Commission to determine if such contempt has indeed been committed and the Commission is, therefore, not going in to this issue in these proceedings. The Petitioner is free to bring the matter of the notice of the Hon'ble High Court who would take such view of the matter and take such action as they may deem fit.

10. The petition is accordingly rejected.

**(Divakar Dev)**  
**Chairman**