

BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

Quorum

Shri Desh Deepak Verma, Chairman

Smt. Meenakshi Singh, Member

Shri I. B. Pandey, Member

In the matter of:

Sub: Petition No. 488 of 2007 "Maintainability of recall application.

M/s Parmarath Iron Pvt. Ltd., B-23, Nai Basti, Near Small Power House, Bijnor - 246701
Petitioner

Versus

1. Managing Director, Paschimanchal Vidyut Vitran Nigam Ltd., Victoria Park, Meerut.
2. Executive Engineer, Electricity Distribution Division, Paschimanchal Vidyut Vitran Nigam, Bijnor.

Respondents

Present in the Hearing:

1. Shri Lalit Agarwal
2. Shri S. C. Rai, Advocate
3. Shri Amarjeet Singh, Rakhra, Advocate, UPPCL

ORDER

(Hearing on 19.3.2014)

Brief History of the Case

Parmarth Iron had filed petition no. 488 & 489 / 2007 before the Commission. The Commission in its order dated 18.1.2008 observed that

“ petition no. 488 / 2007 being the case of theft of electricity by a consumer, should be dealt by the Special Court and the petition no. 489 / 2007 is in regarding to billing matter, in view of aforesaid decision of Aptel is not maintainable before the Commission and therefore both these petitions are dismissed without going into their merit.”

The petitioner filed application on 24.1.2008 for recall / modification of the Commission order dated 18.1.2008, citing that petition no. 488/2007 was dismissed by mistake along with petition No. 489/2007. Commission had issued an order on 18.1.2008 in Petition No. 488/2007 that being a case of theft of electricity by consumer, should be dealt by the special courts, and therefore dismissed the petition.

In the mean time petitioner approached Hon'ble High Court vide petition no. 538 of 2008 and Hon'ble High Court vide order dated 30.1.2008 directed:

“UPERC to decide the recall application moved by the petitioner expeditiously, say, within fifteen days. He is also directed that no adjournment will be sought by either of the parties before the Regulatory Commission.”

Commission in it's hearing dated 14.2.2008 allowed additional time for filing some additional points on the request made by the petitioner on which the respondents had no objection.

The petitioner submitted a supplementary application dated 24.2.2008 in support of application dated 24.01.08 before the hearing. The order of Hon'ble Supreme Court dated 29.2.2008 was brought to the knowledge of the Commission during the hearing.

Hon'ble Supreme Court in its order directed:

“ Issue notice.

In the meantime, the direction of the High Court with regard to the deposit of Rs. 2 crores by its order dated 7.2.2008 shall be suspended.

Mr.Pradeep Misra, learned counsel waives notice on behalf of respondent Nos.1 and 2”

Commission in its order dated 28.5.2008 directed :

“Commission finds that the matter is subjudice before the Hon'ble Supreme Court, therefore, the Commission would not prefer to pass any order on the recall application, till the case is pending in the Hon'ble Supreme Court.”

The petitioner filled writ petition no. 57384 of 2010 against the general order issued by way of public notice on 16.2.2010 whereby it has been stated that all matters relating to certain provisions of Electricity Act would be disposed of and consumers would be free to file their grievances for redressal before the appropriate forum as provided under the

Electricity Act, 2003. It is this order/public notice, which is under challenge in this petition.

The Hon'ble High Court in its order dated 20.9.2010 directed:

“The order of the public notice dated 16.2.2010 does not disposed off the case of the petitioner.”

The petitioner filled an application dated 18.4.2011 with the request to decide the case in view of the Hon'ble High Court order dated 30.1.2008 and 20.9.2010.

The hearing was held on 28.3.2012 where the petitioner requested for adjournment of hearing for 15 days and the same was granted by the Commission in its order dated 30.3.2012.

The hearing in the same matter was held on 28.5.2012 and the Commission in its order dated 12.6.2012 directed :

“In view of the absence of the petitioner and the respondents, the Commission adjourns the hearing.

The next date of hearing shall be intimated separately.”

The petitioner submitted an supplementary application along with the order dated 20.7.2013 of the Special Court Bijnor received on 4.3.2014 stating the following :

1. That the matter is pending before the Hon'ble Commission. The Special Court vide order dated 20.7.2013 acquitted the petitioner from theft of electricity as the charges of theft could not be proved by the respondents. The Special Court did not impose any civil liability.
2. That the officers of the distribution licensee have falsely implicated the petitioner in theft case. The petitioner has made to suffer irreparably. It is submitted that on account of false and fabricated case of theft of electricity, the Central Excise Department issued show cause notice thereby imposing huge liability of excise duty. The petitioner is facing the aforesaid case since long.

3. That the respondent authorities have initiated theft case in order to fulfill their personal vendetta and ego. The petitioner is suffering huge loss as the huge liquidated money is lying with the department for no fault of the petitioner.

During the hearing the petitioner submitted that the Special Court has absolved him from the charges of theft and no civil liability has been imposed. They have been falsely implicated in theft case which caused them huge financial losses and irreparable losses. This act of licensee needs to be investigated so they have required the Commission to constitute the Investigating Authority u/s 128 of Electricity Act 2003. This Investigation is very necessary so that the licensee can not implicate the others in false case of theft of electricity.

The respondent requested that the copy of recall application should be provided to him so that he can file the reply. He further submitted that the licensee has filed an appeal in the Hon'ble High Court against the orders of Special Court and if at this juncture enquiry is constituted by the Commission it will adversely effect the judgment so in interest of justice Investigating Authority should not be constituted under section 128 of Electricity Act 2003.

The Commission directs that the copy of the recall application should be provided to the respondent counsel and the respondent counsel is directed to file the reply within next 10 days.

The matter shall be listed in the second week of June.

(I. B. Pandey)
Member

(Meenakshi Singh)
Member

(Desh Deepak Verma)
Chairman

Dated: 06.06.2014