

**Before**  
**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**  
**Misc. Appl. No. 30 of 2022**

**In the Matter of:**

**Unplanned and irregular load shedding/curtailment of power by Uttarakhand Power Corporation Limited during the period 01<sup>st</sup> of March 2022 to 30<sup>th</sup> June 2022 and being continued till date.**

**And**

**In the Matter of:**

M/s Galwalia Ispat Udyog (P) Limited,  
Narayan Nagar Industrial Area,  
Bajpur Road, Kashipur,  
Udham Singh Nagar.

**...Petitioner**

**&**

**In the Matter of:**

Managing Director,  
Uttarakhand Power Corporation Ltd. (UPCL),  
Victoria Cross Vijeta Gabar Singh Urja Bhawan,  
Kanwali Road, Dehradun

**...Respondent**

**Coram**

**Shri D.P. Gairola      Member (Law)/Chairman(I/c)**

**Shri M.K. Jain        Member (Technical)**

**Date of Hearing: August 24, 2022**

**Date of Order: September 12, 2022**

**ORDER**

This Order relates to Petition filed by M/s Galwalia Ispat Udyog (P) Ltd. (hereinafter referred to as "M/s Galwalia Ispat Udyog" or "the Petitioner") in the matter of unplanned and irregular load shedding/curtailment of power by Uttarakhand Power Corporation Limited (hereinafter referred to as "UPCL" or "the Respondent" or "Distribution Licensee") during the period 01.03.2022 to 30.06.2022 and being continued till date.

2. M/s Galwalia Ispat Udyog Pvt. Ltd. is a manufacturing unit of steel products located in Narayan Nagar Industrial Area, Bajpur Road, Kashipur, Udham Singh Nagar, Uttarakhand and has availed electricity load connection of 27.50 MW from the Distribution Licensee.
3. The Petitioner has been facing frequent unplanned power cuts/load shedding since March, 2022 and is therefore facing losses on account of uncontrolled overhead and production losses.
4. In the above, the Petitioner has filed the instant Petition before the Commission on 12.07.2022 under Section 94, Section 23, Section 42 and Section 86 of the Electricity Act, 2003 (the Act) and has also quoted provisions from UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2022, UERC (Distribution Code) Regulations, 2018 and UERC (Standards of Performance) Regulations, 2007.
5. The Commission vide letter dated 19.07.2022 had informed the parties to appear before the Commission for hearing in the matter for admissibility and to submit their replies by 29.07.2022, however, later on request of Petitioner, the Commission vide letter dated 27.07.2022 decided to reschedule the hearing for 24.08.2022.
6. In compliance to the above, UPCL vide its letter dated 17.08.2022 submitted its reply/objection on the admissibility of the Petition.
7. On the day of hearing i.e., on 24.08.2022, the Commission heard the parties in detail on the issue of admissibility wherein, the parties reiterated their earlier submissions which are provided in the paras below and later vide the daily Order dated 24.08.2022 the Commission decided to reserve its judgment.
8. The Petitioner in its Petition has submitted that: -
  - (1) Since month of March 2020 to till date, it is facing unplanned power cuts/load shedding and as unable to run its manufacturing units smoothly.  
  
*“GIUPL is always unaware how long this power cut will be, it may be of one hour to ten hours or more at mercy of UPCL people. It is never told at the time of communication of power cut, when it will be restored. Further, power cut will be in day, afternoon, evening or night, either God knows or UPCL “*

- (2) That in absence of any systematic and disciplined approach of UPCL the Petitioner is unable to manage its manufacturing operation and is thus facing losses.
  - (3) That UPCL is unable to maintain an efficient, coordinated and economically distribution system in its area of supply in accordance with the provisions of the Act, the Supply Code and the Distribution Code. UPCL has not obtained any approval from the Commission for sustained shortages and no planned load shedding has been published in any of the local newspapers as required.
  - (4) That the electricity regulator should regulate load shedding in consultation with the distribution company and electricity consumers.
  - (5) That UPCL should inform atleast a week in advance of the power cut or the load shedding.
  - (6) The Petitioner has sought following relief in its Petition: -  
“
    - (i) *UPCL is not adhering to either the Electricity Act provisions nor the Regulations framed by Uttarakhand Regulatory Commission. It needs to act according to the statute and regulations framed.*
    - (ii) *UPCL needs to give industry uninterrupted power supply so that we may run our manufacturing operations on regular basis.*
    - (iii) *UPCL needs to share its load shedding planning on advance basis and not on immediate basis. It should be shared on weekly basis in advance when the power cut is going to happen and for how long so that we can plan our operations accordingly.*
    - (iv) *GIUPL needs to be compensated by UPCL for the manufacturing losses suffered by unprofessional working of UPCL as per relevant statute and regulations framed.”*
  - (7) With regard to the question of admissibility, the Petitioner submitted that this is a pure Policy and Regulatory matter which needs to be decided by the Regulator and not by any other Authority.
9. UPCL in its reply dated 17.08.2022 has submitted that: -
- (1) The instant matter is a grievance of an individual consumer and therefore it has to be redressed by the Forum established under the Act.

- (2) The Petition has no cause of action, the Petitioner has represented certain facts in isolation without correctly understanding the existing scenario. The situation as represented has arisen not only in this State but throughout the country. This was due to exceptionally high gas prices on account of grim international scenario, the gas arrangement at suitable prices could not be done and consequently the power from gas plants was not available since October, 2021; Also, due to acute coal shortage and unprecedented hike in demand across the country and in the State, the availability of power in the exchanges was reduced substantially leading to very high rates. Despite placing the bids at higher rates in the exchange, the percentage of clearing volume was very less leaving Utility short of power. Such shortages caused unscheduled curtailment of power that results in resentment of general public and industries in specific.

10. **Commission's Observations, Views & Decision**

- (1) On the day of hearing i.e. on 24.08.2022, the parties were heard on admissibility of the Petition and therefore this Order too shall delve, discuss and limit its scope to the question of admissibility, primarily in light of the proposition of it being an individual consumer grievance.
- (2) The Petitioner has argued that prior approval from the State Commission, and prior intimation of power cuts, by the Distribution Licensee is a sine qua non as per provisions of Regulations and the directions issued in Tariff Orders of the Commission and is therefore a regulatory matter to be redressed only by the State Commission. Further, the Petitioner has referred to the breach of Standards specified by the Commission through its Regulations and Tariff Order mentioned Supra by the Distribution Licensee and has thus requested relief for breach of the Standards specified by the Commission. Further, to support its arguments, the Petitioner has *inter alia* referred to Section 23 and Section 86 of the Act that provides the power/functions of the State Commission. The said Sections are being reproduced hereunder: -

*"Section 23. (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."*

*"Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -*

*...*

*(h) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;"*

We appreciate/acknowledge the reference drawn by the Petitioner to the power/functions of the Commission manifested in Section 23 and Section 86 of the Act and its concerns/grievance over the breach of Standard of Performance, however, we cannot read these provisions of law in isolation to various other provisions which also have equal force and demands fulfilment of certain juridical protocols. Such provisions include Section 42(5) of the Act which provides for creation of separate entity for redressal of grievance/complaints of the Consumer i.e. the Consumer Grievance Redressal Forum (CGRF). Let us be apprised with the law/Regulations that specifies the type of cases falling under the jurisdiction of the CGRF. For this, the definition of complaint defined in clause (d) of sub-Regulation (1) of Regulation 1.2 of the UERC (Guidelines for Appointment of Members and Procedure to be followed by the Forum for Redressal of Grievances of the Consumers) Regulations, 2019 needs to be read:

*"(d) "Complaint" means a letter or application filed with the Forum seeking redressal of grievances concerning the supply of electricity, new connection or the services rendered by the Distribution Licensee(s), including alteration in load/demand, meter related matters, bill related issues and cases where licensee(s) has charged price in excess of the price fixed by the Commission or has recovered the expenses incurred in excess of charges approved by the Commission in providing any electric line or electric plant or has failed to provide compensation to the consumer defined under the UERC (Standard of Performance) Regulations; "*

**[Emphasis added]**

Further, Regulation 3.1 of the aforesaid Regulations clarifies the jurisdiction of the CGRF which is imperative to be studied and hence is provided below:

***“3.1 Jurisdiction of the Forum***

- (1) *The Forum shall have the jurisdiction to entertain the grievances filed by the complainant with respect to the services provided by the Distribution Licensee and give such orders and directions as may be deemed necessary.*
- (2) *The Forum shall entertain only those complaints which fall under sub-regulation (1) (d) of regulation 1.2 of these Regulations.”*

The CGRF is established only to hear complaints/grievance of consumers like the Petitioner, bypassing this mechanism/authority undermines the purpose of its creation which this Commission cannot allow to happen. In cases like the instant matter, where standard of performance determined already by the Commission has to be enforced is outrightly jurisdiction of the CGRF to exercise. We shall not tinker with the scheme of the Act. Moreover, we believe that legal provisions work in harmony and not in conflicts and that is how they should be interpreted.

- (3) Further, there are various judicial orders of the Hon’ble Supreme Court and Hon’ble APTEL that makes distinction in cases which falls for examination before Commission and redressal before CGRF. Let us rush through what these judicial pronouncements say:

In Maharashtra Electricity Regulatory Commission versus Reliance Energy Ltd. (2007 (8) SCC 381), the Hon’ble Supreme Court vide order dated 14.08.2007 has categorically held that the adjudicatory functions of the State Commission does not encompass within its domain Petitions of individual consumers and that it only provides for adjudication of disputes between generating companies and licensees. The Supreme Court affirmed that this section does not include in it a case of an individual consumer and held as under:

*“34. In this connection, we may also refer to Section 86 of the Act which lays down the functions of the State Commission. Sub-section (1)(f) of the said Section lays down adjudicatory function of the State Commission which does not encompass*

*within its domain complaints of individual consumers. It only provides that "the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration. This does not include in it an individual consumer. The proper forum for that is Section 42(5) and thereafter Section 42(6) read with Regulations of 2003 as referred to hereinabove."*

**[Emphasis added]**

In BSES Rajdhani Power Limited versus Delhi Electricity Regulatory Commission bearing appeal No. 181 of 2008, the Hon'ble Appellate Tribunal for Electricity in order dated 30.03.2009 has held that individual consumers cannot approach the State Commission to decide about the dispute between Licensee and the Petitioner.

From reading the above, it is to be clarified and emphasized that such judicial pronouncements by the Hon'ble Courts are precedents incumbent upon us to put in vogue.

- (4) We find it difficult to agree with the Petitioner that the instant matter is a Policy matter which can only be examined, exercised and executed by this Commission, on the contrary we have observed from the above that this matter of the Petitioner as argued by the Respondent is based on the issue of 'Reliability of Power Supply' and is basically individual complaint for which appropriate Forum is concerned CGRF. Section 23 and Section 86 of the Act empowers the Commission to enforce standards on the Distribution Licensee and these provisions are not to be exercised only to provide remedy to an individual consumer but in fact are general obligation entrusted upon the State Commission to keep a check on Distribution Licensee and to exercise supervisory control.
- (5) Besides above, the Petitioner has referred to the duties of Distribution Licensee given in various Regulations/Codes specified by the Commission. In this regard, we are in full conformity with the Petitioner that the Distribution Licensee shall relentlessly work in order to ensure compliance of laws and delivery of services.

- (6) In light of the above observations, we are of the view that the Petition is an individual consumer grievance which seeks directions to be given to the Distribution Licensee to comply with the standard specified by the Commission is a matter to be placed before the CGRF established under Section 42 (5) of the Act and not this Commission.

The Petition does not qualify admission and is hereby rejected.

Ordered accordingly.

**(M.K. Jain)**  
**Member (Technical)**

**(D.P. Gairola)**  
**Member (Law) / Chairman (I/c)**