

Before the Ombudsman

(Appointed by the Uttarakhand Electricity Regulatory Commission under Section 42(6) of The Electricity Act, 2003)

24, VASANT VIHAR, PHASE-II,

Phone - (0135) 2762120

DEHRADUN-248006

Case: Representation No. 9/2006 dated 15.6.2006

Complainants

Respondents

- | | | |
|---|-----|--|
| 1. M/s Kotdwar Steels Ltd.
Plot No. 41 to 44, Block No. E, Industrial Area,
Jasodharpur, Kotdwar,
Dist. Pauri Garhwal,
and others, as follows: | Vs. | 1. Uttarakhand Power Corporation Ltd. UPCL),
through its C.M.D |
| 2. M/s Bhagyashree Steels Alloys (Pvt.) Ltd.
Situating at 100 South Bhopa Road,
Muzaffarnagar and works at Industrial Area,
Jasodharpur, Kotdwar,
Dist. Pauri Garhwal, | | 2. Executive Engineer,
Electricity Distribution Division,
Uttarakhand Power Corp. Ltd.
Kotdwar, Dist. Pauri Garhwal |
| 3. M/s Amrit Versha Udyog (Pvt.) Ltd.
Situating at 10-A New Mandi,
Muzaffarnagar and works at Industrial Area,
Jasodharpur, Kotdwar,
Distt Pauri Garhwal, | | 3. The Chairman,
Consumers Grievances Redressal Forum,
Garhwal Zone,
120-Haridwar Road, Dehradun, |
| 4. M/s Poddar Alloys (Pvt.) Ltd.
Situating at Poddar Building, Goenka Colony, Khurja,
Dist. Bullandshahar and works at Plot No. E-29 to 38
Industrial Area, Jasodharpur, Kotdwar, Distt Pauri Garhwal, | | |
| 5. M/s Mehrishi Steels (Pvt.) Ltd.
Situating at 70/1 Kambalwala Bagh, Muzaffarnagar
And works at UPSIDC Industrial Area, Jasodharpur, Kotdwar
Dist. Pauri Garhwal, | | |
| 6. M/s Sumo Steels (Pvt.) Ltd.
Industrial Area, Jasodharpur, Kotdwar, Dist. Pauri Garhwal, | | |
| 7. M/s Rana Castings (Pvt.) Ltd.
Situating at Krishnapuri, Muzaffarnagar and works at
Industrial Area, Jasodharpur, Kotdwar, Dist. Pauri Garhwal, | | |
| 8. M/s Pushkar Steels (Pvt.) Ltd.
Situating at Ar yapuri, Dist. Muzaffarnagar and works at
Plot No. D-23/225, Industrial Area, | | |

- Jasodharpur, Kotdwar, Dist. Pauri Garhwal,
9. M/s Sant Steels & Alloys (Pvt.) Ltd.
Plot No. 1, Industrial Area,
Jasodharpur, Kotdwar, Dist. Pauri Garhwal,
10. M/s H.R.J. Steels (Pvt.) Ltd.
Industrial Area,
Jasodharpur, Kotdwar, Dist. Pauri Garhwal,
11. M/s Kukreti Steels (Pvt.) Ltd.
Situated at Badrinath Marg, Dist. Pauri Garhwal and works at
Plot No. F-23 to 27, Industrial Area,
Jasodharpur, Kotdwar, Dist. Pauri Garhwal,
12. M/s Aruna Steels (Pvt.) Ltd.
5th KM. Meerut Road, Muzaffarnagar and works at
Industrial Area,
Jasodharpur, Kotdwar, Dist. Pauri Garhwal,

Counsel for the Complainants:

Sri B.C.Rai,
Advocate, the High Court at Allahabad,

Counsel for the Respondents:

Sri S.M.Jain, Advocate
Standing Counsel, UPCL, Dehra Dun

In the matter of:

The joint Representation filed by the above Twelve Complainants against the order dated 02.06.2006 passed by the Consumers' Grievances Redressal Forum, Garhwal Zone, Dehradun in Complaint Case No. 07 / 2003 (71 /2005) whereby the Complaint filed before it against the demand of 15% additional surcharge on account of drawing electricity through Independent Feeders had been rejected by the said Consumers' Grievances Redressal Forum, Garhwal Zone, Dehradun. While doing so it observed the 15% surcharge is payable by the above twelve Complainants.

QUORUM

Sri J.C.Pant	...	Ombudsman.
Date of Award	...	28.02.2007

Award

The above Representation was received in this office on 15.6.2006 and registered as Representation No. 9/2006.

Accordingly notices were issued to the parties on 22-06-2006 fixing the date for submission of the point wise reply of the Respondents and hearing on 12.7.2006.

On 12.7.2006 the response from the Respondents could not be received and as such the next date 19.7.2006 was fixed for submission of reply by the Respondents.

On 19.7.2006 learned counsel for the Licensee Sri S. M. Jain was present and submitted the response of the Respondents (Licensee). A copy of the same was sent to the Complainants and fixed the next date 9.8.2006 for submission of response by the Complainants. However, on 1.8.2006 the date 23.8.2006 was fixed for above and hearing.

On 23.8.2006 the response from the Complainants was received and given to the Respondents for submission of their reply and the date 30.8.2006 was fixed for the same.

On 30.8.2006 the reply from the Respondents was received, the copy of the same was given to the Complainant's representative and the date for hearing was fixed as 20.9.2006.

On 20.9.2006 the date for orders was fixed for 18.10.2006.

On 18.10.2006 the learned Counsel of the Complainant requested for arguments. Accordingly the instructions were issued to obtain the written arguments within the next one week and the date 1.11.2006 was fixed for orders.

On 1.11.2006 heard the learned Counsel of the Complainants. It was to be ascertained from the Power Secretary as to the orders given by the Committee set up by the Hon'ble High Court of Uttaranchal by their order dated 10.8.2004. Accordingly a letter to that effect was sent to the Power Secretary of the Uttarakhand Government vides No C-31/1Ombudsman/09/'06 Dated 03-11-2006. The Line Diagram submitted by the Licensee in the case of M/s Sant Steel was to be given to the learned counsel of the Complainants (and the same was given). The next date 15.11.2006 was fixed for arguments.

On 15.11.2006 the date 29.11.2006 was fixed for further arguments.

On 29.11.2006 the learned Counsel of the Respondents was seeking an adjournment and accordingly the date 20.12.2006 was fixed for arguments of the Licensee's learned Counsel.

On 20.12.2006 heard the learned Counsel for the Licensee and the date 10.1.2007 was fixed for the arguments of the learned Counsel for the Complainants.

On 10.1.2007 heard the learned Counsel of the Respondents and gave instructions that learned counsel for Complainants may file written note and the date 31.1.2007 was fixed for Award.

On 31.01.07 learned counsel for Respondents wanted time to file written arguments in reply to the learned counsel for the Complainants received on 22.01.2007. The date 28-02-2007 was fixed for orders.

Facts of the case:

1. The twelve number Complainants have represented against the order of the learned Consumers' Grievances Redressal Forum (CGRF), Garhwal Zone dated 02-06-2006 which had rejected their joint Complaint against the charging of the additional charge of 15% on the monthly demand and energy charge as per the HV-2 Rate Schedule that was promulgated by the UP Electricity Regulatory Commission (UPERC) vide its Tariff Order of the FY 2000-2001. The Forum had thus upheld the above charges as being chargeable to the Complainants. The Representation was registered as Representation No. 9/2006 dated 15-06-2006.
2. The Uttar Pradesh Electricity Regulatory Commission (UPERC) had promulgated its HV-2 Rate Schedule under its Tariff Order on 27-07-2000 and the U.P Power Corporation Ltd. (UPPCL), which then had the present region of Uttarakhand under its jurisdiction, had enforced it w.e.f. 09-08-2000 in the whole of the still undivided U.P on the HV-2 consumers as also on consumers billed earlier under the HV-1 Tariff.
3. The Rate Schedule HV-2, which is central to this Representation, was expanded in scope to include arc/induction furnace, consumers, rolling, re-rolling mills and mini steel plant consumers under its ambit as prior to UPERC's Tariff Order these processes had been covered under the Rate Schedule HV1. Now UPERC vide its above order had ruled that this HV-1 schedule for such consumers was to be deleted and merged with Rate Schedule HV-2.
4. The UPERC Rate Schedule HV-1, refers to the deletion of the HV-1 Tariff which is as under:-

*"Rate Schedule HV – 1
ARC/INDUCTION FURNACE, ROLLING/
RE-ROLLING MILLS AND MINI STEELS PLANTS*

This schedule is deleted and merged with HV-2.

Note: *As has been indicated elsewhere, the Commission aims to move away from use based categories to the more rational voltage of supply based categories. This would enable tariffs to potentially be more reflective of the underlying cost of supply. The Commission was informed that in the current tariff, demand charges were kept high for high voltage industrial users in the HV1 category while energy charges were kept low, due to problems related to tampering of meters etc. This structure had no rational basis. Now that tamperproof electronic meters have been installed, Tariff Structure for this category should be appropriately amended or merged with other categories, which are fundamentally similar in nature. The Commission has decided to abolish the HV1 category and place current users in this category in the HV2 category, in the interest of ensuring that consumers pay the legitimate price for power...."*

5. On the same Page, the UPERC Rate Schedule HV-2, now including the aforesaid HV-1 consumers as well was inter-alia as follows:

"...To ensure availability of power to industries connected to independent feeders emanating from 132 kV, 220 kV and 400 kV substations, they shall be allowed to operate at peak hour as well. They will be able to do so by paying a small additional charge of 15% of the amount of bill in a month. These consumers will be ensured

minimum 500 hours supply. In case of shortfall in the guaranteed hours of supply a rebate of 1% per hour or part thereof shall be admissible on the total amount of the bill.

(Fixed charges Rs. Per kVA per month and energy charges Paise per unit)

UPERC	
As Approved	
Demand Charge PLUS	130
Energy Charge	390
For consumers getting power supply in restricted hours	15% surcharge on demand and energy charges
For consumers getting power supply on independent feeders emanating from 400/220/132 KV.	15% surcharge on demand and energy charges and have the assured supply of minimum 500 hours in a month. In case of shortfall in the guaranteed hours of the supply, a rebate at the rate of 1% per ten hours or part thereof shall be admissible on the total amount as computed under rate of charge.

- In case where demand is recorded in KW, the demand charge shall be computed assuming the power factor is 0.85.
- For connection in rural area getting power supply as per rural schedule a rebate of 10% on the amount of demand charge and energy charge will be give.
- In respect of the supply during peak hours/restricted hours, the consumer shall have to take the permission from UPPCL with the intimation to the Commission.....”

6. The UPERC had given additional rebates and penalties on the HV -2 Rate Schedule and the rebates are excerpted as below, as follows from the Tariff Order:

“Extra Charge or Rebate:

In case of supply given at 400 volts the consumer shall be required to pay an extra charge of 10% on the amount calculated as per the rate of charge.

If supply is given at a voltage above than 11 KV the rebates mentioned below will be admissible on the amount calculated as per the rate of charge.

- | | | | |
|-----|-----------------------|---|--------------------------------------|
| (a) | Above 11 KV to 66 KV | - | 5% |
| (b) | Above 66 KV to 132 KV | - | 7.5% (10% if load is 10MVA or above) |
| (c) | Above 132 KV | - | 10% (12½% if load is 20MVA or above) |

.....

“REBATES AND PENALTIES

Power Factor Rebate for HV Consumers

Whenever the average monthly power factor is more than 0.90 and upto 0.95 a rebate of 0.25% on the billed amount will be given. A rebate of 0.50% shall be given on achieving 0.95% power factor. Further, if the power factor goes above 0.95 and upto unity an additional rebate of 0.1% for every 0.01 increasing power factor above 0.95 will be allowed.”

“Demand Charge

Demand charge at present is payable by consumers who are covered by HV-1, HV-2, HV-3 and HV-4. In order to encourage industries, we feel that consumer maintaining higher load factor should be given some incentives. The Uttar Pradesh Reforms Act 1999 also empowers the Commission to make distinction between consumers having different load factor or power factor. In view of this we feel that all consumption in HV-2 and HV-3 Categories in excess of 60% annual average load factor shall receive a rebate of 10% of the energy charge per unit.

- 7. However, UPPCL issued a Circular No.1423 –HC / UPPCL dated 08-09-2000 which was done ostensibly to clarify matters pertaining to the UPERC Tariff Order of 27-07-2000 that provided for obtaining an ‘option’ from consumers being fed from independent feeders emanating from 400/220/132 kV substations and was as follows:-

B2%dl%nj vuqptr ,p0oh0&2 es400] 220 ,oa 132 d0oh0 mi d0nh0 sfudyusokysLora i ksdksdsmi HkBrkvs dks500 ?UUVsdh fo|q vki frvZdh xkjUVh dsQyLo#i 15 i fr"kr l jpktZfy; k tk; sxA bl Jsh dsmi HkBrkvs dks500 ?UUVsi erelg fo|q vki frvZl fuf"pr dh tk; sxA fdl h elg es500 ?UUVsl sde vki frvZgksisj i R: sl 10 ?UUVsi j mudsfo|q fcy es1 i fr"kr dh NVVnh tk; sxA ; fn bu Lora i ksdksl stlmsi HkBrk 500 ?UUVsfo|q vki frvZdh xkjUVh ugha plgrsgSrks, sh voLFk esmudsfcyksi j 15 i fr"kr l jpktZugha yxk; k tk; sxA , s s mi HkBrk i atidr i = }kjk vf/k"kl h vfHk; Urk forj.k dksl for djxsf ; s500 ?UUVsfo|q vki frvZdh xkjUVh ugha plgrsg vf/k"kl h vfHk; Urk bl l Ecu/k esdk; k; Kli u fuxZ djxsf ; fn bl Jsh dk dksZmi HkBrk dksZ fodYi ugha nsk gSrksml s500 ?UUVsl fuf"pr fo|q vki frvZdh tk; sh rFk 15 i fr"kr l jpktZfy; k tk; sxA+ , l 0, l Ovks@ vij vfHk; Urk] dk ; g nkf; Ro gksk fd ; sl fuf"pr djxsf i zuxr mi HkBrk i frcfU/kr vof/k es fo|q dk mi Hks u djxsf ; fn bl Jsh dsmi HkBrk i frcfU/kr vof/k esHh fo|q dk mi Hks djrsgSrksmul s 15\$15%30 i fr"kr l jpktZfy; k tk; sxA+-----

2%k% bu i ksdksl si kskr mi HkBrkvsdksfo|q vki frvZdh mi yC/krk l keU; #i l smudsl a ks ukasi j LFkfi r byBVVvd ehVjksdsMVK dsvk/Wj ij dh tk; sh vjS dksZhh vf/kdljh @ deZjh bl l Ecu/k esdksZi ek.k i = fuxZ djusgsqf/ldr ugha gksk vjS u gh dksZi ek.k i = eU; gksxA-----p

.....
2%k% i R; sl elg esvki frvZds?UUVsdsi ek.k i = @ l pvak dsl kfk de vki frvZdk dlj.k l fgr 400] 220 ,oa 132 d0oh0 mi d0nh0dsmi [k.M vf/kdljh % kj.s.k% dsgLrk{kjk/thu vf/k"kl h vfHk; Urk forj.k% dksmi HkBrk dksfcy fuxZ djusdsmn\$; l si R; sl elg dh i gyh rjh[k dksmi yC/k dj; k tk; sxA vki frvZds?UUVsmi d0nh0ds ylx&caq esvdr ?UUVsdsvuqk gksk plfg, A l kfk gh mDr mi [k.M vf/kdljh ; g Hh i ek.k i = nxsfd Lora Qhmj l si hd vloZ esfo|q nh x; h vflok ugha ; fn cMs, oa Hkh i koj mi HkBrk dh fo|q vki frvZyxkrkj nksekg fu/MZr vof/k l sde jgrh gSrksbl dh l eh{k l EcfU/kr fo|q mi d0nh0dsi Hkh mi egki zu/kd] vi usLrj ij djxsrFk bl dk funku djxsf y|q, oa e/; e Jsh dsmi HkBrkvsdh l eh{k l EcfU/kr fo|q mi d0nh0dsi Hkh vf/k"kl h vfHk; Urk djxsf

B4&nj vuqptr ,p0oh0&2 rFk ,p0oh0&3 dsmi HkBrkvsds}kjk 60 i fr"kr yk QBVj l svf/kd mi Hks dh x; h AtkZij buthZpktZe10 i fr"kr NVVvuqU; gksxA , s mi HkBrkvsdsvi Hks dk og Hks] tks60 i fr"kr yk QBVj l sde gSl keU; nj ij gh pktZgksk AP

- 8. Another circular issued by the UPPCL as “another clarification” was No. 776 dated 5-10-2000 issued by the Director (Distribution) UPPCL , which read inter-alia as follows:-

B 3- og m|ks tksLora i ksd l sfo|q i krsdsvjS ; fn og fy[k dj ; g nsgsd mudks500 ?UUVsi fr elg de l sde fo|q vki frvZvo"; nh tk; s bl glykr esmudksmi jkBr fclunv ,oa 2 dsfcy dsAi j 15 i fr"kr vfrfjDr vjS ns gksk vjS ; fn mi HkBrk 500 ?UUVsdh v"; kZi lykZi fr elg dk fodYi ugha nsgSrks ; g eU; ugha gksk A-----p

9. The above Complainants vide 12 number applications had thereafter exercised the purported 'option' as per the Para 2 "Ka" of the Circular No.1423 - HC/UPPCL dated 08-09-2000 and had stated unequivocally that they did not require 500 hours assured supply, and neither had they sought to avail it nor had they applied for a "guarantee" of 500 hours of assured supply. In above letters, all of them exactly the same from all the twelve number Complainants, they had also claimed falsely (as was the case when it came to be examined later) that they had not been given 500 hours of supply during the months of August and September 2000 respectively.

The purported 'option' letter is reproduced as under:

"KOTDWAR STEEL LIMITED

Factory: Block E-Jashodharpur Industrial Area, Kotdwar

fnukd 3-10-2000

I sk eš

Jhaku vkf/k"kkI ha vfHk; Urk]

fo|q forj.k [k.M

dkš}kj

fo'k; %& 15 i tr"kr fo|q I jpktZyxk; stkusdsl Ecu/k es

egks;]

mi jkšr dsl Ecu/k esvki dksl for djuk gSfd foHkkx }kjk 500 ?k/sdh v"; kšZI IykbZdh xkjUVh dsfy; sgeusdkšZvkos u ugha fd; k Fkk] u gh i FkhZdksbl I Ecu/k esdkšZtkudkjih vHkh rd nh x; h Fkh rFkk i FkhZHkfo'; esHkh foHkkx I s500 ?k/sv"; kšZI IykbZdh xkj.Vh dsfy; sdkšZvkos u ugha djuk pkrsgšI kFk gh I kFk ; g Hkh vki dsl Kku esykuk gSfd elg vxLr rFkk fl rEcj esHkh foHkkx }kjk ges500 ?k/sdh I IykbZugha nh x; h gš

vr% vki I svušk gSfd elg fl rEcj I sfcy estksvxLr o fl rEcj&2000 dk 15 i tr"kr I jpktZyxk; k x; k gSog i FkhZI j ykxvgh ugha gksh gSA vr% bl sfcy I srjUr okfi I fy; k tk; srFkk fcy Bhd fd; k tk; srkfd fcy dk Hkarku fd; k tk I dš bl dsvfjDr vki usfcy estksMhyš i ššV dk Instt. i yšekg dk pktZfd; k gSog Hkh Mhyš Mš dsfgl kc I sgksk plfg; sFkk vl sHkh Bhd dj k fn; k tk; š

Sd. /-illegible for Kotdwar Steels,
Director

10. According to the above 12 'option letters/applications' addressed to the E. E. Electricity Distribution Division UPPCL, Kotdwar, by the above mentioned Complainants they had been billed on the above Rate Schedule with an additional 15% surcharge in the bill for the months of August and September 2000 issued in the month of September 2000 by the above E. E.

11. As is made clear vides the E. E. office noting written on 18-10-2000 on the 'option letter' of one of the Complainants, M/s Amritvarsha Udyog Ltd., the 15% surcharge in lieu of 500 hours of assured supply was only to be charged if the consumer had applied for 500 hours of "...Assured supply". This was to be done in accordance with instructions received from the Director (Distribution) vides his No. 776 dated 05-10-

2000. Since in the above 12 applications the Complainants had categorically stated that they did not want the 500 hours of assured supply, so the noting ran that the 15% surcharge, which had been charged in the bill of 8 + 9 / 2000 be reduced by that amount, if so approved. This was accordingly approved by the E.E.

12. There was a necessary condition in the Circular 1423 dated 8-09-2000 that Electronic Tri-Vector Meters (ETVMs) shall be used to monitor the hours of supply given to such consumers who were exercising the 'option'. But neither the Complainants nor the Licensee had made any averment as to whether this was done or not.
13. Similarly the above Circular had clearly directed that the Substation Operators / J.E. shall ensure that the consumers exercising the so-called option shall not be allowed to run their processes during the prohibited hours. It went on to highlight that if such consumers used power supply during the prohibited hours then they shall be charged 15+15=30% surcharge. No averment on this aspect too has been filed either by the Complainants or the Licensee.
14. The UPPCL Circular 1423 of 8-09-2000 had taken the matter of not allowing such consumers to run their processes during prohibited hours gravely and had directed that the concerned S.D.O. shall ensure that no such supply was given on the independent feeders. Here again there is no averment whether this was complied with or not.
15. On 25-04-2001 the Hon. High Court at Allahabad in Writ Petition No.40692/2000 struck down the UPPCL's Circular of 1423 of 08-09-2000 declaring it null and void as also the Hon. High Court dwelt at length on the powers of the State Regulatory Commission that could not be infringed upon by the Licensee (UPPCL) thereby implying that the Licensee had grossly erred in trying to circumvent or alter the Tariff by introducing the so called "option". The Hon'ble H.C had observed inter-alia "...the 15% surcharge would not be levied in case a consumer getting supply from an independent feeder emanating from 400/220/132 KV substation gave an option that he did not want a guarantee of 500 hours in a month, is contrary to the tariff approved by the Commission." The circular was then held to be "...clear alteration of the approved tariff, which is not permissible in law" as per the Hon'ble H.C.
16. When the above UPPCL orders were declared null and void by the Hon. High Court, the UPPCL followed it up by issuing its circular No. 925-HC etc dated 31-08-2001 that rescinded the previous circulars No. 1423 dated 8-9-2000 and 776 etc. of 05-10-2000 as also all such 'clarifications'. This annulment order **No. 925-HC etc. dated 31-08-2001 thus read as follows:-**

*fo | q fu; ked vk; kx } jkj o'kz2000&01 dsfy, vuetar VjQ esLora i ksd I fo | q vki frzI kus
 okys, p00h0&2 nj dsvi HMBRkvsij 15 i fr"kr vfrfjDr vf/HMkj dk i ko/ku bl "krZdsI kfk fd; k x; k gS
 fd , \$ smi HMBRkvsI ds fo | q vki frz500 ?h/si fr ekq I fup"pr dh tk; xhA ; fn fo | q vki frz10 ?h/s; k ml I s
 de gksh gS rksbl dsfy, 1 i fr"kr NVvdk i ko/ku Hh fd; k x; k gS
 bl i ko/ku dksysIj {ksh; vf/kdkfj; ksesdIj HMBUR mRi Uu gksrdsdIj.k fu; ked vk; kx I s
 ppkZbtIj of.kT; LdU/k dsi = I q; k% 1423 , pl h @ kdkfy @1974&1204 fn0 8-9-2000 } jkj i = I q; k 3046
 , pl h @VjQ @ kekofunZk fn0 15-12-2000 } jkj Li 'Vhdj.k fuxZ fn, x, fksA
 es , y-, e0, y- dku i q } jkj bl i zIj.k ij , d ; kfpdk I q; k 40692@2000 ek0 mPp U; k; ky;]
 bygkcin esnk; j dh x; h A ftI ij ek0 mPp U; k; ky; usvi uk fu.kZ nssgq vknS"kr fd; k gSfd
 fu; ked vk; kx } jkj vuetar nj I pr gh I ozkU; gSvkS ykbl Bl h } jkj ml esdksZI d'kksu ugha fd; k tk
 I drk gS vr% ek0 mPp U; k; ky; dsfu.kZ dsi fji \$; esmi jkDr of.kZ i fji = I q; k 1423 fn0 8-9-2000
 dk fclUnq2d½, oa3046 fn0 15-12-2000 dksIj dh djsdli frffk; ksl sgh fujLr fd; k tkrk gS*

vr% m0i 0 i koj dlji kssu fyfe0 dh vf/101 d; k 1208 , pl h @ vti h, y @ ip-1974-1204-1 h /2000
fn0 7-8-2000 } jkj fuxZ VjQ dh nj l ptr , p0oh0&2 esLora i k dks } jkj i ksr mi HMB rkvksdscylsi j 15
i fr"kr vfrfjDr l jpkt Zyxx; k tk, rFk mi j kBr of. kZ m0i 0 i k dky dsl j dgl Z} jkj fuxZ Li 'Vhdj.k ds
dlj.k ftu mi HMB rkvksu 500 ?k. Vsi fr elg l tuf"pr fo | q vki frzu yasdk fodYi fn; k FMj dsvk/kj ij
yh x; h fcyk dh 15 i fr"kr vf/HMj dh NVvdh /kujf" k dksk; kZ l e; nssgq ol yvdh tk; &

¼ l 01 h0 xkfo y½
funskd %okf.kT; ½

l d; k% 925 , p0l h

fnukp% 31-8-2001

i frfyfi l fpo] m0i 0 fo | q fu; led vk; kx] fd l ku e. Mh Hkou xksh uxj] y [kuA dksl pulfkiZ, oa
vko"; d dk; dgh gscj ksrA

¼ l 01 h0 xkfo y½
funskd %okf.kT; ½

(Note: Bold has been added)

17. Following the orders of the Hon'ble HC though the UPPCL circular No. 925 dated 31-08-2001 had directed its field officers to re-impose the 15% surcharge on all such consumers, who had exercised the so called 'option', that included the above 12 Complainants as well but it was not done so on these Complainants. The 15% surcharge was not imposed on the above consumers till April 2003 due to matter being contested either before the UERC or the Hon'ble HC at Nainital.
18. Thus the Complainants had not so far paid the said charges from the time they were promulgated w.e.f August 2000 holding them to be in dispute. Some idea of the huge sums involved in the amount under dispute was provided in the Representation of the Complainants Para (4.39) Page 15.
19. **The 12 Complainants had thus disputed the UPPCL's imposition of the 15 % surcharge in lieu of providing guaranteed supply of more than 500 hours per month as per UPERC's Tariff Order of 27-07-'00, alleging that the two feeders emanating from the 132 kV Substation Jasodharpur, Kotdwar feeding their respective loads were not "independent feeders".**
20. The UPERC Tariff Order dated 27-07-2000 had recognized only three categories of feeders for promulgation of its Tariff for the FY 2000-01, namely:
 - a. Urban Feeders
 - b. Rural Feeders
 - c. Independent FeedersThe above are a matter of record and are thus undisputed. In case of the HV2 Rate Schedule the UPERC had particularly specified "independent feeders emanating from 400/220/132 KV substations".
21. The load sanction Office Memo No. 3870-C/SEB-6/1996 etc of 1996 Dated 05-08-1996 issued in the name of M/s Kotdwar Steel Ltd., (one of the Complaints) was a conditional one that had stated inter alia, the sanctioned load as being 2000 kVA, gave the category as HV1, stated the process as induction furnace for production of ingots and thereafter stated the conditions that were necessary to be fulfilled for the above sanction to be valid as shall be excerpted later for their examination.
22. It is a matter of record that loads as per provisions of their respective Load Sanction Memos were released to the Complainants in the year 1997 or so i.e. in the time of the erstwhile UPSEB (with one exception) for

running their industrial process of induction furnaces (under HV -2 Rate Schedule as per UPERC T/O of 2000-'01), to produce steel ingots from scrap steel from the following two feeders emanating from the 132 kV Sub-Station, Jasodharpur, Kotdwar: -

- i. One 33 KV feeder independently controlled by Circuit Breaker (CB) No. 4 supplies power to the following Complainants namely:

S. No.	Name	Process	Load
1.	M/s Kukreti Steel	Induction Furnace	2000 kVA
2.	HRJ Steel	"	2000Kva
3.	Pushkar Steel	"	2500kVA
4.	Aruna Steel	"	2500kVA
5.	Rana Steel	"	3500kVA
6.	Sant Steel	"	2500 kVA
Total Load			15000 kVA

- ii. A second 33 kV feeder independently controlled by C.B. No. 7 supplies power to the following remaining Complainants, namely:

S. No.	Name	Process	Load
1.	M/s Amritvarsha Udyog	Induction Furnace	4000kVA
2.	Bhagyashree Steels	"	2000kVA
3.	Poddar Steel	"	3200kVA
4.	Mehrishi Steels	"	2000kVA
5.	Sumo Steels	"	1900kVA
6.	Kotdwar Steels	"	2000 kVA
Total Load			15100 kVA

23. The load releases were to be valid only as per provisions of the Load Sanction Memos. An essential condition was it shall be through "independent feeders" at a voltage of 33 kV through affected 400/220/132 kV Sub Stations etc as per conditions of the Sanction Memo (See excerpt later). As said the loads were released to them in the year 1997 for all of them but with one exception as could be made out. **The Complainants have alleged that the above two feeders emanating from the 132 kV Substation Jasodharpur, Kotdwar feeding their respective loads were not "independent feeders".**
24. However, none of the Complainants raised any dispute about the status of the "independent feeder" at that time of acceptance of the Load Sanction Memo or even after that when the feeders were provided under its provisions. The dispute has been raised after the promulgation of the UPERC Tariff Order of 27-07-2000 (effective from 09-08-'00) when it came to charging them an additional 15% on the demand and energy charges of the month, in lieu of their obtaining guaranteed supply of more than 500 hours in a month through an "...independent feeder emanating from a 400/220/132 kV substation...".
25. As per facts submitted by the Resp No.2 (EE, EDD Kotdwar) the supply given to the above Complainants through Circuit Breakers no. 4 and 7 respectively from the months starting from 8/2000 to 09/2001 were of the order of 600-700 hours in a month and shall be detailed while examining the issues. The Executive

Engineer has based this on the copy of the supply failure report verified by the Sub-Divisional Officer of the 132 kV Sub Station, Jasodharpur, Kotdwar.

26. It is again an undisputed fact that the agreement was for the supply of electricity. In this case for the supply of 2000 kVA load for the Complainant, M/s Kotdwar Steels and so on for the rest of the Complainants also, with one exception and the standardized agreement entered into with the erstwhile UPSEB stipulated inter alia the following:-

“...whereas the consumer has requested the Supplier to supply him electric energy in bulk and the Supplier had agreed to afford such supply to the consumer on the terms and condition hereinafter contained.....”

“AND WHEREAS this agreement shall be deemed to have been effective from the day of One thousand nine hundredwhich date shall be constituted at the date of Commencement of supply under this agreement.

Subject to the provisions herein after contained and during the continuance of the agreement the Supplier shall supply to the Consumer at (Place) for (Process) electrical energy in the form of a three phase alternating current at a declared pressure of Volts the between phases, a declared frequency of 50 Cycles per second and a power not exceedingkilovolt ampere (hereinafter referred to as the Contracted load/Contract Demand) and the supply shall be made available to the availability in the Grid. PROVIDED ALWAYS that any loss, damage or compensation whatsoever arising out of any accident failure of supply or stoppage or curtailment, or diminution of variation in supply or stoppage or curtailment, or as a result of any direct or indirect directions or orders of Government of other competent authority in respect to the distribution of power, or due to war, mutiny, commotion, riot, strike, lock-out, fire, floods, lightening, earthquake or other causes beyond the control of the Supplier.”

27. What the entire agreement of the UPSEB's goes to state in simple practical terms is that the supply of electric energy of the prescribed parameters and load shall be made available to the consumer to the extent it is available in the Grid. It is also undisputed that it shall be the electric energy what stands to be purchased and sold, by the Complainants and Supplier (Licensee), respectively. As stands agreed in the agreement there were several likely causes which the licensee claimed were beyond control that were liable to disrupt the supply. Apart from the Force Majeure condition, the matter of accidental failure of supply or stoppage or curtailment or diminution or variation in supply or any failure, rostering, etc. were all factors likely to adversely affect the reliability of supply. Also agreed to in the Agreement was that the Complainant consumers shall pay in advance an estimated amount to be intimated by the Supplier to cover the cost of providing and installing the line, connecting mains and apparatus excluding transformer and the O.C.B payable by the supplier but such line mains and apparatus shall remain the property of the Supplier, even though the cost thereof has been paid by the consumer.
28. It is an undisputed matter of record that in its HV-2 Tariff Order of 27-07-2000, UPERC therefore took specific note of the unreliability of supply in the then undivided U.P. and the need to overcome it or mitigate its deleterious effect as much as was possible for various categories of consumers especially so for the industrial consumers. These efforts *shall be excerpted subsequently* as per UPERC's observations on Para 5.10, again vides Para 7.10 and Para 5.14 *“Part C: The Commissions Findings”*, etc. of its Tariff Order.
29. There is thus no doubt that prior to the Reforms initiated in it under the Uttar Pradesh Reforms Act 1999 w.e.f. 14.1.2000 (Act No. 24), undertaken by the Uttar Pradesh Regulatory Commission (UPERC) there were severe constraints in availability of supply to various categories of consumers, which clearly brought out the dismal power situation then prevailing in the undivided U.P. The 90 Page Tariff Order for the year

2000-2001 of the UPERC dated 27.7.2000 was thus a major step towards improvements on that front as part of Reforms per se and was issued under its Regulatory Functions under the Law.

30. The UPERC Tariff Order had issued the following directive with regard to giving special consideration to certain regions, as on Page ... Para ...7.12: -

"7.12 Area Specific Tariff: Presently electricity tariff in the Hill districts, Ten Eastern Districts and the Bundelkhand region is lower for certain categories of consumers. The rebate varies from 33.3% to 50% of the bill.

.....

As tariff cannot be differentiated due to factors other than those provided for, it is not possible to have different tariff based on the location where electricity is consumed. The Commission had asked the State Government to indicate if they would provide subsidy for consumption in areas in which subsidy is admissible under the current tariff regime. They have not allocated any subsidy for this purpose. Therefore, the Commission is unable to determine differential rates for Bundelkhand, Ten Eastern districts and the Hill Districts. UPPCL shall continue to honour the legal agreements entered into before the implementation of the revised tariff."

31. Although the Complainants had challenged the 'imposition of the UPERC Tariff HV-2' on their specific processes of induction furnaces on the grounds that the electric supply to them was not through "independent feeders" they did not make any representation before the Hon'ble UPERC which had merged their HV-1 category to the HV-2 Category. This was so when the Hon'ble High Court had reiterated at length the powers vested in the said Commission in matters connected with the Tariff in the M/s LML vs. U.P State case which was thus a pointer to highlighting its power as the final arbiter in matters concerned with the Tariff and as to firmly caution any other body from refraining from altering or making an unauthorised interpretation of the provisions of the Tariff. The above High Court's orders had been circulated to all concerned vides UPPCL circular **No. 925-HC etc. dated 31-08-2001 (Para 16)**

ISSUES IN THE CASE

32. The fundamental issue of this dispute is with regard to the rate to be charged for a particular benefit being given to a select category of consumers namely Large and Heavy industrial consumers. The UPERC in its Tariff HV-2 (Para 4), which included the category of loads of the above 12 Complainants in its ambit had given firstly the benefit, which is also the one specific to this dispute that the Licensee (UPPCL) shall give guaranteed supplies of power totaling a minimum of 500 hours in a month to all such consumers connected through "Independent Feeders" emanating from 400/220/132 kV substations and that in lieu of this benefit the UPERC had promulgated an extra charge of 15% on the demand and energy charges consumed in the month. In case the UPPCL defaulted in ensuring the above quantum of guaranteed supplies it had to make good by giving a rebate of 1% on the demand and energy charges for every shortfall of 10 hours or part thereof. That a second benefit was also given, namely of allowing such consumers and also those not connected to independent feeders, to avail supply during the restricted hours, which again entailed charging an additional surcharge of 15%. Furthermore in case of consumers of this category connected to Rural Feeders subjected to scheduled restrictions of supply, i.e. getting monthly power supplies much less than the 500 hours in a month and that too without any guarantees there would instead be a rebate of 10 %. (See detailed Rate Schedule HV-2 excerpt Page 5 Para 4)

33. That the above benefits especially that of guaranteed supply of ensuring 500 hours made it a "supply-availability" based tariff, i.e. the UPERC took pains to satisfy consumers, particularly the industrial consumers, about the reliability and continuity of electricity supply while deciding on the rates to be charged to them that much is thus undisputed.
34. Whether the Complainants had received more than 500 hours of guaranteed supply on their respective feeders for the period 8/2000 till the time the said UPERC Tariff was in enforce as per the concerned UPPCL Division shall need to be seen in light of availing the corresponding benefit. Further, as facts stand out did the Complainants make a false statement in each of the 12 written applications that they had not received more than 500 hours of "guaranteed supply", in the months of 8/ 2000 and 9 /2000, when in fact they had received an average of 626 and 646 Hours respectively as per E.E E.D.D Kotdwar (Respondent No. 2) shall also need to be considered.
35. As facts stand out the UPERC had recognized only three types of feeders (Para 20) for ensuring availability of power of a scheduled or controlled quantum as stated in its Tariff Order for each of the various categories of loads of their respective consumers, which stood connected namely to the following three types of feeders: -
- a. Urban Feeders
 - b. Rural Feeders
 - c. Independent Feeders
- The above are a matter of record and are thus undisputed. In case of the HV2 Rate Schedule the UPERC had particularly specified "independent feeders emanating from 400/220/132 KV substations", with guaranteed supplies of not less than 500 hours in a month.
36. So the issue shall be one of determining as to which of the above mentioned feeders were in use that were supplying power to the 12 Complainants and whether these were emanating from a 400/220/132 kV substation or not.
37. Whether there are other benefits that are dependent upon the aforesaid guaranteed supplies of more than 500 hours in a month, and whether these had been availed by the Complainants or were open to be availed of by them is another important issue. As stated the entire UPERC Tariff Order of the Year 2000-01 had been related to the supply availability under each category of load meaning thereby that the tariffs of each category were supply availability based. In particular the HV-2 Tariff had set out a number of other significant benefits in form of rebates apart from the benefits stated above in Para 32 to the Large & Heavy industrial consumers that accrued as a result of availing guaranteed 500 hours or more of such supplies in the month. So when these had been held out to benefit this category of consumers, whether the Complainants stood benefited from these or not shall also need to be examined. (See Page 5 Para 6 regarding additional rebates under HV-2 Tariff)
38. Whether the UPERC had altered the technical requirements and operating imperatives of the Licensee's Feeder System (a part of its overall Power system), particularly so in the matter of "independently feeding" power through "Independent Feeders" to the Large & Heavy Power consumers or could have done so without a due process in full knowledge of all parties shall also need to be examined. Or, putting it very specifically whether the UPERC had made any changes in the matter of UPSEB's prescribed directions as

to what shall constitute an “Independent Feeder” being followed by its successor the UPPCL? Was it so especially prior to promulgating its Tariff Order dated 27-07-2000?

39. Whether the compulsive necessity of operating the power system based on undisputed technical grounds require that the electric supply of arc/induction furnace has to be segregated from other consumers and that this was being done through providing supply to them through “independent feeders” that were thus separate from or independent of the Rural or Urban Feeders, and were also to be independently controlled or fed from the “feeding sub stations” of 444/220/132 kV?
40. That whether or not, in case of above category of consumers there is yet another technical compulsion of providing supply to them at as high a voltage as is commercially and technically viable and that an optimum voltage of 33 000 Volts had been standardized by both the industry and the erstwhile UPSEB and its successor the UPPCL.
41. Whether or not it is again a matter of operational necessity based on technical compulsions of running a Power System that supply to these categories of consumers, which has to be given at a voltage 33 kilo-Volts through independent feeders has also to emanate from 400/220/132 kilo-Volts Sub Stations?
42. Whether the 12 Complainants had accepted the UPSEB’s prescribed connotation of what shall constitute an “independent feeder” when they accepted the load Sanction Memo No 3870-C SEB-6/1996 Dated 5-08-1996 and other similar Memos bearing the same conditions.
43. Whether the above had also deposited the “independent feeder” charges as prescribed in the Sanction Memo and as agreed upon in the Agreements.
44. Whether the principle of estoppel bars refuting the course of action already accepted as argued by the learned counsel for the Respondents?
45. Whether the UPERC had not based the ARR and hence the category-wise tariff on the quantum of power to be sold to each category of consumers and thereby also fixed the rates under each category in order to pay for the power to be purchased by it so as to be able to supply that much power?
46. How far are the judgments of the Hon’ble High Court at Allahabad in the matter of LML vs. State of UP and M/s NCL Ltd vs. UPPCL relevant to this matter?
47. Whether the learned Consumers’ Grievances Redressal Forum, Garhwal Zone, Dehra Dun stood legally constituted as per the UERC Regulation No. 1/2004/UERC Dated 10-02-2004, when the UERC vides its Order on 08-4-2005 transferred this case to the above Forum and on 02-06-2006, when it gave its order in the present case or whether the learned counsels of both parties had recognized it as such when they argued their case before it all through the period starting from April 2005 to 2-06-2006, a considerable length of time.
48. Whether the current definition of what shall constitute an “independent feeder” as per the latest amendment to the UPERC Distribution Code and the UPCL’s latest order shall be relevant to the matter?

EXAMINATION OF THE ISSUES

49. It becomes necessary at this stage to go into just what was the spirit and substance behind the UPERC Tariff Order of 27 -07 -2000. It is undisputed that unreliability of supply in the then undivided U.P., was taken note of by the UPERC. However the UPERC was particularly concerned about the plight of the

industrial sector particularly for the industrial consumers of HV-2 category. It had said inter alia , in its Section 2.4, “...this is evident from the fact that in Uttar Pradesh there had been an absolute decline in electricity consumption by the industrial sector...If supply and service conditions do not improve substantially more consumers will opt out of the system. It is therefore of prime importance to improve the institutional capability of UPPCL to enhance electricity supply and improve the quality of service...”

Then on Section 3.0 it says “...During the same period, all-India total connected load increased at a CAGR (Compound Annual Growth Rate) of 6.6 per cent. Industrial connected load in Uttar Pradesh, during the same period posted a CAGR of only 1.6 per cent as opposed to the all India figure of 5 per cent. Similar observations can be made on electricity consumption.”

Continuing in this vein it says “More disconcertingly, the gap between industrial growth in Uttar Pradesh and India during 1993-’94 to 1998-’99 was starker and in large part can be attributed to the sorry state of the electricity sector”... “..the share of industry in energy consumption has decreased from 27.3 % in 1991-’92 to 20.7 % in 1998-’99(see table 2) (Section 3.3)

(Section 3.5)... “In 1998-’99 the average revenue realized from Industry was 385 per cent of the average revenue realization from domestic consumers...”

UPERC Tariff Order, Para 5.10, then says as follows “Several consumer interest groups complained about the poor quality of power. They mentioned that there were frequent unscheduled power cuts, trippings, voltage fluctuations and low frequency, which result in production loss and damage to equipment. Consumer groups wanted that the licensees should be penalized for not meeting quality standards.....”

.....

“Part C: The Commissions Findings

....

5.14 The Commission has carefully examined the information provided by UPPCL and the objections raised by other stakeholders. ... **For the current year the availability of electricity from the Central and State generating stations has not been shown as a constraint and it seems that demand is constrained not by the availability of power or by lack of adequate transmission and distribution facilities to transmit this power but by the ability of UPPCL to collect sufficient revenue to pay for the electricity purchased. In all parts of the State consumers have consistently complained to the Commission about the lack of availability of electricity. In the circumstances when availability is not a constraint, all efforts should be made to provide adequate supply of electricity to the paying customers.** In view of these considerations, the Commission has revised the estimate of consumption of certain categories of customers by projecting the base figures of 1998-1999 forward for each category of consumers using the respective historical CAGRs.....” (Bold and underline added)

UPERC says again vides Para 7.10 of its Tariff Order “... **7.10** The price of any product has to be linked to the quality of supply. At present this is not the case with electricity. Irrespective of the frequency of

disruption or the voltage at which it is supplied, the charges to be paid by the consumer are the same. It is necessary to increasingly link payment with actual supply and also the quality of such supply. In our view the first step in this direction is to have consumers pay a greater proportion of their monthly bills, towards payment of actual energy supplied to them..."

50. It is to state that the above are only a limited number of extracts that have been quoted from the comprehensive mass of consumer opinions and documentation that comprises the UPERC Tariff Report 2000-'01. It thus gives a factual insight into the underlying view of the Commission that the Industrial Sector in the erstwhile undivided Uttar Pradesh needed a better deal especially with regard to an assured supply, at a rate which offered incentives to improved consumption consistent with improved productivity. It had noted the fact that the Industrial Sector was a better paying class of consumers so was deserving of the above considerations. So there is no doubt that the Commission put an emphasis on improved availability of supply to the Industrial consumers and this was incorporated into order in its Rate Schedule HV-2.
51. A close and particular examination of the entire UPERC HV-2 Rate Schedule thus points out that it had made the condition of ensuring an "assured supply of minimum 500 hours in a month" an integral part of its Tariff order for the Large and Heavy industrial class of consumers. Quoting its own words it said "15 % surcharge on demand and energy charges and have the assured supply of minimum 500 hours in a month. In case of shortfall in the guaranteed hours of the supply, a rebate at the rate of 1 % per ten hours or part thereof shall be admissible on the total amount as computed under rate of charge." It cannot be over emphasized that the UPERC had stipulated a quid pro quo – the 15 % additional surcharge was for the assured supply of a minimum of 500 hours in a month.
52. Coming to the underlying issue as stated under Para 32 the UPERC had definitely given a clear benefit of ensuring an "Assured Supply of minimum 500 hours in a month" to the consumers under its Rate Schedule HV-2.
53. The issue that shall be further examined now is firstly whether the benefit of an assured supply of at least 500 hours in a month had been availed of by the Complainants. If so was it for the entire period of this dispute. If it has been so availed then how far it was lawful for the Complainants to withhold the additional payment of 15% on the monthly demand and energy charges.
54. It is necessary at this stage itself to disabuse the learned counsel for the Complainants of his reference to this 15% surcharge as an "independent feeder surcharge". The UPERC has nowhere stated that it is an independent feeder surcharge. The connotation given by the above counsel in the matter is entirely misconceived and veers the argument away from the central theme of a "Supply-availability based tariff" i.e. of ensuring 500 hours of guaranteed supply in the month to the consumers connected to "independent feeders emanating from Grid Sub Stations" and charging an additional 15% charge in lieu of that, to one of arguing about the delivery system. Referring to the actual words of the UPERC Rate Schedule HV-2 it said "*...The number of industrial units setting up their own captive power plants is increasing and this trend needs to be arrested. We are, therefore, increasing the demand and energy charges only by 5%.A special*

rate for seasonal industries has been introduced. To ensure availability of power to industries connected to independent feeders emanating to (from) 132 KV, 220 KV, and 400 KV Sub stations, they shall be allowed to operate during the peak hours as well. They will be able to do so by paying small additional charge of 15% of the amount of bill in a month. These consumers will be ensured minimum 500 hours supply. In case of shortfall in the guaranteed hours of supply a rebate of 1% per 10 hours or part thereof shall be admissible on the total amount of the bill....” (See UPERC Rate Schedule HV-2 full text). **Thus it was not the fact of the independent feeder emanating from a 400/220/132 kV Substation which imposed an additional charge of 15% on the consumers being fed from such a feeder but the assured supply/guaranteed supply that was made possible through it.**

55. The Hon'ble High Court's judgment in the M/s NCL vs. UPPCL case quoted by both parties and referred by the learned Forum as well, had said *“This appeal revolves around interpretation of that Para of Tariff Order 2000-01, which relates to category HV-2 (Large and Heavy power) consumer (the HV-2 consumer), who are getting power supply on independent feeder emanating from 400/22/132 kV Substation. Such a consumer is assured 500 hours of electric power supply in a month and in case of failure to fulfill this assurance, the consumer is also entitled to rebate. However, for this benefit the consumer is liable to pay 15% surcharge on demand and energy charges....”*
56. The above is thus the crux of the issue that the first benefit under the UPERC HV-2 Rate Schedule being given to the above category of consumers was of guaranteed, reliability and continuity of supplies in a month. This fact cannot be glossed over that in the undivided U.P, except for certain areas of which the Hill Districts of the then UP were one and certain class of feeders that were mostly kept exempt from load shedding, which enjoyed reliability and continuity of supplies, the rest of the State had to contend with critical shortages of power which entailed almost indiscriminate load shedding. That much has been fully brought out in the excerpts from the UPERC Tariff Order and can also be recalled from the memory of such happenings in the power front of undivided UP in the not too distant past. The benefit of assured and guaranteed supply of power being given to the privileged or the select few however did not mean that this was not at a certain cost to the Supplier (the Licensee), which had thus to be recovered from their beneficiaries.
57. The Hon'ble Commission in its Tariff Order of 27-07-2000 gave the path breaking picture that it had set out to address this chronic shortfall by making the Rate Schedules under various categories to be not just “supply availability based” ones but in the case of the Large & Heavy Power Consumers gave for the first time a guaranteed assurance that these consumers shall neither suffer unscheduled power cuts nor shall suffer shortfalls in the minimum guaranteed quantum of 500 hours of supply in the month provided these were connected to independent feeders emanating from 400/220/132 kV Sub Station from where the load shedding was enforced and could thus be exempted as well. If despite this, shortfalls did occur in the guaranteed hours of supply then rebates were to be paid to the consumers by the Licensee for such shortfalls; - this was the first time this was being done in the State of UP.
58. What shall matter now shall be to determine first of all whether the Complainants had availed this benefit of availing 500 hours guaranteed supply in the months or not. As stated under Para 9 the Complainants had given in writing to the E.E, E.D.D Kotdwar that they neither required 500 hours of guaranteed supplies

in the month nor had been given 500 hours of supply during the months of August and September 2000. However, the Licensee had in the month of September 2000 issued the combined bill for the months of 8/2000 and 9/2000 with due date of payment as 10-10-2000 charging an additional surcharge of 15% but it had not given any rebate in the bill for any shortfall in the supplies @ 1% for any 10 hours shortfall or part thereof. So this refuted the contention of the 12 Complainants in their applications that had stated that the Complainants had not received more than 500 hours of supply during the months of 8/2000 and 9/2000. The Licensee has given the supply availability hours in each of the two feeders supplying power to the 12 Complainants respectively as follows:-

Month	Total supply hours CB-4	Total supply hours CB-7
8/2000	569	683
9/2000	642	651
10/2000	711	708
11/2000	674	623
12/2000	703:04	705:01
01/2001	585:18	579:24
02/2001	618:14	617:27
03/2001	696:05	709:40
04/2001	624:32	625:36
05/2001	708:30	702:57
06/2001	707:57	702:27
07/2001	676:43	658:42
08/2001	659:47	646:51
09/2001	672:01	670:35

59. The Licensee has further made an averment of charging the 15% additional surcharge for each of the 12 Complainants for the entire period this surcharge was not charged earlier for the period from 09-08-2000 to 15-09-2001 in lieu of supplying more than 500 hours of guaranteed supplies but it had not paid any rebate on account of shortfalls. The above has not been denied by the learned counsel for Complainants. There is no doubt that the Licensee's statement that more than 500 hours of supplies per month were provided to the Complainants is correct and so this substantial benefit had in fact been availed of by each of the Complainants. Throughout the course of his arguments the learned counsel for the Complainants had also not contested any non-availability of supply of less than 500 hours in a month. This is thus undisputed that each of the above Complainants availed more than 500 hours guaranteed supply of power to them in each month. Moreover the Complainants have falsely averred that they were not given a supply of an assured minimum of 500 hours in a month in the months of 8/00 & 9/00. They were in fact given supplies of more than 700 hours in several months and never less than 569 hours (in one month only) but generally over 600 hours in the month.
60. It stands established that all the 12 consumers gave a false statement that they had not been given 500 hours of supply when they tendered their so called options in the month of October 2000. This matter of making a false statement is bad in the eyes of law.

61. So the onus rested on the Complainants' arguments as to why they were not to be held liable to pay for a substantial benefit they had each availed of as per the Rate Schedule when in fact there were other classes of consumers who were going without this benefit of guaranteed supplies which was a fact known to all and which is revealed in a diligent reading of the UPERC Tariff order of 27 -7 -2000.
62. The entire weight of arguments of the learned counsel for the Complainants as were tendered by him, which also happen to be literally substantial in this case, is that the two feeders that supplied regular and continuous supplies to the Complainants induction furnace loads of as much as 600-700 hours in a month as per Licensee's statement were not the independent feeders emanating from 132kV, 220 kV, and 400 kV Substations as were prescribed under HV-2 Rate Schedule by the UPERC. Now the entire reading of the UPERC Tariff Order of 27-07-2000 recognizes only three types of feeders as stated under Para 20 and Para 35. The Complainants' learned counsel has spared no pains to aver that the two 33 kV feeders independently controlled by CBs 4 and 7 respectively, emanating from 132 Kotdwar Substations are not in fact independent feeders as was meant by the UPERC in its aforesaid Tariff Order. However he has kept resoundingly silent over the matter if either of the two or both were found deficient in supplying the minimum guaranteed power of 500 hours of the energy to run each of the Complainants' loads in the month and for the entire period in which this particular UPERC Rate Schedule was applicable. This is in effect an admission that there was no deficiency in the benefit for which the Tariff Order/ Rate Schedule HV2 had stipulated a 15% surcharge as provided under the Law by the UPERC.
63. As stated in Para 35 the UPERC had recognized only three types of feeders for ensuring availability of power of a scheduled or "controlled" quantum as stated in its Tariff Order for each of the various categories of loads of their respective consumers, which stood connected namely to the following three types of feeders: -
- i) Rural Feeders— a) Supplying power to rural areas but power availability was restricted to certain scheduled hours i.e., feeders subjected to scheduled rostering of supply (load shedding).
 - b) Rural feeders supplying power to rural areas exempted from scheduled rostering, or connected to cogeneration sources
 - ii) Urban Feeders – Supplying power to Urban Centres, e.g. starting from those of KAVAL Towns that were exempt from scheduled load shedding, even unscheduled ones down to those of other towns but no specific UPERC Tariff Order of guaranteed supplies of providing not less than 500 hours/month was given.
 - iii) Independent feeders, as were described in UPERC Tariff HV -2, i.e. ones emanating from 400/220/132 kV substations which thus had guaranteed supplies of not less than 500 hours in a month.
- So the issue becomes one of determining as to which of the above mentioned feeders were in use that were supplying power to the 12 Complainants and whether these were emanating from a 400/220/132 kV substation or not.
64. It is an undisputed fact that the two feeders independently controlled by the CBs 4 & 7 respectively and emanating from the 132 kilo-Volt (kV) Sub Station Jasodharpur, Kotdwar supplying power to the 12 Complainants respectively (As Per Para 22) are neither Rural Feeders nor Urban Feeders. It shall now be further examined if the two 33 kV feeders concerned in the matter are in fact the independent feeders as was meant by the UPERC.

65. It is a technical compulsion that supply to such a process of load as arc/induction furnace loads has to be segregated from other consumers. It is thus an accepted fact that there is a compulsive necessity to give supply to arc/induction furnace loads through feeders that are separate or segregated from other consumers, or independently fed. In induction/arc furnaces electricity is used to melt steel scrap. The heat is produced in the steel scrap by inducing an electric current into this mass through an induction coil. In these induction/arc furnaces the magnitude of the current changes abruptly causing large swings in reactive power and consequent voltage fluctuations (See UERC Amendment on Tariff for PIUs Dated 24-08-'04 Para 3.14 (9) Page 32). These voltage fluctuations are harmful both for the supplier and the ordinary consumers. This requires that the supply to ordinary consumers is protected from such fluctuations which are harmful as they cause harmonics in the supply that affect the efficiency and life of common appliances. This is sought to be protected by segregating the supply of induction/arc furnace loads of such consumers through separate, independently fed feeders or as the UPSEB had put it "independent feeders".
66. The voltage fluctuations/surges also require dampening by having a strong network at the sending end of the supply which means that the independent feeder for such loads emanates from a grid substation, where the Extra High Voltage network of Interconnected EHV lines and Inter - Connecting Transformers (I.C.Ts) ensures that the Voltage fluctuations/current surges are adequately dampened / cushioned out. Thus there is an overriding technical compulsion to have an independent feeder for arc/induction furnaces consumers and that too, one that is emanating from a 400/220/132 kV substations. Obviously such a feeder shall not be connected to either of the feeders supplying power to rural and urban consumers and shall be independently fed from the feeding sub station. The language used and nomenclature evolved was part of the power-sector technicalese in active usage in the power-sector industry of UP for the greater part of the UPSEB's existence and certainly so after the issue of its Order No 1535 -HC dated 6-07-1978, followed by its Order No 38/HC dated 16-06-1980 and may not have gained statutory provision at the time of the UPERC Tariff Order 2000-'01, or for that matter may not have reached the hallowed pages of Standard English in the OED. That shall not however erase or evade the facts of the existence of this terminology "as it was" in acceptance as the learned counsel for Complainants has zealously tried to do. He has accepted that where a formal definition does not exist the prevalent common usage shall prevail; - the common usage shall however pertain to the power-sector technical language and not that of any lay man in ignorance of the context of usage of the power-sector of the times of UPSEB, in the then undivided UP.
67. The above two Paras thus set out the undisputed technical grounds, which require the electric supply of arc/induction furnaces to be segregated from other consumers and that this was being done by providing supply to them through independent feeders that were thus separate from or independent of the rural or urban feeders.
68. As already brought out in above the operational necessity based on technical compulsions of providing supply to arc/induction furnace consumers at, as high a voltage as was commercially and technically viable was thus mutually accepted by these consumers and the erstwhile UPSEB as also its successor the UPPCL. This was standardized at an optimum voltage of 33 kilo-Volts. The load sanction Office Memo No.

3870-C/SEB-6/1996 etc of 1996 Dated 05-08-1996 issued in the name of M/s Kotdwar Steel Ltd., states the sanctioned load as being 2000 kVA, gives the category as HV1, and states the process as induction furnace for production of ingots and sets down that supply shall be released at 33kV, as is excerpted here (only conditions relevant to the case being reproduced here), as follows:

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 , rn}kjk Lohdr fd; k tkrk g
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 e\$ dks}kj LVhy fy0 2000 vnksgtj½ , p0oh0&1 b.MD"ku QuZ lykV l 0 41 l s44
 Cykd&bZ t l ksj i q dsoh0,0 %bUxkV½ ds rd BbZ Cykel
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 mDr fo | q Hkj 33 dsoh0 vki frZtoHko i j voedr gsk

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 mi ; dr fo | q Hkj dh Lohdr rFlk ml dk voedr djuk fuEufyf[kr "krkZ @ i frCU/kscsv/khu gS&

1. fojy Jsh dh bdkb; ksj}kjk i hd vkoL Zesfo | q dk mi Hks i vZ; k gj n"lk esi frcfU/kr gsk vks bl dk mYyaku djusi j bdkbZdk fo | q l a ksu fu; ekutqkj fopNsr dj fn; k tk; skA
2. i Hkfor 400 @ 200 @ 132 dsoh0 mi l LFkukusij LFkfr VRI QkeZsdh fu/MZr vf/kdre ykVx l hek l svf/kd i kfjr gksdli n"lk esbdkbZdh fo | q vki frZesdVks dh tk; shA
3. fo | q i zkyh vksjy k gksdsdjk. k bl ckr dh i jv l EHkrouk gSd bdkbZdh fo | q vki frZesd Mkmj ykV "kVx rFlk yksoV\$ dh l eL; k; sfonelu jgsA
4. -----
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8. **mDr l aksu dksfo | q... (blank)**
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9. fo | q vki frZi fj 'ln dsi Hkoks gsdfo | q esufgr oksV\$ i j gh nh tk; sh A
10. mDr fo | q Hkj fd l h Hh n"lk esi fj 'ln~dh fd l h Hh Vd ykbZ dksV\$ djdsvoedr ugha fd; k tk; sk A
11. -----
12. **Lora: i ksd }kjk fo | q Hkj voedr djusgsq fj 'ln~}kjk l e; &l e; i j fuxZ vnsksdk vudqyu l tuf"pr fd; k tk; sk A**
13. ; fn dkye&5 esmYyf[kr i fj l j @ bdkbZij vFlak mi HkBrk dsute i gysl salksZduB"ku jgk gks rksmDr Hkj rc rd ugha foedr %jyht½ fd; k tk; sk tc rd fd ml i qusduB"ku vFlak mi HkBrk dsfo:) cdk; k i fj 'knh; /kujf" k % fn dksZgk\$ dk i jv Hkarku u dj fn; k tk; sA
14. ; fn mDr bdkbZmi HkBrk }kjk i fj 'ln~dsufR l ECU/kh fo'k; ksmnkgj. kFkZV\$ Q½ ; k ml l sl EcfU/kr fo'k; tSsQ;-vy l jpktZtksi koj QBVj l jpktZV\$Q dh nj] fojy @fojy fo/kk vlfm dsfo'k; es

1/2 d k b Z f o o l n f d l h H k h U ; k ; k y ; e a m B k ; k x ; k g S v i S ; g y f E c r g S r i s m l n " k e s f o o l n l E k l r g l a s d s i " p k r - g h f o | r H k j v o e Q r f d ; k t k ; s k 1/2 A

- 15. i f j ' k n - } k j k f u / k k r v k S p k f j d r k ; s i v k Z d j u s d s l k " p k r - g h f o | q H k j f o e Q r f d ; k t k ; s k A
- 16. d k s m l v i s s d s l E c u / k e s 18 ? U V s d h f o | q v k i i n z i t u f " p r d j u s d s m n n s ; l s f o | q v k i i n z L o r a i k s d v f u m i m s Q M j 1/2 l s d h t k ; s h A L o r a i k s d d s f u e k z e a g l a s o k y k 0 ; ; m i H k B r k d k s g h o g u d j u k g l a s k A

f o i j h r i z k y h n " k e s @ / k i k r e l y t u j k s v f j a k v f l o k f o | q d v i s h d h l f l k r e s v l o " ; d f o | q v l o " ; d r k e l x c d k ; j [k u s d s y , m i H k B r k d k s i j k e " k z n ; k t i r k g s d m i ; Q r { k e r k d s t u j b x l s y x y s t l d s y , i f j ' k n - d h i o t z d f r v y x l s i d r d j l d r s g a

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l 0 & 3 8 7 0 / 1 1 / 1 h @ j k f o i & ----- @ 6 r n f a u l d

i b r f y f i f u E u f y f [k r d k s l p u l f k z , o a v l o " ; d d k ; z l g h g s v i s k r % &

- 1. e Q ; v f l k ; U r k v o l f . k T ; 1/2 l x B u m o i Q j k T ; f o | q i f j ' k n] - " k f D r H k o u f o L r k j y [k u A A
- 2. v k ; Q r f o d k d j m R r j i n s k " k l u] y [k u A A
- 3. e Q ; { k s h ; L F k f u d v f l k ; U r k m o i Q j k T ; f o | q i f j ' k n] - n g j k n u w A
- 4. v / h { k . k v f l k ; U r k] u x j h f o | q f o r j . k e . M y J h u x j % x < e k y 1/2
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i a t h d r
- 6. m i H k B r k m i ; Q r i r s i j A

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u k s & l E c f u / k r v f / k " k l h v f l k ; U r k i z u x r b d k b z l s f u ; e k u b l j i z l e . k " k d 1/2 l s s x d k s t e k d j k u k l t u f " p r d j s A (B o l d c h a r a c t e r s a d d e d)

- 69. The learned counsel for the Respondents' has averred and argued that it is evident that the Complainants' had firstly accepted the Load Sanction Memo No.3870-C/SEB-6/1996 dated 05-08-1996 as also had similarly accepted the other load sanction memos issued separately for each of the induction furnace loads of the respective Complainants in 1995-1996 (that included all except M/s Sumo Steel that was sanctioned its load in 2002 and should be out of the dispute as the dispute concerns the Tariff Order of FY 2000-'01) and thereby each had also accepted the conditions imposed in the above Memos. It is clarified that when the reference is to "all complainants" it shall come to mean the Representation tendered by all on the subject matter of dispute. There was one exception in the case (Sumo Steel) with regard to the load sanction and its subsequent release of load but this shall not invalidate the present findings on the dispute. The conditions of the Sanction Memo of 1996 inter-alia were as they stand excerpted in the above sanction memo No 3870 dated 5-08-1996.
- 70. The learned counsel for the Respondents thus avers that having accepted the conditions imposed in the above Sanction Memos the Complainants then went on to execute Agreements for the supply of the respective loads sanctioned to them and thus the principle of estoppel bars revoking the acceptance of this course of action.

71. The above shall thus be examined, whether the supply that had to be given to this category of consumers only on the terms of UPSEB's Sanction Memo of which there can be no dispute had also included the prescribed UPSEB's connotation of what shall constitute an independent feeder which according to the counsel for Respondents, the Complainants had also thus accepted. The counsel for Respondents is correct that the Complainants had thus to be released connections as per the above conditions imposed by the UPSEB's Sanction Memos of which the main conditions relevant here were that supply had to be released at a Voltage of 33 kilo-Volts; it was not to be given by tapping any trunk-line and most importantly, the standing instructions issued in the matter of releasing loads through independent feeders were to be complied with. The condition under Serial 12 of the Sanction Memo had stated as follows:
 BLoꝛꝛ i ksd }kjk fo |q Hkj veQr djusgswfj'kn }kjk l e; &l e; ij fuxZ vlnsksdk vuqkyu l qur"pr
 fd; k tk, xkAP

72. Referring to the above, which states "...orders issued by the Board from time to time..." (as the above shall translate to English) on the matter of independent feeders, the erstwhile UPSEB Circular 549/ etc dated 31-05-1996 which was applicable in this case, had said inter-alia vide Para 4 , under the heading
 BLoꝛꝛ QhMjþ

BLekeU; r% fdI h mi HkBrk dsfy, Loꝛꝛ QhMj dk fuZk.k ugha fd; k tk, xkA vldZ@ bUMD"ku QuZ
 jkSyx @fj&jkSyx feYl ,oa feuh LVhy lykA/ dsmi HkBrk vksdsfy, Loꝛꝛ QhMj dk fuekZ i pfyr fu; eksds
 v/khu tkjh jgZkA , dsmi HkBrk vksds Loꝛꝛ QhMj dk i jw0; ;] BcsptkZþ , oe-Bfl Lve ykBAx ptkZþ ns gkZs
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73. The above condition of Serial 12 of the Sanction Memo referring to "standing orders issued from time to time" and the reference to B--- i pfyr fu; eksþ in UPSEB Circular 549/ etc dated 31-051996 as translated to "standing orders", refers to the following orders of the UPSEB regarding what it had prescribed as an "independent feeder" and these are reproduced as under: -

Chairman UPSEB Office Memo No. 38/HC etc. dated 16-06-1980 that read as follows:

" Orders regarding charging the cost of providing independent feeders for individual consumers at their requests, were issued vide O.M. No. 8380-HC/2(243)C/73, dated 28-12-1976 read with O.M. No. 3829-HC/2(243)C/73, dated 14-09-1977 that no connection from independent feeder constructed at the cost of a consumer, was to be given to any other consumer.

Now it has been decided that from the independent feeder constructed for a particular consumer even though at his cost, other connections having the same and/or similar process(es) may be given, if technically feasible, for which the old consumers will not be entitled for any refund on account of the some portion of the common line constructed at his cost. For example, if an independent feeder has been constructed for feeding a cold storage at the cost of particular consumer, then other cold storage may also be connected on the same feeder, if technically feasible, after realization of necessary charges and completing the pre-connection formalities. It must, however, be ensured that no consumer having process(es) different/dissimilar than that of the old consumer at the cost of which the independent feeder was constructed, be given connection from that particular independent feeder and no additional dissimilar process(es) in future should be allowed to these new consumers. These orders shall not apply to feeders constructed for state tube-wells/pumps canals etc.

The above orders shall come into force with immediate effect."

74. An earlier order of erstwhile UPSEB 1535-HC dated 06-07-1978 read as follows:-
 i. "The facility of having an independent feeder shall not be allowed to small and medium power consumers due to technical and practical difficulties.
 ii. The construction of independent feeders for feeding a consumer having load above 100 HP shall be subject to technical feasibility and the decision of the concerned Chief Zonal Engineer/General

Manager in this regard, shall be final, who may examine if the independent feeder to be taken out is technically feasible, and shall not create any problem in future planning.

iii. The cost of switchgear to be provided at the start of the feeder, if any, and the cost of independent feeder to be constructed shall be charged from the consumer in advance.

iv. On realization of the necessary cost from the consumer in advance, the construction must be completed within a period of three/six months."

75. Thus the Load Sanction Memo referring to standing orders in the matter of "independent feeders" can be traced back to the UPSEB Circulars circa 1976-78 referred in UPSEB Memo 38/HC etc. dated 16-06-1980 which also made it clear that the nomenclature of "independent feeder" shall include or come to mean more than one consumer of the same or similar process connected to it.
76. It is thus established that the Complainants were thus charged the cost of the feeder line, cost of bay, etc. in accordance with the above condition 12 of Load Sanction Memo and as per the Circular No. 549 dated 31-05-1996 and these were deposited by them to avail their respective electric connections through the above stated "independent feeders" emanating from the 132 kV Sub Station Jasodharpur, Kotdwar as they stand described in Para 22.
77. The sanction Memo No 3870 Dated 5-8-'96 read in the context of Circular No. 549 of 31-05-1996 had thus made it clear that such induction furnace/arc furnace, rolling, re-rolling mills, mini steel plants shall have to bear the full cost of the "independent feeder", bay charges and system loading charges. In short, the UPSEB load sanction order read with Circular No. 549 dated 31-05-1996 had made it clear that arc/induction furnace consumers shall be given supplies only through what had come to be termed as an "independent feeder" and this terminology by the erstwhile UPSEB was in de facto usage by all concerned especially in the power-sector industry of the undivided U.P. as also by its successor the UPPCL.
78. The erstwhile UPSEB while entering into agreements for the supply of electricity, stated inter-alia in its standardized agreement Para 26, the consumer shall pay in advance a estimated amount to be intimated by the Supplier to cover the cost of providing and installing the line, connecting mains and apparatus excluding transformer and the O.C.B payable by the Supplier but such line, mains and apparatus shall remain the property of the Supplier, even though the cost thereof has been paid by the consumer. It is thus established that the above Complainants had accepted the status of their feeder line to be in accordance with the UPSEB's directions via the Load Sanction Memos and Circular 549 of 31-05-1996 and then as contained in Circular 38/HC dated 16-06-1980 and paid for the same. Such an arrangement was thus willingly accepted by each of them of which there is no doubt, as is convincingly made out by the learned counsel for the Respondents.
79. Thus the acceptance of the conditions imposed in the Load Sanction Memo by the above Complainants who had deposited the independent feeder charges as prescribed in the Sanction Memo and as agreed upon in the agreement for the supply of power executed by each of the Complainants was proof of acceptance of the above course of action. So the learned counsel for the respondents is correct that the principle of estoppel bars any subsequent disavowal on the acceptance of it, namely that supply had to be given to this category of consumers only on the terms of UPSEB's Sanction Memo that had included the prescribed connotation of what shall constitute an independent feeder, which they had accepted. It needs

to be reiterated again just what these terms were and the fact needs assertion that since they were mutually beneficial they stood accepted by both the parties, i.e. the Complainants and the UPSEB:

- a) Supply was to be given at the High voltage of 33 kV
 - b) That to do so required a separate feeder line called an independent feeder by the UPSEB and accepted as such by the Complainants and subsequently by the UPERC since the induction furnace process prohibited such a category of consumer to be connected to any rural feeder or an urban feeder. It shall be understood that such a process load at the voltage of 33000 Volts cannot just get hooked onto the line of the nearest neighbourhood of ordinary power consumers.
 - c) That it was especially in the interest of such induction furnace process industrial consumers that power supply could be regulated to them during periods of power shortage and were thus saved from the scheduled rostering (load sheddings) of rural feeders or unscheduled load sheddings of urban feeders.
 - d) That the voltage/current surges accompanying the induction/arc furnace heating demanded that these separate feeder lines or independent feeders emanated from grid substations, as at 132 kV Substation Jasodharpur, Kotdwar where the strong EHV transmission/transformation interconnection served to dampen and cushion out these surges and the network had sufficient capacity to absorb such surges.
80. The learned counsel for the Complainants had studiously refrained from examining the above undeniable compulsions of what shall constitute an independent feeder. Thus the nomenclature given by the erstwhile UPSEB as in Circular 38-HC of 16-06-80 and used by the UPERC serves a much wider connotation than is to be sought either in the OED under the meaning of the word "independent" there or even in other specious arguments tendered in the case.
81. To challenge this particular connotation given to the word "independent feeder" in its practical usage from the times of the UPSEB especially evidenced in the Circular 38-HC of 16-6-'80, it has rightly been argued by the counsel for respondents that it is barred by estoppel. Thus any other connotation except the one agreed upon by both parties that it was to provide two independently controlled, independent feeders one by CB No 4 the other by CB No. 7 emanating from the 132 kV Sub station, is barred by estoppel as has been very rightly and cogently been argued by the learned counsel for the Respondents.
82. Again referring to the load sanction memo No. 3870 of 5-08- '96, the UPSEB had made it clear that supplies to consumers could be affected by load shedding, overloading of grid transformers, etc. It also made a clear and distinct stipulation that supplies to a cold storage/cold storages connected to their respective independent feeders shall be ensured for a minimum period of 18 hours per day. Thus, a guaranteed supply of at least 540 hours was to be ensured through the independent feeders for the cold storages for the obvious reason of ensuring that the agricultural produce, fruits, etc. stored in them were not allowed to perish due to unreliability of electric supplies that caused failure of the cold storage plant to work un-interruptedly to give sustained cooling. This highlights the operational importance of the UPSEB / UPPCL description of what shall constitute an independent feeder, namely to guarantee a stipulated minimum essential requirement of electric supply.

83. It needs to be recalled that the Circular No. 38 of 16-06-1980 also gave the example of a cold storage connection for which an independent feeder line had been initially constructed to give supply only to it. Thereafter the circular went on to provide the rule that another similar process i. e. cold storage consumer could also be connected to it. The example of the cold storage consumers is significant because of the overriding importance of providing a guaranteed, minimum essential quantum of supplies to such consumers, which were thus to be kept exempt from avoidable load-shedding and worse. This thus applied to all essential categories of consumers and more than one consumer of the same or similar process could be connected provided the technical norms, such as of ensuring proper voltage regulation, current carrying capacity etc. were complied with. The far reaching import of this circular which guided an entire quarter century of engineers and consumers alike cannot be dubbed “non-est” when the Complainants benefited from it throughout.
84. With regard to the tenacity shown by the learned counsel for Complainants that an “independent feeder” had meant only that feeder emanating from the Grid Substation (400/220/132 kV) which fed only one consumer at its culmination, there can be no other conclusion except to say that it was either in total ignorance of practical knowledge governing the functioning of a power system such as that of U.P., or a deliberate obfuscation of facts. The most telling refutation of such a contention that a separate 33kV feeder line should be run for each of the twelve induction furnace consumes in order to qualify for the nomenclature of an independent feeder is to be found in the definition of what shall constitute an “independent feeder” as defined in the standing UPERC Code reproduced in its entirety as under:

Extract from the ‘U.P. Electricity Supply Code - 2005 upto 3rd Amendment - English (Effective from date of notification i.e. 14-09-2006)’

“Supply through Independent feeders

a) Load for Arc / Induction furnaces, Rolling Mills, Re-rolling Mills and Mini steel plants, of 1000 KVA and above, shall be released only through an independent feeder and all necessary charges including the feeder cost shall be paid by the consumer.

(b) 3(4) [In other cases including townships / complexes, domestic or non-domestic or institutions, the supply may be given at independent feeder for load above 500 KVA, including those industries mentioned in clause 3.4(a) above but having load less than 1000 KVA, at the request of the consumer / applicant, if he is willing to bear all applicable charges, subject to technical feasibility and availability of bay / corridor at the sub-station.]

2 [Provided that for releasing the supply to consumer / applicant on independent feeder, having load below 500 KVA, it shall depend on nature and purpose of supply such as emergency services, and such other reasons where continuity of supply is required by consumers, if the licensee so determines, the supply can be released depending on system constraints, technical feasibility, cost parameters as well as safeguarding the provisions of duty of supply on request as per Act.]

(c) 3 (3) Deleted

(d) 3 (1) [The licensee shall allow tapping of feeders supplying Arc/ Induction furnaces, Rolling Mills, Re-rolling Mills and Mini steel plants, with either of these plants, and this shall not be construed as change in process. The tapping of the independent feeder shall be permitted by licensee to other connection having a similar process subject to the following conditions, (i) Construction of separate feeder from the sub-station is not possible on account of non-availability of corridor, right of way and bay at the respective sub-station.

(ii) Consent of original consumer has been obtained by prospective consumer for cost sharing of common portion of feeder with the prospective consumer.

(iii) Quality of supply is not likely to be affected, and if technically feasible.]

(iv) The outdoor metering at the tapping point, and the additional cost due to changes in system shall be done at the cost of prospective consumer. However the cost credit due to removal of the existing system shall not be given to the consumers.

(v) 3 (3) Deleted

3(2) [Note: Process of use of electricity means the sub-category mentioned under applicability clause of appropriate tariff schedule as per the latest applicable Tariff Order of the Commission.]”

85. The practical considerations incorporated here have thus been the very ones which the erstwhile UPSEB had evolved in its norms of what shall constitute an “independent feeder”. The UPERC Code thus indicates finally that ‘a single-consumer only connotation’ of an “independent feeder” would cause utter wastefulness not only in equipment rendered grossly under-utilized in running a plethora of such single-consumer lines each with its own controlling circuit breaker but it would be the most deleterious course as far as land-use is concerned. There would not be room enough to accommodate so many “bays” and such an arrangement would require many more such 400/220/132 kV Substations to cater for this fanciful arrangement. Just as important was how much land area would be required to obtain ‘right of way’ clearances for running say 12 such lines in a narrow belt, if at all it was possible? If each of the above Complainants had sought an entirely new line from the above 132 kV sub-station would it have been at all possible or practical and if at all so to what purpose? Would it be just to satisfy a dictionary meaning? Whether that could have been possible in the light of the “right of way” disputes posed by the affected rural/urban land owners is easily answered. If at all these would have been allowed by the land owners or was physically possible it would invariably have involved huge outlays of time and money for the Complainants to resolve the dispute. In effect the facility and benefits of 12 separate lines had been coalesced into two as the required technical norms for supply and benefits of uninterrupted guaranteed power as available in the Grid had been observed. More importantly all of the parties accepted this “independent feeder” status right from its inception from the time of their load sanction in August 1996 onwards and was challenged only when the matter of paying the quid-pro-quo of 15 % additional charges in lieu of 500 hours or more of guaranteed availability of power per month came to be enforced as per the UPERC HV-2 Rate Schedule of 2000-'01.

86. Here it must be stated that the Complainants were fully aware of the status and connotation carried by the word “Independent feeder”, which was evolved as part of practical usage in the then UPSEB to ensure the reliability of power supply to the single or limited numbers of connected consumers in a power system prone to frequent load shedding. The Complainants had admitted as such when they took recourse to exercising an option “not to require 500 hours guaranteed supply” that was open only to consumers connected to independent feeders emanating from Grid Sub Stations as per ‘option circular’ of UPPCL No. 1423 of 08- 09-2000 later declared null and void by the Hon’ble H.C., that had said as follows:

*B2/d/nj vubpr, p00h0&2 es400] 220 , oa 132 dBoh0 mi dBoh0 sfudyusokysLora# i ksdksdsmi HMBRvks
dks500 ?MUVsdh fo/q vki frvZdh xkjUVh dsQyLo#i 15 i fr"kr l jpktZfy; k tk; sIA bl Jsh dsmi HMBRvks*

500 ?UVsi frrelg fo/q vki frvZl fuf"pr dh tk; sHA fdl h elg es500 ?UVsl sde vki frvZgkasi j i E; sl 10 ?UVsi j mudsfo/q fcy es1 i fr"kr dh NVVnh tk; sHA ; fn bu Loræ i ksdksl stHsmi HMBRk 500 ?UVsfo/q vki frvZdh xkjUVh ugha plgrsg&Rks, bh voLFk esmudsficykasi j 15 i fr"kr l jpkt Zugha yxk; k tk; sHA , &s mi HMBRk i &hdR i = }kjk vf/k"kl h vfhk; Urk forj.k dksl for djæsfed ; s500 ?UVsfo/q vki frvZdh xkjUVh ugha plgrsg&.. So the Complainants had exercised this 'option' by virtue of having accepted the status of their feeders being independent feeders.

87. Fortunately wiser counsels have intervened to rule out any fanciful interpretation of running 12 separate lines in order to qualify being fed from an independent feeder but it was too deleterious to even contemplate or suggest that such an arrangement could exist since it would be too wasteful in allowing valuable land to be put to such a course and at what price to pay for the right of way over the land to create such a web of parallel feeder lines. There could not have been any better practical way than what stood created from the times of the erstwhile UPSEB in order to meet the contingencies of not only segregating supplies of such loads that created harmful voltage fluctuations etc. from the majority of ordinary consumers but also to safeguard the interests of the Complainants from unreliability of supplies due to load sheddings . So why seek to obfuscate a clearly practical arrangement unless it was to mislead the Ombudsman to subserve the interests of the Complainants and thereby create a travesty of the law?
88. It is equally relevant that the present UPCL has also vides its order No.106/UPCL/COM/E-1 dated 29-01-'06 had defined nearly the same outcome as under:-

dk; kZ; &Kki

u; sm/k&ks dksRofjr xfr l sfo/q Hkj voeDr djusdsmnæs; lsdkji k&ks vlnsk l a; k&1277 @ mi kdlfy @dk&V@bZ1] fnuld 30&5&2005 , o&Loræ @vks&fxd i ksdksl c&rk esi oZesfuxZ l eLr vlnsk&dk vfr&e.k djrsgq rRdly i Hko l sfuEukublj vlns"kr fd; k tkrk g&

1- Loræ i ksd og i ksd gStksfdl h 400@220&66@11 d&oh0 mi d&bnzl sfuxZ gksrFk ml l s, dy (Single) mi HMBRk dksvFlok ml h fo/k dsmi HMBRk l egvdkso/q vki frvZdh tkrh gksrFk tk&smi HMBRkv&sdso; ; i j fuekZ fd; k x; k g& fdl h Loræ i ksd l svU; fo/k dsmi HMBRkv&sdksvki frvZd; k tkuk fuf"k) gSrFkfi , d Loræ i ksd l sml h fo/k dh vU; bdkbZ&sdks(Technical Feasibility) gkasi j fuEu fcUnq1/5 es vfrdr "kr&Zdsvublj l a k&tr fd; k tk l drk g& Hko"; esLoræ i ksd dk fuekZ l a Dr i zU/k fun&kd dh fyf[kr vuefir dsmi jklUr gh fd; k tk l drk g&

89. There are also no grounds to believe that the U.P.E.R.C. had altered the U.P.S.E.B's standing definition of what shall constitute an independent feeder as was being followed by the UPPCL, when it promulgated its Tariff w.e.f. 9.8.2000. The fact remains that the U.P.E.R.C. had thus not disputed the U.P.S.E.B's description of what shall constitute an "independent feeder" to prescribe one of its own in the matter. Whether the UPERC could have wanted to alter the technical and operating requirements of the Licensee's system of feeders or its Power System as such for feeding power to consumers, or could have altered them, particularly so in the matter of "feeding" power through "Independent Feeders" to the Large & Heavy Power consumers is to question the technical considerations governing these matters. These have already been dealt with earlier and specifically so in Paras 69, 70 & 72 etc. concerning the peculiar demands of the arc/induction furnace consumers. It shall suffice to say this is totally ruled out so shall not

need any further refutation of this bizarre interpretation that the UPERC in promulgating “independent feeders” emanating from the 400/220/132 kV Sub Stations in its Tariff Order of 27-07-'00 meant only those having only one consumer connected to it!

90. That the existing UPSEB description as in use by the UPPCL was fully known to the UPERC is borne out by the UPPCL circular No. 925 dated 31-08-2001 issued by the Director (Distribution) UPPCL, which read inter-alia as follows:-

fo | q fu; led vk; kx }ljk o'kZ2000&01 dsfy, vuqtkr VjQ esLora i ksd I sfo | q vki frZi kusokys , p0oh0&2 nj ds vi HMBRkvlk; j 15 i fr"kr vfrfjDr vf/Hkkj dk i ko/ku bl "krZdsI kfk fd; k x; k gSd , s s vi HMBRkvlk; sfo | q vki frZ500 ?k/si fr ekg I fuf"pr dh tk; s hA ; fn -----

I d ; k% 925 , p01 h

fnukp% 31-8-2001

i frfyfi I fpo] m0i & fo | q fu; led vk; kx] fd I ku e.Mh Hkou xksh uxj] y[kuA dksI pulkZ, oa vlo"; d dk; dgh gscj s hA

*¼, I 01 h0 xksoy ½
funskd ½kf. kT; ½*

This circular refers in the plural when it comes to referring to more than one number of HV 2 consumers connected to “a one” (in the singular) independent feeder and the same is thus in the knowledge of the UPERC.

Another circular issued by the UPPCL No. 776 dated 5-10-2000 again refers in the plural when it comes to referring to more than one number of HV 2 consumers connected to “an (in the singular) independent feeder” so it connotes the prevalent use of this common fact.

B 3- og m | kx tkLora i ksd I sfo | q i krgsvk; ; fn og fy[k dj ; g nssgd mudk500 ?k/si fr ekg de I sde fo | q vki frZvo"; nh tk; s bl glykr esmudksmi jkDr fclnwv , oa 2 dsfcy dsAij 15 i fr"kr vfrfjDr vj s ns glsk vj s ; fn mi HMBRk 500 ?k/sch v"; kZI lykbZi fr ekg dk fodYi ugha nssg s rks ; g ekU; ugha glsk A---P

91. Much of the arguments by the counsel for Complainants has been vented that the UPERC had not defined an “independent feeder” in its Tariff Order. A prevalent terminology of common usage in the business of power that was as old as nearly a quarter century in the erstwhile UP and fully accepted by the Complainants as also by the rest of the consumers and Licensee’s personnel needed no such “definition” least of all in the Tariff that was in continuance of earlier ones. That this should be raised by the Complainants when they had deposited their respective costs for such a feeder and entered into an Agreement for it and were receiving a favoured quantum of power as a consequence of it is all the more specious. So it is not open to us to surmise that the U.P.E.R.C. was lacking in due diligence and methodical study to be ignorant of this long standing order of the U.P.S.E.B. and its practical connotation considering that this involved the feeding arrangements to one of its most important class of consumers, namely the Large & Heavy Industrial consumers “a paying class of consumers”. The UPERC was fully aware of what the feeding arrangements were for all classes of consumers and how much they were benefiting or not benefiting from it as can be made out from the examples of charging higher rates for more reliable and assured supplies that have been extensively quoted in earlier Paras.

92. **As if to clinch this issue beyond doubt in the very same HV-2 Tariff, the UPERC made the telling difference between industrial consumers connected to independent feeders (that too emanating from 400/220/132 kV sub stations) and those connected to “rural feeders”. It said, “? For connection in rural area getting power supply as per rural schedule a rebate of 10 % on the demand charge and energy charge will be given.”** As said earlier in the undivided U. P. for which the Tariff was formulated the rural areas got supplies only for restricted hours in each day. These supply hours per month were certainly far less than the guaranteed 500 hours for which the extra 15% was levied. So for industrial consumers suffering restricted power supplies of say 10 -12 hours per day only, the Commission in its fair-mindedness gave a 10% rebate.
93. This distinction must remove all doubts as to what the UPERC had in mind and which we too have so far been at pains to point out. That this was so is obvious from the fact that the UPERC put a higher price on the electric energy that was reliable and could be effectively “controlled” to ensure its reliability through the Central Load Despatch Station (CLDS) and the Area Load Despatch Stations (ALDSs). This was not the case with the “rural feeders” that were given supplies for certain restricted hours each day. Apart from that it could not be ruled out that these “rural feeders” would not be beset by “break downs” and load shedding. Load shedding was carried out by the CLDS and ALDSs according to a pre-planned “rostering programme”, which was aimed at shedding off relatively less important loads just when there was a sudden shortage of power availability to its system, which progressed to shedding off increasingly important loads if the shortage demanded it. Needless to say even the “rural feeders” suffered as did the “urban feeders” but the independent feeders from the “controlled sub stations“ meaning the 400/220/132 kV sub stations were in the relatively well protected category of loads, which were shed off only in the worst shortfall situations or when it became inevitable to save the system from collapsing.
94. As regards the Complainants’ contention that the U.P.E.R.C. did away with the 15% surcharge in its next revision w.e.f. 1.9.2001 it is also a fact that it did not see it fit to rescind its earlier order of 27 -7- 2000 with retrospective effect that is w.e.f. 9.8.2000 as is now being contended in this Representation. So we cannot apply hind sight into something in which we have no jurisdiction. We have thus no other course except to conclude that the U.P.E.R.C. took recourse to the U.P.S.E.B’s definition of what constituted an independent feeder as per the definition given in circular dated 16.6.1980 (already referred to earlier) and issued its Tariff Order in the light of this knowledge. For the sake of knowledge the next year’s UPERC Rate Schedule HV-2 was based on voltage of supply.
95. The Learned counsel for the complainants has also used various points of the law to further the arguments refuting the status of the feeder line feeding the complainants as to be not an independent feeder. The point of law is being focused on the matter which is not germane to the issue. The matter of dispute is the price of electricity utilized by the complainants. The Rate Schedule HV-2 was set for this purpose that is that if the complainants shall receive 500 hours of guaranteed supply in a month they shall have to pay slightly more for this supply. The arguments fail to mention that the Complainants availed continuous and reliable supply, a substantial benefit, in lieu of which they were to pay extra at the rate of 15% on the monthly Demand and Energy Charges and that this reliable supply of more than 500 hours in a month could not be guaranteed unless the complainants were connected to an Independent Feeder fed from a

Grid Sub Station. These obligations were fully met by the Licensee but the additional charges accrued over the period @ 15 % on the monthly Demand and Energy Charges have not yet been paid by the Complainants. The learned counsel for Complainants has more than belaboured the point over the dictionary meaning of the word "independent". That has been answered. What shall matter is the quantum of electricity consumed and the price fixed for it by the statutory authority. In this HV-2 Rate Schedule itself, in case of industrial consumers connected to Rural Feeders subjected to scheduled load shedding the UPERC had given a 10 % rebate. So having availed the most reliable electricity supplies which were the saleable item in the entire transaction that was being imported by UPPCL, the latter was entitled to get the full amount that was due from its new Rate Schedule w.e.f 08/2000 from the Complainants who had benefited from it.

It was also an undisputed fact that in order to ensure the guaranteed supply of more than 500 hours in a month the Licensee may well have imposed load shedding on other consumers thereby tending to lose revenue on that score besides incurring a loss of goodwill and reputation. So the UPERC in all its wisdom imposed a higher tariff on the industrial consumers of the HV-2 category that included the Complainants sparing them the hardship of unreliable supplies and seeking to improve the industrial climate in the State by that step, while at the same time ensuring the Licensee's financial capacity to pay for the power it was to import, to ensure such guaranteed supplies. As described earlier the UPERC was particularly concerned about the plight of the industrial sector especially for the industrial consumers of HV-2 category but it was also concerned about the Licensee's capacity to recover its revenues. It had said inter alia , in its Section 2.4 Page 10, "...this is evident from the fact that in Uttar Pradesh there had been an absolute decline in electricity consumption by the industrial sector...*If supply and service conditions do not improve substantially more consumers will opt out of the system. It is therefore of prime importance to improve the institutional capability of UPPCL to enhance electricity supply and improve the quality of service...*" (Bold added)

Counsel for Complainants had also made no acknowledgement of the manifold financial benefits that accrued to them from the UPERC Rate Schedule HV 2, e.g. Load Factor Rebate. The UPERC had given this as per Page 6, "*Demand charge at present is payable by consumers who are covered by HV-1, HV-2, HV-3 and HV-4. In order to encourage industries, we feel that consumer maintaining higher load factor should be given some incentives. The Uttar Pradesh Reforms Act 1999 also empowers the Commission to make distinction between consumers having different load factor or power factor. In view of this we feel that all consumption in HV-2 and HV-3 Categories in excess of 60% annual average load factor shall receive a rebate of 10% of the energy charge per unit.*"

Besides there was the High Voltage rebate @ 5% on the amount calculated as per the rate of charge and PF rebate "**Power Factor Rebate for HV Consumers**". "*Whenever the average monthly power factor is more than 0.90 and upto 0.95 a rebate of 0.25% on the billed amount will be given. A rebate of 0.50% shall be given on achieving 0.95% power factor. Further, if the power factor goes above 0.95 and upto unity an additional rebate of 0.1% for every 0.01 increasing power factor above 0.95 will be allowed.*"

All these manifold benefits accrued to the Complainants when they availed the reliability and continuity of supplies that were much more than the guaranteed minimum of 500 hours in a month.

96. The very fact that a relatively colossal amount of electricity was provided to each of the Complainants with a guaranteed reliability also burdened the UPPCL in order to pay for it. In its Tariff Order of 27-07-'00. UPERC had determined a projected sale of 25259 M.U in the FY 2000-'01. Revenue from sale of this at the then current tariff provided only Rs. 6283 Crore. The projected sale to Arc/induction category was 1007MU while that of Large & Heavy Power was 2594 MU, respectively. The Aggregate Revenue Requirement for the Year 2000-'01 was worked out as Rs. 7472 Crore, which included Rs. 5100.53 Crore for purchase of energy. UPERC had said, Para 5.70 and Table 24, *"The gap between the aggregate revenue requirement and expected revenue from current tariff is determined at Rs. 1189 Crore(i.e. 7472 less 6263).* In Para 7.4 UPERC continued **"7.4 The tariff revision, details of which follow, will result in an annual increase of Rs.640 Crore in revenue to UPPCL. This would raise the current average tariff by 10.18 per cent. As the revised tariff will be available for eight of the twelve months in 2000-2001, the UPPCL's revenue will increase by Rs. 427 Crore.**

7.5 *During 2000-2001 the gap between the approved expenditure and the expected revenue is projected at Rs 399 Crore after accounting for the financing of Rs. 790 Crore by the State Government. Thus the revised tariff will fully cover the revenue gap and will leave Rs 28 Crore as surplus for the Corporation. We propose to allow this amount as return on the capital base.*

These were thus the approved calculations of the UPERC and this entire exercise was a statutory undertaking under the law, as was reminded by the Hon. HC in the LML case. This thus forbids any step that shall overturn the above projections duly bound by Law as shall happen if the Complainants' stand over not paying for the additional 15% for the guaranteed supplies availed of by them was to be accepted. It is here necessary to recall again the spirit and substance of the supply-availability based tariff calculations of the UPERC, as per following: -

"7.10 *The price of any product has to be linked to the quality of supply. At present this is not the case with electricity. Irrespective of the frequency of disruption or the voltage at which it is supplied, the charges to be paid by the consumer are the same. It is necessary to increasingly link payment with actual supply and also the quality of such supply. In our view the first step in this direction is to have consumers pay a greater proportion of their monthly bills, towards payment of actual energy supplied to them....."*

The emphasis on consumers paying a greater proportion of their monthly bills towards payment of actual energy supplied to them entails that the Licensee recovers sufficient revenue to pay for the electricity purchased as per its **Para 5.14** **"... For the current year the availability of electricity from the Central and State generating stations has not been shown as a constraint and it seems that demand is constrained not by the availability of power or by lack of adequate transmission and distribution facilities to transmit this power but by the ability of UPPCL to collect sufficient revenue to pay for the electricity purchased...."** (Underline added)

The annulment of the 15% this surcharge more so on the grounds sought by the Complainants for availing a particular quality of supply (of guaranteed reliability) shall contribute not only to the Licensee's incapability to pay for the electricity purchased and is thus a violation of the authority of the UPERC on that ground it also amounts to a violation of the Tariff Order of 27-07-2000 in the light of the judgment in the M/s LML vs. the State of U.P. and others, Para 16 in which the Hon'ble H.C. at Allahabad had further dwelt at length upon the authority and powers vested in the UPERC under the U. P. Act No. 24 of 1999. It had observed that a determination of the tariff by a body other than the Commission or to alter or vary the same constituted a violation of its powers and the UPERC was empowered to impose fines and failure to comply with any direction or order; it was an offence punishable with imprisonment up to one year or a fine up to Rs 5 Lacs. The Hon'ble H. C's reiteration of these awesome powers of the Commission in its judgment must not be lost sight of to caution against any ill-considered, frivolous, or unauthorized interpretation or action that is construed as or becomes an alteration of the duly approved Tariff / Rate Schedule.

97. As such we have to conclude that the UPERC Rate Schedule HV-2 for the FY 2000-'01 shall be fully liable to be implemented when the UPPCL supplied power of the required quality to each of the Complainants' connections through the two feeders, each controlled and "fed" independently, by the Circuit Breakers Nos. 4 and 7, respectively from the 132 kV Sub Station Jasodharpur, Kotdwar and any annulment of the 15% surcharge chargeable w. e. f. 09-08-2000 to 15 -09 -2001 sought on the grounds given by the learned counsel for the Complainants' connections are therefore held to be devoid of merit, hence untenable and liable to be rejected. That the above annulment being sought on the ground that above two feeders were supplying power to a "cluster" of the Complainants hence were not independent feeders as per terms of common usage or technicalise, which were thus used in practice since around 1976 from the time of the erstwhile UPSEB and accepted as such in the Tariff Order by the UPERC was thus found to be devoid of merit as per the detailed deliberations and is hence dismissed. Any persistence over the evasion of payment of the additional charge of 15 % on the more than 500 hours of guaranteed supplies availed of by each of the Complainants in each month shall therefore be a violation of the UPERC Tariff Order of the FY 2000-'01, which shall be illegal and a violation of the law. The Representation against the Order of the learned Consumers' Grievances Redressal Forum, Garhwal Zone, Dehra Dun is thus untenable, devoid of merit and dismissed.
98. Finally we see no ground in the learned counsel of the Complainants' contention that the learned Forum had passed its order behind his back and that it was a predetermined order that disregarded most of his arguments. We find the proceedings of the learned Forum to have been well attended and well argued proceedings with its learned and diligent examination of the rules, regulations and the Acts of Law in the case that were tendered by both parties. We find ample proof of its sincere application of its collective mind to be fair-minded in its decision in adherence to the law and there is no basis for making an unfounded allegation of "going behind the back". The deliberations and the final decision of the Forum are thus upheld. It is for that matter that many of the contentions argued by the counsel for Complainants and

dismissed by the Forum have not been examined again in this Award as also they stand rejected in the wider perspective of the deliberations and the conclusions that have been arrived here. With regard to Complainants' counsel arguing that the Forum itself was "illegal" we uphold the counsel for respondents' argument that the former had willingly acquiesced in its jurisdiction and in the proceedings before it. Further, the Forum had also examined in depth the arguments by counsel for Complainants in the M/s LML vs. State of U.P case and M/s NCL vs. UPPCL case and its findings are thus upheld. We have examined the judgments of the Hon'ble H.Cs and have come to the conclusion that they neither nullify nor even detract our findings in the matter as detailed above.

99. The contention by the counsel for Complainants that their last rejoinder or the set of written arguments before the Forum were not examined by the learned Forum meant that they stood established, is unacceptable for the simple reason that such a course of action shall be disruptive of the normal course of proceedings by making it an ad infinitum exercise of tendering voluminous rejoinders and written arguments even after the set time for these was over. The learned Forum was thus entitled to come to a conclusion after giving a fair and judicious hearing to both parties within a reasonable time frame. The contention of "non-rebuttal" holding thereby that they were true is not applicable for the simple reason that the Complainants had been given ample time to do so earlier and their contentions had in fact been contended with. This finding shall hold well in this Representation also. Considering the importance of the case a very liberal amount of time has been given to both parties but it cannot now be overindulged in by the learned counsel for the Complainants. The extended time in the Representation was thus for the aforesaid reasons.

Coming now to examining the issue raised by the Complainants with regard to legality of the Forum there was no dispute, as its jurisdiction was accepted by both parties especially the Complainants when they filed their Complaint before it sometimes after 8-04-2005 following the order of the UERC of 8-04-2005. These proceedings thereafter continued under the jurisdiction of this Forum.

The Hon'ble UERC had constituted this Forum and had duly notified the same and had not withdrawn them so the Forum as such continued to hold jurisdiction when it passed its Order on 02-06-2006. This issue had been dealt with by the UERC when it was raised by the Licensee so the status of the Forum was fully legal at the time the Complainants had sought to raise it.

Earlier, the Hon'ble High Court at Nainital had referred this dispute to a Committee headed by the Chief Secretary, Uttarakhand, and this Committee had issued its deliberations to the UERC vides its 1289 / 1 /2005-06(4) / 15 / 03 dated 14-03-2005 and the Commission had decided that the Consumers' Grievances Redressal Forum, Garhwal Zone shall decide this case. The UERC had not revoked its above order, so the above said Forum had full jurisdiction to decide this case. There was thus no dispute over its legal status at the time of passing its said order on 2-06-2006.

100. Before disposing off this Representation it is necessary to record that the matter involves a relatively huge amount of accrued charges that are now held payable by the Complainants, which they had earlier withheld on their own, pending settlement of their cases before the Hon'bles UERC and the High Court at Nainital. The Licensee shall therefore take recourse to recovering its due amount along with late payment surcharge as per the due process of recoveries open to it under the Law.

101. For the reasons deliberated at length as above, we therefore see no merit in the Representation against the order of the learned Forum and the same is dismissed.

102. As the Government of Uttarakhand was also directed by the Hon'ble High Court at Nainital to decide on the matter along with the UERC a copy of this Award shall also be sent to them for such necessary action as is deemed necessary.

103. The Complainants had erred over this matter of not agitating their alleged dispute before the Hon'ble UPERC although they had ample time to do so to go before that august body especially so starting from the time the UPPCL had issued its Circular 925-HC dated 31-08-2001 to re-impose the 15% surcharge and recover the amount. The observations of the UERC are thus pertinent when it said while deciding the case of M/s Ace Glass & Containers Pvt. Ltd. vs. UPCL as follows: -

".....The tariff determined by UPERC on 07.08.2000 was the applicable tariff and this provided for levy of 15% surcharge on consumers getting supply on independent feeders.Agitating this point before this Commission at this stage does not help the petitioner in any way. This Commission is neither authorized to, nor inclined to examine merits and propriety of UPERC's tariff order of 2000....."

104. The Licensee was fully aware, which course was being adopted by the Complainants over the matter of implementing the Rate Schedule HV-2 as early as the period August to October 2000. Thereafter even after the directions to exercise an 'option' was rendered null and void by the Hon'ble H.C and the UPPCL had issued its Circular 925-HC dated 31-08-2001 to re-impose the 15% surcharge and recover the amount under the 15% surcharge in lieu of guaranteed supplies given to them the Licensee too neither re-imposed this charge nor referred the matter to UPERC. The seeming strictures over the 'option' matter amounting to an alteration of the Tariff by the Hon'ble H.C. appear lost on the Licensee. It was thus pointing to an evasion of its responsibility.

The Complainants were no doubt guided by their interests but the Licensee being a public-owned company had wider accountability, which it failed to observe. What can only be surmised is that the Complainants' had taken the special status enjoyed by the Hill Districts in the matter of reliability and continuity of supplies (as Per Para 30) for granted but had failed to recognize that this continuous power had to come at a commensurate price that had been set by the UPERC.

In this particular case the Licensee had thus the duties to monitor the supplies if these were above or below the guaranteed minimum. As facts were they were much above the guaranteed minimum so these imposed a duty upon the Licensee to be able to recover revenues in order to be able to pay for its imports of power. It had to work sincerely towards that objective. The orders of the UPPCL Head Quarters contained in Circular 1423 of 8-09-2000 had also directed monitoring supplies for the restricted hours (Peak Hours) but the Licensee had filed no averment over it although it too was a tariff-related issue.

Since the amount involved is relatively huge, in the present Representation the Government and the UERC may well take cognizance of this fact in ensuring that the recoveries take place in due time.

AWARD

Having diligently considered and examined all the facts and circumstances of the Complainants' Representation against the decision of the learned Consumers' Grievances Redressal Forum, Garhwal Zone, Dehra Dun and after giving due hearings to both parties, and having thus considered their arguments as given in the preceding paragraphs, I come to the conclusion that the decision given by the aforesaid learned Forum is correct and the Complainants' Representation to annul the 15% charge while fully availing of the benefits accruing to them with a guaranteed minimum 500 hours of supply availed of by them through two independently fed feeders emanating from the 132 kV Jasodharpur, Kotdwar Sub Station, is thus found to be devoid of merit, untenable and is rejected. The decision of the learned Forum in this matter is thus upheld and this Representation against it is accordingly dismissed. The Licensee shall therefore take recourse to recovering its due amount along with late payment surcharge as per the due process of recoveries open to it under the Law.

The Representation is thus accordingly decided.

Dated: 28. 02.2007

(J.C.Pant)
OMBUDSMAN