

BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

Petition No.

151/2003

IN THE MATTER OF: Application dated dt 15.12.2003, under clause 7.27 & 7.29 of
U.P. Electricity Supply Code, 2002.

AND

IN THE MATTER OF: M/S Jagannath Steels Pvt Ltd,
Rajaganj, Phoolpur
Petitioner Azamgarh

Versus

Respondents

1. U P PCL through its CMD
2. GM (Distribution), UPPCL, Azamgarh
3. EE, EDD-II, UPPCL, Azamgarh

ORDER

(Hearing for admission dated 1.11.2004)

1. A Petition no.151/2003 was filed on dated 15.12.2003 by M/s Jagannath Steels Pvt Ltd, Rajaganj, Phoolpur, Azamgarh under the provisions of U.P. Electricity Supply Code 2002, against the order of Appellate Forum of UPPCL decision dated 3.11.2003 rejecting the petitioners' request in respect of their option given to EE, EDD, Azamgarh, for availing supply during unrestricted hours through independent feeder as per rural schedule.
2. The respondent's filed reply on 27.1.2004, and stated that the consumer was drawing power from the 132 KV substations, Shahganj, independent industrial feeder and as per the month wise average supply record of Power System Control-UPPCL for the period under consideration, which was more than 17 hours. The benefit of rural tariff cannot be availed by the consumer as supply was available to the consumer for periods much more than the rural schedule, which is limited to only 9 to 10 hours per day, and merely because that the unit was situated in rural area does not qualify the consumer for availing rural tariff.

3. The Commission issued an order on 8.1.2004, disallowing the interim relief application of the petitioner, and allowed time till 13.2.2004 for the petitioner to file supplementary rejoinder.
4. The FAFO no.32/2004 before Hon'ble High Court ,was moved by petitioner against the order of Commission dated 8.1.2004 on the grounds that the Commission is approaching the matter on erroneous and non sustainable grounds in the eye of law which are not related to the matter. *Hon'ble High Court issued directions to respondents UPPCL, that till the case is disposed of by the Commission, the appellant shall be charged as per the rural schedule vide UPPCL letter dated 13.11.2002.*
5. The petitioner's rejoinder dated 7.2.2004 in response to respondents' reply dated 27.1.2004 reaffirmed that since the applicant is having his unit in a declared rural area, so the urban schedule tariff is not applicable, and moreover, *the excess energy supplied by UPPCL is on account of lack of control and to save off the losses.* The respondents in their reply had admitted that area is rural, but had with equal vehemence reaffirmed that drawal by applicant as per the MRI is over 17 hrs/day, and to avail rural schedule the petitioner needs to draw as per rural schedule.
6. In the hearing on 4.8.2004, the petitioner emphatically reiterated that as a matter of right as per the said tariff orders for FY 2002-03, the consumer had applied for billing in rural schedule which was granted by Executive Engineer, *and that the petitioner is prepared to pay for any penalty as per provisions of clause 4(c).*
7. Commission had examined the documents it had asked, related to sample computations from the respondent's billing division for the period of dispute, which tacitly established the respondent's surmise was correct up to that point of time of hearing. The Commission also considered it prudent to apprise the consequences of penalty under clause 4(c), on account of peak/restricted hours, as Commission was guided by it's important function under Section 61(d) of EA-2003 in tariff regulations in safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner. The petitioner's point was held true due to provision in agreement, the new provisions in Tariff order (rate schedule for rural), and lastly, the petitioner's consent to pay the penalty.
8. The Commission on the basis of hearing dated 4.8.2004 issued orders on 3.9.2004 directing the respondents that *'from the date of orders of Executive Engineer of the division, and subsequently thereafter, the billing of consumer shall be done on the*

basis of rural schedule with restricted supply to consumer. The load factor rebate shall be admissible as per rules. The licensee shall revise the billing from the period of dispute and adjust the payments made by the consumer, if any, and also levy the penalty on account of peak hour/restricted hours as per tariff schedule.'

9. Subsequently, the petitioner had filed three applications before the Commission in respect of the above order. The issues raised in these petitions are as given below:

(i) That the respondents be directed to resume the electricity for at least 14 hours in a day as per Rural Schedule. {Filed on 8th October 2004 -R-234}.

The main contentions of the petitioner are as below;

- a) *That the above dispute since unit is located in the Rural Area so billing may be made as per Rural Schedule was resolved through the order dated 03/09/2004.*
- b) *That after receiving the Commission's judgment on 14/9/2004, the unit is being supplied electricity only for 6 to 7 hours in a day.*
- c) *That as per the System Control schedule letter dated 15/09/2004/ UPPCL-ARR, the rural areas of the state is entitled to get 14 Hours supply as per prescribed schedule, which is required for a steel unit.*
- d) *The petitioner has prayed that the respondents be directed to resume the electricity for at least 14 hours in a day as per Rural Schedule.*

(ii) Review / modification of the Commission's order dated 3.9.2004 passed in above statutory reference No. 151 of 2003 only upto the extent of last two lines of Para 15 of the order as " and also levy the penalty on account of peak hour / restricted hours as per tariff schedule". {Filed on 11th October 2004, R-238}

The petitioner had submitted that: -

- a) *That the present review application is being filed under the provisions of Business Regulation 2000 for review / modification of the Commission's order dated 3.9.2004 only upto the extent last two lines of Para 15 of the order as "and*

also levy the penalty on account of peak hour / restricted hours as per tariff schedule. “

- b) *That these two lines in para 15 of the order are creating great confusion amongst the parties as that was not the issue raised before the Commission by the parties*

(iii) Quash the penalty bill for period of 15.11.02-30.8.2003 raised on 29.9.2004, and not to initiate any peak hour penalty against consumer, and also restore the supply. {Filed on 19th October 2004,R-243}

Petitioner requested the Commission for directing the respondents to reconnect the supply disconnected on 16.10.2004 and issue stay order against recovery of penalty imposed on the basis of following facts in affidavit, as briefly summarized below:

- a) *The respondents have raised a penalty bill for **Rs 2.42 crores on 29.9.2004** for the period 15.11.2002-30.8.2003, based on last two lines of Para 15 of Commission order dated 3.9.2004, (“ and also levy the penalty on account of peak hour / restricted hours as per tariff schedule.”) and have given the grounds that supply was used in peak/restricted hours by petitioner. Whereas, the petitioner's only request was for billing in rural schedule /with use in restricted hours in terms of Commission tariff order dated 22.10.2002, and that, the petitioner had replied on 7.10.2004, that they never used the supply during the peak/restricted hours as evident from bills for concerned months, and for which, they also have strong proof of having confined themselves within 15 % permissible limit during the peak hour period.*
- b) *The petitioner also contended that peak and restricted hour are synonymous terms as in Govt. order dated 1977, Commission's Tariff order dated 27.7.2000, 16.9.2001 and 22.10.2002, and the controversy of peak hour was ended in T.O. of 10.6.2003 with the introduction of TOD schedule.*

Whereas, the respondents have determined the supply hours and timings on the basis of what is prescribed in rural schedule, for determination of penalty during the peak/restricted hour, thereby differentiating the peak and restricted as separate meanings.

- c) The applicant has also been billed under category for un-restricted rural supply at Rs 3.0 per unit for the period of 15.10.2002-30.08.2003 during the corresponding M/o penalty raised, in addition to the above penalty, thus amounting to Rs 25 lacs approx. in the month of September 2003, along with an interest of Rs 68094.71. However, the petitioner deposited only the current electricity bill for Rs 38,13,230.84 in September 2003.*
- d) On 18.10.2004, the supply was disconnected on account of non-payment of peak/restricted hour.*
- e) The petitioner also informs that respondent's have approached Hon'ble High Court against the decision of the Commission, but could not get an interim order.*
- f) In his prayer, the petitioner has requested the Commission for quashing the penalty bill for period of 15.11.02-30.8.2003, and not to initiate any peak hour penalty against consumer.*

10. Commission issued a notice fixing the date of hearing on 27.10.2004. But on 25.10.2004, the respondents also filed three caveats (R-245, R-246, and R-248), against the above three applications, and Commission fixed the date of hearing on 1.11.2004, to hear both the petitioner as well as the respondents in respect of above applications of petitioner and caveats filed by respondents on admission.

11. Commission consequent to the hearing both the parties on 1.11.2004, admitted all the above applications and caveats filed by petitioner/respondents, consequent to withdrawal of objection filed by respondents against signatures of applicant in one of the applications. *The issue related to peak/restricted hour was discussed and conflicting views were expressed by counsels of petitioner and respondents, consequent to which, the Commission stayed the recovery proceedings in respect of penalty raised by respondents on 29.9.2004 and also reserved its final decision*

until supplementary submissions are made by both the petitioner and respondents by 5.11.2004 before the Commission related to this issue. Commission also noted that respondents had disconnected the supply without sufficient notice period, and vide order dated 1.11.2004 directed them to reconnect the supply of the applicant forthwith and not to take any coercive action until disposal of the matter by Commission.

12. While the respondents filed their written submission on 9.11.2004, but the petitioner did not file any further submission to the Commission. Commission has therefore to take a view on the above applications of the petitioner, and the written submission dated 9.11.2004 of the respondent.
13. The written submission by the respondents on their views given during hearing on 1.11.2004 before the Commission on the above mentioned applications is reproduced below;

A. Restricted Hours:

The State Government in exercise of powers conferred by Section 22-B of the Indian Electricity Act 1910 made The Uttar Pradesh Electricity (Regulation of Supply, Distribution, Consumption and use) Order, 1977 and the same continues to operate during the period of dispute in question i.e. 2002-03. The term Restrictions on using electrical energy has been covered in Clause 8 © of the above Order, 1977 and the same is quoted herein below:-

Quote:

Restrictions on using electrical energy during certain hours: -

8 (a) Any non-continuous process industry other than, Petrol pump, Automobile service and air-filling station receiving supply from Uttar Pradesh State Electricity Board, shall on any day not use energy from 1800 to 2200 hours.

(b) All Shops and Commercial establishment shall observe the hours of business from 9 a.m. to 8 p.m. on all days of the week other than their close day.

(c) All the rural line feeders district-wise shall get supply in two groups as in Annexure 1 to this Order in accordance with

the electricity availability Schedule issued by the Uttar Pradesh State Electricity Board from time to time.

Unquote

The Uttar Pradesh Electricity (Regulation of Supply, Distribution, Consumption And use) (Fourth amendment) Order 1979 has modified the restricted hours as notified by the Order, 1977 in as much as the existing restricted hours from 1800 to 2200 hours were made applicable between 1st March, to 30th September, and from 1st October to 28/29th February each year the restricted hours were fixed between 17.00 hours to 21.00 hours. Similarly the hours of business of all shops and commercial establishments was changed from existing 9.00 a.m. to 8.00 p.m. to 9.00 a.m. to 6.00 p.m.

B. Peak Hours

The erstwhile UPSEB, now UPPCL in its rate schedule 1.2.1986 under HV-2 category has made mention of peak hours and restriction of use of power during the peak hours. The relevant portion as contained under para 4 (IV) is reproduced herein below: -

Quote:

(IV)The non continuous process consumers shall not use power during evening peak hours between 18 hours to 22 hours each day from March to September each year and between 17 hours to 21 hours each day from October to February each year, as may be amended from time to time.

Unquote

It is evident from the above that for all rural line feeders the supply hours were to be declared by the State Electricity Board from time to time and there is a restriction on using electrical energy during the hours not declared by the State Electricity Board. The erstwhile U.P. State Electricity Board now U.P. Power Corporation Limited, through its System Control declares from time to time the supply hours for rural areas in different districts and applying the above restriction

imposed by order of 1977 and as modified from time to time ,it can be said that the hours not covered by the Schedule of System Control are Restricted Hour and any violation thereof attracts penalty.

It is Pertinent to note that on the option given by the petitioner regarding not to use supply during restricted hours and availing supply as per rural schedule the Executive Engineer, EDD-11, Azamgarh passed order dt. 13-11-02 wherein the consumer was cautioned not to use supply in restricted hours failing which he would be liable for penalty as described in rate schedule.

Before passing order dt. 3-9-2004 the Commission had also desired from the Executive Engineer, ED-II, Azamgarh the detail of total penalty assessment on the basis of available MRI reports month wise considering of the consumer on rural schedule with the option not to use during restricted hours only as per clause 4(c) of rate of tariff HV-2 for the year 2002-03. The desired details were furnished by the concerned E.E in form of a statement of the desired penalty assessment based on supply hours as per rural schedule (8 hrs. a day schedule) and the Commission had obviously considered the above information before passing its order dt. 3-9-04.

The Commission has given its finding on the violation of restricted hours by the consumer in Para 13 of its order dt. 3-9-2004 and the same is quoted for the better understanding of the matter by the Commission.

Quote

13. In the present matter, the consumer has 'used the supply' whatsoever made available to him, and has not 'restricted' himself for adhering to the notified rural hours. The learned counsel for the petitioner has also willfully consented on behalf of the consumer, to bear any penalty imposed as called for in 4(c) for use during restricted hours.

Unquote

In the Tariff Order dated 22.10.2002 and Rate Schedule issued effective from 9.11.2002 a provision for penalty for violation of using supply in restricted hours has been made.

(c) Since the petitioner has opted for not availing supply during restricted hours and the same was also clearly mentioned in EDD-II, Azamgarh order dated 13.11.2002 the Executive Engineer, EDD-II, Azamgarh, on the basis of MRI report has found the petitioner drawing supply during restricted hours and accordingly penalty for violation of restricted hours as stipulated under para 4 (c) of HV-2 category of Tariff Order 2002 –03 has been rightly imposed on the petitioner.

14. Commission's observations on for 14 hours supply on rural feeder:

The petitioner's view is that once the issue is resolved by the Commission's order dated 3.9.2004, the order should have been implemented in spirit, and accordingly the supply provisions should have been adhered strictly to rural schedule of System Control for the hours of supply and the timings by the concerned substation. Commission is of the view that the consumer is aggrieved due to the imposition of the operational restrictions of the rural schedule. . The licensee could have ensured supply strictly as per rural schedule of system control to the consumer, if not done in this case.

15. Commission's observations on Review / modification /Interim relief application:

- a) Referring to Para 6 of the Commission order: "In the hearing on 4.8.2004, the petitioner emphatically reaffirmed that as a matter of right as per the said tariff orders for FY 2002-03, the consumer had applied for billing under rural schedule which was granted by Executive Engineer, *and that the petitioner is prepared to pay any penalty as per provisions of clause 4(c).*"
- b) Referring to Para 13 of the order: "In the present matter, the consumer has 'used the supply' whatsoever made available to him, and has also not 'restricted' himself for adhering to notified rural hours. *The learned*

counsel for petitioner has also willfully consented on behalf of consumer, to bear any penalty imposed as called for in 4(c) for use during restricted hours.”

- c) The Commission's conclusion after hearing both the parties on 4.8.2004 was clear as per Para 11:“The respondent's submitted the required documents vide fax/letter-dated 17/18th August 2004. Commission examined these documents, which establish the respondent's surmise as per the first option [*quote- Para 9 of order: '(i) Supply from Independent Feeder in Urban Schedule with restricted hours use permitted.'*] above due to reasons like consumption and supply availability as already discussed in the Commission orders issued earlier. *But the Commission is constrained not to admit this at this point, until the petitioner's viewpoint is also examined which is discussed in Para 6 & forthcoming paras.*”
- d) From the above, it is clear that petitioner contention in the review application, *that the Commission has given a view which was not required to be dealt by them and which was not raised by the applicant in the statutory petition nor in the counter petition, and has passed the erroneous order/and exceeded its jurisdiction*, is misplaced, to the extent that that though it was not raised in the petitions, but it was willfully consented to by both the legal counsel and the petitioner. (refer: para 6 & 13 of order as quoted above)
- e) Moreover, once the provisions of rate schedule of tariff order 2002-03 in respect of rural rate schedule has been exercised in petitioner's favour, the provisions of note 4(c) which is enjoined with the rate schedule, automatically also holds true, even in case if it was not mentioned by Commission in the order dated 3.9.2004. The review of the petition is therefore not called for.

16. Commission's observations on petitioner's request for quashing the penalty bill for period of 15.11.02-30.8.2003 raised on 29.9.2004, and not to initiate any peak hour penalty against consumer, and also restoring the supply.

- a) The Commission during the hearing on 1.11.2004 had stayed the recovery proceedings on account of contrary views on provisions of Govt order of 1977.

- b) Once the provisions of rate schedule of tariff order 2002-03 in respect of rural rate schedule has been exercised in petitioner's favour, the provisions of note 4(c), which is, enjoined with the rate schedule, automatically also holds true. The petitioner has contended that the concept of restricted hour implicit in the rural schedule is synonymous with the peak hour restrictions, as specified in G.O of 1977 and subsequent tariff orders of Commission.
- c) Commission observes that it is not just the specific GroupWise timing restrictions as per the SLDC rural schedule, but also the maximum no. of hours of supply specified in the schedule, which often becomes a subject of regulation by SLDC whensoever there are system constraints.
- d) It was for the reason cited in para (c) above, and in order to adequately compensate the rural consumers availing rural supply hours, the rural categories were created. The philosophy of tariff design by Commission for rate schedule HV-2, page 212 of Tariff order for FY 2002-03, thus states that 'In respect of consumers in rural area getting supply as per rural schedule, a rebate of 15 % on the amount billed shall be applicable.'
- e) In the present case, before the Commission order, the consumer was not getting the supply as per rural schedule- (*timings as well as hours of supply*), but as per the urban schedule. The orders of SLDC show the period wise hours of supply for rural area in two groups, and it's adherence vi-a-vis MRI reports established usage for more period than the rural schedule. *The moot point is whether this excess use by consumer in certain hours attracts penalty if not made during the hours specified as peak hour in G.O. of 1977.*
- f) Some of the implications as a consequence to interpretation of peak and restricted hours by licensee are:
- (i) *Whether any restricted hour penalty has been imposed on any other consumers violating the restricted hour's norms as per rural schedule before.*
 - (ii) *Can a penalty of such gigantic dimensions be imposed without bringing the terms and conditions to the knowledge of consumer.*

The Commission is of considered opinion that the interpretation of 'usage of electricity' during the restricted hours by the consumers operating during the rural schedule hours, had led to dual interpretations by the parties. As laid down in State Government orders in 1977, while the petitioner interprets restricted period, as 'peak hour restrictions', and which presently still holds from licensee own system control point of view, the other view of licensee holds strict adherence to 'rural schedule' only and any usage beyond 'rural supply hours' shall be construed as 'restricted use' and shall be treated as violations, in addition to peak hour violations.

17. Commission is of the opinion that the meaning of peak and restricted cannot be dealt with different yardstick by the licensee in view of their own system rural schedule constraints. In the event of excess availability of power, the supply hours to rural sometimes may exceed the schedule even, and usage during the period beyond the rural schedule, does not call for levy of penalty.
18. Going by the reasoning concluded in paras above, the Commission does not deem fit to review its earlier order. The licensee shall however review the penalty imposed during the period of dispute and adjust the payments made by the consumer. The Commission's earlier order stands, upto the date from which the new tariff for FY 05 has come into effect.

(R.D.Gupta)
Member

(P.N.Pathak)
Member

(Vijoy Kumar)
Chairman

Lucknow. Dated: 12Th January 2005.

