

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Review Petition filed by UPCL on Commission's Order dated 05.05.2014 on the Application seeking approval of releasing additional 6 MVA load (Total of 20 MVA) on Supply Voltage of 33 kV to M/s Birla Tyres, Unit-2, Haridwar.

And

In the matter of:

Uttarakhand Power Corporation Limited (UPCL)Petitioner

&

1. M/s Birla Tyres, Unit-II, Khedi Mubarakpur, Laksar, Haridwar Respondent 1

2. Power Transmission Corporation of Uttarakhand Limited (PTCUL) Respondent 2

Coram

Shri C.S. Sharma Member-Chairman

Shri K.P. Singh Member

Date of Hearing: July 01, 2014

Date of Order: July 08, 2014

The Order relates to the Petition dated 27.05.2014 filed by Uttarakhand Power Corporation Limited (hereinafter referred to as "petitioner" or "licensee" or "UPCL") for review of the Commission's Order dated May 05, 2014 on the Petition of M/s Birla Tyres (hereinafter referred to as "Respondent No.1" or "consumer") granting approval for releasing additional 4 MVA load (Total of 18 MVA) on supply voltage of 33 kV.

1. Background & Submissions

1.1 A Petition was filed by Respondent No. 1 seeking approval of release of additional 6 MVA load (Total load of 20 MVA) on 33 kV. In its Petition, Respondent No. 1 had submitted that it was having a sanctioned load of 20 MVA and against the same, initially a load of 10 MVA was released to it. Respondent no. 1 also submitted that it had deposited the requisite amount of Rs. 3,00,15,859 for construction of 132 kV sub-station and single circuit transmission line to their factory.

1.1.1 However, considering the delay in construction of 132 kV line, Respondent No. 1 on 26.12.2009 requested UPCL to release additional 4 MVA load on existing 33 kV line as a stop gap arrangement. Since, UERC (Release of new HT & EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008 (hereinafter referred to as "Regulations") specifies that load exceeding 10 MVA and upto 50 MVA should be released on 132 kV, accordingly, UPCL sought approval of the Commission to release 14 MVA load to the Respondent no. 1 at 33 kV vide its Application dated 15.03.2010. The Commission vide its Order dated April 08, 2010 under the prevailing circumstances directed UPCL to release the additional load to Respondent No. 1 at 33 kV pending completion of 132 kV works subject to compliance of safety rules and the said order was complied by UPCL.

1.1.2 As the 132 kV line could not be erected even after a period of three and a half years, Respondent no. 1 again approached UPCL to release a further load of 6 MVA on the said 33 kV line but the same was not considered by UPCL. Respondent no. 1 also submitted that since he has already deposited the requisite amount with Power Transmission Corporation of Uttarakhand Limited (hereinafter referred to as "PTCUL" or "Respondent No.2"), it is not only losing the interest on money deposited by it but is also being subjected to excess load penalty by UPCL and it is also incurring losses as it is unable to plan its process expansion. Accordingly, it requested the Commission to direct UPCL to release load of 20 MVA on 33 kV till 132 kV line is ready.

1.2 The copy of the Petition was sent to UPCL and PTCUL for their comments in the

matter. The Commission also fixed a hearing for admissibility in the matter on April 10, 2014. The Commission vide its daily Order dated April 11, 2014 admitted the Petition filed by Respondent No. 1. The Commission in the said Order also directed the Petitioner and both the Respondents (Respondent No. 1 & 2) to submit complete chronological details/sequence of events from the date of deposition of the amount against the demand note raised by the Petitioner (UPCL) for release of the sanctioned load for construction of 132 kV line and associated works furnishing detailed justification/reasons for each event of delay by 23.04.2014. UPCL was also directed to furnish its position on request of Respondent no. 1 for allowing additional 6 MVA load on 33 kV. The matter was again posted for hearing on April 23, 2014.

- 1.3 Respondent No. 1 submitted the chronological detail wherein it mentioned that it had applied for sanctioning of 20 MVA load to UPCL on 03.02.2009. PTCUL vide its letter dated 10.02.2009 informed it that an additional bay has to be constructed for which Respondent No. 1 has to purchase the land near Gangnoli S/s and should transfer the same to PTCUL free of cost which was complied by it. UPCL sanctioned 20 MVA load on 30.04.2009 and therefore, Respondent No. 1 deposited Rs. 4,10,30,859.00 towards security money, work charges, processing fee and construction of 132 kV line and bay on 03.06.2009.
- 1.4 PTCUL vide its letter dated 19.04.2014 in compliance to the Commission's order dated April 11, 2014 submitted its reply. In its reply PTCUL submitted that after the amount was deposited by Respondent No. 1, it floated tender on 21.07.2009 for which the last date was 18.08.2009. The contract was signed with the contractor on 26.03.2010 and the completion period was stipulated as 90 days from the date of Letter of Award (LOA), which was issued on 19.03.2010. PTCUL also submitted the current status of work stating that 3 towers were damaged by unknown persons after their erection, which were to be re-erected and due to collapse of these towers 1.145 km of stringing were also damaged and total stringing work remaining was 1.437 km. PTCUL, in addition, also submitted the following in support of the reason for delay in the work:
 - 1.4.1 As per the route survey, proposed line length was 2.246 km and total 11 towers were to be erected. The construction work began in April, 2010 and since 9 out

of 11 towers were proposed in private land, hence, due to severe ROW problems progress of work was badly hampered. All work except stringing between Tower no. 4 to 6 and tower no. 8 to 9 were completed by 10.02.2011.

1.4.2 The land owners of land between tower no. 8 to 9 filed a suit in Civil court Lakshar for permanent injunction. Respondent no. 2 requested SDM, Lakshar vide its letter dated 16.05.2011, 09.06.2011 and 27.02.2012 and DM, Haridwar vide letter dated 07.03.2011 and 22.02.2012 for administrative support for completion of the construction work of the above line. It also requested the land owners for completing the balance work and they suggested that Respondent No. 2 (PTCUL) may change the route of line which was also communicated by the villagers to SDM, Lakshar who in turn directed PTCUL to take necessary action on the request of the villagers. The re-routing of line was also agreed upon by Respondent No. 1.

1.4.3 Accordingly, detailed survey for shifting the said line to new alternate route was carried out by the contractor and the revised scope was approved by Respondent No. 2 (PTCUL) on 19.08.2011 and based on the revised scope total line length was 2.394 km and 2 no. of additional towers were to be erected after dismantling of 1 tower of previous route. However, the villagers again protested and agitated and hence, the work could not be taken up and the local administration was expressing its helplessness and advised Respondent No. 2 (PTCUL) to stop the work as it could not guarantee the security to the employees of the contractor and PTCUL.

1.4.4 Hon'ble Additional District Judge, Haridwar vide its Order dated 21.09.2012 restrained it from further construction of line and operating the same during the pendency of the case. Respondent No. 1 filed a writ Petition before the Hon'ble High Court of Uttarakhand against the order of Hon'ble Additional District Judge, Haridwar. Hon'ble High Court vide its Order dated 15.04.2013 refused to interfere with the order passed by the Additional District Judge granting injunction. However, the Hon'ble High Court gave liberty to Respondent No. 1 to approach the State Government for obtaining permission

u/s 68 of the Electricity Act, 2003. Hon'ble High Court also clarified that if the State Government is of the opinion that no permission is required then Respondent No. 1 would be free to approach the appellate court for modification of the order for injunction and the Additional District Judge shall consider the same in accordance with law.

- 1.4.5 Thereafter, Respondent No. 1 filed an application u/s 68 of the Electricity Act, 2003 before District Magistrate for seeking permission for laying down 132 kV overhead line by PTCUL. The District Magistrate vide its letter dated 01.01.2014 has referred the matter to the State Government. However, the decision of the State Government is pending in the matter.
- 1.5 The Respondent No. 2 (PTCUL) also submitted that since Respondent No. 1 had sought relief against UPCL and no relief has been sought against it and has also not impleaded PTCUL in the matter, it should not be treated as Respondent in the matter.
- 1.6 The Petitioner (UPCL) vide its letter dated April 21, 2014 sought postponement of the hearing scheduled on April 23, 2014 and considering its request, the Commission rescheduled the hearing for May 05, 2014.
- 1.7 The Petitioner (UPCL) made its submission in the matter vide its letter dated 03.05.2014 wherein the chronological details were identical to that submitted by Respondent No. 2 (PTCUL). The Petitioner further submitted that in absence of 132 kV line, the sanctioned load of 20 MVA could not be released to it and Respondent No. 1 was still having a contracted load of 14 MVA on 33 kV. The Petitioner also submitted that the request of the Respondent No. 1 for release of additional 6 MVA load should not be accepted. The Respondent No. 1 had already been permitted release of additional load of 4 MVA on 33 kV by the Commission and it has again approached the Commission for relaxing the provisions of the Regulations as it would lay down a wrong precedence of allowing the release of load at lower voltage level than required under the Regulations which would not only result in loss to Petitioner (UPCL) but would also lessen the spirit of the Regulations. Relaxation of provisions of Regulations should be exercised exceptionally or else the same would be ineffective and redundant.

- 1.8 Having heard the Petitioner and Respondents in the matter during the hearing held on May 05, 2014, the Commission issued an Order dated May 05, 2014 allowing release of 4 MVA load in addition to the contracted load of 14 MVA (Total 18 MVA) from the existing 33 kV line supplying to the consumer till completion of the pending 132 kV works and directed aforesaid Petitioner (UPCL) to conduct a meeting with the consumer within 15 days from the date of the aforesaid Order and chalk out an Action Plan for carrying out the required modifications in the existing 33 kV line/system for releasing additional load of 2 MVA through the 33 kV line considering the compliances of safety rules and submit a report to the Commission latest by 26.05.2014. Respondent No. 2 (PTCUL) was directed to submit the legal authority under which it started constructing the said transmission line, the copies of the permissions procured for constructing the said transmission line and also the copies of the Orders issued in the matter from various Courts from time to time.
- 1.9 Respondent No. 2 (PTCUL) vide its reply dated 27.05.2014 submitted that under the Regulations all 132 kV and 220 kV works are to be executed by the Transmission Licensee. The GoUP in exercise of its power conferred under Section 51 of the Electricity Act, 1910 had authorized the UPSEB for placing the electricity supply lines and also to exercise powers under the Indian Telegraph Act, 1885. Respondent No. 2 also submitted that the Commission had issued the Transmission and Bulk Supply Licence to it wherein the Commission had conferred upon the licensee, all the power for placing of electric lines, appliances and apparatus for the Licensed Business that a telegraph authority possesses under the Indian Telegraph Act, 1885 (13 of 1885) under section 164 of the Electricity Act, 2003. Moreover, Respondent No. 2 (PTCUL) has been notified as an STU by GoU under the provisions of the Electricity Act, 2003 and hence, it has a statutory duty to build, operate and maintain Intra State Transmission network as per Section 40 of the Electricity Act, 2003. Respondent No. 2 also submitted that it was not required to seek any permission under the law. It also enclosed copies of orders passed by Civil Judge, District Judge and Hon'ble High Court in the matter.
- 1.10 Respondent No. 1 vide its letter dated May 27, 2014 and June 12, 2014 informed the Commission that the Petitioner (UPCL) did not release the additional 4 MVA load to it and had not complied with the directions of the Commission and had in fact levied

excess demand violation charges on it.

1.11 UPCL filed a Review Petition on Commission's Order dated 05.05.2014 wherein the Petitioner submitted that allowance for releasing 20 MVA load at 33 kV voltage level would lead to wrong precedence and violate the principles of basic engineering that would also lessen the very spirit of regulations vide which the load were required to be released. The Petitioner also submitted that:

1.11.1 The Commission had already relaxed the provisions once before for the same consumer, i.e. Respondent No. 1 (M/s Birla Tyres) and again relaxing the same would negate the very need of constructing 132 kV line, and bypassing of the specific provisions of law and circumventing the same in this manner would not only effect the certainty of law but also set a bad standard and impact on the general public at large. The relaxation earlier was provided by the Commission to the Respondent No. 1 (consumer) on the considerations which were not present at the present juncture, moreover, the relaxation of the provisions of the regulations was although not strictly as per law but keeping in mind the difficulty and time consumed in laying down 132 KV line.

1.11.2 The Commission recently in the matter of application filed by M/s. Raibahadur Narain Singh Sugar Mills had held that the Commission has powers to relax the provisions of the Regulations, however, such powers cannot be exercised by the Commission while discharging its judicial function. Any relaxation or amendment to any provisions of the Regulations can only be done through Regulations & not by way of Orders. Hence, the impugned order needs to be reviewed as the same is apparently erroneous and the error is apparent on face.

1.11.3 The Commission vide its Order dated 05.05.2014 had allowed the release of additional 4 MVA load (Total of 18 MVA) from the existing 33 kV line till the completion of pending works of 132 kV line, and there was no ground and justification for again providing the said relief and the said order was against the law, hence, the impugned order needs to be reviewed.

1.11.4 The Interim Order required the prior amendment of the UERC (Release of new HT & EHT Connections, Enhancement and Reduction of Loads) Regulations,

2008 and only after the necessary amendment in the said regulation, any increase in load could be released which cannot be done in a judicial proceedings.

- 1.11.5 The Commission gave the relief to the consumer as per its final prayer in the Interim Order itself. No relief by way of interim order is permissible if the interim relief is the final relief claimed by the person, as apparent that granting the final relief in an interim stage would only mean that the final adjudication upon merits loses all its purpose, hence the impugned order needs to be reviewed.
- 1.11.6 Maintainability of the earlier Petition filed by Respondent No. 1 (consumer) was objected by UPCL, however, without deciding the said issue, granting final relief at an interim stage was an error apparent on the face of the record.
- 1.12 The copy of the Review Petition was forwarded to both the Respondents in the matter for comments and a hearing was scheduled for admissibility of the Petition on 24.06.2014. On the scheduled date of hearing, Petitioner (UPCL) again sought adjournment. The Commission allowed the adjournment and posted the matter for 01.07.2014. However, during the hearing, on enquiry made by the Commission it was stated by the representative of Petitioner that the Order dated 05.05.2014 had not been complied by it. The Commission directed the Petitioner (UPCL) to comply with the said order immediately and report compliance of the Order on affidavit to the Commission on or before 30.06.2014. The Commission also held that non-compliance of the Order would render the Managing Director of the Petitioner (UPCL/licensee) liable for appropriate punitive action under Section 142 of the Electricity Act, 2003.
- 1.13 The Petitioner vide its letter dated 30.06.2014 submitted that since it had filed a review petition on the grounds mentioned therein and accordingly, it stated that insisting upon the execution of the Commission's Order before disposing the review petition according to law would be unjust and unfair as the same would render it as infructuous and would amount to rendering the Petitioner devoid of available statutory remedy and would also be against the principles of natural justice, further only option available to Petitioner now as per the said Order is either to comply with

the said Order dated 24.06.2014 or to face punitive action under section 142 of the Electricity Act, 2003 which is not be lawful and is against the principles of natural justice.

1.14 The Commission heard the Petitioner and Respondents during the hearing held on 01.07.2014. The Petitioner reiterated its submissions made in the review Petition.

2. Commission's Views and Decision

2.1 Powers of Commission and Grounds for Review

2.1.1 Before going into the merits of the Petition on various issues, the Commission first explores the powers vested in it to review its Orders in order to establish the legality of the Petition. In this regard, reference is drawn to section 94(1)(f) of the Act which specifically empowers the Commission to undertake review, which can be exercised in the same manner as a Civil Court would exercise such powers under section 114 and Order XLVII of the Code of Civil Procedure, 1908 (CPC).

2.1.2 The powers available to the Commission in this connection have been defined in section 114 and Order XLVII of the CPC. Under the said provisions, review of the Order is permitted on three specific grounds only, namely:

- (a) Discovery of new and important matter or evidence, which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time of passing of the Order.
- (b) Mistake or error apparent on the face of the record; or
- (c) Any other sufficient reasons.

2.1.3 The application for review has to be considered with great caution to ensure that it fulfill one of the above requirements to be maintainable under law. On the discovery of new evidence, the application should conclusively demonstrate that (1) such evidence was available and was of undoubted character; (2) that it was so material that its absence might cause miscarriage of justice; (3) that it could not be with reasonable care and diligence brought forward at the time of proceedings/passing of Order. It is well settled that new evidence discovered, if

any, must be one, relevant, and second, of such character that had it been given, it might possibly have altered the judgement.

- 2.1.4 With regard to mistake or error apparent on the face of the record, the error should be apparent enough to be noticed and presented before the Court during review proceedings to take cognizance. However, if it is a case that the Petitioner was not able to properly explain a legal position at the time of proceedings, it does not make a ground for a review.
- 2.1.5 With regard to any other sufficient reason, the courts have interpreted these words that such reasons should be at least analogous to those specified immediately above the clause. The courts have interpreted this phrase on the facts and circumstances of each case. It is a well-settled law that a review of the Orders of the Court/Commission should be used sparingly after examining the facts placed before the Court. An erroneous view or erroneous judgement is not a ground for review, but if the judgement or order completely ignores a positive rule of law and the error is so patent that it admits of no doubt or dispute, such an error must be corrected in the review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for a patent error. A review can only lie if one of the grounds listed above is made out.
- 2.1.6 The above legal position emerges out of various judgements of Supreme Court, notably, Smt. Meera Bhanja Vs. Smt. Nirmala Kr. Chaudhary [(1995) 1 SSC 170], Ajit Kumar Rath Vs. State of Orissa and others [(1999) 9 SSC 596] and Devendra Pal Singh Vs. State and another [(2003) 2 SSC 501]. With this background on legal provisions of the Review Petition, the Commission has examined the issues raised by the Petitioner to ascertain whether the issues raised by the Petitioner qualify for review or not.
- 2.1.7 The Petitioner had submitted that allowance for releasing 20 MVA load at 33 kV voltage level would lead to wrong precedence and violate the principles of basic engineering that would also lessen the very spirit of regulation vide which the load were required to be released. In this regard, it would be relevant to refer to Section 43 of the Electricity Act, 2003 which is reproduced hereunder:

“Duty to supply on request

43. (1) *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 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.

(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.”*

The above reading of the provisions of the Act makes it amply clear that the Petitioner being a distribution licensee was duty bound to release 20 MVA load to the consumer when it had already sanctioned the load. Further, it may be noted that the consumer had duly deposited the requisite amount in this regard in June, 2009. However, till date the consumer could not get the 20 MVA connection as desired by it. UPCL has merely referred that under the Regulations construction of 132 kV and above network is the responsibility of the transmission licensee and it has no control on the same. However, under the Electricity Act, 2003 it is the duty of the distribution licensee to supply electricity to the consumer on his request and hence, it cannot be absolved of its responsibility by merely stating that construction of the line was the responsibility of PTCUL. The Commission would like to make it clear that in the

instant case, PTCUL was merely acting as a contractor for Petitioner and onus of timely completion of work was on the Petitioner. The Petitioner also is liable for attendant penalties for delays.

In this regard, Regulation 4(8) of UERC (Release of new HT & EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008 specifies as under:

"...The distribution licensee shall also indicate in the above communication, the approximate time frame for providing such connection, which shall not be more than that specified in these Regulations or tentative date indicated by consumer in his application, whichever is later."

Regulation 5(2) & 5(3) of UERC (Release of new HT & EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008 specifies the time frame for complete installation of HT/EHT works & commissioning of a new sub-station/bay which in the present case is 270 days (180+90) from the date of deposition of requisite amount by the consumer. Considering the date of deposit, i.e. 03.06.2009, the Respondent No. 2 (PTCUL) was required to complete the work of installation of 132 kV line and commissioning of a new sub-station/bay by 28.02.2010. However, the work of erection of line and sub-station is still not complete and the Right of Way problem has been cited by Respondent No. 2 (PTCUL) as the reason for its inability to complete the work within the stipulated timeframe.

Further, Respondent No. 1 (consumer) had deposited the entire amount almost 5 years back and has till date not been released 20 MVA load sought by it. As a result, it had to not only forego any return on the amount deposited upfront but was also being subjected to excess load/demand charge by the Petitioner (UPCL) as its maximum demand was exceeding the load released to it despite having already applied for a load of 20 MVA which was also sanctioned by the Petitioner more than 5 years ago.

It would be relevant to refer that the Commission has, as an interim measure vide its Order dated 05.05.2014, allowed the consumer release of additional load of 4 MVA only till the completion of pending 132 kV work and not 6 MVA as contended by the Petitioner (UPCL). For balance 2 MVA load, the Commission had directed the

Petitioner (UPCL) to conduct a meeting with the Respondent No. 1 (consumer) within 15 days and chalk out an Action Plan for carrying out the required modifications, if any, in the existing 33 kV line/system for releasing additional load of 02 MVA through this 33 kV line considering the compliances of safety rules. Further, the contention of the Petitioner that the Commission has granted relief to the consumer as prayed by it is incorrect. The Respondent No. 1 (consumer) had sought release of additional 6 MVA at the existing 33 kV line, however, it has been allowed release of only 4 MVA.

The contention of the Petitioner that allowing additional load on this 33 kV line will violate the basic principles of Engineering is not valid. The Petitioner has been allowing loads close to that, now permitted albeit, with imposition of penalty for overdrawl. The Commission finds no merit in contention that if excess load is allowed with imposition of penal charges it does not affect the “basic principles of engineering” and only when it is allowed normally does it affect their cherished principles.

The Commission is aware of the requirement of 132 kV supply voltage for EHT consumers having load above 10 MVA and hence, nowhere waived this requirement. Hence, under the existing circumstances and on the principles of natural justice, the Commission in exercise of powers conferred upon it under Regulation 11(2) of UERC (Release of new HT & EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008 directed UPCL to release an additional load of 4 MVA to the consumer vide its Order dated 05.05.2014. Regulation 11(2) is reproduced hereunder:

“Powers to Remove Difficulties

If any difficulty arises in giving effect to these Regulations, the Commission may, of its own motion or otherwise, by an order and after giving reasonable opportunity to those likely to be affected by such order, make such provisions, not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.”

Further, this Order being specific and interim in nature and not generic, the need for amendment in Regulations does not arise. Moreover, reference made by the Petitioner towards Order dated 10.04.2014 is not relevant in this case as the Order

relied upon by the Petitioner related to request made by the generator for change in generic tariffs specified under the Regulations which cannot be modified by an Order. The current proceeding was specific in nature and accordingly was dealt by the Commission as an isolated case.

The contention of the Petitioner that maintainability of the earlier Petition filed by Respondent No. 1 (consumer) was objected by it, however, without deciding the said issue, granting final relief at an interim stage was an error apparent on the face of the record is incorrect and devoid of substance. Except for contending the absence of proper authorization for filing the aforesaid Petition by the consumer, UPCL did not make any material submission in this regard then. The Commission had then admitted the said Petition for further examination as the consumer was suffering due to default of the licensee and in the interest of justice, the said requirement was relaxed, to some extent mentioned in the Order only.

Based on the above, the Commission does not find any merit in the contention of the Petitioner that there are any errors of law or fact or circumstances warranting exercise of the review by the Commission and accordingly, the Petition is rejected.

- 2.2 In this regard, it would also be relevant to refer to the Petitioner (UPCL) submission made vide its letter dated 30.06.2014, in response to the Commission's directions issued in the Order dated 24.06.2014, that since it had filed a review petition, accordingly, it stated that insisting upon the execution of the Commission's aforesaid Order before disposing the review petition would be unjust and unfair is frivolous. Any Order or direction is required to be complied with by the parties to the proceedings unless any stay/injunction against that order/direction has been obtained. Merely filing a review Petition or an Appeal does not absolve it from compliance of the Order/directions issued by the Commission. The Petitioner arbitrarily chose to defy the directions of the Commission. The Commission directs its staff to issue notice to MD, UPCL under Section 142 of the Electricity Act, 2003 for non-compliance of the Commission's Order dated 24.06.2014.
- 2.3 The Commission vide its Order dated 05.05.2014 had also directed Respondent No. 1 (PTCUL) to submit the legal authority under which it started constructing the said

transmission line alongwith the copies of the permissions procured for constructing the said transmission line.

2.3.1 The Respondent No. 2 (PTCUL) vide its reply submitted that under the Regulations all 132 kV and 220 kV works are to be executed by the Transmission Licensee. PTCUL had also referred to the notification of GoUP wherein UPSEB was authorized for placing the electricity supply lines and also to exercise powers under the Indian Telegraph Act, 1885. PTCUL also submitted that the Commission had issued the Transmission and Bulk Supply Licence to it wherein the Commission had conferred upon the licensee, all the power for placing of electric lines, appliances and apparatus for the Licensed Business that a telegraph authority posses under the Indian Telegraph Act, 1885 (13 of 1885) under section 164 of the Electricity Act, 2003.

The Respondent No. 2 (PTCUL) also referred that it has been notified as an STU by GoU under the provisions of the Electricity Act, 2003 and submitted that it has a statutory duty to build, operate and maintain Intra State Transmission network as per Section 40 of the Electricity Act, 2003. The Respondent No. 2 also submitted that it was not required to seek any permission under the law.

2.3.2 In this regard, it would be relevant to refer to Section 68 of the Electricity Act, 2003 which requires prior approval of the State Government, for installation of overhead line exceeding 11 kV voltage level as in this case which requires installation of 132 kV line. Relevant extract of Section 68 is reproduced hereunder:

“Overhead lines.

68(1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

(2) The provisions contained in sub-section (1) shall not apply-

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

...

(3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary."

2.3.3 Hon'ble ATE in its various Judgments has also held that prior approval of the State Government for installation of overhead line is mandatory. In its Judgment dated May 24, 2011 in Appeal No. 166 of 2010, Hon'ble ATE has held that:

"27 ...Getting prior approval of the State Government for any overhead line is mandatory, irrespective of who constructs the line. This approval was also necessarily required even if the line was constructed by the licensee i.e. Appellant Board.

28 We would like to clarify here that the prior approval of the Appropriate Government under section 68 of the Act is mandatory even if the works are carried out by a licensee. To remove any doubt about this requirement, we would also like mention that prior approval under section 68 is being obtained by POWERGRID, a Central Transmission Utility, who have been authorized to exercise the powers of Telegraph Authority under section 164 of the Act. The requirement of prior approval under section 68 of the Act cannot be replaced by mere sanction of a licensee to undertake the works as a contractor."

2.3.4 It has been generally observed, both in case of works to be executed by UPCL and PTCUL that without any pre-preparation, funds required for these works are being got deposited from the consumers and then Right of Way problem is cited as an excuse for not executing these works for years. The licensees have not only been flouting the relevant provisions of regulation but are also helping themselves to undue financial gains. It is evident that proper route surveys and problems likely to be encountered are neither envisaged nor resolved before getting the funds deposited. Being the commercial entity the licensee should behave more responsibly towards the consumers, who are paying the cost of infrastructure in advance. PTCUL has been on many occasions found to be constructing the HT/EHT network without seeking prior approval of the Government under a wrong premise that it does not require any approval as it has been conferred with the powers of a telegraph authority under the Indian Telegraph Act, 1885.

2.3.5 In this regard, Hon'ble ATE in its Judgment dated 07.09.2011 in Appeal No. 83 of 2010 has decided on this issue in detail. Relevant extracts of the same are reproduced hereunder:

"16. In the present case, the 2003 Act is a special statute dealing with subject matter of electricity. Section 174 of the Electricity Act 2003 contains a non-obstante clause which provides that if there is any express conflict with any other Act, the provisions of the 2003 Act would prevail. The Telegraph Act 1885 does not contain any such non-obstante clause. Hence, if there is any inconsistency between 2003 Act and the 1885 Act, the provisions of the 2003 Act shall prevail.

17. That apart, even if the Telegraph Act 1885 contained a non-obstante clause, the 2003 Act being a latter special statute dealing with the field of electricity and electrical works, the 2003 Act alone would prevail over the provisions of the 1885 Act. So, the 1st question is answered accordingly."

Hence, from the above reading it is amply clear that in the matters concerning electricity and electrical works, the Electricity Act, 2003 would prevail over the provisions of the Telegraph Act 1885. Accordingly, the licensees are bound to comply with the provisions laid down in the Electricity Act, 2003.

2.3.6 PTCUL has so far contended that Sections 67, 68 and 69 of the 2003 Act are not applicable to it as it has been conferred with powers of the Telegraph authority under Telegraph Act 1885 under Section 164 of the Act. This contention of PTCUL is completely misplaced. In this regard, Hon'ble ATE in its Judgment dated 07.09.2011 in Appeal No. 83 of 2010 has held as under:

"35. In view of above discussions it becomes evident that provisions of Section 67 and 68 would be applicable to all the licensees irrespective of whether they are empowered to exercise powers of the Telegraph Authority under section 164 of 2003 Act or not. The second question is answered accordingly."

"65. No doubt plain reading of section 10 read with section 16(1) of 1885 Act would suggest that the Telegraph Authority has the right to enter upon the immovable property without prior consent. But, in the absence of non-obstante clause, Section 164 of 2003 Act does not confer such overriding powers to any licensee who has been authorised to exercise powers of Telegraph Authority and the licensee will have to carry out its works

within the parameters indicated by the rules framed by the State Government under Section 67(2) of the 2003 Act. In the absence of such rules, provisions of section 12 of 1910 Act by virtue of section 185(2)(b) would apply. Therefore, in terms of section 12(2) of the Indian Electricity Act 1910, prior consent of land owner would be required."

2.3.7 At present the State Government of Uttarakhand has not framed Rules under Section 67 of the Act. As already held by Hon'ble ATE, Section 67 (2) (a) of the Act provides for Rules to be framed even in respect of the consent of the land owner. Therefore, it is conceivable that relevant rules will be framed either for providing for the consent of the land owner by the State Government or dispensing with the consent of the land owner. In the absence of such rules, Section 185 (2) (b) must be given its full effect. If it is so, Section 12-18 of the Act, 1910 are specifically saved and the same will continue to apply till such time the Rules are framed under Section 67 (2) by the State Government. Section 12 of the Act, 1910 which is saved by the specific clause, specifically provides for the consent of the land owner.

2.3.8 The contention of Respondent No. 2 (PTCUL) that since it has been conferred with power of the Telegraph authority under Telegraph Act, 1885 no approval of the State Government for laying down transmission line (exceeding 11 kV voltage) is required under section 68 of the Electricity Act, 2003 is misplaced. In this regard, it is pertinent to reproduce relevant portion of Hon'ble APTEL Order in Appeal no. 83 of 2010:

"71. Next issue before us to be addressed as to Whether notification under Section 164 of the 2003 Act would mean that the Appellant has become Telegraph Authority under 1885 Act and all his actions would be governed by the Telegraph Act 1885.

72. In the light of our discussions and conclusions referred to above, we feel that this issue has become, somewhat redundant. However, we would like to address it for the sake of completeness.

73. In order to address this issue it would be worthwhile to reproduce relevant portion of section 164 of the 2003 Act.

164. Exercise of powers of Telegraph Authority in certain cases. – *The Appropriate Government may, ... for the placing of electric lines or electrical plant for the transmission of electricity ..., confer upon any ..., licensee ... any of the powers which the telegraph authority possesses under that Act { portions not relevant in present case removed}*

74. Thus, Section 164 confers upon the Appellant powers of the Telegraph Authority. Powers of the Telegraph Authority have enumerated in section 10 of the Telegraph Act 1885. Section 16 of 1885 Act deals with the powers of District Magistrate to permit the Telegraph Authority to exercise powers granted under section 10 and to adjudicate upon the disputes related to compensation.

75. On going through the relevant provision we are of the view that issuance of notification under Section 164 of 2003 Act conferring powers of Telegraph Authority upon a licensee, would not mean that the entire Telegraph Act 1885 is bodily lifted and incorporated into the Electricity Act 2003. In other words, it can be stated that only the provisions of the Telegraph Act dealing with the powers of a Telegraph Authority namely Section 10 and 11 of the Telegraph Act 1885 thereof may be read as part of the Section 164 of the 2003 Act.

76. Merely because Section 164 empowers State Government to confer on the licensee certain powers which can be exercised by a Telegraph authority under the Indian Telegraph Act, it cannot be construed that all the provisions of the Telegraph Act 1885 are to be incorporated into Indian Electricity Act. In other words, simply because some of the powers of Telegraph Authority under the Indian Telegraph Act 1885 are conferred on a licensee under the Electricity Act, it does not follow that all the rights of a licensee under the Indian Electricity Act are to be governed under the provisions of the Indian Telegraph Act. To put it shortly, the licensee, under the Electricity Act 2003 cannot be construed to be a Telegraph authority under the Telegraph Act.

77. In this context, it would be appropriate to quote the decision reported in AIR 1970 SC 491 (Patna Electric Supply Co Vs Patna Municipality), cited by the Learned Counsel for the State Commission in order to substantiate his plea that merely because some powers have been conferred under the Telegraph Act on a

Transmission Licensee, the said Licensee namely the Appellant cannot be considered to be a Telegraph Authority so as to be governed by the provisions of the Telegraph Act. In this decision, the Hon'ble Supreme Court has rendered two specific findings:

(i) merely because certain powers of the Telegraph Act have been conferred on a Licensee, it does not mean that the Licensee has become a Telegraph Authority as defined in the Telegraph Act and (ii) merely because certain powers of Telegraph Authority are available to a Licensee, it does not mean that all the rights and liabilities of the Licensee would be governed by the Telegraph Act.

78. Let us now quote relevant observations made by the Hon'ble Supreme Court reported in AIR 1970 SC 491. Relevant paragraphs 6 & 8 are reproduced below:

"6. Merely because some of the powers conferred under the Indian Telegraph Act on the Telegraph Authority could be conferred on a licensee under the Indian Electricity Act, it does not follow that all the rights and liabilities of a licensee under the Indian Electricity Act are governed by the provisions of the Indian Telegraph Act"

"8. Before this provision can be called into aid for the determination of any dispute, the dispute must arise between the Telegraph Authority and a local authority. A licensee under the Indian Electricity Act cannot be considered as a Telegraph Authority an expression defined in Sec 3 (6) of the Telegraph Act. Further that the disputes that can be referred to arbitration under that provision are only those referred to in that Section and no other".

79. This decision was rendered by the Hon'ble Supreme Court while interpreting Section 51 of the 1910 Act which is parimateria new Section 164 of the 2003 Act.

80. As indicated above, Section 51 contains a non-obstante clause whereas the present Section 164 of the Act 2003 has no such non-obstante clause. The finding of the Hon'ble Supreme Court is that the licensee cannot construe to be a Telegraph Authority even under Section 51 of the 1910 Act. If such were the legal position under Section 51 of the 1910 Act which

contains a non-obstante clause, the legal position could be the same even under notification which have been issued under present Section 164 of the 2003 Act which does not contain the said non-obstante clause."

- 2.3.9 ROW has been cited as the reason for delays in completion of works. This problem has occurred solely on account of PTCUL's failure to abide with the provisions of the Act, Rules and Regulations. PTCUL has vehemently contended that it does not require any permission for carrying out the works. However, based on the above discussions, it is abundantly clear that PTCUL has been consistently violating the provisions of the Act, Rules and Regulations and is also not discharging the duty required of it under the Act. Accordingly, PTCUL is directed to show cause within 15 days of the date of Order as to why it should not be proceeded against under Section 142 of the Act for non-compliance of the provisions of Section 67 and 68 of the Electricity Act and the Regulations.
- 2.4 Based on the above discussions, it is amply clear that the reasons for delays were attributable to the licensees. Accordingly, the Commission directs its staff to issue notice to MD, UPCL as to why penalty be not imposed on him under Section 43(3) of the Electricity Act, 2003 for non-compliance of Section 43 of the Electricity Act, 2003.
- 2.5 The Commission has vide its letter dated June 18, 2014 separately requested GoU to frame "Works of Licensee" Rules as required under Section 67(2) of the Electricity Act, 2003. A copy of this Order be forwarded to Secretary (Energy), GoU. An early notification of Rules under Section 67(2) of the Electricity Act is required not only to speed up the capital works by the licensees but also to avoid such complications in future.
- 2.6 The Review Petition filed by UPCL being not maintainable is hereby dismissed.
- 2.7 Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member-Chairman