

THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s H.R.J.Steels Pvt. Ltd., F-12 to 22 Jasodharpur Industrial Area, Kotdwara,
Distt. Pauri Garhwal, Uttarakhand.

Vs

Uttarakhand Power Corporation Limited through its Executive Engineer, Electricity
Distribution Division, Kotdwara

Representation No. 12/2008

Order

M/s HRJ Steels Pvt. Ltd. (Petitioner) has filed this representation against the order passed by The Consumer Grievance Redressal Forum, Garhwal Zone (Forum) on 21.04.2008. The petitioner had complained to the Forum that a bill for Rs. 10,85,397/- has been raised against him by UPCL by way of penalty for drawing electricity in excess of the permitted 15% during the peak hours violating the restrictions placed in this regard. The main complaint was that UPCL had not notified/publicised the restrictions on use of electricity during the peak hours and the petitioner was never informed about it. The Forum passed the impugned order and rejected the complaint. The Forum's order has now been challenged reiterating that UPCL had not publicised these restrictions nor intimated the same to the petitioner and therefore the penalty has been wrongly imposed; that the Forum has failed to appreciate this lapse on UPCL's part and its implications for the petitioner.

2. UPCL has filed a reply opposing the representation and has asserted that it had taken adequate steps to publicise the restrictions imposed on use of electricity by consumers during peak hours after obtaining Uttarakhand Electricity Regulatory Commission (Commission)'s approval; the petitioner knowingly violated these restrictions and the penalty imposed on him is as approved by the Commission.
3. It is not disputed that from 10.01.2007 to 15.03.2007 UPCL had placed restrictions on consumption of electricity by consumers and that these restrictions had been duly approved by the Commission. It is also not disputed that the penalty imposed by UPCL is as per rates approved by the Commission. The petitioner's grievances that while placing these restrictions UPCL did not inform him of the same resulting in these violations for which penalty has now been unfairly imposed on him. In this connection it has been argued that while a public notice

was issued by UPCL on 01.01.2007, restriction on consumption during was approved by the Commission only on 25.01.2007, and even the notice dated 01.01.07 did not stipulate any penalty for violations but stipulated disconnection of supply. Further that on 09.01.2007 the Commission had approved only the Load Shedding programme, which is different from restriction on consumption during the peak hours. In this connection reliance has been placed on an internal letter of UPCL issued by the General Manager (D) to the Executive Engineer, Kotdwara on 26.04.2007. It has therefore been argued that the restrictions on consumption of electricity, even when approved by the Commission, were not intimated to the consumers and in absence of their knowledge, violation of these restrictions should not invite penalty on the petitioner.

4. It has been argued on behalf of UPCL that the Commission had approved a Load Shedding programme on 09.01.2007 as per which all industrial feeders emanating from 132 KV and 32 KV substations were to be shut between 5:00 pm to 10:00 pm from 10.01.2007 to 15.03.2007. Subsequently UPCL approached the Commission with a proposal that industries on mixed feeders were freely using power during the peak hours as their supply could not be stopped. Therefore all industries in the state should be barred from using electricity during the peak hours i.e., 5:00 pm to 10:00 pm. This proposal was approved by the Commission on 25.01.2007. While placing this restriction an allowance of 15% of the sanctioned load was made for meeting light and fan and other essential requirements of such consumers. As a result industries could use power during this period for meeting its light & fan requirements but if their consumption exceeded 15% of the sanctioned load, penalty as approved by the Commission was to be levied. The petitioner exceeded this limit and attracted the penalty. It is also been argued that the Load Shedding and restriction approved by the Commission on 09.01.2007 were published in daily Amar Ujala on 14.001.2007 and UPCL had therefore taken all reasonable steps for publicising the restrictions and bringing them to notice of the consumers as it is not possible for UPCL to inform its consumers individually.
5. I have carefully gone through the record, the arguments of both the parties and the Forum's impugned order. It is not disputed that the petitioner had drawn more than the permitted load on two occasions i.e., 05.02.2007 & 01.3.2007; that the Commission had approved UPCL's proposed load shedding programme under section 23 of the Electricity Act 2003 on 09.01.2007; that on 19.01.2007 CMD UPCL again proposed to the Commission that UPCL may be permitted to restrict usage of electricity by industries during the peak hours to the extent of 15% of the sanctioned load, which was approved by the Commission on 25.01.2007. It is also not disputed that UPCL had issued two public notices pertaining to load shedding and restrictions on consumption by industrial consumers on 14.01.2007 and 01.01.2007 respectively. Therefore the only point for determination is whether the restrictions on consumption approved by the Commission on 25.01.2007 were

known to and still violated by the petitioner. The Forum in the impugned order has concluded that that papers filed by UPCL (the public notice published in Dainik Jagran on 01.01.2007 and that on load shedding programme issued on 10.01.2007) show that restriction on use during peak hours was given due publicity and most of the consumers were aware of it, rejecting thereby the petitioner's plea in this regard.

6. Before coming to facts of the present case it would be useful to refer to the relevant provisions of the Electricity Act 2003 and the Commission's Tariff Order stipulating the quantum of penalty that would get attracted for such violations. Consumption and use of electricity is regulated by the appropriate Commission under section 23 of the Act. The relevant provision reads as:

"If the Appropriate Commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing the equitable distribution of electricity and promoting competition, it may, by order, provide for regulating supply, distribution consumption or use thereof."

7. For enforcing any such restriction on supply, use or consumption, in the relevant tariff order Commission has spelt out the rate and method of calculating the penalty on delinquent consumers. The relevant portion of the tariff order reads as:

"In case, imposition of restriction towards the usage of electricity by the industry during certain hours in the day is effected by the Commission at any point of time, then the following rates and charges shall start to be applicable.

..... Consumers who do not opt for supply during Peak hours/ restricted hours (Non Continuous supply) shall not be allowed to use power in excess of 15% of their contracted demand. Any violation detected shall attract a penalty of Rs. 50 per KVA per day of the contracted demand, for the number of days of such violation. For the month of default, the consumer shall be billed at the rates specified at (i) above (for consumers opting for supply during restricted hours (Continuous)).

8. It is clear from the above provisions that as per law restriction on consumption of electricity by a consumer can be placed, but only by the appropriate Commission in exercise of its powers u/s 23 of the Act. Similarly the penalty for violation of such restrictions stipulated in the Tariff Order, get attracted only when such a restriction is imposed by the Commission.

9. In the present case the Commission has exercised its powers u/s 23 in two stages. On 09.01.2007 the Commission had approved the schedule for load shedding for the period 10.01.2007 to 15.03.2007 proposed by UPCL. Later i.e., on 25.01.2007 the Commission approved UPCL's proposal for restricting use of electricity by industrial consumers between 1700 hrs to 2200 hrs. The difference between these

two orders needs to be understood and appreciated. The order dated 09.01.2007 has authorized UPCL, the Licensee, to regulate supply to different areas in accordance with the approved schedule, which stipulates stoppage of supply between 5:00 pm to 10:00 pm everyday to industrial Feeders emanating from 132 KV and 33 KV substations, Sidcul Haridwar, Sidcul Pantnagar, Muni ki Rani etc. understandably this schedule clearly states that when sufficient power is available from the grid, the declared load shedding shall not be done. This order of the Commission relates only to UPCL, and authorises it to regulate supply in the manner approved by the Commission in view of the prevailing power shortage. This order does not contain any directions for usage or consumption by consumers. The need for restricting consumption by industrial consumers was felt and placed before the Commission for the first time by CMD UPCL's letter dated 19.01.2007. This was considered and approved by the Commission on 25.01.2007. Since this order of the Commission placed certain obligations on consumers, the fact whether the affected consumers were made aware of such obligations or not is relevant and important. While it is appreciated that it is not be possible for UPCL to inform each and every consumer of his obligations, at the same time UPCL is expected to take reasonable steps to notify the affected consumers. The restrictions dated 25.01.2007 were not notified in the official gazette nor were they publicised through news papers. The two notices published in the news papers precede imposition of these restrictions and are dated 01.01.2007 and 10.01.2007. The notice dated 01.01.2007 could not have and does not mention the restrictions subsequently placed by the Commission on 25.01.2007. Therefore this particular publication cannot be deemed to have notified consumers of the restrictions u/s 23, which as stated earlier, were placed only on 25.01.2007. UPCL's claim in this regard is factually incorrect and misconstrued. This at the best can be treated as an administrative directive, but its violation will not attract the penalty stipulated in the Tariff order.

10. Coming to the publication dated 10.01.2007 / 14.01.2007, this again precedes Commission's order dated 25.01.2007 placing restrictions on consumption even if supply was there in the feeder. Further the notice as carried by the news papers notifies only the schedule for load shedding during the period 10.01.2007 to 15.03.2007. As per this schedule certain industries fed from 132 KV and 33 KV substations were to be denied supply during 1700 hrs to 2200 hrs every day. This obviously was to be done by UPCL and certainly not by the affected consumers. This publication therefore does not and could not have notified the industrial consumers of restriction on consumption during these hours imposed only on 25.01.2007. Apart from these two, no other notification/public notice has been filed by UPCL.
11. It is obvious from the above discussion that the restrictions on drawl of power, approved by the Commission u/s 23 of the Act on 25.01.2007, were not

notified/publicised or intimated to the affected consumers in any reasonable manner. The issue remained confined to the files of UPCL and the Commission, while these consumers were expected to exercise self discipline, follow the discipline and restrict their draws to 15% of the connected load. UPCL has not been able to show how this obligation placed on the consumers but kept confined to its files, was supposed to be known to these consumers for compliance. In absence of any such knowledge how can the consumers be held responsible for violating these restrictions and penalised for the same. Failure to intimate directly or through a notice published in the official gazette or even in the leading news papers, amounts to withholding this information from the very consumers, who were expected to comply with them and regulate their consumption. It is therefore neither logical nor just to subsequently find fault with the consumer and punish him for such non compliance. In absence of any knowledge of these restrictions, finding fault with the petitioner and penalising him for not complying with the same is clearly unfair and unjust. The Forum has erred in concluding that the publications dated 01.01.2007 and 10/14.01.2007, even though they predate the Commission's approval dated 25.01.2007, were proper and sufficient intimations of these restrictions to the petitioner. In absence of any proper publication/notification of these restrictions the petitioner cannot be held guilty of their violations and penalised for the same. The representation is accordingly allowed and the penalty imposed on the petitioner in this regard is hereby set aside.

Dated: 24.10.2008

Divakar Dev
Ombudsman