

# THE ELECTRICITY OMBUDSMAN UTTARAKHAND

M/s Bharat Electronics Ltd.

Kotdwar, Distt. Pauri Garhwal, Uttarakhand.

Vs

1. The Chairman and Managing Director, UPCL, Urja Bhawan, Kanwali Road, Dehradun.
2. The Executive Engineer, Electricity Distribution Division, UPCL, Kotdwar, Distt. Pauri Garhwal, Uttarakhand.

Representation No. 09/2008

## Order

M/s Bharat Electronics Ltd. (BEL), a Central Public Sector undertaking located at Kotdwar in Pauri Garhwal district has filed this representation (Petition) against the order of the Consumer Grievance Redressal Forum, Garhwal Zone (Forum) dated 12.03.2008. Reply to the representation was filed on behalf of Uttarakhand Power Corporation Ltd. (UPCL) on 21.05.2008. The Petitioner's rejoinder to the same was filed on 25.06.2008. Since the Petitioner as well as the Respondent both are Government undertakings, an issue that arose was whether the Petition is in conformity with the directions of the Hon'ble Supreme Court relating to litigations between Government undertakings and departments. Both the parties sought time for clarifying this point. This position was clarified and the petition was found to be in order. Later when the case was fixed for arguments, the petitioner wanted to file some more papers to which UPCL had objections and in view of the continuing delay, the petitioner was directed to pay to UPCL the outstanding amount.

2. The Petitioner sought a review of this direction and in the meantime approach the Hon'ble High Court who were pleased to pass an order on 10.02.2009 directing the Petitioner to deposit with undersigned an FDR in favour of UPCL for the amount of Rs. 34, 58,024.00. This has been done. The Hon'ble High Court also directed that this

appeal be disposed off expeditiously, preferably within one month. Accordingly arguments of the two parties were heard on 24.02.2009 and 27.02.2009.

3. On 27.02.2009 UPCL's counsel moved an application to stay proceedings in this case as operation of the undersigned's order in another case relating to HRJ Steels has been stayed by the Hon'ble High Court. After hearing the two parties on this it was decided that in view of Hon'ble High Court's directions referred to above, it would not be correct to stay these proceedings as the matter is to be disposed off expeditiously. To enable UPCL to obtain revised directions from the Hon'ble High Court it was also decided that final orders in this case will not be passed before 10.03.2009.
4. After the above history of the current proceedings we now come to the facts of the case. The Petitioner is a Central Public Sector undertaking having a unit in Kotdwar. On 09.01.2007 Uttarakhand Electricity Regulatory Commission (Commission) accorded its approval to a load shedding programme submitted by UPCL for the period Jan-March 2007. This schedule was published for information of the affected consumers. As per this schedule, electricity supply to Industrial Consumers on Feeders emanating from 132 KV and 33 KV substations, Sidcul Haridwar, Sidcul, Pantnagar, Muni ki Reti etc. was to be totally switched off daily between 5 and 10 pm. On 18.01.2007 the Petitioner approached UPCL seeking in writing, uninterrupted power supply and for that purpose exemption from the above rostering. In response, the then Chairman and Managing Director of UPCL issued an order on 21.01.2007 allowing the Petitioner to draw a minimum load during this period i.e. between 5 and 10 pm. Subsequently on 25.01.2007 the Commission approved a fresh proposal of UPCL made on 19.01.2007 permitting all Industrial Consumers to use upto 15% of the sanctioned load during 5 to 10 pm. The Commission however gave this approval subject to certain conditions enumerated in its letter dated 25.01.2007. UPCL again approached the Commission on 01.02.2007 listing out its own difficulties in implementing the conditions stipulated by the Commission. While the final outcome of this correspondence between UPCL and the Commission is not known, the Petitioner was sent a letter on 26.03.2007, again signed by the Chairman and Managing Director, intimating that the exemption granted to it on 21.01.2007 will stand withdrawn w.e.f. 01.04.2007 and electricity supply to them will be cut off between 5 to 10 pm as per the rostering schedule.
5. On 10.04.2007 the Petitioner received a bill for Rs. 30.04 lacs on account of "peak hour penalties". The Petitioner approached the Forum against imposition of these penalties. The Forum after considering the matter passed the impugned order on 12.03.2008 rejecting the Petitioner's grievance. Aggrieved by this the Petitioner has filed the present representation.
6. I have carefully gone through the record and have heard the arguments presented by both the parties. There is no dispute on the facts of the case. The Forum has rejected the Petitioner's grievance only on the ground that Shri B. M. Verma, the then CMD UPCL did not have the authority to grant exemption dated 21.01.2007 and the same

therefore does not give the Petitioner any relief from the penalties imposed for violating the Peak Hour restrictions, and that Shri Verma has given this exemption without obtaining approval of UPCL's Board or from the Commission.

7. It is an accepted fact that by its very nature electricity supply is subject to huge fluctuations. On one hand the demand for electricity is not constant throughout the day and undergoes substantial change. While the demand during night hours goes down, it tends to be the highest during the evening hours and the high demand hours are commonly referred to as Peak Hours. Generation of power also keeps fluctuating and these variations are very high in states like Uttarakhand which depend substantially on Hydro-generation. These variations in availability as well as demand require regulation of supply by the Licensee and usage by the Consumer. However such regulation was never left to the Supply Licensee. Prior to coming of the Electricity Act 2003 (Act) the state governments were vested with statutory powers to place such restrictions. Now under the Electricity Act 2003 the power to place such restrictions is vested in the Commission. Section 23 of the Act which deals with this issue is reproduced below:

*Directions to licensees. - 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.*

8. It will be seen from above that under the circumstances enumerated therein, this section authorises the Commission to pass an order for regulating:
  - Supply
  - Distribution
  - Consumption or
  - Use of electricity.
9. UPCL accordingly approached the Commission with its proposals for regulating supply of electricity to Consumers during the period Jan-March 2007. This was approved by the Commission on 09.01.2007 and was valid from 10.01.2007 to 15.03.2007. This schedule is referred to as rostering in common parlance. This schedule approved by the Commission and notified for knowledge of the general Consumers stipulates that whenever sufficient power is available in the grid the cuts indicated in the schedule will not be resorted to.

10. Subsequently on 19.01.2007 i.e. after introducing the above scheduling, UPCL now proposed to the Commission that between 5 to 10 pm, all Industries in the State may be permitted to use up to 15% of their sanctioned load daily during this period. The Commission approved these restrictions on 25.01.2007, but subject to certain conditions. UPCL had some problems in accepting these conditions and therefore again approached the Commission on 01.02.2007 in this regard. It is significant that the restrictions approved by the Commission on 25.01.2007 were not published in News papers or notified individually to Industrial Consumers who actually had to restrict their consumption during these peak hours. The reason for not informing the Consumers about their obligations to restrict consumption during these hours is not known, but UPCL's letter to the Commission dated 01.02.2007 does suggest that it was not willing to implement the restrictions in the form approved by the Commission and had therefore again approached the Commission . It would appear that the restrictions were still being fine tuned and were therefore not notified to the affected consumers who were to observe this restraint. This is further supported by the letter sent to the petitioner by the CMD UPCL on 26.03.2007.
11. Given the above sequence of events we have to now see what was the petitioner actually required to do and to what extent he has failed to do so resulting in the disputed penalties. In this context the exemption granted to the petitioner by the CMD on 21.01.2007 is important as the same was done even before the Commission accorded its approval to the fresh proposals on 25.01.2007.
12. While grant of exemption to the Petitioner on 21.01.2007 has not been disputed, the Forum took the view that the said exemption was granted by the CMD without authority as the same had not been validated by the Board of Directors of UPCL or by the Commission. The Forum has come to this conclusion on its own as there is nothing on the file to suggest that the said order has been set aside or withdrawn either by UPCL, Commission or any other competent authority. Functions of the Forum as listed out in the Act and relevant Regulations do not include adjudicating on the legality of any order or action of the Licensee. It has been argued on behalf of UPCL that the Commission, taking note of this unauthorized action of the then CMD, has taken action against the concerned officer under section 142 of the Act. That may indeed be the case, but such punitive action is different from setting aside of the order dated 21.01.2007 or invalidating it. It has also been argued by UPCL's counsel that this order is not of the licensee company but a personal order of Shri B. M. Verma the then CMD and UPCL has disowned the same. He has however not been able to produce any document in support of this claim. On the contrary the order has been issued on the official stationary of UPCL by Shri B. M. Verma as Chairman and Managing Director of the company. There is nothing to suggest that UPCL has withdrawn or altered the said order. If this action of Shri B. M. Verma was unauthorized, it could have triggered off some administrative or legal action against him personally, but the same is different from cancelling, withdrawing or setting aside this order. Further legal validity of this particular order was not the issue to be decided

in the proceedings before the Forum or for that matter in the present proceedings before the undersigned. This is a question that can be decided only by the competent authority who will also take a view whether the order needs to be set aside or withdrawn or altered and if so in what manner and from what date. No such order or decision has been produced either before the Forum or in these proceedings. Commission's order against Shri B. M. Verma passed u/s 142 of the Act only relates to his conduct and the consequential punishment but does not alter, invalidate or set aside the order.

13. In these proceedings we are neither examining the conduct of Shri B. M. Verma or validity of his order dated 21.01.2007, that if required, is to be done by UPCL's Board of Directors, the Commission or other competent authority. In these proceedings we are only concerned with the question whether the penalty imposed on the Petitioner is justified or not. In this context the Petitioner's conduct and action do not suggest any conscious or deliberate violation of the Act or Order. It may be recalled that when load shedding was introduced on 10.01.2007, the Petitioner approached UPCL on 18.01.2007 seeking exemption from the power cuts, and the same was allowed in writing by no less a person than the Chairman and Managing Director of the company. It would be unreasonable to expect the Petitioner who is a consumer of UPCL to have doubted the validity of this order issued by the highest authority of the Licensee Company. Accordingly there was no occasion for the Petitioner to go into the question whether the CMD was authorized to issue such an order or not. It was perfectly natural for the Petitioner to infer that the said order had exempted him from the power cuts stipulated in the rostering schedule and to continue using electricity as earlier. If an officer of the Licensee has erred in exercising a power not vested with him, it is a matter between the concerned officer, the licensee company and the concerned authority and the consumer cannot be faulted for such indiscretion on part of Licensee's own officer, particularly when the officer concerned is the highest functionary in the Licensee Company. For the Licensee to now find fault with the Petitioner on this account and penalise him is totally unjustified.
14. It has also been argued on behalf of UPCL that the Commission's approval on restrictions on usage granted subsequently on 25.01.2007 overrides their order dated 09.01.2007 from which the above exemption had been given, and the penalties imposed are for violation of these restrictions. UPCL has not been able to support this argument with any documentary evidence that this change in situation, which happened after the Petitioner had been exempted from the earlier restrictions, was known or intimated to him. Some restrictions on supply were placed on 09.01.2007, exemption from these was given to the petitioner on 21.01.2007 where after some other restrictions were placed on 25.01.2007. Having exempted the petitioner from the earlier restrictions, UPCL should have either withdrawn or modified its earlier position and advised the Petitioner about the change brought about by this new development. No such action seems to have been taken and in absence of the same it is not surprising that the Petitioner continued to believe that he enjoys the exemption.

Far from advising the Petitioner, UPCL sent a letter to him on 26.03.2007 indicating that the exemption granted on 21.01.2007 was to be withdrawn w.e.f. from 01.04.2007. This letter which again has been signed by no less a person than the CMD himself, does not even mention the restrictions approved by the Commission on 25.01.2007. As stated earlier these restriction on usage were approved by the Commission subject to certain conditions. UPCL had difficulty in accepting these conditions and wrote to the Commission regarding the same on 01.02.2007. There is nothing on record to suggest that these difficulties were resolved or overcome and the restrictions approved by the Commission were actually imposed and consumers, including the Petitioner, informed of the same. It is important that these restrictions were on an actual consumption and were to be observed by the affected consumers themselves, and they could not be expected to do so without being informed of the same. For reasons not known, these restrictions on usage by the petitioner was not intimated to it and remained in knowledge of UPCL and the Commission. It is not correct to claim that these restrictions which remained under correspondence/discussion between UPCL and the Commission had become effective, and the Petitioner instead of observing them has consciously and deliberately violated them, calling for these penalties.

15. For reasons given above I find that the penalties imposed on the Petitioner are without justification. The same are hereby set aside and UPCL is directed to make necessary corrections in their bills and records. In compliance of the Hon'ble High Court's order, the Petitioner had deposited in this office FDRs for Rs. 34,58,024.00. In view of these findings OSD may kindly return the concerned FDRs to the Petitioner.

Dated: 16.03.2009

Divakar Dev  
Ombudsman