

## **UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION LUCKNOW**

**In the matter of :** Notice dated 12.5.2007 U/s130 of Electricity Act2003and compliance of the order of Hon'ble H.C. order dt 29.6.2007 in the WP No. 4182 (M/B) 2007 in the case of Madhyanchal Vidyut Vitran Nigam Ltd. V/s Chairman, Members & Secretary of U.P. Electricity Regulatory Commission.

AND

**In the matter of :**

1. Managing Director, U.P.Power Corporation Limited, Shakti Bhawan, 14 Ashok Marg, Lucknow
2. Managing Director, Madhyanchal Vidyut Vitran Nigam Limited, 4 Gokhaley Marg, Lucknow.
3. Managing Director, Purvanchal Vidyut Vitran Nigam Limited, Bhikharipur, Vidyut Nagar, 132 KV Sub-station, Varanasi.
4. Managing Director, Dakshinanchal Vidyut Vitran Nigam Limited, Vidyut Bhawan, Gailana Road, Agra.
5. Managing Director, Paschimanchal Vidyut Vitran Nigam Limited, Victoria Park, Meerut-250001
6. Managing Director, Kanpur Electric Supply Company Limited, KESA House, 14/71, Civil Lines, Kanpur.
7. Chief Executive, Noida Power Company Limited, Commercial Complex, H-Poket, Alpha-II Sector, Grater Noida-261306.
8. M/s Jalan Concast Unit 2,Rolling Mill,Nakha Jungle,Railway Crossing,Gorakhpur(service Connection No.71053)
9. M/s Jalan Concast,Furnace Unit,Nakha Jungle,Railway Crossing,Gorakhpur(service Connection No.21001)
10. Cold Storage Associaton, Uttar Pradesh, Water Works Road, Aishbag, Lucknow-226004.
11. 11.M/sJai Jagdambe Malleable Pvt.Ltd.,IndustrialArea,Bijauli,DisttJhansi

### **Order**

On the application dated 27.4.2007 moved by Shri Vishal Dikshit learned counsel of the petitioner showing urgency because of disconnection threatened by the opposite party, the Commission allowed him to put forward his case on 27.4.2007, although the same was not listed for hearing on the said date. Incidentally Shri Amarjeet Singh Rakhra learned counsel of the respondents (1 & 2) was also present before the Commission on in connection with some other petition.

Shri Vishal Dikshit learned counsel of the petitioner put forward the following two prayers regarding the case before the Commission for consideration and simultaneously prayed in the application for interim relief that the impugned demand of the licensee dated 26-04-2007 is fictitious since it has been prepared after the gap of more than 2 years from the period of consumption and therefore the same may be stayed and the respondent may be directed not to disconnect the supply of the petitioner on the question of 15% independent feeder surcharge during the pendency of the petition.

1. Commission may kindly set aside the licensee's demand notice dated 26-04-2007.

2. Respondents be directed not to charge 15% independent feeder surcharge from the petitioner.

Shri Amarjeet Singh Rakhra learned counsel of respondent no.1 &2 said that prima-facie the matter is a billing dispute and hence in view of the following decision of Appellate Tribunal dated 30.3.2007 the Commission does not have the jurisdiction to decide the case.

***“No petition / appeal / application lies before any Regulatory Commission or this Tribunal in respect of a billing matter”.***

However during the hearing the point insisted by the learned counsel of the petitioner was that the petitioners were aggrieved due to non compliance of section 56 of the Act since the bills were issued in contravention of clause 6.15 of U.P.Electricity Supply Code 2005.

Commission observed that the complaint petitions were basically related to violation of section 56 of the E.A.2003.

The Commission observed that these petitions are cases where the Licensee is violating section 56 of the Act and such violation is affecting a large number of consumers .So the Commission will separately issue notice U/s 130 of the Act, where the affected consumers may lodge complaint and after giving opportunity to the consumer and the licensee issue directions U/s129 of the Act.

Commission in view of the above pronounced on 27.4.2007 during the hearing in the matter of complaint petitions 458/2007 and 459/2007 that it is not inclined to admit the petitions since these petitions pertain to dispute between the Licensee and consumer regarding billing matter and directed the petitioner to go to the appropriate fora u/s 42(5) or u/s42(6) of the E.A.2003 as applicable for the redressal of his grievance.

Consequently at a later date on 12-05-2007 Commission issued a notice under section 130 of Electricity Act, 2003 wherein the stakeholders were directed to send their objections and suggestions regarding irregular application of section 56 of the Act, latest by 11-06-2007. Again a notice for date of hearing was issued on 15-06-2007 wherein it was notified that the Commission will hear concerned aggrieved stakeholders on 27-06-2007. Subsequently policy directions will be issued by the Commission under section 129 of the Act in the matter of objections, complains and suggestions where licensees have violated the provision under section 56 of Electricity Act, 2003(the Act).

However, during pendency of the notice under section 130, Jalan Concast Ltd., unit 2, Rolling Mill, Nakha Jungle, Railway Crossing, Gorakhpur (ref. Pet no.458/07) and Jalan Concast Ltd., Furnace unit , Nakha Jungle, Railway Crossing, Gorakhpur (ref. Pet no.459/07) approached Hon'ble High Court with the following prayer in WP2951-MIS-2007.

***“That the licensees have issued disconnection notice to the consumer of electricity giving time of less than 15 days and the same is in contravention of the provisions of section 56 of the Act notices were issued requiring the parties to file their objections fixing 11.6.07. As an interim measure, vide order dt.12.5.07,***

***the regulatory Commission has directed that the licensee shall not resort to coercive action of disconnection against the consumers of electricity affected by these contraventions till the directions as mentioned above are issued by the Commission. In spite of aforesaid interim order dt.12.5.07, the licensees are disconnecting the connection of the electrical energy to the petitioners unit on the ground that their names did not find place.”***

Hon'ble High Court gave following directions on 14.6.07 in the above matter:

***“In view of the above, it is provided that the benefit of interim order dt.12.5.07 granted by UPERC extended to the petitioners unit also till the disposal of the complaint numbers 458 & 459 of 07 filed by the petitioners. UP Electricity Regulatory Commission is further directed to fix some early date or hearing on the said complaints and it is expected that the same may be decided by 15.7.07.”***

The Commission received following complaints against notice U/s130.

- (iv) Jalan Concast Ltd., unit 2, Rolling Mill, Nakha Jungle, Railway Crossing, Gorakhpur (ref. Pet no.458/07)
- (v) Jalan Concast Ltd., Furnace unit , Nakha Jungle, Railway Crossing, Gorakhpur (ref. Pet no.459/07)
- (vi) M/s Jaigadembe Malleable Pvt. Ltd., Industrial Estate, Bijauli, Distt Jhansi (ref. Pet no.442/07)

It was observed that the complaints again made on the basis of Pet nos apart from the fact that reference was given to the violation of S.56 of the Act. Since Hon'ble High Court has given direction, therefore, we are considering these complaints against Pet numbers mentioned above restricting our role to violation of S.56 of the Act only by suitable directions under section 129.

On 27.6.07, the matter was heard by the Commission but the hearing could not be completed due to conspicuous absence of the representatives of Madhyanchal/Paschimanchal/Dakshinanchal Vidyut Vitran Nigam. Therefore, a notice was issued on the same date to all concerned MDs of distribution companies, MD, KESCO, Chief Executive, NPCL & the above mentioned complainants to appear before the Commission in person or through duly authorized representatives to be able to answer all material questions relating to the hearing in the said matter on 2.7.07.

On 02.07.2007, Sri. Amarjeet Singh Rakhra, Advocate , Counsel for UPPCL informed vide letter dt.2.7.07 that the a division bench of Hon'ble High Court has vide order dt.29.6.07 directed the UPERC to decide the objections raised by the licensee (by speaking and reasoned order) within a period of 15 days and till such time not to pass any final order U/s 129 of the Act.

The points raised by the learned Counsel of UPPCL are summarized as below:

1. that there is no conscious violation of the provisions of the Act by the licensee. In the aforesaid notice, the Commission has without specifying as to in which cases, in the opinion of UPERC, the licensee or its officers have violated the provisions of Act. Unless it is disclosed by UPERC, the licensee is not in a position to clarify its stand.

2. that from the aforesaid notice, it is further evident that UPERC has taken note of the prospective violations, which may be committed by the licensee. Unless bills are raised in contravention of the provision of S.56 (ii) of the Act, no presumption can be drawn to the effect that the licensee is likely to issue such bills.
3. that the aforesaid notice issued by UPERC gives the direction to the licensee not to resort to coercive action against the consumers in presumed cases of violation. It may be mentioned U/s 130 of the Act, UPERC does not have power to give any such direction.
4. the aforesaid notice U/s 130 of the Act, was never served upon the licensee.
5. that unless the stand of the licensee in particular cases of presumed violation is considered, no general order may be passed U/s 129.

In light of the order passed by the Appellate Tribunal of Electricity in case of M/s Polypex Corp. Ltd. Vs UPCL (appeal no.220/06), individual billing disputes of the consumers may not be entertained as it has been clearly held therein that the Regulatory Commission has no power deal the billing matters.

The Commission is issuing following order in respect of the aforementioned objections:

**1.Points 1 ,2 ,4 and 5:**

The points raised by the UPPCL are quite irrelevant in the context of the proposed order under section 129. In considering matters for the purpose of Sections 129/130 ,the Commission does not and is not intending to decide any individual dispute or dispute of a group of consumers. As such ,there is no question of Commission specifying the particular case or cases or indicating/clarifying the prospective future violation,so far as matter regarding service is concerned.

The notice dated 12.5.2007 under section 130 of the Act,published in Times of India and Dainik Jagran news papers on 12.5.2007, required the licensees and the stake holders to submit their objections / suggestions latest by 11.6.2007. MDs of the licensees as well as MD of UPPCL were further provided with a copy of the said notice vide registered letter no. UPERC/Secy/2007-547dt.14.5.2007

Therefore the objection of the learned counsel of UPPCL that the licensee was not informed about the said notice is far from truth. Again notice for hearing in the matter on 27.6.07 was sent to the MDs of all the licensees vide registered letter no UPERC/Secy/ANG/2007-139dt.15.6.2007.But MD,UPPCL and MD, MVVNL or their representatives did not attend the hearing on 27.6.04.

In this context, the law is that ,where notice is sent by registered post at the correct address of the addressee ,it will be presumed that it has been served and the burden to disprove this presumption lies on the person who alleges that the notice has not been served.

This burden is not discharged by making vague allegations without supporting it affidavit etc .

### **3.Point number3**

Notice under section 130 has been issued with an interim direction that the licensee shall not resort to coercive action of disconnection against the consumers of electricity affected by these contraventions. The Commission has issued notice under section 130 with above interim direction only to ensure that the consumers are not harassed in the interim period, without mentioning any specific consumer and leaving it at the wisdom of the licensee, till suitable direction under section 129 is issued. However, Hon'ble High Court against WP 2951-MIS-2007 has issued directions that the benefit of interim order dated 12.05.2007 granted by UPERC be extended to the petitioners units till the disposal of complaint No. 458 of 2007 and 459 of 2007 and further directed UPERC to fix some early date for hearing on the said complaints and UPERC is expected that the same may be decided by 15.07.2007.

Further, UPPCL said that in light of the order passed by the Appellate Tribunal of Electricity in case of M/s Polypex Corp. Ltd. Vs UPCL (appeal no.220/06), individual billing disputes of the consumers may not be entertained as it has been clearly held therein that the Regulatory Commission has no power deal the billing matters.

The Commission is not intending to deal the billing matters between the licensee and consumer.

In view of the above, as per directions of Hon'ble High Court communicated by letter dated 02.07.2007 by the learned counsel of UPPCL the objections raised by the petitioner Madhanchal Vidyut Vitran Nigam Limited, are hereby disposed off and Commission will separately deal for issue of suitable direction under section 129of EA2003.

(R.D. Gupta)  
Member

(P.N.Pathak)  
Member

(Vijoy Kumar)  
Chairman

Dated: 13.07.2007  
Lucknow