

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**In the matter of:**

Proceeding initiated in the Commission's Order dated 08.07.2014 under section 142 of the Electricity Act, 2003 for non-compliance of the provisions of the section 67 & 68 of the Electricity Act, 2003 in the matter of M/s Birla Tyres, Unit II, Khedimubarakpur, Laksar Haridwar.

**And**

**In the matter of:**

Power Transmission Corporation of Uttarakhand Limited (PTCUL)

.... Respondent

**Coram**

**Shri Subhash Kumar      Chairman**

**Shri C.S. Sharma          Member**

**Shri K.P. Singh            Member**

**Date of Order: 21.01.2015**

**Order**

This order relates to reply dated 11.12.2014 filed by The Power Transmission Corporation of Uttarakhand Limited (hereinafter referred to as "licensee") against the Commission's Order dated 27.11.2014; in the Proceedings commenced by the Commission's Order dated 08.07.2014; under Sec. 142 of the Electricity Act of 2003 in a matter concerning non-compliance of the provisions under Secs. 67 & 68 of the Electricity Act of 2003 for the petitioner - M/s. Birla Tyres, Unit II, Khedimubarakpur, Laksar, Haridwar.

**1. Background**

- 1.1 A petition was filed by M/s. Birla Tyres seeking approval for release of additional 6 MVA load (Total load of 20 MVA) at 33 kV supply voltage In its Petition M/s Birla Tyres had submitted that it was having a sanctioned load of 20 MVA and against the same, initially a load of 10 MVA was released to it at 33 kV supply voltage as the 132 kV line was under construction. However, considering the inordinate delay in construction of 132 kV line, the

Commission had allowed release of four (4) MVA load on the existing 33 kV line vide Order dated 08.04.2010 as a stop gap arrangement, pending completion of the 132 kV line and associated works. As the erection of 132 kV line could not be done even after lapse of more than three years, M/s. Birla Tyres approached the Commission to direct UPCL to release additional 6 MVA load (Total 20 MVA) on 33 kV supply voltage, till erection of 132 kV line.

1.1.1 The Commission heard the matter and in its Order dated 11.04.2014 directed the licensee to submit by 23.04.2014, a document giving a complete chronological sequence of events and the concerned justification/reasons for each event which contributed to the delay.

1.1.2 Licensee in compliance to the aforementioned Order, submitted the required details. In addition, it also submitted before the Commission that since M/s. Birla Tyre has sought relief only against UPCL and not against the licensee, the latter must not be joined as a Respondent in the matter.

1.1.3 Thereupon, a hearing was conducted and the Commission issued an Order dated 05.05.2014 allowing release of 4 MVA load in addition to the existing contracted load of 14 MVA (Total 18 MVA) from the existing 33 kV line, till the pending work associated with 132 kV line culminates. The Commission in its Order also directed the licensee that...

*“PTCUL should submit:*

- (1) The legal authority under which it started constructing the said transmission line.*
- (2) The copies of the permissions procured for constructing the said transmission line.*
- (3) The copies of the Orders issued in the matter from various Courts from time to time.”*

1.2 The Licensee vide its reply dated 27.05.2014 stated that under the UERC (Release of new HT & EHT Connection, Enhancement and reduction of Loads) Regulations, 2008, all 132 kV and 220kV works are to be executed by the Transmission Licensee. The GoUP in exercise of power conferred on it by Section 51 of the Electricity Act, 1910 had authorized the then UPSEB for placing the electricity supply lines and also to exercise powers under the Indian Telegraph Act, 1885. Licensee also submitted that the Commission had issued the Transmission and Bulk Supply Licence to it wherein the Commission had conferred upon the licensee, all the power for placing of electric lines, appliances and apparatus for the Licensed Business that a telegraph authority posses under the Indian Telegraph Act, 1885 (13 of 1885) under Section 164 of the Electricity Act, 2003. Moreover, licensee has been

notified as an STU by GoU under the provisions of the Electricity Act, 2003 and hence, it has a statutory duty to build, operate and maintain Intra State Transmission network as per Section 40 of the Electricity Act, 2003. Licensee also submitted that it was not required to seek any permission under the law. It also enclosed copies of orders passed by Civil Judge, District Judge and Hon'ble High Court in the matter.

Subsequently, against the Commission's Order dated 05.05.2014, a review petition was filed by UPCL wherein the Licensee was also made a respondent. In the aforementioned petition, the Commission issued an order dated 08.07.2014, requiring the licensee to explain within 15 days as to why it should not be proceeded against under Sec. 142 of the Act for violating the provisions of Section 67 and 68 of the Electricity Act.

- 1.2.1 Following this, a letter by the licensee dated 17.07.2014 was received at the Commission's office wherein it requested the Commission to grant an additional one month time to reply; as the required inputs were to be extracted from the field units. Also, acting in compliance with the Commission's Order dated 08.07.2014, the officers of the Commission on 01.08.2014, reissued a *suo-motu* notice to the licensee requiring a reply from their side. The Commission also rejected the licensee's request for any extension of time and directed it to submit its reply by 20.08.2014.
- 1.2.2 Acting in pursuance of the same, the Licensee vide letter dated 20.08.2014 submitted its reply in which it further requested the Commission to extend the time for filing its reply as per the Order dated 08.07.2014. Also, it requested the Commission to treat the situation in a way as if there was no wilful non-compliance by the Licensee and whereby no penal action is initiated against the MD or any of its employees.
- 1.3 On the reply received, the Commission vide its letter dated 14.10.2014 directed the Licensee to submit a compliance report by 30.10.2014. However, the Licensee preferred filing an appeal against both, the Commission's Order dated 08.07.2014 and the *suo-motu* notice dated 01.08.2014 before the Hon'ble APTEL. To this, the Hon'ble APTEL in its Order dated 27.10.2014 directed the Commission to dispose of the said 142 proceedings as expeditiously as possible.
- 1.4 Furthermore, in compliance to the directions of the Commission, the licensee submitted its reply wherein, it requested the Commission to issue directions, much clearly and specifically which are to be complied. Also, it placed a request before the Commission to

grant 15 days time for responding to those directions. In this regard, a hearing was fixed by the Commission in which it was enquired whether the Respondent wishes the Commission to proceed & decide the matter on the basis of the reply dated 30.10.2014, or intends to give a modified reply. The Respondent repeated its request to allow 15 days time for filing a fresh reply in the matter. Thereupon, the Commission directed the licensee to submit a specific reply in the matter by 12.12.2014.

## **2. Submissions**

### **2.1 Licensee in its compliance/reply has proffered that:-**

Licensee had already brought it to the knowledge of the Hon'ble Commission that the construction of the transmission lines by Licensee is being carried out in accordance with the practices followed by the erstwhile UPSEB and that the Licensee's construction work of transmission lines was being done in accordance with the authorization/ Regulations as under-mentioned:-

- 2.1.1 Regulation 4: Sub-regulation 10 of the UERC (Release of new HT & EHT Connection, Enhancement and reduction of Loads) Regulations, 2008, which requires all 132kV and 220kV works to be executed by the transmission Licensee.
- 2.1.2 The Government of Uttar Pradesh exercising its power conferred under Sec. 51 of the Electricity Act of 1910 vide their notification dated 30.12.1970 and subsequently of 30.11.1971 had authorized U.P. State Board for placing of the electric supply lines and also to exercise the powers which the telegraph authority possesses under the Indian telegraph Act of 1885. After coming into effect of the Electricity Act of 2003 on 26.05.2003 and on 26.05.2003; the rules, notifications and instruction issued under the old act of 1910 which were not inconsistent, were saved by the virtue of Sec. 185 (2)(a) of the Electricity Act of 2003. In view of the same, the notification issued under Sec. 51 of the old Act continued to apply and thus, the power conferred under the Indian Telegraph Act became available to Licensee for construction of Transmission lines.
- 2.1.3 The Uttarakhand Electricity Regulatory Commission (UERC) granted Transmission and Bulk Power Supply License issued to UPCL on 20<sup>th</sup> June 2003, whereby the UERC in clause 15.4 of the license (regarding applicability of the Indian Electricity Act of 1910, Indian Electricity Supply Act of 1948, Central and State Act) provided that in pursuance of Sec. 11 (80 of the Sec. 164 of the Electricity Act of 2003), the licensee shall

have all the powers for the placing of the electric lines, appliance and apparatus towards the licensed business that a telegraph authority possesses under the Indian Telegraph Act of 1885.

2.1.4 Power Transmission Corporation of Uttarakhand (PTCUL) had been notified by the Government of Uttarakhand as 'State transmission Utility' vide its notification dated 31.05.2004 under the provision of Electricity Act of 2003.

2.2 Licensee in its reply has also stated that ...

*"..as per the provisions of UERC (HT & EHT) Regulation, 2008 was only required to erect the line for UPCL consumer and has done the same as per the policy followed in the department and as per the rules and regulations applicable and mentioned above and, and that the question of taking permission under Sec. 68 of the Electricity Act of 2003 came up before the Hon'ble commission for the first time and the Hon'ble Commission for the first time only has held that the permission under Sec. 68 of the Electricity Act of 2003 is necessarily required to be taken, this interpretation of law was not within the knowledge of PTCUL before the date of the said order hence PTCUL was following the usual course that has been followed in such matter from the time of erstwhile UPSEB"*

2.3 That, licensee in the meanwhile has tendered a request letter to the Under Secretary (Energy), GOU seeking an approval to construct the subject line under provisions of the Sec. 68 of the Electricity Act of 2003 and PTCUL is also perusing the matter with the State Government and the information in connection thereof was also given to the Hon'ble Commission.

### **3. Commission's view**

3.1 The Commission observes that, in its submission, the licensee has contended that as per the UERC (Release of new HT & EHT Connection, Enhancement and reduction of Loads) Regulations 2008, all the 132 kV and 220 kV works are to be executed by the Transmission Licensee. Further, the licensee has submitted that they as a notified State Transmission Utility have been exercising the powers of telegraph authority and constructing lines without obtaining permission of the State Government as required under Section 67, 68 & 164 of the Act, since the licensee was not aware of such provisions of the law. It was only after the Orders of the Commission invoking these requirements of the Act and seeking

compliance on the same from the licensee, the licensee became aware of these requirements of law.

- 3.2 The Commission is of the view that the licensee's submission that the interpretation of the law was not within its knowledge and that it had been following the usual course that has been followed from the time of erstwhile UPSEB cannot be sustained. Being a commercial entity, it is an obligation on the part of licensee to know the law and comply with it accordingly.
- 3.3 The Commission has taken a note of the fact that the licensee has only now, in the month of May, 2014, approached the State Government for seeking its approval under Section 68 of the Act which was actually a pre-requisite before taking up any transmission line works since the enactment of the Act w.e.f. 10.06.2003. Notwithstanding, even this delayed in action of licensee, expectedly, will resolve the wrangles, which has inordinately delayed execution of this work. Having said that, the Commission is of the view that delay in erection of this work and several other works taken up by this licensee, the root cause is, that it has been acting beyond its jurisdiction and had usurped the authority vested in the State Government by the Act. The Commission expects that hereinafter the licensee will act according to the provisions of the Act.
- 3.4 Even though the licensee in the instant case is guilty of violating the provisions of the Act, the Commission considers it fit to provide them another opportunity and therefore declines to impose a penalty. However, it intends to keep a close watch on the progress in this case and accordingly directs the licensee to file progress every month. The Secretary of the Commission is also directed to forward a copy of this order to Secretary (Energy), GoU with a request to expedite disposal of these cases of permission under Section 68 so that the execution of these long pending works could be done quickly.

Ordered accordingly.

**(K.P. Singh)**  
**Member**

**(C.S. Sharma)**  
**Member**

**(Subhash Kumar)**  
**Chairman**