

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Notice under Section 142 of the Electricity Act, 2003 in the matter of Non-compliance of the Commission's Directions with regard to the electricity theft caught by departmental Vigilance on 26.05.2012 in Sarverkhera area of EDD-Kashipur (Udham Singh Nagar).

In the matter of:

Uttarakhand Power Corporation Limited (UPCL),
Urja Bhawan, Kanwali Road, Dehradun

Coram

Shri J.M. Lal

Chairman

Shri C.S. Sharma

Member

Shri K.P. Singh

Member

Date of Hearing: January 24, 2014

Date of Order: March 13, 2014

- The Commission received a letter from Sh. Ashok Tandon, President, Hydro Electric Employees Union Uttarakhand, Haridwar vide reference No. 33 dated 31.05.2012 regarding the involvement of UPCL's officials in theft of electricity, established by the vigilance team of UPCL on 26.05.2012 in Sarverkhera area of Electricity Distribution Division, Kashipur.
2. The Commission took cognizance of the same and directed UPCL vide its letter No. 475 dated 11.06.2012 and No. 1150 dated 30.11.2012 to take necessary action after conducting an enquiry in the matter.

3. In response, UPCL vide its letter No. 194 dated 29.01.2013 submitted to the Commission that:

"इस सम्बन्ध में सूचनीय है कि दिनांक 26.05.2012 को कारपोरेशन की विभागीय विजिलेन्स टीम द्वारा मै0 हिमालयन पेपर मिल, सरवरखेड़ा, काशीपुर को निर्गत विद्युत संयोजन में विद्युत चोरी पकड़ी गयी। इस चोरी के विरुद्ध उपभोक्ता पर रू0 74.00 लाख के विद्युत मूल्य का निर्धारण किया गया। उपभोक्ता द्वारा निर्धारण की राशि का भुगतान अभी तक नहीं किया गया है। खण्ड कार्यालय द्वारा उत्तर प्रदेश इलैक्ट्रिसिटी (इयूटी) अधिनियम (उत्तराखण्ड अनुकूलन एवं उपान्तरण) आदेश, 2001 की धारा-5 के अन्तर्गत रिकवरी नोटिस जिला मजिस्ट्रेट को भेज दिया गया है। इस प्रकरण में विजिलेन्स टीम द्वारा जांच की गयी एवं इस जांच के आधार पर कारपोरेशन मुख्यालय द्वारा श्री शिवेन्द्र कुमार शर्मा, अवर अभियन्ता को आरोप पत्र निर्गत कर दिया गया है।"

4. On examination of the submission of UPCL, it was found that the report submitted by ED (Commercial), UPCL was incomplete, therefore, the Commission vide its letter No. 1599 dated 25.02.2013 asked UPCL to submit the information on following points by 05.03.2013:

- "1- उपभोक्ता द्वारा निर्धारण राशि जमा न करने पर उपभोक्ता का संयोजन काटा गया है अथवा नहीं। यदि नहीं तो क्यों ?
- 2- विजिलेन्स द्वारा की गयी जांच आख्या में कौन-2 दोषी पाये गये। जांच आख्या संलग्न करें।
- 3- जांच में दोषी पाये गये श्री शिवेन्द्र शर्मा, अवर अभियन्ता अथवा अन्य दोषियों को प्रेषित आरोप पत्र की प्रति प्रेषित करें।
- 4- वर्तमान में मीटर और संयोजन की स्थिति पर आख्या।"

5. However, UPCL did not respond, hence, the Commission sent a reminder vide letter No. 1763 dated 28.03.2013 directing UPCL to submit the report/information by 15.04.2013.

6. In response, UPCL vide its letter No. 1053 dated 01.05.2013 submitted information on the observations of the Commission. The submission of UPCL was further, examined by the Commission and consequently UPCL was directed vide letter No. 470 dated 24.06.2013 to submit information on following observations by 15.07.2013:

- “1. Final action taken by UPCL after issuance of watered down and poorly drafted charge-sheet to Shri Shivender Kumar Sharma.*
- 2. Progress report on revenue recovery of Rs. 74 lacs against the assessment made.*
- 3. Progress report on the FIR No. 43/12 u/s 135 of the Electricity Act, 2003 lodged in the matter in police station and subsequent registration of the case in the Civil Court*
- 4. Prima-facie, it appears to be a case of abetment of theft and officer should have been proceeded against under Section 150(2) of the Act. Please specify why action has not been taken against the personnel involved in abetment under Section 151 and 154 of the Electricity Act, 2003.”*

7. In the meantime, UPCL vide its letter No. 1579 dated 15.07.2013 sought the time extension for submitting the reply by 31.08.2013, which was allowed by the Commission vide letter No. 663 dated 29.07.2013.

8. Subsequently, in response to the Commission's observations, UPCL vide its letter No. 1697 dated 01.08.2013, submitted that:

- “1. प्रश्नगत प्रकरण में उत्तरदायी पाये गये श्री शिवेन्द्र कुमार शर्मा, तत्कालीन अवर अभियन्ता के विरुद्ध अग्रेत्तर कार्यवाही करने हेतु प्रकरण विभागीय जांच समिति को सौंपा गया है। विभागीय जांच समिति द्वारा श्री शर्मा को आरोप-पत्र निर्गत किया गया है। जांच समिति द्वारा प्रकरण में अभी तक कोई अन्तिम निर्णय नहीं लिया जा सका है।*

2. प्रकरण माननीय न्यायालय के समक्ष विचाराधीन है। विद्युत चोरी के विरुद्ध किये गये निर्धारण राशि की वसूली प्रकरण में माननीय न्यायालय के निर्णय के अनुसार ही की जा सकेगी।
 3. प्रकरण में विद्युत अधिनियम, 2003 की धारा 135 के अन्तर्गत एफ0आई0आर0 नं0 43/12 दर्ज करायी गयी थी। काशीपुर पुलिस द्वारा जांच के उपरान्त चार्ज शीट माननीय जिला एवं सत्र न्यायाधीश, ऊधमसिंह नगर के समक्ष दायर कर दी गयी है। जिसकी विशेष परीक्षण संख्या-125/2012 सरकार बनाम विनीत कौशिक माननीय न्यायालय के समक्ष विचाराधीन है। प्रकरण में साक्ष्य हेतु अगली तिथि 14.08.2013 नियत की गयी है। विभागीय अधिकारी एवं कर्मचारी दिनांक 14.08.2013 को माननीय जिला एवं सत्र न्यायाधीश, ऊधमसिंह नगर के समक्ष अपनी गवाही/विभागीय पक्ष प्रस्तुत करेंगे।
 4. प्रकरण में जांच अधिकारी द्वारा प्रथम दृष्टया श्री शिवेन्द्र कुमार शर्मा, तत्कालीन अवर अभियन्ता (सेवानिवृत्त) को विद्युत चोरी में संलिप्त पाये जाने के कारण उनके विरुद्ध विद्युत अधिनियम, 2003 की धारा 150(2) के अन्तर्गत एफ0आई0आर0 दर्ज करने हेतु सम्बन्धित उपखण्ड अधिकारी द्वारा सम्बन्धित थाना कुण्डा, काशीपुर में अनुरोध पत्र दिनांक 22.07.2013 को प्राप्त करा दिया गया है। पत्र की प्रतिलिपि संलग्न है।
9. Further, the Commission vide its letter No. 993 dated 14.10.2013 directed UPCL to apprise the present status in the matter, latest by 25.10.2013. UPCL did not submit the status in the matter by the stipulated date, hence a reminder was issued vide letter No. 1056 dated 30.10.2013 directing UPCL to apprise the Commission regarding status in the matter latest by 20.11.2013. However, no information was submitted by the stipulated date.
 10. On non-receipt of any information/status in the matter, the Commission further issued a second reminder vide letter No. 1218 dated 09.12.2013 giving opportunity to UPCL for submitting the same by 15.12.2013.
 11. Despite the Commission's directions issued vide aforesaid letters and reminders, reply/information in the matter was not submitted by UPCL. The Commission

took cognizance of the same and was of the view that this act of licensee was a clear case of non-compliance of the Commission's directions.

12. Therefore, the Commission decided to initiate *suo-moto* proceeding in the matter and directed MD, UPCL vide letter No. 1284 dated 20.12.2013 to show cause and explain as to why appropriate action be not taken against him in accordance with the provisions of section 142 of the Electricity Act, 2003 for non-compliance of the Commission's direction and reply to the show cause notice on affidavit before the Commission latest by 10.01.2014. Further, MD, UPCL was directed to appear before the Commission on 24.01.2014 at 11:30 Hrs.
13. With regard to the above show cause notice, UPCL requested time extension for submission of the reply by 20.01.2014, which was allowed by the Commission and communicated to UPCL through letter No. 1392 dated 16.01.2014.
14. Meanwhile, UPCL vide its letter No. 76 dated 18.01.2014 submitted following reply to the Commission regarding information sought by it through the letters No. 470 dated 24.06.2013, 993 dated 14.10.2013 and No. 1218 dated 09.12.2013:

"1— प्रश्नगत प्रकरण में उत्तरदायी पाये गये श्री शिवेन्द्र कुमार शर्मा, तत्कालीन अवर अभियन्ता के विरुद्ध अग्रेत्तर कार्यवाही करने हेतु प्रकरण विभागीय जांच समिति को सौंपा गया है। श्री शर्मा को आरोप-पत्र निर्गत किया गया है। विभागीय जांच समिति द्वारा विभागीय नियमों के अनुसार कार्यवाही करते हुए प्रकरण को अंतिम रूप (Conclude) दिया जा रहा है। प्रकरण में सुनवाई पूर्ण हो चुकी है। विभागीय जांच समिति की आख्या प्राप्त होने पर कारपोरेशन के मानव संसाधन निदेशालय द्वारा अंतिम निर्णय लिया जायेगा।

2— प्रकरण माननीय न्यायालय के समक्ष विचाराधीन है। विद्युत चोरी के विरुद्ध किये गये निर्धारण राशि की वसूली प्रकरण में माननीय न्यायालय के निर्णय के अनुसार ही की जा सकेगी।

3— प्रकरण में विद्युत अधिनियम, 2003 की धारा 135 के अंतर्गत एफ0आई0आर0 नं0 43/12 दर्ज करायी गयी थी। काशीपुर पुलिस द्वारा जांच के उपरान्त चार्ज शीट माननीय जिला एवं सत्र न्यायाधीश, ऊधमसिंह नगर के समक्ष दायर कर दी गयी

है। जिसकी विशेष परीक्षण संख्या-125/2012 सरकार बनाम विनीत कौशिक माननीय न्यायालय के समक्ष विचाराधीन है। प्रकरण में पुलिस द्वारा विवेचना जारी है।

- 4- प्रकरण में जांच अधिकारी द्वारा प्रथम दृष्टया श्री शिवेन्द्र कुमार शर्मा, तत्कालीन अवर अभियन्ता (सेवानिवृत्त) को विद्युत चोरी में संलिप्त पाये जाने के कारण उनके विरुद्ध विद्युत अधिनियम, 2003 की धारा 150(2) के अन्तर्गत एफ0आई0आर0 दर्ज करने हेतु सम्बन्धित उपखण्ड अधिकारी द्वारा सम्बन्धित थाना कुण्डा, काशीपुर में अनुरोध पत्र दिनांक 22-07-2013 को प्राप्त करा दिया गया था। श्री शर्मा द्वारा उन्हें प्रकरण में अभियुक्त बनाये जाने और पुलिस द्वारा परेशान किये जाने के विरुद्ध माननीय सत्र न्यायालय जिला उधमसिंहनगर में जमानत हेतु आत्मसमर्पण करने के लिए आवेदन किया गया था, जिससे माननीय न्यायालय ने खारिज कर दिया। श्री शर्मा द्वारा माननीय उच्च न्यायालय में उन्हें जांच में अभियुक्त बनाये जाने व पुलिस द्वारा परेशान किये जाने के विरुद्ध प्रार्थना पत्र दायर किया गया। माननीय उच्च न्यायालय ने अपने आदेश दिनांक 13.11.2013 (प्रतिलिपि संलग्न) द्वारा आदेशित किया कि अभियुक्त को परेशान न किया जाये और न ही हिरासत में लिया जाये। प्रकरण में कार्यवाही जारी है।”

15. Thereafter, MD, UPCL vide letter No. 96 dated 21.01.2014 submitted its reply to show cause notice dated 20.12.2013 under affidavit and submitted that the directions issued by the Commission had been forwarded to the field units for seeking factual position in the matter as the information was to be collected from the Civil Court and local Police Station, therefore, it has resulted in delay in submission of the reply to the Commission. MD, UPCL further, submitted that the updated status had already been submitted to the Commission vide letter No. 76 dated 18.01.2014 and requested the Commission to condone the delay in submission of the reply.
16. The hearing was held on scheduled date i.e. on 24.01.2014. During the hearing, Chief Engineer (Commercial), UPCL represented licensee on behalf of MD, UPCL and reiterated the submission of UPCL made before the Commission vide letter No. 76 dated 18.01.2014. Chief Engineer (Commercial), UPCL submitted

that the matter has been handed over to the departmental enquiry committee and charge sheet had been issued to the accused. Chief Engineer (Commercial) further, submitted that since the departmental enquiry committee is on the verge of concluding the matter, thereafter, appropriate action would be taken by the competent authority as soon as the report would be submitted.

17. With regard to the query of the Commission about recovery of the assessed amount, Chief Engineer (Commercial), UPCL submitted that the case is sub-judice before the Civil Court. Hence, the matter will be disposed off after receiving the decision of the Court.
18. Chief Engineer (Commercial), UPCL, further submitted that FIR No. 43/12 had been lodged under the provision of section 135 of the Electricity Act, 2003, in the matter is under consideration before the District Court.
19. Chief Engineer (Commercial), UPCL submitted that the Investigation Officer had found Sh. Shivender Kumar Sharma, JE (Retd.) responsible for abetment of theft of electricity and therefore, under the provisions of section 150 (2) of the Electricity Act, 2003, an FIR was lodged by the concerned SDO at Police Station-Kashipur on 22.07.2013. In this matter, the Commission pointed out on the unwillingness of the concerned SDO on filing of the FIR against the accused and also reminded on the language/text of the FIR filed against the accused, excerpt of the same is reproduced below:

"... प्रबन्ध निदेशक उत्तराखण्ड पावर कारपोरेशन लि0, द्वारा अपने पत्रांक 706-UPCL/MD/35 दिनांक 12.07.2013 एवं पत्रांक 638-UPCL/MD/35 दिनांक 03.07.2013 एवं अधीक्षण अभियन्ता के पत्रांक 939 दिनांक 20.07.2013 एवं अधिशासी अभियन्ता, विद्युत वितरण खण्ड, काशीपुर के पत्रांक शून्य दिनांक 20.07.2013 के द्वारा श्री शिवेन्द्र कुमार शर्मा की उपरोक्त विद्युत चोरी में संलिप्तता बाबत F.I.R. कराने हेतु आदेशित किया है पत्र की प्रति संलग्न है चूंकि श्री शिवेन्द्र कुमार शर्मा का उपरोक्त कृत्य धारा 150(2) विद्युत अधिनियम 2003 के अन्तर्गत अपराध की श्रेणी में आता है। अतः उपरोक्त के अनुसार आवश्यक कार्यवाही करने का कष्ट करें।"

20. Chief Engineer (Commercial), UPCL further submitted that the case is still under sub-judice as the bail application of Sh. Shivender Kumar Sharma was rejected by the District Court and thereafter Sh. Sharma approached to Hon'ble High Court for relief. However, Hon'ble High Court issued an Order dated 13.11.2013 in the matter, directing that "*...till next date of listing, no coercive steps shall be taken against the petitioner in connection with impugned FIR No. 43 of 2013, under Section 135 and 150(2) of The Electricity Act, registered at Police Station Kunda, District Udham Singh Nagar, provided he cooperates with the investigating agency in the investigation of the case. Stay application stands disposed of.*"

21. **Commission's View**

(1) Taking cognizance of the submissions made by the licensee during the proceedings in the matter, the Commission expressed its views as follows on the issues pointed out by the Commission in the para 6 of this Order and also included in the Show Cause Notice dated 20.12.2013 issued to MD, UPCL:

(a) *Final action taken by UPCL after issuance of watered down and poorly drafted charge-sheet to Shri Shivender Kumar Sharma.*

The licensee has not been serious on acting against official who was involved in abetment of theft of electricity and poorly drafted charge sheet against the accused reflects that the licensee approached this issue as a commonplace occurrence. Some charge sheet was issued by Departmental Enquiry Committee to the accused on 29.11.2012 and even after lapse of more than a year, the final report of the Committee in the matter is still pending. While the conduct rules provide that the Committee should carry out the investigation in a time bound manner and thereafter submit its report to the appropriate authority of licensee expeditiously.

(b) *Progress report on revenue recovery of Rs. 74 lacs against the assessment made.*

The Commission is of the view that assessment under section 135 is a civil liability on the consumer conducting the theft and the licensee should take necessary action for its recovery under the Supply Code Regulation of the Commission.

- (c) *Progress report on the FIR No. 43/12 u/s 135 of the Electricity Act, 2003 lodged in the matter in police station and subsequent registration of the case in the Civil Court*

With regard to registering of FIR with the Police under section 135 of the Act, the licensee has got registered a weakly drafted FIR, which has all the more given opportunity to the accused for evading the charges *prima facie* imposed against them under the provisions of the Electricity Act, 2003. Further, effective pursuance by the licensee in such cases is of utmost importance and accordingly, the licensee should have kept close watch on the case and co-operate with the respective Court by submitting specific and unequivocal information as desired by the Court, in the timely manner and provide necessary assistance to the Court for disposing such cases. The Commission directs the licensee to efficiently follow-up the matter and report on the outcome of the case after its disposal by the Court.

- (d) *Prima-facie, it appears to be a case of abetment of theft and officer should have been proceeded against under Section 150(2) of the Act. Please specify why action has not been taken against the personnel involved in abetment under Section 151 and 154 of the Electricity Act, 2003.*

On this issue, *Prima-Facie* it appears that licensee's field officers of the concerned division/sub-division was forced to lodge an FIR under section 150(2) of the Electricity Act, 2003 by his subordinate officers in the Company under pressure when the Commission intervened the matter. The Commission finds that there is a basic flaw in licensee's approach in dealing with such cases and emphasizes that the licensee has become

habitual about shielding its errant officials and is indifferent towards revenue loss caused to the company by their misdeeds.

- (2) During the hearing proceeding in the matter, the Commission once again cautioned MD, UPCL and other officers of the licensee for their repetitive inaction and lackadaisical approach towards compliance of the directions of the Commission. The Commission, further, expressed dissatisfaction on the callous behavior of the licensee that without issuance of show cause notices under the provisions of the Electricity Act, 2003, the licensee remains unresponsive towards directions issued to them under the provisions of the Act/Regulations/Order of the Commission. Also, the Commission expressed deep displeasure on UPCL's inactions and for not taking prompt actions against its officers/staff found accomplice in dishonest and malpractices. This callous approach of licensee in dealing with such officers/staff is sending wrong message down the line that even in case of abetment of theft of electricity, no action may be taken against them by licensee's management. This has been established by the Commission from the submission of licensee, wherein no action has been proposed against other officers, who were posted during the period and included in the report (ref. No. 303/सतर्कता अधिकारी/उपाकालि/V.C-16/12) dated 01.10.2012 of Departmental Vigilance Officer.

22. In light of the above, the Commission hereby orders that:

- (1) Licensee is required to develop a mechanism that such corrupt practices should be identified and promptly reported to the appropriate authorities.
- (2) Licensee to take stern action in such matters so that it becomes a deterrent for corrupt officers/staff in future. The tendency of shielding such errant officials needs to be curbed.
- (3) Licensee should follow up the cases registered against such corrupt practices with appropriate authorities/Courts and co-operate with the authorities/Courts for speedy and fast trials.

- (4) Licensee to take note of the views expressed by the Commission on all the issues in this matter in para 21 above and submit a compliance report including an Action Plan as to how UPCL is going to effectively deal in this matter till its logical conclusion. This report should be submitted within one (1) month from the date of issuance of this Order.

Ordered accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member

(Jag Mohan Lal)
Chairman