

**BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

Present:

1. Shri J.L. Bajaj, Chairman
2. Shri S.C. Dhingra, Member
3. Shri Arun Sarkar, Member

1. **M/s Sandila Metal Private Limited, Hardoi** - **Petitioner** **Petition No. 55/02**
Versus
Managing Director, UPPCL & ORS - **Respondent**
(Review Petition filed on 18th December, 2002 as per Hon'ble High Court order dated 26th November 2002 in first appeal No. 95/2002 against the Commission's order dated 22nd October 2002 passed on reference petition No. 7 of 2002 as filed by UPPCL)
2. **M/s Jai Jagdamba Malable Pvt. Ltd., Jhansi** - **Petitioner** **Petition No. 62/02**
Versus
Managing Director, UPPCL & ORS - **Respondent**
(Review Petition filed on 19th December, 2002 as per Hon'ble High Court order dated 12th December 2002 in first appeal No. 102/2002 against the Commission's order dated 22nd October 2002 passed on reference petition No. 7 of 2002 as filed by UPPCL)
3. **M/s Modipon Fibre Company, Modi Nagar** - **Petitioner** **Petition No. 52/02**
Versus
Managing Director, UPPCL & ORS - **Respondent**
(Review Petition filed on 5th December, 2002 as per Hon'ble High Court order dated 21st November 2002 in first appeal No. 92/2002 against the Commission's order dated 22nd October 2002 passed on reference petition No. 7 of 2002 as filed by UPPCL)
4. **M/s Saini Alloys Pvt. Ltd, Secunderabad** - **Petitioner** **Petition No. 56/02**
Versus
Managing Director, UPPCL & ORS - **Respondent**
(Review Petition filed on 10th December, 2002 as per Hon'ble High Court order dated 23rd November 2002 in first appeal No. 90/2002 against the Commission's order dated 22nd October 2002 passed on reference petition No. 7 of 2002 as filed by UPPCL)
5. **M/s Shivangi Steel Pvt. Ltd. Jhansi** - **Petitioner** **Petition No. 60/02**
Versus
Managing Director, UPPCL & ORS - **Respondent**
(Review Petition filed on 18th December, 2002 as per Hon'ble High Court order dated 26th November 2002 in first appeal No. 95/2002 against the Commission's order dated 22nd October 2002 passed on reference petition No. 7 of 2002 as filed by UPPCL)

1. These five review petitions have been filed in pursuance of the directions of the Hon'ble High Court Lucknow Bench, passed under appellate jurisdiction under section 36 of the UP Electricity Reforms Act, 1999 (here in after referred to as the "Act"), according to which directions this Commission is required to decide the petitions as may be filed by the petitioner after hearing the parties through speaking order.
2. Since these review petitions involve and raised common questions of fact and law, the same have been taken up and heard together and being decided together through this order.
3. The petitioners have prayed before this Commission to modify the impugned clause 8(a) of HV-2 category rate schedule of tariff order dated 22nd October 2002 by replacing "dues" with "if dues are stayed by the court, consumer shall be provided rebate" and also to modify the clause 7.135 of HV-2 category tariff schedule of tariff order dated 1st September 2002 by placing the words "if consumers are having disputed dues they should not be debarred from the rebate".
4. It is the case of the petitioners that the clause 8(a) of HV-2 category rate schedule of tariff order dated 22nd October 2002 is not clear in respect of the dues, which are disputed and in regard to which a stay order has been granted by the Hon'ble High Court or any other court. According to the petitioners the consumer cannot be debarred from claiming/getting the load factor rebate in respect of the dues, where there is a stay of the Hon'ble Court/other Court. In this context, the Hon'ble High Court has directed this Commission to clarify its stand in following words:
"This is an appeal U/s 36 of the of UP Electricity Reforms Act, 1999 against the decision of Electricity Regulatory Commission dated 22nd October 2002 passed in reference No. 7/2002 filed by UP Power Corporation Limited. ----- In view of the submission made by the learned counsel, it is directed that the appellant shall move a review petition before the Regulatory Commission, which shall decide as to whether a person with disputed arrear shall not be allowed the rebate. The Regulatory Commission shall decide this matter by the speaking order".
5. We have heard the parties and their learned counsel. We have also gone through the copies of the Memorandum of First Appeal, which the petitioners filed before the Hon'ble High Court to challenge clause 8(a) of the Tariff Order dated 22-20-2002 in so far as it provides that *"this rebate will be available on monthly basis. Consumers with arrears shall*

not be eligible for this rebate.” The prayer made in the First Appeal was that “the Hon’ble Court may kindly be pleased to set aside the impugned condition of clause 8(a) of the Rate Schedule of rebate clause and may kindly modify the same so as to read that if a consumer is having undisputed arrears, they will get high load utilization rebate if the arrears are due to any court’s stay order or any statutory authority order, then the consumer will not be debarred from the rebate in question and accordingly the U.P. Power Corporation Rate Schedule dated 9-11-2002 be modified.”

6. In this way, the First Appeal before the Hon’ble High Court was against the said condition of Tariff Order dated 22-10-2002 but surprisingly another relief has been sought in the Review Petitions filed by the petitioners before this Commission to seek modification of the Order dated 1-9-2001 and thereby the petitioners have filed these review petitions even beyond the terms and scope of the order of the Hon’ble High Court.
7. Another important thing to be noticed is that nowhere it is stated in the memorandum of the first appeals before the Hon’ble High Court or in the review petitions that any petitioner is in disputed arrears and there is a stay order of Hon’ble High Court/any other Court. As such the petitioners approached the Hon’ble Court and also this Commission with an abstract proposition without stating the factual position about the arrears and relevant orders of the Hon’ble High Court/other Court and the terms of the individual stay orders. It is also relevant in this connection to mention that there are about four thousand consumers in the HV-2 category while only five petitioners came forward to seek orders in general nature so as to affect all such consumers.
8. The Supply Code 2002 issued by UPPCL gives in detail the channels that the consumers may approach for the redressal of their grievances. The petitioner have not stated anywhere that they had approached any of these channels for the redressal of their alleged grievance or for the clarification of the order. No where it is stated that the petitioners approached the High Court/other Court to challenge the correctness of any particular bill after exhausting above channels of grievance redressal and this Commission itself.

In any case the matter has to be considered and decided as put up before the Hon’ble High Court and as per the judgment and order of the High Court.

9. It is abundantly clear that if there is stay granted by the Hon’ble High Court or by any court of law for recovery of any specific amount of the bill issued by the UPPCL, no recovery can

be made by the UPPCL in respect of such amount for so long as and to the extent the particular stay order is in operation.

10. In order to appreciate and fully understand the problem which the petitioners seek to raise, it may be noted that load factor rebate is admissible as per the Tariff Order dated 22-10-2002 only in favour of the of HV-2 category consumers and only in respect of consumption in excess of the defined KVAH per KVA (of contracted demand). As is provided in clause 8(a), this rebate is provided on the energy charges for such excess consumption as given in the tables provided in this clause and further this rebate will be available on monthly basis. If a consumer is in arrears, he shall not be eligible for such rebate. The purpose and object of this clause obviously is to encourage the HV-2 category consumers to ensure timely payment of their bills.

11. In this context, it would be useful to clarify that while issuing the tariff order or any other order, the Commission has to keep in view certain functions that are conferred upon it under section 10 of the Act. While discharging its obligation of tariff determination in accordance with section 10(a) & 10(b) of the Act, the Commission is also to be guided by the provisions of section 10(d), 10(h) of the Act, which are reproduced below:

10(d) – *“to promote competition, efficiency and economy in the activities of the electricity industry to achieve the objects and purposes of this Act;”*

10(h) – *“to regulate the working of licensees and other persons authorized or permitted to engage in the electricity industry in the State and to make their working efficient, economical and equitable;”*

Further, Section 24 of the Act clearly lays down that the Commission may specify in regulations the terms and conditions for the determination of the revenue and tariffs and, in doing so, the Commission shall be guided by the factors which would encourage efficiency, economical use of the resources, good performance etc.

12. To promote efficiency and economy in the working of the licensee, it is necessary that honest consumers, who make timely payment against their dues, should be encouraged and the defaulters are discouraged. The impugned provision, that HV-2 category consumers with arrears shall not be eligible for load factor rebate, was made to give an incentive to the consumers for timely payment of the dues and also to improve the financial viability of the licensee as this category contributes substantially to the revenue of the licensee.

13. In order to secure the position as regards the extent of the arrears against the petitioners, necessary information was sought by this Commission from the UPPCL and the information which has been provided by the UPPCL in this regard is as follows:

“ The total amount of arrears as in November 2002 against all the HV-2 consumers was Rs. 1217.07 Crores”

“As regards the five petitioners the position is as follows:

- Sandila Metals - 2.17 Crore as on 12/02
- Modipon Fibre - 1.54 Crores as on 12/02
- Shivangi Metals - 6.82 Crore as on 03/02
- Jai Jagdamba Malable - 1.68 Crore as on 03/02
- Saini Alloys - Nil

Since there is no arrear against M/s Saini Alloys Limited, the load factor rebate has to be released to them immediately. This petitioner, as it appears, has been making payments under protest while claiming the amounts as disputed.

14. As per the case set up by the petitioners before the High Court in the First Appeals, as also in the Review Petitions before this Commission, they want that the load factor rebate as per clause 8(a) of the Tariff Order dated 22-10-2002 may continue to be paid to them in case a dispute is raised about any arrears and there is a stay order in whatever terms it may be. To accept the contention and to grant the relief sought by the petitioners in such general terms will go to frustrate the very purpose and object of the provision of load factor rebate and to nullify the provision about ineligibility for the rebate in the event if a consumer is in arrears. Such a relief cannot be granted and the matter requires to be determined in individual cases keeping in view the relevant facts and equities of both the parties - the UPPCL and the consumers.

15. In this situation, the matter can be disposed of with the direction that

- a. In case the petitioner or any other consumer in the HV-2 category is in arrears and has obtained an order of stay, from a court or any statutory authority the amount of load factor rebate for which the consumer is eligible in respect of the amount of the bill shall be calculated and the same shall accrue to the account of the consumer but actual credit thereof will not be given to the consumer in his monthly bill until the case relating to the dispute regarding arrear is finally decided by the competent court/statutory authority.

- b. If the petitioner succeeds in his dispute relating to his arrear, the load factor rebate, as accrued to him, for the entire period shall be paid to him with interest at the rate equal to deposit rate of the State Bank of India during that period. However, this rebate shall be payable to the consumer only when the consumer has cleared the reduced amount of arrear, if any, as decided by the Court/Authority, in full.
- c. On the other hand, if UPPCL succeeds in establishing that that amount of arrear, as claimed by it, was correct, the consumer shall not be eligible for load factor rebate and will be liable to pay the arrears along with the late payment surcharge.
- d. If any consumer is aggrieved by the orders of UPPCL in giving effect to the directions above, it will be open to him to approach this Commission for redressal of his grievance after exhausting all the channels of the licensee under the provisions of the Supply Code 2002.

The review petitions are accordingly decided.

(Arun Sarkar)

Member

(S.C. Dhingra)

Member

(J.L. Bajaj)

Chairman

Dated: Lucknow 25th February 2003