

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No. 49 of 2017

In the matter of:

Additional Surcharge levied by Uttarakhand Power Corporation Ltd. during the period 01st December 2014 to 31st of March 2017 on Open Access Power Purchased.

In the matter of:

M/s Kashi Vishwanath Textile Mill (P) Ltd. Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd. (UPCL) Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: November 07, 2017

Date of Order: December 18, 2017

ORDER

This Order relates to the Application filed by M/s Kashi Vishwanath Textile Mill (P) Ltd. (hereinafter referred to as "KVTMPL" or "the Petitioner") on 07.09.2017, in the matter of Additional Surcharge levied by Uttarakhand Power Corporation Ltd. (hereinafter referred to as the "UPCL" or "the Respondent" during the period 01st December 2014 to 31st of March 2017 on Open Access Power Purchased.

2. The Petitioner has stated that UPCL has behaved arbitrarily and was illegally charging 15% Additional Surcharge from KVTMPL on the basis of UERC Order dated 18.08.2011 which was applicable only for the FY 2011-12 and not for the further period.
3. The relief sought by the Petitioner in the instant Petition is:

“UPCL to refund amount of Rs. 65,35,600/- paid as additional surcharge between 1st of December 2014 to 31st of March 2017 with interest at bank rate along with cost of expenses to KVTMPL for filing this Petition”

4. The Petitioner in the instant Petition has submitted that a Writ Petition in the matter has also been filed in the Hon’ble High Court of Uttarakhand.
5. The hearing in the matter was held on 07.11.2017.
6. The Commission vide its daily Order dated 08.11.2017 ordered that:
 - “(i) Petitioner to submit a copy of the writ Petition filed in the Hon’ble High Court of Uttarakhand and copy of the interim Order(s) passed by the Hon’ble Court in the matter.*
 - (ii) Respondent to submit a copy of counter reply filed before Hon’ble High Court of Uttarakhand in the matter.”*
7. Accordingly, as per the directives of the Commission, the Petitioner and the Respondent submitted a copy of the writ Petition No. 2356 (M/S) of 2015 and counter affidavit respectively filed before the Hon’ble High Court of Uttarakhand.

Commission’s Views and Decision

8. The Petitioner in the aforesaid Writ Petition has prayed before the Hon’ble High Court to:

“

 - (a) Issue a writ, order or direction in the nature of mandamus, directing and commanding the respondent UPCL, not to recover further additional surcharge@15% from the Petitioner through regular monthly electricity bills in future in the grab of infructuous and inoperative order dated 30-08-2011 issued by UPCL respectively.*
 - (b) Issue a writ, order or direction in the nature of Prohibition and pleased to declare that the impugned order dated 30-08-2011 (Annexure-6) passed by UERC as well as office memorandum dated 30-08-2011 (Annexure-5) issued by UPCL are in-operative, infructuous as well as non-functional documents/orders.*
 - (c) To issue a writ, order or direction in the nature of mandamus, directing the commanding the respondent UPCL that they shall refund/adjust the total amount of along-with Bank interest.*
 - (d) Or Pass any other writ, order or direction which this Hon’ble Court may deem fit and proper in the circumstances of the case.*
 - (e) Award the court of writ petition.”*

9. On the examination of the copy of Writ Petition filed by the Petitioner before the Hon'ble High Court of Uttarakhand it is evident that cause of action and relief sought by the Petitioner from the Hon'ble High Court of Uttarakhand and this Commission are same. In this regard, it is relevant to mention here Section 10 of The Code of Civil Procedure 1908 & the Rule of *Res Sub Judice* therein, bars the Courts to proceed with the trial of a matter/issue which is also directly and substantially in issue in a previously instituted matter, pending before the Court, between the same parties.
10. In the light of the above, the Commission is of the view that it will not be appropriate at this juncture to proceed with the matter on merit since the same is already pending before the Hon'ble High Court of Uttarakhand.

The Petition is disposed off accordingly.

(Subhash Kumar)
Chairman