

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Petition under provisions of the Regulation 68 read with Regulation 74 of Uttaranchal Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 and section 94(1)(f) of the Electricity Act, 2003 to reconsider/review the order dated 11 March, 2014 passed by the Commission in the matter of non-compliance of Commission's direction with regard to Commercial Performance Monitoring of the Licensee including submission of monthly periodical reports in the prescribed formats by UPCL and Commission's Order dated 04.03.2013

And

In the matter of:

Sh. S. K Tamta, Chief Engineer (Commercial), UPCL
S/o Sh. B. L. Tamta R/o 1/VI, Urja Bhawan Coloney, Dehradun.Petitioner

Coram

Shri C.S. Sharma

Member-Chairman

Shri K.P. Singh

Member

Date of Hearing: May 22, 2014

Date of Order: May 26, 2014

1. In order to monitor Commercial Performance of distribution licensee, the Commission vide its letter No. 284 dated 17.05.2012 had issued certain formats pertaining to number of commercial performance parameters and directed the licensee to submit monthly periodical reports in the prescribed formats by 15th day of next month.
2. For the lackadaisical approach adopted by the licensee in compliance of the above direction, the Commission took strong exception and issued directions from time to time for submitting these parameters, which are key to its business.

However, despite the directions, the Commission observed that the licensee continued to default in submission of required information and also failed to put forth any valid reasons for their repeated non-compliance of the Commission's directions.

3. Over the repeated and continued lapses, the Commission took a serious view and initiated suo-moto proceedings under section 142 of the Electricity Act, 2003 making Sh. A.K. Johri, the then MD, UPCL & Sh. Anil Kumar, the then Executive Director (Commercial), UPCL as respondents and heard the matter on 11.02.2013. Subsequently, an Order was issued, in the matter, on 04.03.2013.
4. In the Order dated 04.03.2013 the Commission had cautioned the licensee and the respondents for their repetitive inaction and lackadaisical approach towards compliance of the directions of the Commission and non-responsiveness to the Commission's direction that: "*... if in future they do not channelize their efforts and lay down procedures and measures in accordance with the directions/regulations of the Commission and the Commission finds that the action of licensee and the respondents are not conducive in ensuring the compliances of regulations/license condition/directions, the Commission will construe this as wilful non compliance on the part of licensee and the respondents and will act according to provisions of the Act/conditions of the licence*".
5. Besides above, the Commission in its Order dated 04.03.2013 had clearly decided that:
"Particularly for the delays in submission of information/ reports desired by the Commission, Head of the Commercial wing will be held responsible and penal action including imposition of fine shall be taken in accordance with the provisions of Electricity Act, 2003 and Condition of the Licence. The Commission directs that from now on, the licensee shall submit the desired information/reports before the Commission regularly within the stipulated date in the prescribed formats."
6. The Commission noted that in accordance with the above directions of the Commission, '**Head of the Commercial wing, UPCL**' alongwith other respondents will be held responsible for this entire lackadaisical approach and delays in submission of information/reports hence forth.

Further, the Commission clearly decided in the Order dated 04.03.2013 that:

“The notice for action against Respondents u/s 142 of the Act, at present, is kept on hold and would be disposed off by the Commission after watching compliance by Respondents for 3 months.”

7. Giving ample opportunity and sufficient time to licensee and the respondents for compliances of the issued directions and submission of periodical reports in the prescribed formats exclusively meant for the benefits of licensee, the licensee and respondents failed to comply with the directions of the Commission issued vide various Orders and Tariff Orders. Hence, the Commission issued an Order dated 11.03.2014 and decided to dispose-off the matter kept on hold in the Order dated 04.03.2013.
8. In the Order dated 11.03.2014, the Commission considered such act of licensee as deliberate non-compliance of the directions of the Commission and held the following officers of UPCL responsible for the non compliance of the Commission’s direction:
 - (1) Sh. A.K. Johri, the then MD, UPCL
 - (2) Sh. Anil Kumar, the then ED, UPCL at present Director (Operations), UPCL
 - (3) Head of the Commercial wing holding the chair at present.
9. Taking cognizance of the reply/submissions made before the Commission in the matter from time to time namely written submission on behalf of the licensee, review meeting etc., the Commission was of the view that these officers namely Sh. Anil Kumar, the then ED (Commercial), UPCL at present Director (Operations) and Sh. S.K. Tamta, Head of the commercial wing of UPCL acted in an irresponsible manner and despite numerous opportunities were non-compliant of the directions of the Commission. This was construed as wilful non-compliance and therefore, the Commission, in exercise of its power under section 142 and 149 of the Electricity Act, 2003 imposed a personal penalty of ₹10,000.00 (Rupees Ten Thousand only) on each of the following:
 - (1) Respondent No. 2 Sh. Anil Kumar, the then ED (Commercial), UPCL at present Director (Operations), UPCL.
 - (2) Sh. S.K. Tamta, Chief Engineer (Commercial), UPCL, Head of the commercial wing.

The above penalty was required to be deposited to the Commission latest by 20.04.2014.

However, as an exceptional case, the Commission took a lenient view in the matter of Sh. A.K. Johri, as he had relinquished the office of MD, UPCL in September, 2013.

10. In compliance to the Order dated 11.03.2014, Sh. S.K. Tamta, Chief Engineer (Commercial), UPCL has deposited the personal penalty of ₹10,000.00 vide DD No. 118020 dated 16.04.2014. However, Sh. S.K. Tamta, Chief Engineer (Commercial), UPCL filed a review Petition on the aforesaid Order under provisions of the Regulation 68 read with Regulation 74 of UERC (Conduct of Business) Regulations, 2004 & Section 94(1)(f) of the Electricity Act, 2003.
11. The Petitioner, Sh. Tamta, in its review Petition submitted that:
 - “14. *That in the aforementioned suo-moto proceedings petitioners was not the party and hence had no opportunity to put up before the Hon'ble Commission, the efforts taken by the office of the Petitioner for complying with the direction of the Hon'ble Commission, hence the opportunity of hearing was denied to the petitioner and actual facts and evidence in this regard could not be placed before the Hon'ble Commission. It is humbly submitted that an opportunity of hearing and filling reply on the said petition was required to be given to the petitioner before passing the order against the petitioner.*
 15. *That the non compliance of the Hon'ble Commission's directions has not been caused by the petitioner on the contrary all possible efforts were made by the Petitioner to get the directions to get the directions of the Hon'ble Commission Complied with.*
 16. *Hon'ble Commission has prescribed 10 nos Monthly Commercial Performance monitoring formats regarding division wise billing, metering, losses & energy auditing vide letter no. 284 dated 17-05-2012 directing UPCL to submit monthly reports by 15th of the next month.*
 17. *Since, the division wise monthly data for these formats is available at respective division only, so these formats were send by Commercial Dept at UPCL HQ to all field officers of distribution i.e. Chief engineer (D), Superintending Engineers (D) and Executive Engineer (D).*
 18. *The system for reporting in UPCL is that EE(D) shall prepared the report, SE (D) shall check and forward to Zone office and finally the Zone office shall compile the*

division wise reports and sent Commercial Dept at UPCL HQ for submission to Hon'ble UERC.

19. *The Commercial Dept at UPCL HQ is totally dependent on Zone office to get these reports correctly and timely. Commercial Dept took all measures like sending reminders, holding meetings, issued cautions to field officers that they may be held responsible for any adverse action by Hon'ble Commission.*
20. *The Commercial Dept at UPCL HQ and officers holding the charge of this Department are not responsible for the delay and non-compliance of Hon'ble Commission's directions. The Distribution divisions are running under the administrative control of Operation. The role of Commercial in sending periodical reports to Hon'ble UERC is collection and forwarding only. Commercial Department is dependent on Zone office for these reports. Zone office is further dependent on Superintending Engineers (D) and Executive Engineers (D). Commercial HQ cannot prepare these reports without the division wise reports from distribution divisions/circles/zones.*
21. *That there are so many officers who are responsible for preparing and sending the reports to the office of the petitioner (who only submits the same to the Hon'ble Commission) and the same are not under direct and immediate control of the petitioner, it is not just to hold petitioner liable personally for the wilful non compliance of the commission's direction when the petitioner is not personally responsible for the act of which the non compliance has been imputed, moreover when the petitioner never faulted in his efforts of complying with the directions of the Hon'ble Commission.*
22. *That the petitioner has even after passing of the order dated 11th March, 14 has made various efforts for the same , the correspondence justifying the same are also being filed with the present petition.*
23. *That there is error apparent on record in order dated 11th March, 2014 which needs to be reviewed and reconsidered.*
24. *That the relevant records and facts pertaining to the efforts of the petitioner in matter could not be placed before the Hon'ble Commission, and consequently the same could not be considered while passing the aforesaid order, causing failure of justice to the petitioner.*
25. *That there are just and sufficient reasons for reviewing the order dated 11th March, 2014 passed by the Hon'ble Commission.*

26. *That if the order dated 11th March, 2014 is not reviewed/reconsidered it would cause irreparable loss and injury to the petitioner."*
12. In his Petition, Sh. Tamta, requested the Commission for granting the relief as:
- "A) That the Order dated 4th March, 2013 and 11th March, 2014 be reconsidered/reviewed, and holding that Petitioner is not personally liable for wilful non compliance of the directions of the Hon'ble Commission the penalty imposed on the petitioner in personal capacity be waived and the order be accordingly modified.*
- B) That any other or further relief be granted to the applicant which the Hon'ble Commission finds the applicant entitled to. "*
13. On the above review Petition of Sh. Tamta, the Commission decided to hold a motion hearing for admissibility of the application and fixed the date of hearing on 22.05.2014 at 11:30 AM and accordingly notice for hearing was issued to Sh. S.K. Tamta, Chief Engineer (Commercial), UPCL vide letter No. UERC/5/Tech/Misc. Appl. No. 20 of 2014/2014-15/289 dated 15.05.2014 directing him to appear before the Commission on scheduled date and time.
14. The hearing was held on the scheduled date i.e. on 22.05.2014. During the hearing, the Petitioner, Sh. Tamta, reiterated his written submission and requested the Commission that he should not be personally penalized and the penalty imposed on him in his personal capacity be waived-off by reviewing the Order dated 11.03.2014.
15. The Commission observed that matter in which this penalty was imposed, non-compliance still persists. The Commission would caution the Licensee and Petitioner that if definitive improvement is not seen in complying with the directions given almost two years back, the Commission may again have to proceed against them.
16. The Commission pointed out that the powers for reviewing the decision, directions and orders under Section 94(1)(f) of the Electricity Act, 2003, are same as are vested in a civil court under the Code of Civil Procedure (CPC), 1908 (5 of 1908). Any application for review of judgment has to necessarily fulfill the requirement of Section 114 and Order XLVII, Rule-1 of CPC. In accordance with the said provisions, the specific ground on which review can be made are:

- (1) If there is a discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be earlier produced.
 - (2) If there are mistakes or errors apparent on the face of the record; and
 - (3) If there exists other sufficient reasons.
17. The Commission enquired from the Petitioner about the grounds of the review/reconsideration and asked to elaborate the same with respect to the grounds for review mentioned above.
18. The Petitioner, Sh. Tamta, submitted that earlier the efforts made by him for obtaining the reports from the field offices were not brought before the Commission, hence, requested the Commission to take cognizance of the copies of the correspondences (enclosed in the Petition) made with the field offices. Sh. Tamta has further requested the Commission that these correspondences should be treated as discovery of new evidences and the Petition should be admitted for review.
19. The Commission pointed out that in accordance with the provisions of the Regulations 68(1) of UERC (Conduct of Business) Regulations, 2004, the application for review may be filed within 90 days of the date of the Order. The Order dated 11.03.2014 being sought to be reviewed is just a consequential Order of the Commission's Order dated 04.03.2013 in which head of the Commercial wing was charged with ensuring compliances. The Order dated 04.03.2013 was neither challenged nor any review of it was sought. Consequently it has attained finality. The Commission, further, observed that with regard to the review of the Order dated 11.03.2014, the grounds brought before it for review, are not sufficient and sustainable and hence holds that the review Petition is not maintainable and accordingly decides to reject it.

Ordered Accordingly.

(K.P. Singh)
Member

(C.S. Sharma)
Member-Chairman