

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the Matter of:

Review Petition filed under Regulation 54 of the UERC (Conduct of Business Regulations), 2014 for review of the Order dated 06.01.2016 passed by the Hon'ble UERC in the matter of application seeking removal of difficulty/clarification in the UERC (Release of new HT & EHT Connection Enhancement and Reduction of Loads) Regulations 2008.

In the Matter of:

Uttarakhand Power Corporation Limited. (UPCL)

Coram

Shri Subhash Kumar

Chairman

Shri K.P. Singh

Member

Date of Hearing: March 15, 2016

Date of Order: March 16, 2016

ORDER

This Order relates to the Review Petition filed by Uttarakhand Power Corporation Limited (hereinafter referred to as "the Petitioner" or "Distribution Licensee" or "UPCL") against the Commission's Order dated 06.01.2016 passed by the Commission seeking removal of difficulty/clarification in the UERC (Release of new HT & EHT Connection Enhancement and Reduction of Loads) Regulations 2008 (hereinafter referred to as HT/EHT Regulations 2008).

Background

2. UPCL vide its letter No.644/UPCL/Comm/RMC-34/D (F) dated 04.03.2016 filed a Petition for Review of the Commission's Order dated 06.01.2016 for seeking removal of difficulty/clarification in the UERC (Release of New HT & EHT Connection Enhancement and Reduction of Loads) Regulations 2008.
3. Earlier, the Commission vide its Order dated 30.07.2015 had held that:

“...the Commission has not found any ambiguity, inconsistency or difficulty in giving effect to the Regulations laid down in UERC (Release of New HT & EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008, the Commission decides to reject the Petition as not maintainable.”

4. The Petitioner in its Review Petition has submitted that, the *“...Commission vide its order dated 06.01.2016 while rejecting the petition has clarified the issue by explaining the definition of ‘distribution mains’ and ‘service line’.* The definitions and the mandate of the Hon’ble Commission over it, emphasizes that these are two different kinds of lines and cannot be interchangeably used or even overlap...in light of Hon’ble Commission’s view any extension of line carried out for release of connection to consumer and charged as per the work charge table provided in Regulations shall be considered as the service line and cannot be used for connection of any other consumer at any time later. ”
5. Further, the Petitioner has submitted that the interpretation made by the Commission in its Order dated 06.01.2016 will cause complication as it would be difficult for the licensee to get right of way for more than one or two lines in the area and that on Commissions view on licensee laying the distributing main considering the future growth and prospects it is always difficult to reach upto each and every nook and corner of the State.
6. Supplementing the above submission the Petitioner further submitted that if it is considered that upon receiving the application for new connection licensee should decide to extend its distributing main in that direction it would always be an open question as upto what extent the line be extended as distributing main and from where the service line be started.
7. Furthermore, the Petitioner submitted that,
“...order creates further problem and complications as many a time due to space constraints or any other reason whatsoever there will be the requirement to merge the various lines into one with increased capacity conductor, then also the differentiation between the two type of sections may cause confusion. Further it is very clear that the Regulations are still deficient in dealing with the issue like conductor replacement or other augmentation works. ”

8. Expressing its apprehension the Petitioner submitted that there is a chance of more than one interpretation regarding the category of line and can cause confusion among the consumers as well. There are chances that consumer might raise the question or even ask for refund in case of change of status of line, as per the interpretation, at any time in future.
9. Reiterating the submission from its original Petition the Petitioner submitted that, the Regulations allow for recovery of augmentation charges in case of enhancement/ reduction of load and the very same logic should hold good for new connection as well and the Order of the Commission may lead to different treatment for two consumers wherein one is required to pay the work charges for construction of new line and the other one escapes claiming there is no such provisions in the Regulations for augmentation of existing system.
10. On taking reference of the case of Sh. Manjul Gupta that Petitioner submitted that the Commission has issued specific direction in the case which appears unreasonable as the said Order was not challenged before the Commission and the finding upon the same affects the Petitioner's right.
11. The Petitioner has submitted that there is an error apparent on the face of record in the aforesaid Order and that there are various new facts and situations appeared which needs to be clarified by the Commission.
12. On the schedule date of hearing i.e. 15.03.2016, the Commission heard the matter for admissibility and enquired the Petitioner to justify the Review filed by it w.r.t. the provision under Order XLVII Rule 1 of CPC. To this, the Petitioner reiterated its submissions made before the Commission in the Petition.

Commission's Observations, Views & Direction:

13. The issue-wise contentions of UPCL, filed in the Review Petition were examined w.r.t. the principle of review enshrined in the provisions of Order XLVII (1) of the Code of Civil Procedure, 1908 and is observed that in accordance with such principles of review enshrined in the Code, an Order issued by the Commission may be reviewed if:

- (1) There is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced at the time when the Order was passed.
- (2) There is any error or mistake apparent on the face of the record.
- (3) Or there is any other sufficient reason.

Therefore, from above it is well settled that the review proceedings have to be confined to the scope and ambit of Order XLVII Rule 1 of the Civil Procedure Code.

14. Further, on examination of the Review Petition, the Commission observed that the Petitioner seeking Review of the Order on the ground that the Order is vitiated by an error apparent on the face of the record. Before finding out the applicability of the said ground of Review, it would be worthwhile to quote various decisions cited by the authorities with regard to the powers of the Court to entertain Review:

S Bhagirathi Ammal Vs. Palani Roman Catholic Miss 2008 SC 719/MANU/SC/8177/2007

"....An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which as to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the Court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the Appellant, in such circumstances, the review will lie..."

Nathu Yeshwantrao Bhusari v. Sona wd/o Jaganath Ganar, 1994 Mah LJ 1829

"It is a well-settled law that a review of the Orders of the Court should be used sparingly after examining the facts placed before the Court. An erroneous view or erroneous judgment is not a ground for Judgment in RP No. 5 of 2012 in Appeal No. 102 of 2011 Page 4 of 15 review, but if the judgment 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."

15. In the light of the above decisions, it would now be appropriate to examine as to whether any error or mistake has crept in the impugned Order dated 06.01.2016 and if yes, whether the error has led to miscarriage of justice and whether a review is warranted.
16. The Commission on analyzing the Review Petition found that the submission made by the Petitioner is mere repetitive version from its original Petition which has already been addressed and disposed off by the Commission in its aforesaid Order. It appears that the Petitioner is seeking Review of the aforesaid Order merely rearguing the original matter and seeks a fresh decision in the case. There cannot be re-hearing of the matter during Review and an error, which is not self evident and can hardly be said to be an error apparent on the face of record justifying exercise of Review power. Therefore, it is observed that neither the Petitioner has been able to justify error in the aforesaid Order nor does the submission qualify any of the abovementioned Review Principles.
17. The Commission in the aforesaid Order has already discussed the provisions of the HT/EHT Regulations 2008, wherein, work charges mentioned at Table 1 of Regulation 4(11) of the said Regulations is limited to the 'Service Line' including 'Terminal Equipment'. However, expansion/development of new distribution system and/or augmentation/strengthening of existing distribution network in order to match with the prospective load growth in the State is the responsibility of the UPCL who being a sole distribution licensee in the State. Therefore, UPCL is required to carry out its roles and responsibilities under the Distribution and Retail Supply Licence (Licence No. 2 of 2003).
18. The Commission is of the view that UPCL raising the issue of not being able to distinguish between service line and distribution mains when these terms have been categorically defined the Act is inexplicable. The distribution licensee should be able to ascertain as to where the nearest distribution main exist in the network and how much length of distribution main is required to be extended and what length of service line is required to be laid for releasing the new connection to the Applicant.

19. Further, in the matter of CGRF's Order dated 23.08.2014 in the matter of Manjul Gupta, the Petitioner in its original Petition had prayed to the Commission to grant an interim order to stay the proceedings pending before the CGRF during pendency of the original petition, to which the Commission had viewed that CGRF ruling was not liable to be interfered with and timely compliance of the Forum's Order had to be ensured by the Distribution Licensee in accordance with the relevant provisions of the Regulations.

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

Ordered accordingly.

(K.P. Singh)
Member

(Subhash Kumar)
Chairman