

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Review Petition on the Order dated 16.01.2014 issued by Hon'ble UERC in the matter of Non-compliance of UERC (Release of New HT & EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008 and in the matter of M/s Gold Plus Glass Industry Ltd. Thithola (Roorkee) and Uttarakhand Power Corporation Ltd.

And

In the matter of:

Power Transmission Corporation of Uttarakhand Limited (PTCUL) Petitioner

&

1. M/s Gold Plus Glass Industry Ltd. Thithola (Roorkee) Respondent 1
2. Uttarakhand Power Corporation Limited (UPCL) Respondent 2

Coram

Shri C.S. Sharma

Member -Chairman

Shri K.P. Singh

Member

Date of Hearing: May 23, 2014

Date of Order: June 10, 2014

The Commission received a complaint from Sh. Yogesh Tyagi, Manager (Public Relations), M/s Gold Plus Glass Industry Limited, Vill.-Thithola, Tehsil-Roorkee, Distt.- Haridwar stating that despite depositing the requisite amount of ₹2,20,00,000.00 and ₹2,97,79,036.00 (total ₹5,17,79,036.00) in favour of PTCUL (transmission licensee) in the year 2008 for construction of 132 kV Manglore-Thithola Transmission line for its 10.118 MVA connection from UPCL (Distribution Licensee), the works were not completed.

2. On the above complaint of M/s Gold Plus, the Commission directed UPCL and PTCUL to submit reports justifying the undue delay, in the matter, in accordance with the provisions of UERC (Release of New HT/EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008 and 'The Works of Licensee Rules, 2006'.
3. Taking cognizance of the submissions of UPCL & PTCUL, in the matter, and

Regulations 4(8), 4(10), 5(2), 5(3) of UERC (Release of New HT & EHT Connections, Enhancement and Reduction of Loads), Regulations, 2008 and Rule 3(b) of 'The Works of Licensee Rules, 2006', the Commission in its Order dated 16.01.2014 specified that the responsibility of constructing a 132 kV transmission line lies with the transmission licensee as the feasibility study for providing such connection including route survey for line and associated works are in the scope of transmission licensee. UPCL as a distribution licensee has to coordinate with transmission licensee for compliance of the regulation and in no case can absolve itself from its obligation to supply under the provisions of Regulations/Act by merely stating that the delay in the matter is attributable to the transmission licensee. Further, the Commission observed that the licensees need to develop appropriate strategies on case to case basis and show definite improvement in the pace of work and issued an Order dated 16.01.2014 directing PTCUL as follows:

- “(i) PTCUL should take urgent steps to complete this work and furnish quarterly progress report in this regard.*
- (ii) PTCUL shall calculate the interest at the Bank Rate on the amount lying unutilized with it and this interest would be for the period subsequent to the expiry of 270 days from the date of last deposit and upto the completion of the said work. However, the total interest shall be adjusted out of dues of the consumer or added to the refund to be made to the consumer based on the actual expenditure incurred on the completion of the work. The Commission hereby directs PTCUL to submit compliance report within 1 month from the date of completion of the work.”*

4. On the aforesaid Order of the Commission, PTCUL filed a review petition under provision of Regulation 68 read with Regulation 74 of UERC Conduct of Business Regulations, 2004 read with the relevant provisions of the Electricity Act, 2003 stating that :

- (1) The provisions of the HT Regulations 2008 would not be applicable in the present case as these came into effect on 05.12.2008 whereas the terms and conditions for the work of construction of the line in question stood concluded on 30.08.2008 and at that point of time the Electricity Supply (consumers) Regulations, 1984 were applicable.

- (2) Further, the Licensee Rules have been framed by the Central Government under section 176 of the Electricity Act, 2003 and pertains to "Works of Licensee" and the same have not been adopted by the state of Uttarakhand till date.
- (3) M/s Gold plus was supposed to make available land measuring 960 sq meter adjacent to the sub-station at its cost, thereafter, 1 no. 132 kV bay and 132 kV S/C line from Mangalore to M/s Gold Plus was to be constructed on deposit basis. Keeping in mind the past experience of PTCUL with regard to ROW problems faced in construction of lines for consumers, PTCUL proposed that compensation to the land owners on the route of the line will be provided by the consumer, and, accordingly, the completion period for the work was kept as 6 months from the date of the award of the contract **subject to clearance of ROW problems by the consumers.**
- (4) PTCUL being the STU is only liable for ROW clearance in respect of UITP system and PTCUL's other Transmission network required for supplying energy to public and not for the individual consumers such as M/s Gold Plus. Therefore, the responsibility and liability of obtaining ROW clearance is that of the consumer in the present case.
- (5) With regard to Section 68 of the Electricity Act, 2003, as per the Order dated 20.04.2013 of Hon'ble High Court in the case of M/s Birla Tyres, the consumer M/s Gold Plus should approach the Govt./DM for resolving the ROW issue.
- (6) PTCUL submitted that under deposit works, it is the responsibility of the independent Consumer/applicant to obtain ROW.
- (7) PTCUL submitted that in the previous hearing held on 11.10.2013 its reply was confined to the reasons for the delay in completion of the line consequently:
 - (a) It could not get the opportunity to bring true and correct facts with regard to the other issues before the Commission and hence the said Order was passed by the Commission under mistake of fact and non-availability of the proper factual and legal position.

(b) M/s Gold Plus had neither filed petition and nor paid any court fee hence was not entitled to any relief.

- (8) Through the said review petition PTCUL requested the Commission that the Order dated 16.01.2014 be reconsidered/reviewed and submitted that M/s Gold Plus is not entitled to any interest on the amount deposited with PTCUL for the construction of 132 kV single circuit Mangalore to Thithola line (Roorkee). Further, PTCUL sought relief requesting the Commission to issue an interim Order and suspend the operation of the Order dated 16.01.2014 issued in the aforesaid matter.
5. For examining the admissibility of the review Petition, the Commission fixed a hearing on 05.05.2014 and directed MD, PTCUL vide letter dated 25.04.2014 for appearing before the Commission on the scheduled date.
6. The hearing was held on the scheduled date, i.e. 05.05.2014 and a daily Order dated 06.05.2014 was issued by the Commission admitting the Petition and posting the hearing on 15.05.2014 at 04:00 PM directing the Petitioner and Respondent as follows:
- “1. The Commission’s staff should send a copy of the Review Petition filed by the Petitioner to the Respondents namely-M/s Gold Plus Glass Industry Ltd. (Respondent No. 1) and Uttarakhand Power Corporation Ltd. (Respondent No. 2) for filing their submissions to the Commission before the scheduled date of hearing.*
- 2. Both the Respondents should also forward copies of their submissions to the Petitioner for its response before the scheduled date of hearing.*
- 3. The Petitioner and both the Respondents should appear before the Commission on the scheduled date of hearing.”*
7. Copies of the Order were forwarded to the concerned (Petitioner & Respondents) on 06.05.2014, informing them to comply with the above direction and appear before the Commission on 15.05.2014.
8. On scheduled date of hearing, i.e. on 15.05.2014 the hearing was held. During the hearing M/s Gold Plus requested the Commission to grant one week time for submitting comments on review petition of PTCUL and submitted a request vide letter dated 15.05.2014. The Commission heard the Petitioner and Respondent and

issued a daily Order on 16.05.2014 directing the Petitioner and Respondents as follows:

“Accepting the request of Respondent No. 1, the Commission allows Respondent no. 1 to submit its reply by 22.05.2014 alongwith a copy to the Petitioner & Respondent no. 2. Next hearing in the matter is posted for 23.05.2014 at 11:30 AM.”

9. Copies of the Order were forwarded to the concerned on 16.05.2014.
10. The Respondent-1, M/s Gold Plus in compliance to the Order dated 16.05.2014 submitted its reply vide letter dated 22.05.2014.
11. Further, another hearing was held on the scheduled date of hearing, i.e. on 23.05.2014. The Commission heard the Petitioner and Respondent. During the hearing M/s Gold Plus reiterated its submission made vide letter dated 22.05.2014 stating that:

(1) The review Petition of PTCUL is not maintainable as the Petition is barred by limitation as the limitation to file a review application is 30 days, as per Article 124 of Limitation Act and no delay condonation application was filed by PTCUL.

(2) The review application is maintainable only if there is mistake or error apparent on the face of record and jurisdiction of the Court cannot be invoked to review the order, like an Appellate Court. Since PTCUL has failed to show any mistake or error apparent on the face of record, therefore, the application is not maintainable and legally tenable.

12. In response, PTCUL submitted that contention raised by M/s Gold Plus regarding expiry of date of filing petition is wrong in accordance to the Regulation 68(1) of the UERC (Conduct of Business) Regulations, 2004, wherein 90 days period from the date of Order has been allowed for filing a review of the Order.
13. The Commission enquired about the grounds on which PTCUL has submitted review petition on the Commission's Order dated 16.01.2014. In response, PTCUL reiterated its submission dated 01.04.2014 made in the Review Petition.

14. **Commission's View**

The Commission is of the view that as per prevailing Regulations the responsibility of constructing 132 kV Transmission line lies with the transmission

licensee as the feasibility study for providing such connection including route survey for line and associated works are in the scope of transmission licensee. The Commission observed that being the transmission licensee, PTCUL is responsible for constructing the said line in a time bound manner. Notwithstanding its responsibilities as a transmission licensee, even after lapse of 5 years PTCUL has made very little progress in the construction work of line and from the information/documents submitted during this proceeding it is unequivocally clear that licensee has neither made any concerted effort towards identifying the problem, if any, encountered in execution of the work nor it has raised the issue before the competent authority/Govt. meticulously, rather the licensee & its officers have been lackadaisical in their approach and are found completely indifferent towards delivering the roles/responsibilities bestowed upon them under the Act/Regulations. Taking a strong exception on the working of the PTCUL, the Commission considers it a gross negligence on the part of licensee depriving the consumer, its sanctioned source of power supply for more than 5 years and making the consumer suffering the poor quality and reliability of power. **Inactivity** of the licensee can not result in undue enrichment on the amount deposited by the consumer in advance in lieu of the proposed line work to be carried out by the licensee.

Further, the submission of PTCUL that UERC (Release of New HT/EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008 are not applicable in the matter, is not acceptable. The Commission is of the view that though in the said matter the amount had been deposited prior to the notification of UERC (Release of New HT/EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008, however, the works were started after the said Regulations came into force. The Commission cautions the licensee for making such naive submission on the applicability of Regulations on frivolous grounds.

On applicability of Works of Licensee Rules, 2006 framed under sub-section (2) of Section 67 of the Electricity Act, 2003, the Commission is of the view that till such time State Govt. frames these rules, the rules prescribed by Central Govt. will apply on the licensees. It is amply established during the proceedings that PTCUL per se has refrained following the procedures laid down in the aforesaid rules including seeking approvals from State Govt./competent authorities resulting in a

situation where even after lapse of 5 years very little progress has been made on line work. The Commission has held that the difficulties/problems forwarded by PTCUL are not any complex issues faced by any execution agency and should not be presented as excuses. Had PTCUL followed the laid down procedures in accordance with the prevailing Rules/Act/Regulation in **light** earnest, the work would have carried on smoothly and the licensee would have realized that RoW clearances etc. are not constraints but part of the project execution milestone activities.

The Commission has taken cognizance of the submission of the Petitioner that the Respondent No. 1 (M/s Gold Plus Glass Industries Ltd.) has not been cooperating with the Petitioner in sorting out the issues of RoW with the local land owners and is of the view that being a user of the proposed line, Respondent No. 1 should coordinate with the Petitioner and extend all possible support to the Petitioner within the frame work of Rules/Act/Regulations.

With regard to the submission of the Petitioner that STU is only liable for RoW clearance in respect of UITP system and its other transmission network required for supplying energy to public and not for the individual consumers, the Commission entirely disagrees with such submission of the licensee and is of the view that the individual consumers are also the part of public and there is no such discrimination among the consumers. Moreover, being the commercial entity the licensee should behave more responsibly towards the consumers, who are paying the cost of infrastructure in advance.

The Petitioner with regard to prior approval of the State Govt. for construction of overhead lines exceeding 11 kV voltage level in accordance with the section 68 of the Electricity Act, 2003, has referred to an Order dated 21.09.2012 of Additional District Judge /Appellate Court in the matter of M/s Birla Tyres, Laksar (Sahab Singh & Others Vs Executive Engineer, UPCL) The relevant para 16 & 17 of the Order is reproduced below:

“ 16- प्रतिवादीगण द्वारा एक तर्क यह प्रस्तुत किया गया कि पी0टी0सी0यू0एल0 समुचित सरकार की परिभाषा में आता है और उसे प्रश्नगत विद्युत लाईन को लगाने का अधिकार प्राप्त है और समाचार पत्र में प्रकाशित विज्ञप्ति पी0टी0सी0यू0एल0 द्वारा माह अप्रैल 2010 में प्रश्नगत विद्युत लाईन के स्थापन का प्रकाशन भी कर दिया गया था, किन्तु उस समय वादीगण द्वारा

कोई आपत्ति प्रस्तुत नहीं की गयी। पत्रावली में उक्त प्रकाशन की प्रति प्रपत्र 19बी/4 संलग्न है। इसके अवलोकन से यह दर्शित होता है कि पी0टी0सी0यू0एल0 की ओर से यह विज्ञप्ति प्रकाशित करायी गयी है और उक्त विज्ञप्ति में यह भी उल्लिखित है कि यह विज्ञप्ति विद्युत अधिनियम की धारा 68 या 69 के अनुपालन में दी जा रही है। यहां यह ध्यातव्य है कि विद्युत अधिनियम 2003 की धारा 68 स्पष्ट रूप से समुचित सरकार के पूर्वानुमोदन से 11 किलोवाट से अधिक क्षमता की शिरोपरि विद्युत लाईन स्थापित किये जाने का प्रावधान करती है। समुचित राज्य सरकार की परिभाषा विद्युत अधिनियम 2003 की धारा 2(5) में दी गयी है। जिसके अनुसार समुचित सरकार से अभिप्रेत है—

(क) केन्द्रीय सरकार

- (i) पूर्णतया या अंशतः उसके स्वामित्वाधीन उत्पादन करने वाली कम्पनी के संबंध में,
- (ii) विद्युत के किसी अन्जर्जायिक उत्पादन, पारेषण, व्यापार या आपूर्ति के संबंध में और किसी खान, तेल-क्षेत्र, रेल, राष्ट्रीय राजमार्ग, विमान पत्तन, तार, प्रसारण स्टेशनों और बचाव, डाक यार्ड, परमाणु उर्जा संस्थापन के किसी कार्य के संबंध में
- (iii) राष्ट्रीय भार प्रेषण केन्द्र और क्षेत्रीय भार प्रेषण केन्द्र के संबंध में,
- (iv) उससे संबंधित या उसके नियन्त्रण के अन्तर्गत किन्हीं कार्यों या विद्युत संस्थापन के संबंध में,
- (ख) किसी अन्य मामले में इस अधिनियम के अधीन अधिकारिता रखने वाली राज्य सरकार

17— इस प्रकार इस विधिक प्रावधान के अवलोकन से यह स्पष्ट हो जाता है कि समुचित सरकार मद के अन्तर्गत या तो केन्द्रीय सरकार आती है या राज्य सरकार। पी0टी0सी0यू0एल0 किस प्रकार केन्द्रीय सरकार या राज्य सरकार की परिभाषा में आती है, इसे प्रतिवादीगण ने स्पष्ट नहीं किया है। इस प्रकार पत्रावली में संलग्न साक्ष्य के आधार पर पी0टी0सी0यू0एल0 समुचित सरकार की परिभाषा में नहीं आती है और प्रश्नगत विद्युत लाईन के पारेषण का प्रयास प्रतिवादीगण द्वारा बिना समुचित सरकार के पूर्वानुमोदन के किया जा रहा है। ”

The Petitioner also submitted copy of the Order of Hon'ble High Court, Uttarakhand dated 20.04.2013, which the Commission has taken cognizance of and the same is reproduced below:

“After hearing the learned counsel for the petitioner, I am of the view that the order passed by learned Additional District Judge/Appellate court for granting injunction does not call for interference. The issue in the suit itself was whether permission under section 68 of the Electricity Act, 2003 is precisely required or not. Learned appellate court has found and it is admitted that such permission was not

obtained. Learned counsel for the petitioner says that no permission under section 68 of the Act is required. I think, this issue can be resolved at the time of trial of the suit. This Court cannot relegate it to the position of the learned court below. However, I give liberty to the petitioner to approach the State Government for obtaining permission under section 68 of the aforesaid Act without prejudice if advised. If any approach is made and State Government says that no permission is required, then petitioner will be free to approach the Court below/appellate court for modification of the order for injunction, and Additional District Judge shall consider the same in accordance with law.

The writ petition is disposed of accordingly.”

The Hon'ble High Court has not set aside the decision of Additional District Judge / Appellate Court including injunction granted thereof and has also directed the Petitioner to approach the State Govt. for deciding the requirement of prior approval of the Govt. under section 68 of the Act.

The submission of the Petitioner that the Commission's Order dated 16.01.2014 has been issued under mistake of the fact and non-availability of factual & legal position is not sustainable since ample time and opportunity were given to both the Petitioner & Respondent for pleading the case during the said proceedings.

The submission of the Petitioner that since Respondent No. 1 had neither filed petition and nor paid any court fee and hence, it was not entitled for any relief is without **basis** on the ground that the Petitioner is ignorant of the fact that *suo-moto* proceedings in the matter were initiated by the Commission. The Commission in its Order dated 16.01.2014 has held that:

“17. It has been generally observed that 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. In the

order dated 02.04.2013 in the matter of inordinate delay in releasing connection to BSNL, the Commission has already directed that funds be got deposited only after proper route surveys and obtaining required clearances. The onus of obtaining required clearances including right of way in on the licensee and on this pretext they cannot delay execution of works for years. The licensees need to develop appropriate strategies on case to case basis and show definite improvement in the pace of work."

Accordingly, the Commission had then, interalia, directed PTCUL to pay interest on the amount lying unutilized with it & adjust the same from the dues of the consumers.

Based on the above, as no sustainable grounds have been urged warranting review of the impugned order, the Commission decides to reject the review Petition.

Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member-Chairman