

BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

Petition No. 173/2004

IN THE MATTER OF: Seeking direction to the Respondents to adjust/refund the amount deposited under protest towards 15% surcharge on Independent Feeder in the bills.

AND

IN THE MATTER OF:

M/s Tirupati Texknit Ltd.
880, East Park Road,
Opposite Ajmal Khan Park,
Karolbagh
New Delhi

: Petitioner

Versus

1. Chairman & Managing Director,
UP Power Corporation Ltd
Shakti Bhawan,
14, Ashok Marg
Lucknow
2. General Manager,
UP Power Corporation Ltd,
Moradabad Zone,
Moradabad
3. The Director (Commercial)
UP Power Corporation Ltd
Shakti Bhawan,
14, Ashok Marg
Lucknow
4. Executive Engineer
UP Power Corporation Ltd
Electricity Distribution Division
Gajraula
Moradabad

: Respondents

ORDER

(Date of hearings 15.9.04,12.10.04,24.1.05,25.11.05)

- (1) In this Petition, the Petitioner has sought adjustment/refund of the amount deposited under protest towards 15% surcharge levied by the Respondent in bills for independent feeders in pursuance to tariff order dated 27.7.2000. The contention of the Petitioner is that it neither applied for an independent feeder nor its unit is connected on such feeder. The

Petitioner has stated that his case is similar to M/s Nirmal Fiber, Moradabad Vs. UPPCL & Ors in which the Commission has held in order dated 7.1.02 that the Best Board Feeder was not an independent feeder to which M/s Nirmal Fiber was connected and directed the Respondents to refund/adjust the amount paid by that Petitioner.

- (2) UP Power Corporation Ltd.(UPPCL) on behalf of the Respondents has contested the claim of the Petitioner on the following grounds:
- (i) That the Petitioners unit was sanctioned load prior to M/s Nirmal Fiber as such order dated 7.1.02 does not apply in its case.
 - (ii) That the Petitioner is connected on an independent feeder because the agreement with the Petitioner was signed in May, 94 when M/s Best Board Industries, engaging in the similar process, was only connected on the said feeder. Later, an Agreement was signed on 18.10.94 with M/s J.K Dairy
 - (iii) That the Petitioner is liable to pay surcharge as the Commission has held, in the matter of UP State Spinning Company Ltd., Mau Vs. UPPCL, that it was not open to the Petitioner to seek exemption from paying 15% surcharge since the consumer has availed all advantages of an independent feeder.
- (3) The Petitioner has opposed the arguments forwarded on behalf of the Respondents and maintained that his case was similar to M/s Nirmal Fiber and the process of its unit is not similar to that of M/s Best Board Industries.

The Commission, by Order dated 8.12.2006, directed the Petitioner to establish that their case was similar to M/s Nirmal Fiber and the Respondents were also directed to substantiate that the process of the Petitioners unit was similar to M/s Best Board Industries.

These submissions were to be made within time specified in the said order.

- (4) Subsequently, the Petitioner filed the following:
- (a) Application dated 28.1.06-seeking extension of time for filing information as required by the Commission in order dated 8.12.2005,
 - (b) An application dated 24.2.06 submitting the information on Supplementary Affidavit dated 23.2.06 required by the Commission in order dated 8.12.05,
 - (c) An application dated 24.2.06 for condonation of delay, and
 - (d) An application dated 27.2.06 praying to take the said applications on record.

The Commission considered the said applications filed by the Petitioner and condoned the delay in filing the information vide order dated 3.3.06. An opportunity was also provided to the Respondents to file reply and to make submission as directed to them in order-dated 8.12.05. The Petitioner was directed to serve a copy of the submission, made before the Commission as per order dated 8.12.05, on the Respondents within 7 days, who might file reply to the same within next 15 days with a copy to the Petitioner. The Respondent could also make submission of their part as directed to them by the Commission in order-dated 8.12.05 within 15 days with a copy to the petitioner who might file reply if any, within next 15 days.

The following submissions have been made on behalf of Respondents:

- (a) Affidavit dated 24.3.06 in reply to Supplementary Affidavit dated 23.2.06 filed by the Petitioner on 24.2.06.
- (b) Supplementary Affidavit dated 10.4.06 in compliance to orders dated 8.12.2005 and 3.3.2006.

The Petitioner has filed Rejoinder Affidavit dated 23.4.06 in reply to Supplementary Affidavit dated 10.4.06 filed on behalf of the Respondents.

- (5) The Petitioner in Supplementary Affidavit dated 23.2.06 has submitted that prior to its connection on the Best Board feeder, there existed M/s Best Board Ltd. and M/s J.K Dairy & Foods Ltd. connected on the same feeder engaged in dissimilar manufacturing processes as such its case was similar to that of M/s Nirmal Fibers. In reply to Supplementary Affidavit dated 23.2.06 filed by the Petitioner, it is stated on behalf of the Respondents that the Petitioner was sanctioned load on 15.5.93 prior to M/s J.K Dairy on 31.1.94 and received supply from 33 KV Best Board feeder, which was an independent feeder. It is further stated that the Petitioner is engaged in manufacture of cotton yarn, a continuous process like M/s Best Board industries, which was engaged in manufacture of fiber.

In Supplementary Affidavit dated 10.4.06, it is stated on behalf of Respondents that the Petitioner's case is not similar to that of M/s Nirmal Fiber because the Petitioner had full knowledge of getting supplied from an independent feeder and at the time of sanction of load or signing of the agreement, no other industrial unit except M/s Best Board was connected to the said feeder and both were continuous process. The Petitioner, in its rejoinder to Supplementary Affidavit filed on behalf of the Respondents, has denied the averments made by the Respondents. The Petitioner has submitted that M/s Best Board was manufacturing ply board, not fiber, whereas Petitioner is manufacturing cotton yarn, which is entirely a different process and for a feeder to become an independent feeder, there should be similar process industries connected on it.

- (6) Before we discuss the issues raised by parties to The case, it is necessary to enumerate the facts emanating from written and oral submissions made by the parties as below : that,

- (i) The Petitioner was sanctioned 1000 KVA load on 16.5.93 subject to condition, inter alia, that in case of release of load

from independent feeder, the orders in respect to independent feeders issued from time to time by the board shall apply vide Annexure-1 to affidavit 24.3.06 filed on behalf of the Respondents. An Agreement for supply of electricity was signed by the Petitioner with UPSEB on 6.5.94 on the premise, inter alia, that the agreement shall be deemed to have taken effect from the date of connection and that date shall be construed as the date of commencement of supply under the agreement vide Annexure-3 to affidavit 24.3.06 filed on behalf of the Respondents. The load of the Petitioner was later enhanced to 1400 KVA by an agreement signed on 17.7.95.

- (ii) M/s J.K Dairy & Foods Ltd. was sanctioned load on 31.1.94 and an agreement for supply signed on 18.10.94 vide Annexure-2 and 4 to affidavit 24.3.06 filed on behalf of the Respondents.
- (iii) The Petitioner was connected to Best Board Feeder on 24.12.94 as stated by the Petitioner in Rejoinder Affidavit dated 25.2.05 and before the Commission in hearing on 25.11.05.
- (iv) The Petitioner did not apply for independent feeder vide Annexure-1 to the Petition, the fact not denied by the Respondents.
- (v) At the time of connection of Petitioners unit, other industries, M/s Best Board Industries and M/s J.K Dairy & Food Ltd. existed connected with the Best Board Feeder since 6.11.88 and 15.12.94 respectively as stated by the Petitioner in Rejoinder Affidavit dated 25.2.05.
- (vi) M/s Nirmal Fiber Ltd. was connected to the Best Board Feeder on 9.1.97.
- (vii) M/s Best Board Ltd. was engaged in manufacture of plain particle boards, blister plain particle boards and delaminated/loose bonded plain particle boards of varied thickness ranging from 4mm to 18 mm vide Annexure-SA1,

which is a periodical return of exercisable goods manufacture/received, filed by the Petitioner with Supplementary Affidavit dated 23.2.06.

(viii) M/s J.K Dairy & Foods Ltd. is engaged in manufacturing of Ghee, skim milk powder and milk powder etc. vide Annexure-SA2, which is a certificate of a registration-dated 6.7.95 issued by Govt. of India, filed by the Petitioner with affidavit dated 23.2.06.

(ix) As per letter dated 10.10.94 of Ministry of Industries, Govt. of India, the Petitioner was engaged in manufacture of yarn of all types primarily cotton yarn vide Annexure SA3 to supplementary affidavit 23.2.06 filed by the Petitioner

(7) In the matter of M/s Nirmal Fiber, Moradabad Vs. UPPCL & Ors, the Commission in order dated 7.1.02 determined the issue whether the Best Board feeder was an independent feeder as on Jan,97 when connection to M/s Nirmal Fiber was released. In its conclusion, the Commission has relied upon UPSEB OM No. 38-HC/2(243)C/73 dated 16th June,80 which specifies the conditions to be satisfied by a feeder for being an independent feeder.

In the instant Petition, the Petitioner was released connection on 24.12.94 as such it is essential to examine whether the said feeder was an independent feeder at the time of connection on the basis of determinants set out for that purpose in UPSEB OM No. 38-HC/2(243)C/73 dated 16th June,80. The question of enjoyment of benefits of an independent feeder by the Petitioner can be settled thereafter.

(8) In order dated 7.1.02, passed In the matter of M/s Nirmal Fiber, Moradabad Vs. UPPCL & Ors, the Commission relied on the provisions of UPSEB OM No. 38-HC/2(243)C/73 dated 16th June,80 for determining the status of the feeder; which are as below:

“Order regarding charging the cost of providing independent feeder for individual consumers at their requests were issued vide OM no.8380-HC/2(243)C/73 dated 28th December,1976 read with 3829-HC/C/(243)C/73 dated 14th September,1977 that no connection from independent feeder constructed at the cost of a consumer was to be given to any other consumer.

Now it has been decided that from the independent feeder constructed for a particular consumer even though at his cost, other connections having the same and/or similar processes may be given, if technically feasible, for which the old consumer will not be entitled for any refund on account of some portion of the common line constructed at his cost. For example, if an independent feeder has been constructed for feeding a cold storage on the cost of a particular consumer, then other cold storage may also be connected from the same feeder, if technically feasible, after realization of necessary charges and completing the pre-connection formalities. It must however be ensured that no consumer having process (es) different, dissimilar than that of the old consumer at the cost of which independent feeder was constructed, be given connection from that particular independent feeder and no additional dissimilar process (es) in future should be allowed to these new consumers. These orders shall not apply to feeders constructed for state tube wells/ pump canals etc.”

- (9) The load to the petitioner was sanctioned on 16.5.93 and an agreement signed on 6.5.94. As per terms and conditions of the agreement, the effective date of the agreement is the date of connection. The Petitioner was released connection on 24.12.94 from the Best Board feeder, the fact not disputed by the Respondents while M/s J.K & Food Ltd. had already been released connection from the same feeder on 15.12.04 as such the argument of the Respondents that the Petitioner's unit should be

considered connected prior to M/s J.K & Food Ltd on the basis of dates of signing of agreements is contrary to the provisions made in the agreement dated 6.5.94 as signed between the Petitioner and the Respondents.

In view of above, it is concluded that prior to release of connection to the Petitioner on 24.12.94 from Best Board feeder, M/s Best Board Industries and M/s J.K Dairy & Food Ltd. were already existing connected on the same feeder since 6.11.88 and 15.12.94 respectively.

- (10) On the basis of the documents submitted by the Petitioner as mentioned at 6 (vii&viii) above it is explicit that M/s Best Board was engaged in manufacture of boards and M/s J.K Dairy was engaged in manufacturing of food stuffs; the dissimilar processes within the meaning of UPSEB OM No. 38-HC/2(243)C/73 dated 16th June,80. As per letter dated 10.10.94 of Ministry of Industries, GOI, the Petitioner is engaged in manufacturing of yarns. Therefore, the contention of the Respondents that the process of petitioner unit was similar to M/s Best Board is not sustainable.

It is worth mentioning here that the Respondents have not replied to the question asked by the Commission in its order-dated 8.12.05 to establish that the process of M/s Best Board Industries was similar to that of the Petitioner.

- (11) Prior to release of connection to the Petitioner on 24.12.94, two dissimilar process industries, namely M/s Best Board Industries and M/s J.K Dairy & Food Ltd. were existing connected to the Best Board feeder, therefore, the said feeder ceased to be an independent feeder even before 24.12.94, the date of connection of unit of the petitioner, on the basis of provisions made in UPSEB OM dated 16.6.80 which says that “.....*if an independent feeder has been constructed for feeding a cold storage on the cost of a particular consumer, then other cold storage may also be connected from the same feeder, if technically feasible, after realization of necessary charges and completing the pre-connection formalities. It must however*

be ensured that no consumer having process (es) different, dissimilar than that of the old consumer at the cost of which independent feeder was constructed, be given connection from that particular independent feeder and no additional dissimilar process (es) in future should be allowed to these new consumers...”.

The Commission in order-dated 7.1.02, passed In the matter of M/s Nirmal Fiber, Moradabad Vs. UPPCL & Ors, has clarified that the intention of said UPSEB OM dated 16.6.80 was to distinguished industries on the basis of same and/or similar process (es) instead of on the basis of continuous and non-continuous categories of industries. The relevant portion of the said order is as reproduced below:

“.....if the intention of the OM was to determine the connectivity on the basis of continuous or discontinuous categories of industries, it could have stated so instead of same and/or similar processes. Going by the example of above OM also, the process of the petitioner’s industries cannot be treated as similar to other consumers connected from the 33/KV Best Board feeder. Therefore, we arrive at the conclusion that the connection of the Petitioner can not be treated as a connection on an independent feeder on both counts i.e. in terms of similarity of process and also in view of the DO no. 273CE/Rules/System loading charges dated 23rd March,1995.

In light of the above facts, it is concluded that the Petitioner was not connected on an independent feeder as such there is no question of enjoyment of an independent feeder and payment of 15% surcharge thereof by the Petitioner.

- (12) In consideration of facts and circumstances as discussed above, it is held that the Petitioner was not connected on an independent feeder as such not liable to pay 15% surcharge levied by the Respondents for independent feeder in pursuance to tariff order dated 27.7.2000. The Respondents are directed to adjust in bills or refund the amount deposited

by the Petitioner under protest towards 15% surcharge for independent feeder.

(13) The Petition is disposed of.

(R.D. Gupta)
Member

(P.N. Pathak)
Member

(Vijoy Kumar)
Chairman

Lucknow; Dated: 6th July,2006