

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Pet. No. 27 of 2020

In the Matter of:

Petition for recovery of charges collected by UJVN Ltd. for supply of electricity made to the consumers of the State of Uttarakhand.

And

In the Matter of:

Uttarakhand Power Corporation Ltd. (UPCL),
VCV Gabar Singh Urja Bhawan,
Kanwali Road, Dehradun

...Petitioner

&

UJVN Limited,
"UJJWAL", Maharani Bagh,
GMS Road, Dehradun

...Respondent

Coram

Shri D.P. Gairola Member (Law)

Shri M.K.Jain Member (Technical)

Date of Hearing: January 05, 2021

Date of Order: June 02, 2021

ORDER

The Order relates to Petition filed by M/s Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "the Distribution Licensee" or "the Petitioner") under Section 12 of the Electricity Act, 2003 (hereinafter referred to as "the Act") in the matter of recovery of charges collected by UJVN Ltd. (hereinafter referred to as "the Respondent" or "UJVNL") for supply of electricity made to the consumers of the State of Uttarakhand.

Background

2. Under Section 14 read with Section 12 of the Electricity Act, 2003 (the Act), distribution of electricity is a licensed activity and hence mandates a licence

for distribution to whoever desires to undertake electricity distribution business in a State. Accordingly, Uttarakhand Power Corporation Limited (UPCL) has obtained a licence to distribute electricity in Uttarakhand and is the sole distribution licensee in the State. Whereas, the Respondent is a generating company and is involved only in the business of generation of power in the State and is committed to supply all the power generated from its project to UPCL.

3. Contrary to the above scheme of law, it came to the knowledge of the Commission that, UJVNL has been involved in distribution of electricity to the sundry consumers residing in nearby areas of its Plant colonies. On finding this act of the Respondent not only *ultra vires* but violative of section 12(b) of the Electricity Act, 2003, the Commission vide its Tariff Orders dated 10.05.2011, 04.04.2012, 06.05.2013, 10.04.2014, 11.04.2015, 05.04.2016 & 29.03.2017 has been continuously directing UJVNL to handover the electricity distribution business to UPCL. In this regard, Section 12 of the act stipulates that: -

Section 12. (Authorised persons to transmit, supply, etc., electricity):

No person shall

(a) transmit electricity; or

(b) distribute electricity; or

(c) undertake trading in electricity,

unless he is authorised to do so by a licence issued under section 14, or is exempt under section 13.

On this issue of transfer of distribution business, UJVNL has always stated that UPCL has not been cooperating in ensuring swift handing over of the distribution business as directed by the Commission which was always refuted by UPCL.

4. Thereafter, the Commission on observing non-compliance by the Utilities of the aforesaid Tariff Orders w.r.t. transfer of distribution business by UPCL to UJVNL, initiated *suo-moto* proceedings and vide Order dated 19.06.2018

directed both the parties to ensure compliance of the aforesaid Tariff Orders in toto latest by 30.09.2018 and submit compliance report before the Commission latest by 10.10.2018. Accordingly, the Respondent & Petitioner submitted only partial compliance report before the Commission. The Commission directed both the utilities to submit compliance in toto with the Commission by 11.02.2019.

5. Interestingly, in the meantime, an additional submission was made by the Respondent before the Commission vide letter No. 3663/UJVNL/01/MD/U-6 dated 25.09.2018, wherein the Respondent requested the Commission to exempt handing over of 33 kV Lakhwar-Vyasi transmission lines & feeders along with 33/11 kV Hathiyari & Lakhwar Sub-stations to UPCL in view of specific use of these lines & feeders particularly for construction power & thereafter for auxiliary power of Vyasi HEP and Lakhwar HEP.

6. The above request of the Respondent to exempt handing over of 33 kV Lakhwar-Vyasi transmission lines & feeders along with 33/11 kV Hathiyari & Lakhwar Sub-stations to UPCL was refused by the Commission vide letter dated 06.11.2018. Relevant para of the said letter is reproduced hereunder: -

"...it is pertinent to highlight that under section 12 of the Electricity Act, 2003, UPCL is the sole distribution licensee in the State who is authorized to distribute electricity to the consumers in the State including Supply to the consumers having temporary connections allowed for Construction purposes under Temporary category rate of charge. Further, it is also to remind that in post Electricity Act, 2003 scenario as per the electricity (Removal of Difficulty) Fourth Order, 2005, the scope of supply of electricity by a generator is limited to the housing colonies of its operating staff. Therefore, under prevailing provision of the Electricity Act, 2003 your aforesaid request is unacceptable. In this connection, you are directed to ensure the compliance in accordance with the direction issued vide Commission's Order dated 19.06.2018 read with Commission's letter No. 1134 dated 02.11.2018."

7. But, instead of ensuring compliance of the aforesaid directions, UJVNL filed a Review Petition against the Order dated 19.06.2018 read with letter dated 06.11.2018 of the Commission which was rejected by the Commission vide Order dated 07.03.2019, on finding the same as non-maintainable the

Commission directed the parties to sit together and resolve the issue between themselves and in case of difficulty the parties were at liberty to approach the Commission. Relevant para of the said Order is reproduced hereunder: -

“Both the Petitioner and Respondent are directed to sit together and mutually resolve the issue within a reasonable time with a liberty to both the parties to approach the Commission in case of any dispute.”

8. Since, the parties have failed to resolve the issues among themselves, UPCL has now approached the Commission and has filed the instant Petition vide letter dated 07.02.2020 requesting recovery of charges collected by UJVNL for supply of electricity made to the consumers of the State of Uttarakhand.
9. Accordingly, the Commission conducted a hearing on admissibility of the Petition on 29.05.2020, wherein, the Commission directed the Respondent UJVNL to furnish its reply before the Commission with a copy to the Petitioner who was further directed to submit a rejoinder.
10. The Respondent vide the letter dated 11.06.2020 submitted its reply on the Petition and the Petitioner, vide letter dated 21.07.2020 submitted the rejoinder as directed under the aforesaid Order dated 29.05.2020. Further, UJVNL vide letter dated 01.10.2020 submitted a reply on the said rejoinder submitted by UPCL.
11. Thereafter, the Commission admitted the Petition on 29.10.2020 and decided to conduct a hearing in the matter on 05.01.2021. On the said date of hearing, the Commission directed the Petitioner to file its written submission within 15 days with an advance copy to Respondent who was at liberty to file its reply within 10 days of receipt of advance copy.
12. A written submission was filed by Executive Engineer Electricity (Distribution Division), Vikasnagar on behalf of UPCL. However, the Commission vide letter dated 27.01.2021 returned the said submission to the Executive Engineer as under the provisions of the UERC (Conduct of Business) Regulations 2014, the Executive Engineer is not authorized to file replies on behalf of its Company. A letter dated 27.01.2021 was also sent to MD UPCL directing him to submit written submission before the Commission duly signed and verified

by the Managing Director/Director or any Officer not below the rank of Chief Engineer/General Manager of the company as is specified in provisions of the aforesaid Regulations.

13. Consequently, UPCL vide letter dated 18.02.2021 filed its written submission before the Commission. Meanwhile, a submission was made by UJVNL vide letter dated 25.01.2021 before the Commission.

Submission by Petitioner & Respondent

14. UPCL vide the instant Petition has requested the Commission for recovery of charges collected by UJVNL for supplying electricity to nine consumers for the purpose of construction of Lakhwar-Vyasi projects from the 33kV Lakhwar - Vyasi transmission lines and feeders emanating from Dhakrani. In its Petition UPCL also submitted the names of the nine consumers to whom UJVNL has released connection and has requested the Commission:

“

- (i) *to direct UJVN Ltd. to transfer the consumer connections to it by 20.02.2020;*
- (ii) *to make payment of the billing done by the UJVN Ltd. on the said consumer connections to it;*
- (iii) *to make payment to UPCL for the billing done by UPCL on the said connections;*
- (iv) *to allow UPCL to deduct the value of the payment amount from the monthly power purchase bills.”*

15. UJVNL *inter alia* in its replies has challenged the view of the Commission specified in the aforesaid Orders (Supra) in the matter. The replies of UJVNL have been argued against by the Petitioner which are discussed below: -

- (i) UJVNL has submitted that the Orders of the Commission are in contravention to the statutory provisions and law laid down by the Hon'ble Supreme Court and the APTEL and is without jurisdiction and the Commission has committed an error in asking the Respondent to handover the electricity distribution business to UPCL.

In response to this, the Petitioner has submitted that it is surprising to see such conduct of the Respondent challenging the validity of

Commission's earlier Orders and that the right to seek any remedy against the said Orders of the Commission is now time barred. And such submissions of the Respondent are not only meritless but also cannot be legally considered.

- (ii) Respondent has submitted that: (i) the dedicated transmission line has been constructed by predecessor which is inherited by UJVNL through which point to point supply of electricity is being made; (ii) Electricity supplied to contractors is generated by UJVNL's Dhakrani Plant; (iii) Transmission line's maintenance and upkeep is done by UJVNL, and therefore, the Respondent is not required to take licence under Section 12 of the Act.
- (iii) Respondent has submitted that in the matter of Dakshin Harayana Bijli Vitran Nigam Vs. M/s Toshiba (Appeal no. 254/2013), the APTEL vide judgement dated 29.05.2015 has held that supply of electricity through shared dedicated transmission line by generating company, without licence, is completely within provisions of the Act. Further, Hon'ble APTEL in the matter of Jindal Steel and Power Ltd. vs. Chhattisgarh State Electricity Regulatory Commission and Ors. (Judgement dated 07.05.2008 in Appeal no. 27 of 2006) while interpreting section 10(2) of the Act had taken a view that supply of power to a group of consumers through its 'dedicated transmission lines' by a generating station does not become distribution, and held that generating company may supply electricity through its dedicated transmission line in terms of section 10(2) of the Act, without obtaining distribution licence. That the present case of Respondent is squarely covered by the above judgment as the Respondent is supplying electricity through dedicated transmission line to the contractors who are utilizing this power for the purpose of activities relating to construction work of Respondent's own project at Lakhwar-Vyasi. To this the Petitioner has submitted that the judgment quoted by the Respondent does not apply to the facts and circumstances of the present case.

- (iv) Further, the Respondent has submitted that the whole scheme of statutory provisions including UP Electricity Reforms Act, 1999, UP State Reorganization Act, 2000 and the Electricity Act 2003 which would go to show that for the activities of UJVNL of supplying electricity to its own contractors for a pre-existing agreement through a dedicated transmission line would not require licence. That section 185 (2)(a) of the Act, provides that any licence, permission, authorization etc. given under the repealed law shall be deemed to have been done under the corresponding provision of the Act. Further, section 185 (3) of the Act states that the Uttar Pradesh Electricity Reform Act, 1999 not inconsistent with the provisions of the Act will continue to apply. Furthermore, that Electricity [Removal of difficulty] (Fourth) Order 2005 and Electricity [Removal of Difficulty] (Fifth) Order 2005 shows that electricity supply without licence is permissible and not completely prohibited. The Petitioner has stated that the submissions of the Respondent are completely baseless as the Commission has not erred in appreciating the whole scheme of the provisions.
16. Besides the above submissions, the Respondent submitted that UPCL for last 17 years never made any demand which makes it clear that even as per UPCL, the supply of electricity by Respondent to its contractors for construction of its project does not require a licence. To this Petitioner submitted that with regard to transfer of assets, the Commission since past several years had been directing the Respondent to transfer the distribution assets and that the contention of Respondent is baseless.
17. Furthermore, the Respondent submitted that the act of Respondent is supplying power to its Lakhwar-Vyasi project is in public interest and any change in the electricity supply would cause the project cost to alter. That it is important that the project construction work is supplied with uninterrupted electricity for the project to be finished in time. In response to this the Petitioner submitted that the contention of the Petitioner is wrong and totally irrelevant and that no reasons of the Respondent can permit them with the justified

ground to act in derogation of the provision of the Act or direction of the Commission.

18. With regard to the contention of the Respondent that it supplies electricity for construction work for projects, therefore, the tariff charged from the contractors is recovered by the contractors through the bills they raise before the Respondent and there is nil cost effect on the Respondent, in response to this, the Petitioner submitted that the Respondent has not clarified as to what is the tariff being charged by them and who has determined it. Further, the Petitioner submitted that the Respondent should disclose with the scheduling through the alleged independent feeder is done through SLDC or not.
19. With regard to the contention of the Respondent that the generation and supply of electricity by the Respondent for the purpose of construction of the Lakhwar-Vyasi public utility project may be viewed as captive generation in view of public interest, the Petitioner submitted that the Respondent's Plant is devoid of any qualification necessary to acquire the status of captive generation.
20. Further, the Respondent submitted that there is neither any factual nor legal requirement to make the payment to the Petitioner and the basis of such demand has not been disclosed by the Petitioner and it has not been disclosed as to how much payment the Petitioner would be entitled to. In response to this, the Petitioner has submitted that it has already clarified in its Petition the basis for demand of payment and that the Respondent is merely repeating its statements.
21. Further, the Respondent submitted that, with regard to the argument of the Petitioner that the earlier orders of the Commission cannot be reviewed as being barred by *res judicata* and estoppel does not sustain as *res judicata* and estoppel are not applicable in the present case. In response to this the Petitioner submitted that it has never made any such statement and that the Petitioner is unable to understand the reference of *res judicata* in the matter.
22. With regard to ensuring compliance of Commission's Order dated 07.03.2019, the Respondent has submitted that it had vide letter dated 06.07.2019

requested MD, UPCL for a suitable time and place for a meeting to resolve the issue. Per contra, UPCL has submitted that vide letter dated 20.09.2019 it had requested MD, UJVNL to be present for a meeting on 25.09.2019.

23. Furthermore, the Respondent submitted that the Petitioner has failed to act on the previous directions of the Commission and has not made any efforts in this direction and has not exhausted all alternate remedies. In response to this, the Petitioner denied contention of the Respondent as wrong and baseless.

Commission's Observations, Views & Decision

24. With regard to the submissions made by the Respondent and replies made by the Petitioner from time to time during the course of proceeding, three issues have been identified which are cardinal to the present proceedings in the matter. The same are:

- (i) Whether the parties have taken any steps to comply with the directions issued by the Commission in the matter from time to time and the directions issued vide Order dated 07.03.2019.
- (ii) Whether the Orders of the Commission issued w.r.t. transfer of 33kV transmission lines & feeders supplying electricity to Lakhwar & Vyasi HEP and other connected consumers by UJVNL are legally valid and whether their validity can be challenged at this juncture.
- (iii) Whether UPCL is entitled to recover charges collected by UJVNL Ltd for supply of electricity made to the consumers of the State of Uttarakhand.

25. Since, answer to the second issue validates the relevance of first and third issue therefore, the second is being taken up for analysis now;

"(ii) Whether the Orders of the Commission issued w.r.t. transfer of 33kV transmission lines & feeders supplying electricity to Lakhwar & Vyasi HEP and other connected consumers by UJVNL are legally valid and whether their validity can be challenged at this juncture."

- (1) The Respondent in its reply has primarily challenged the Order of the Commission issued in the instant matter of handing over of 33kV

Lakhwar-Vyasi transmission lines & feeders and the consumers connected thereto.

The Respondent has referred to section 10(2) of the Act and has submitted that it is empowered to supply electricity to consumers of Lakhwar-Vyasi project through dedicated transmission line under the said section which reads as;

“A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.”

Since section 10(2) refers to section 42 of the Act, the same is reproduced hereunder:-

“ ...

*(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases **and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:***

Provided that ¹[such open access shall be allowed on payment of a surcharge] in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

*Provided also that such surcharge and cross subsidies shall be progressively reduced ²[***] in the manner as may be specified by the State Commission:*

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

3[Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.]

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

...”

[Emphasis added]

From reading the above provisions of the Act, it is clear that a generating company under section 10(2) of the Act is empowered to supply electricity to the consumers, however, such supply is subject to the terms and conditions of Open Access provided under section 42 (2) of the Act and is also specified in the Commission's Regulations wherein the entities involved in Open Access are obligated to pay Open Access charges to the Distribution Company. In the instant case, the Respondent has neither complied with the terms and conditions of Open Access Regulations nor is paying any Open Access charges to the Petitioner. Respondent has not even taken any clearance from nodal

Agency/SLDC as required under the Open Access Regulations for supplying electricity from its generating stations to consumers within the area of supply of UPCL. Besides site contractors of UJVN Ltd. involved in construction of Lakhwar-Vyasi project have also not taken approval from nodal Agency/SLDC for taking Open Access under the OA Regulations. Therefore, referring to section 10 (2) of the Act, thereby, invoking the provisions of Open Access to justify the act of supply of power to the consumers of Lakhwar-Vyasi Project by the Respondent is blatantly wrong.

- (2) Let us also examine the judgements quoted by the Respondent in its submission justifying its stance on supplying power to Lakhwar-Vyasi projects which are discussed below:-

In the matter *Dakshin Haraya Bijli Vitran Nigam Vs. M/s Toshiba (Supra)*, the supply of electricity by the generator to the consumers was being made under the Open Access arrangement, the same was reinstated by the Hon'ble APTEL at para 20 of the aforesaid judgment, relevant part of the said judgment reads as; *"The State Commission by impugned Order has taken care of the relevant interests of the distribution licensee, namely the appellant, by allowing cross subsidy surcharge or additional surcharge, if any, to the appellant."*

Also, the matter of *Jindal Steel & Power Ltd. Vs. Chhatisgarh State Electricity Regulatory Commission (Supra)*, is related to supply of electricity under section 10(2) of the Act i.e. supply under the Open Access arrangement. It is to clarify that the view taken by the APTEL in the above matter is not the issue in the instant case as Respondent is not supplying electricity under the scheme of Open Access Regulations. Section 10(2) is applicable only when Respondent choose to supply electricity in an Open Access arrangement to a consumer. However, that too is not allowed in the instant matter since Respondent have entered into a power purchase agreement with the Petitioner whereby, the project consumption and colony consumption from the entire

power generated at the project (excluding the share of Government of Himachal Pradesh) is to be sold to UPCL by UJVNL.

Therefore, both the cases quoted by Respondent are not applicable in the facts of the present case.

- (3) Further, with regard to the claim of UJVNL that the generation and supply of electricity by it for the purpose of construction of the Lakhwar-Vyasi project may be viewed as captive generation in view of larger public interest is imperative to be examined in light of the qualifying requirements of captive generator specified at Rule 3(1)(a) of the Electricity Rules, 2005. The said Rule provides that: -

“

3.Requirements of Captive Generating Plant:-

(1) No power plant shall qualify as a 'captive generating plant' under section 9 read with clause (8) of section 2 of the Act unless-

(a) in case of power plant –

(i) not less than twenty six percent of the ownership is held by the captive user(s), and

(ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:-

Provided that in case of power set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the cooperative society:

Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent;” [Emphasis added]

From the above, it is clear that the basic qualifying criteria for a Captive Generating Plant is that it should consume atleast 51% of the generation of the aggregate electricity generated in such Plant, determined on an

annual basis for the captive use. Whereas, in the instant case, Respondent is in the business of power generation and it is not an industry having inhouse generator which is catering to atleast 51% of the consumption of the Industry. The Respondent does not qualify the basic criteria as stated above and therefore, cannot remotely claim itself to be a captive generator. The claim of the Respondent is blatantly misplaced.

- (4) With regard to the exception provided for supply of electricity to the sundry consumers, clause 2 of the (Removal of Difficulty) Fourth Order, 2005, specifies that a generating company supplying electricity to housing colonies of its operating staff shall not be required to obtain licence. However, the same is also not applicable to the present case for the reason that the Respondent is supplying electricity to the contractors engaged by it for construction of its project and not to the colonies or its operating staff. These contractors/consumers are engaged for a limited contract period who should not be mixed/confused with the consumer residing in the housing colonies of the Respondent.
- (5) On the submission of the Respondent that under section 185 of the Act, the Respondent is allowed to continue to supply electricity to the consumers of Lakhwar-Vyasi Projects, it is to be clarified that any arrangement/agreements done under the erstwhile legislation shall continue to have force of law only if the same is not inconsistent with the provisions of the Electricity 2003. Section 185 (2) (a) reads as,
- “(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, Order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, **in so far as it is not inconsistent with the provisions of this Act**, be deemed to have been done or taken under the corresponding provisions of this Act.”*

[Emphasis added]

Besides above, it is relevant to highlight that the Commission has been directing the Respondent to handover the distribution business to the Petitioner since 2011 and accordingly, the Commission has also been directing the Petitioner to cooperate in ensuring compliance of the same. The matter of transfer of Lakhwar-Vyasi Transmission lines & feeders and the consumers of Lakhwar-Vyasi project came into light only when the Respondent vide letter dated 25.09.2018 requested the Commission to exempt it from handing over of the said lines and feeders to UPCL. The Commission vide letter dated 06.11.2018 rejected the said request of the Respondent keeping its view in consonance with the provisions of the Act. Thereafter, Respondent filed a Review Petition (RP) in the matter. The said RP was also rejected by the Commission vide Order dated 07.03.2019 wherein the Commission directed the parties to sit together and resolve the issue and in case of difficulty the parties were at liberty to approach the Commission. Since UPCL was unable to ensure compliance of the aforesaid Order of the Commission, it has mooted the same vide the instant Petition, before the Commission. It is observed that post issuance of the Review Order dated 07.03.2019 in the matter, the Respondent never agitated the issue any further in any forum. It is only in response to the instant Petition of UPCL, the Respondent vide its written and oral submissions has expressed its unwillingness to comply with the aforesaid Orders of the Commission in the matter and has now challenged their validity. It is surprising that the Respondent is now challenging the view of the Commission expressed in the aforesaid Orders which have attained finality. If at all the Respondent was aggrieved by the decision of the Commission, it could have availed the available legal remedies. On the contrary, it appears that the Respondent slept over the Orders of the Commission and has suddenly woken-up with the instant Petition and is now juggling with the arguments challenging the legality/ view of the Commission vide the aforesaid Orders in the matter which are in line with, and in furtherance of the provisions of the Act and are well

reasoned/firm. It was a legal & ethical duty of the Respondent to have immediately complied with the directions issued by the Commission. However, from its reply it seems that the Respondent presumes itself above the prevailing scheme of laws and authorities established thereunder and runs its own parallel legal wisdom of an esoteric world.

(6) Thus, from the above, the Commission is of the view that mooted questions challenging validity of the Commission's aforesaid Order at this juncture is completely irrelevant. Under the prevailing scheme of the Act, supply of electricity by Respondent is an illegal activity and cannot be colored as legit by false manipulative arguments and half cooked application of law. It is a violation of the principal of *Quando aliquid prohibetur ex directo, prohibetur et per obliquum* (doing indirectly something which cannot be done directly). Therefore, the earlier Orders of the Commission are fine and are well within the boundaries of law and resonates with the spirit/intent of the Act. Further, the present proceedings and reply submitted by the Respondent thereunder cannot be the medium to revisit the settled Order of the Commission which have now attained finality.

26. Coming on to the first issue, i.e. non-compliance of the previous directions of the Commission whereby the Commission had directed both parties to sit together and mutually resolve the issue within a reasonable time, it is clear from the submissions of the parties that they did not sit together in the matter to resolve the issue in time. Clearly the lis persist and therefore the Petitioner was compelled to file the instant Petition on failing to ensure compliance in the matter.

27. On the third issue, i.e. whether UPCL is entitled to recover charges collected by UJVNL, the Commission of the view that since it is established that the Respondent is committing an illegality by erroneously supplying electricity to its contractors in its project, and that UPCL being sole Distribution Licensee in the State is authorized to supply electricity to the consumers of the State, the illegal supply of the electricity by UJVNL to its contractors at its project shall be accounted and paid to UPCL from the date of installation of meter by UPCL.

Further, it is imperative to clarify that UPCL in compliance to the directions of the Commission, issued vide the aforesaid orders in the matter, had installed the meter at Dhakrani for the purpose of recording energy being supplied to the consumers connected to the network. In this regard, the Commission is of the view that supply of electricity by UJVNL to the said contractors/consumers shall be treated as bulk supply with UJVNL as a franchisee of the Distribution Company and the connection shall be treated as single point bulk supply connection to UJVN Ltd. Further, it is observed that since the date of installation of the meter, the energy supplied on this network is properly being recorded, therefore, UJVNL shall be treated as deemed single point bulk supply consumer from the said date and accordingly, the Distribution Licensee will be entitled to raise the bills in accordance with the applicable Tariff Orders of UPCL/Discom. Both the utilities are suggested to reconcile the supplied energy and make due adjustments accordingly.

28. Further, on the concern raised by the Respondent w.r.t the reliability and quality power supply, the Commission considers that if at all UJVNL desperately desires to continue to keep the network and the consumers to itself, then, UJVNL may apply afresh Single Point Bulk Supply connection at Dhakrani from where the said 33kV network is emanating.
29. Besides above, the issues/concerns raised by the Respondent in the matter are the same as were raised during the review proceedings in the Misc. Appl. No. 03 of 2019 and have already been addressed in detailed by the Commission in the aforesaid Review Order dated 07.03.2019. The matter is settled and the view of the Commission is concrete and cannot be a subject matter of scrutiny at this stage of proceeding. The parties, under law, are bound to comply with prevailing laws and direction of the Commission issued thereunder, laxity in ensuring compliance shall attract stringent penal action under the Act.
30. Therefore, in light of the above, the Commission directs: -
 - (1) UPCL shall raise the bills for recovery of the charges month wise from the date of installation of meter by UPCL within 15 days of issuance of

this Order until the option provided at clause 30(3) below is availed and acted upon.

- (2) Within 10 days of issuance of bills by UPCL, both the parties shall sit together for reconciliation of the bill amount and in case of any dispute, the parties can approach the Commission.
- (3) Meanwhile, the Respondent shall either apply for a Single Point Bulk Supply connection from UPCL for the network and the connections in dispute OR shall transfer 33kV transmission lines and feeders and the consumers connected thereto, and submit compliance report to the Commission within 30 days of issuance of this Order. Further, UPCL shall cooperate in ensuring compliance of the direction of the Commission.

The Petition is hereby disposed.

Ordered Accordingly.

(M. K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law)