

UTTARANCHAL ELECTRICITY REGULATORY COMMISSION
DEHRADUN

Petition No. 3/2003

In the matter of:

M/S Amrit Varsha Udyog Ltd. Kotdwar and 11 Others Petitioners

v/s

Uttaranchal Power Corporation Ltd., & others Respondents

(Date of hearing 19th March 2003)

The following were present:

1. Shri M.C. Bansal, Advocate (Counsel for the Petitioners)
2. Shri Ranjeet Saxena Advocate (Counsel for the Respondent No. 3)

INTERIM ORDER

This is a petition filed by M/s Amrit Varsha Udyog Limited Kotdwar and 11 other challenging imposition of penalties by Uttaranchal Power Corporation Limited (UPCL) for use of electricity by these consumers during the peak hours. The petition has been admitted and is to be taken up for hearing on merit separately.

(2)

2. The petitioners have also filed an application requesting for staying recovery of the penalties imposed by UPCL and of the security arising on this account. They have also sought stay against disconnection of their supply.

3. The stay application was taken up for hearing on 19-3-03. The petitioner was represented by Shri M.C. Bansal, Advocate and the Respondent No.3 by Shri Ranjit Saxena Advocate. It has been argued on behalf of the petitioners that in the undivided UP State the applicable tariff was determined by the Uttar Pradesh Electricity Regulatory Commission (UPERC) and made effective from 9-8-2000. This was the prevailing tariff in the state of Uttaranchal on its formation. This tariff did not stipulate any penal charges to be levied for violation of peak hour restrictions. Such charges were introduced in the state through the tariff adopted by UPCL on 1-1-2002. However penal charges have been levied on the petitioners for the alleged violations even for the period when such charges were not leviable as per the applicable tariff. In view of this obvious infirmity in these charges, their collection and consequential action like disconnection of supply etc. should be stayed.

4. The petitioner's request has been opposed by the respondent No.3's counsel. He has argued that notwithstanding the passage of UP Electricity Reforms Act and its adaptation in the Uttaranchal State the power to levy such charges vests in the State Government by virtue of Section 22 (B) of the Indian Electricity Act 1910. The penal charges levied on the petitioners for violation of peak hour restriction have been levied in exercise of these powers. The petitioners are guilty of violating the discipline of peak hour regulation and should pay penalty for the same.

5. I have heard the parties and have gone through the file. It has not been disputed that the tariff applied in the undivided UP State on 9-8-2000 did not stipulate any such penalty. Similarly it is not disputed that a provision to this effect was made in the tariff adopted with effect from 1-1-2002. Section 22 (B) of the Indian Electricity Act 1910, only empowers the State Government to regulate supply, distribution, consumption or use of electricity. On the other hand the UP Electricity Reforms Act as adopted in the State clearly envisages that the tariff shall be determined by the Commission and further that the licensee shall not implement any tariff unless it has been approved by the Commission. The respondent's counsel was not able to show orders that the State Government has issued in exercise of Powers claimed under Section 22(B) of the Indian Electricity Act, 1910. Similarly he could not show the exact legal provision under which the tariff effective from 1-1-2002 has been fixed. He promised to produce these during hearing of the petition.

6. Whether the penal charges imposed on the petitioners are tariff stipulated in the Reforms Act applicable in restricted hours or are part of the Regulation of supply as per section 22(B) of the Indian Electricity Act, 1910 is an issue, which will be decided at the time of final disposal of this petition. What is clear at this stage is the fact that the charges levied by way of penalty on the petitioners merit proper scrutiny and validation. Questions raised with respect to these charges need to be looked into and answered before drawing any conclusion on their legality and justification. It would, therefore only be fair that the petitioners should not be compelled to pay these disputed charges till disposal of this petition. At the same time, it is necessary

(4)

to ensure that the petitioners are not allowed to take any undue advantage by raising this dispute only to get collection of these dues stayed. It is, therefore, ordered that:

(a) Each petitioner shall deposit with Commission at least 10% of the amount due from him. This amount will be kept in a separate bank account and will be paid to the petitioners or the respondents along with interest earned thereon as per final decision on this petition.

(b) The respondents shall not take any coercive action including disconnection of supply for recovery of this disputed amount against petitioners who deposit this amount.

(c) If the petition is finally rejected and the amount due from the petitioners is held payable then the interest on the balance payable amount will also be paid at such rates as the Commission may prescribe at the time of final disposal of this petition.

Dated March 20, 2003