

BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

In the matter of:

Subsidized Electricity Rates for Power Loom Consumers

And

In the matter of:

Uttar Pradesh Power Corporation Limited, Lucknow.
Poorvanchal Vidyut Vitran Nigam Limited, Varanasi.
Paschimanchal Vidyut Vitran Niagam Limited, Meerut.
Madhyanchal Vidyut Vitran Nigam Limited, Lucknow.
Dakshinanchal Vidyut Vitran Niagam Limited, Agra.
Kanpur Electricity Supply Company, Kanpur
Noida Power Company Limited, Greater Noida

ORDER

The Commission received a letter of Principal Secretary (Energy) Government of Uttar Pradesh dated 14th June, 2006 addressed to Managing Director, UP Power Corporation Limited on 28th June, 2006 directing the Corporation to supply electricity to power loom consumers in the State on a concessional flat rate. The provisions of the Government order dated 14th June, 2006 are reproduced below :

- 1- सामान्यतः यह सुविधा तीन फेज भार के लिये अनुमन्य होगी, लेकिन प्रदेश के कुछ भागों में जहाँ सिंगल फेज का भार है, वहाँ भी लागू होगी।
- 2- 60” तक की रीड स्पेस (कंधी) के लूम के लिए रू0 65.00 प्रति लूम लिया जाय। यह माना जायेगाकि लूम का भार 0.5 अ0श0 है।
- 3- 60” तक से अधिक रीड स्पेस के लूमों के लिए रू0 130.00 प्रतिमाह लिया जायेगा। यह माना जायेगा कि लूम का भार 1 अ0श0 है।
- 4- ग्रामीण क्षेत्रों में यह दर 60” तक की रीड स्पेस के लूम के लिये रूप्ये 37.50 प्रति लूम एवं 60” से ऊपर रू075/अ0श0/माह ली जायेगी।
- 5- अतिरिक्त मशीनों पर शहरी क्षेत्र में रू0 130/अ0श0/ माह की दर से एवं ग्रामीण क्षेत्र में रू0 75/अ0श0/ माह की दर से चार्ज किया जायेगा।
- 6- लूमों पर सहयोगी प्रकाश व्यवस्था एवं पंखा अनुमन्य होगा। कुल भार का 10 प्रतिशत आंकलित किया जायेगा। बुनकारों के बिल में 10 प्रतिशत धनराशि जोड़ दी जायेगी।
- 7- यह योजना 01.04.2006 से बुनाई के प्रयोग में आने वाले परिसर के लिये लागू होगी। दिनांक – 01.04.2006 के बाद जमा किये गये वर्ष 2006-07 के माह अप्रैल एवं मई के बिल की धनराशि का समायोजन किया जायेगा।
- 8- धोषणा पत्र (प्रारूप संलग्न) के आधार पर वर्तमान चालू कनेक्शन भी फ्लैट रेट के टैरिफ में बदल दिये जायेंगे। नये कनेक्शन हेतु भी यह प्रक्रिया होगी। एक सप्ताह में कनेक्शन दिया जायेगा। यथासम्भव नये कनेक्शन कैम्प लगाकर दिये जायेंगे एवं इसमें बुनकार प्रतिनिधियों द्वारा सक्रिय सहयोग प्रदान किया जायेगा।

नये कनेक्शन हेतु निम्न चार्जेज लिए जायेंगे—

(क) प्रारम्भिक प्रतिभूति राशि रू0 200/अ0श0

(ख) सिस्टम लोडिंग चार्जेज

क. सं	भार	सिस्टम लोडिंग चार्जेज की दर
1	25 के0वी0ए0 तक	रू0 150-00/के0वी0ए0 अथवा उसका अंश

2	25 के0वी0ए0 से अधिक एवं 50 के0वी0ए0 तक	रू0 400-00/के0वी0ए0 अथवा उसका अंश
3	50 के0वी0ए0 से अधिक एवं 150 के0वी0ए0 तक	रू0 800-00/के0वी0ए0 अथवा उसका अंश

- (ग) कनेक्शन हेतु केबिल बुनकरों द्वारा उपलब्ध कराया जाएगा एवं इसको नये कनेक्शन के खर्च में शामिल नहीं किया जायेगा। नये मीटर का खर्च बुनकरों से नहीं लिया जायेगा।
- 9- नवीन कनेक्शन के बाद विभागीय अधिकारी एवं जिलाधिकारी के द्वारा नामित बुनकर प्रतिधिधि द्वारा संयुक्त जॉच एवं आवश्यकतानुसार उपभोक्ताओं के लोड के गणना की कार्यवाही की जायेगी।
- 10- नवीन कनेक्शन के लिए एक पासबुक तैयार की जायेगी एवं बुनकारों को प्रतिमाह बिल जमा करना होगा। पासबुक में ही भुगतान की राशि की इन्ट्री की जायेगी। अलग से बिल नहीं दिया जायेगा। स्वीकृत भार से कम/अधिक भार होने पर पासबुक में भार कम/अधिक कर दिया जायेगा।
- 11- पावरलूम के परिसर मे मीटर लगे रहेंगे अथवा नवीन कनेक्शनपर मीटर लगाये जायेंगे जिनका व्यय बुनकर उपभोक्ता को वहन नहीं करना पड़ेगा, लेकिन वर्ष में 2 बार उनकी रीडिंग ली जायेगी जिससे निर्धारित लागू दर एवं फ्लैट रेट के बीच की सब्सिडी राज्य सरकार को तदनुसार सूचना देकर, का आंकलन किया जा सके। मीटर रीडिंग से बुनकर उपभोक्ता के विद्युत बिल देय नहीं होंगे।

Upon receipt of the aforesaid letter, the Commission examined the letter and had concerns on following issues, which would have led to erosion of statutory mandate as well as serious operational problems. The concerns of the Commission in this regard are enumerated below:

- a. As such the directive to provide electricity supply at a rate variant from the rates of tariff order was issued to Power Corporation Limited whereas, under the present legal dispensation i.e. Electricity Act, 2003, the State Government is empowered to issue directive to State Electricity Regulatory Commission under section 108 in discharge of its functions but the Act does not provide for any directive directly to the licensees from the State Government.
- b. The rates, procedure and scheme of charging the rates from consumers as prescribed in the directive of the State Government were totally different from the rate schedule of the tariff order. In the tariff order of the Commission the power loom consumers fall under two categories i.e. less than 5 Kw under LMV-2 and 5 kW or more under LMV-6, with urban metered consumers in both the categories, to be billed on a monthly basis at a demand charge of Rs. 80/kW/month and energy charges Rs.3.90/unit and a different

prescription for rural consumers. In contrast to this, the structure given by the Government, as is evident from the above, was on the flat rate basis depending upon reed space, number of looms, number of additional machines and rural-urban classification. Therefore, it appeared to be a case of altering the rate schedule of the tariff order, which is not permissible in the legal framework.

- c. The Government order dated 14th June, 2006 also did not spell out the compliance of the advance subsidy payment, as envisaged under section 65 of the Electricity Act, 2003, which has an overriding effect even on the Government direction issued under section 108.
- d. A comparison of rates given in point 3 & 4 indicates an anomalous situation as the rates for loom in urban areas with reed space of more than 60" is flat Rs. 130/month whereas a loom of same size in the rural areas is based on HP i.e. Rs. 75/HP/month. The anomaly may be seen from a typical example of say 10 H.P. loom with more than 60" reed space - while the same will be charged Rs. 130/month in the urban area, in rural area the respective charge will be Rs. 750/month.
- e. For new connection under point 8, the Government order dated 14th June, 2006 prescribes security charges and system loading charges at its own without taking into consideration the provisions of Supply Code.
- f. Point No. 11 of the Government Order specifies that consumers will not bear the cost of meter in case of new connections, which is inconsistent with the first proviso of section 55 (1) of the Electricity Act, 2003.
- g. The Government order dated 14th June, 2006, while deeming the contracted load, does not provide any treatment for charges for violation of contracted demand.
- h. The Government order, while specifying the subsidized payment schedule from power loom consumers, does not provide the treatment of applicability of minimum charges, as specified under LMV-2 and LMV-6 rate schedule for such consumers.

- i. In the Government order, there is no mention of the existing relief/rebate to power loom consumers of Rs. 5000/- in the last two months bills of the financial year and also its prospective treatment.

Although, the Commission had concerns on all above issues but it preferred to raise only legal objections, while directing the licensees, vide its order dated 3rd July, 2006, not to implement the provisions of above direction of the State Government. Relevant portions of the Commission's order are reproduced below:

- a. *“There is absolutely no doubt that the State has manifold functions including extending an encouragement to a class of entrepreneurs but while doing so it has to be ensured that the direction does not run counter to the statutory mandate contained in the sections related to tariff determination under the Electricity Act, 2003. It is also observed that since section 108 does not begin with a non-obstante clause and therefore, the direction issued under it do not override the obligations laid down under the provisions of the Act specifically the requirement provided under section 65 of the Act. In the instant case, the direction of the State Government provides that quantum of subsidy will be estimated by meter reading to be carried twice in a year to determine the difference between the amount payable on prevalent tariff rates and the subsidized flat rate. This procedure of estimating the subsidy, without even talking about its payment, runs directly counter to section 65 of the Act, which unambiguously provides that the subsidy to any consumer is required to be paid in advance by the State Government in a manner specified by the Commission, otherwise the tariff prepared by the State Electricity Regulatory Commission would prevail. Since the direction does not provide for advance subsidy and the Commission has not been approached in this matter to specify the manner of advance payment, the rates provided in the direction of the State Government cannot be implemented in accordance with the proviso of section 65*
- b. *The State Government is empowered to give direction on the questions of policy in general hence we don't find anything wrong with this direction as it targets a class of consumers in general however, it needs to be underlined that the direction of the State Government, as in the instant case to provide a concessional tariff for power looms, while being within the ambit of the policy, in indicating the specific rate is certainly in excess of the power of giving direction on the question of policy. It may be recalled that*

the Commission had allowed an annual relief/rebate of Rs. 5000.00 per power loom consumer in the last two months bills of the financial year on the proposal of the licensee. If the Government intends to subsidize these consumers further, the Government may specify a higher relief for these consumers, along with commitment of advance subsidy, without tinkering with the existing rate structure...

- c. *The direction is ultra vires to the extent that it provides specific flat rates for power loom consumers that too on the basis of an assumed contracted load (with no relationship whatsoever with actual connected load) and it does not provide for the subsidy estimation along with the commitment of the State Government to make an advance payment against it in accordance with section 65 of the Electricity Act, 2003. The licensees are, accordingly, directed not to implement any revised rate on the power loom consumers and to bill them strictly in accordance with the rate schedule provided in the tariff order 2004-05 with the existing rebate provision.”*

It is clear from the above that the Commission emphasized on the overriding effect of section 65 over section 108 of Electricity Act, 2003 apart from observing that fixation of specific rate does not fall within the policy domain but it is an exclusive jurisdiction of the Commission. In the context of the Commission's order dated 3rd July, 2006 the relevant portions of the judgments of the Hon'ble Supreme Court in the matters of M/s Real Food Products Limited and Others etc. Vs. A. P. State Electricity Board & Others Dated 1st March, 1995 and Chittoorzilla Vyavashyadarula Sangham Vs. A.P. State electricity Board & others Dated 3rd November, 2000 are also noteworthy

Real Food Products:

“Where the direction of the State Government, as in the present case, was to fix a concessional tariff for agricultural pump sets at a flat rate per H.P., it does relate to a question of Policy which the Board must follow. However, in indicating the specific rate in a given case, the action of the State Government may be in excess of the power of giving direction on the question of policy, which the Board, if its conclusion be different may not be obliged to be bound by.”

Chittoorzilla Vyavashyadarula Sangham

“On the facts of this case the policy decision by the State Government, for the year in question, can only be construed to mean to supply the electricity to ryots at the subsidized and concessional tariff rates. The other part of the assurance, namely, to supply electricity at the rate of Rs. 50/-per H.P. per annum cannot be construed to be part of policy direction under section 78 A..... So, both State and the Board have to maintain its cordiality and co-ordination in terms of the statutory sanctions. If any policy direction pushes the Board in its compliance beyond statutory limitations, it cannot be a direction within the meaning of section 78 A. It is significant that opening words of Section 78 A is, in the discharge of its functions, the Board shall be guided by such directions. So, the direction of the State is for the guidance to the Board, in the discharge of its functions. Thus this direction has also limitation to give such direction which will subserve in performing its statutory obligation.”

Here it may be recalled that interpretation of word “Policy Direction” under section 108 of Electricity Act, 2003 will be identical to the one laid down under above Supreme Court rulings for the purposes of interpreting the above word in reference of section 78 A of Supply Act, 1948. Obviously, the requirement of advance subsidy is an added prerequisite for compliance of policy direction under the Electricity Act, 2003 for providing subsidized tariff to any category of consumers.

Subsequent to the issuance of above order, the Chairman, UP Power Corporation Limited in his capacity as Chairman of five Distribution Companies submitted an affidavit dated 10th July, 2006 before the Commission, providing a new scheme compatible with legal framework, along with a directive from the State Government issued under section 108 of the Electricity Act, 2003. The scheme as proposed in the affidavit is reproduced below:

- “1. That despite the aforesaid order the normal billing as per applicable tariff shall be made.*
- 2. That the payment from the weavers shall be collected as per the directions of the Government at normal billing cycle.*
- 3. That the advance subsidy shall be collected from the Government in one installment or maximum two half yearly installments. The account of adjustment of subsidy will be submitted to government every six months and the shortfall if any will be collected from Government*

4. *That the weavers are already getting subsidy of Rs. 5000/per year which may increase due to aforesaid order but the Government is compensating the above companies for any loss, in terms of section 65 and section 68, therefore the above named licencees have no objection in implementing the above government order.”*

The policy direction issued by the Government under section 108 is worded as follows:

“I am directed to inform you that in public interest, in financial year 2006-07, the Government of Uttar Pradesh has decided to provide electricity to Power loom Weavers on a flat rate basis as per G.O. No. 1969/24/P-3-2006 dated June 14, 2006. The Government has also decided to compensate the distribution licensees for any loss incurred by them due to implementation of the aforesaid Government order. Adhoc provision of Rs. 30 Crores has been made in the State budget the sanction for which will be issued soon.

From the above affidavit and the policy directive of the State Government it is clear that the four essential legal requirements, as raised in the Commission's order dated 3rd July, 2006 i.e.

- a) no alteration with the rate design of the Commission
- b) billing to be strictly according to the rate schedule
- c) compliance of advance subsidy provision
- d) a directive to the Commission under section 108 in the matter

have been complied with. With this the policy directive of the State Government, to be read with the affidavit of the Chairman, UP Power Corporation Limited, falls within a proper legal framework as required under statutory mandate.

Having said that the Commission would like to visit the operational details of implementing the scheme, as enumerated below:

1. The Commission agrees with point No. 1 and 2 of the affidavit dated 10th July, 2006 i.e. billing of the power loom consumers shall be done strictly in accordance with the prevalent rate schedule for these consumers under tariff order 2004-05 whereas, the payment from the power loom consumers shall be collected as per the policy direction of the Government at normal billing cycle. In this context, it requires clarification that since the methodologies and principles of tariff application cannot be altered by a policy

direction and also the fact that the petition submitted by Chairman, UPPCL admits the billing to be done in accordance with tariff structure and also payment on the basis of normal billing cycle therefore notwithstanding the directive of State Government issued on 14th June, 2006 the meter reading of these consumers will be done on monthly basis and not on bi-annual basis. It is also cogent technically as most of the meters installed at these premises might not be having a memory storage of more than 45 days therefore, if the reading is done on six monthly basis then the actual demand on monthly basis may not be captured to generate a bill on the basis of the rate schedule given under the tariff order. In any case for computing exact subsidy, a monthly reading and billing of demand and energy is inevitable. Accordingly, the monthly bills for power loom consumers shall clearly reflect the following:

- (I) Bill as per Tariff order rate schedule on the basis of actual monthly fixed / demand charges + energy consumption charges
- (II) Payment as per Government Directive dated 14th June, 2006
- (III) Monthly subsidy payable by the Government for the Consumer [(I)-(II)]

In the context, it is pertinent to mention that monthly meter reading and billing of the consumers will in no way deter the interest of the consumer as they are being charged as per Government orders but at the same time it will help the licensee in keeping a proper energy account and accurate subsidy estimation.

2. The State Government has already committed an advance subsidy of Rs. 30 Crore in the State budget, funds for which are expected to be released soon as per the State Government policy directive No. 121/24-P-3-2006 dated 7th July, 2006 therefore, the requirement of section 65 is largely met. While appreciating the fact that the amount of advance subsidy cannot be exactly estimated, the licensees are directed to submit Division wise computational details regarding total subsidy requirement for the year based on three months billing data of power loom consumers in the current financial year i.e. for the months April, May & June 2006 for which billing must have been done in accordance with prevalent rate schedule, within a month of the issuance of this order, to satisfy the Commission that the figure is a realistic reflection of advance subsidy.

3. The Commission also agrees with the submission in the affidavit that the actual adjustment of subsidies will be done on six monthly basis and shortfall, if any, will be collected from the Government. In view of the approved meter reading and billing on monthly basis, the exact requirement of subsidy can be worked out on six monthly basis.
4. The affidavit also submits that the advance subsidy shall be collected from the Government in one installment or maximum two half yearly installments. In this context, it may be recalled that section 65 provides that advance payment of subsidy shall be made by the State Government in accordance with the manner specified by the Commission. Therefore, it is the prerogative of the Commission to specify the frequency in which the advance subsidy shall be paid by the Government however, the Commission does not find any fault in accepting the proposal of two half yearly installments as advanced by the Chairman, UP Power Corporation Limited.
5. The Commission also directs the licensees to discontinue the existing provision of relief/rebate of Rs. 5000 to power loom consumers in their last two months bills of the financial year as a totally new scheme of flat subsidized payment has been introduced by the Government for which it has made subsidy provision without mentioning the continuity of the earlier relief scheme.
6. Coming back to the issue of security deposit for new connections as provided in the Government order dated 14th June, 2006, it would be useful to refer our order dated 3rd July, 2006 wherein it was observed that since section 108 does not begin with a non obstante clause therefore, the direction issued under it do not override the obligations laid down under the provisions of the Act and other regulations made under the Act. This observation is in consonance with the Hon'ble Supreme Court Order in the matter of Poddar Projects Limited Vs. A.P.S.E.B. Since security deposit has been provided under clause 4.20 of the Supply Code 2005, which has been framed under the powers conferred by section 50 of the Electricity Act, 2003, as a deposit to cover the estimated power consumption for two months therefore, this provision cannot be altered through a policy direction indicating a specific security deposit amount. As the security deposit is basically meant to safeguard the licensee in case the consumer defaults in his payment therefore, in the present context the security deposit amount should be calculated on the basis of total flat charges paid by the consumer for two months, which would be

sufficient to safeguard the licensee for his default and the same would also make it in line with provisions of the Supply Code.

7. The provision given in the Government order that the power loom consumers will not bear the expense of meter in case of new connection runs counter to the first proviso of Section 55(1) of Electricity Act, 2003, which provides that the consumer will have to pay security for the price of meter along with meter rent unless he elects to purchase a meter. It appears from the Government order that the meter in case of new connection will be provided free of cost to power loom consumers accordingly, in such a situation, the State Government should earmark capital subsidy on this account.

8. The Government order by deeming the loads of power looms under point 2&3 and also for other machines, as given in the declaration form, creates a situation wherein the contracted load of the consumer will be an aggregate of all the deemed loads for various looms and other machines. Further, it requires mention that most power looms above 25 BHP must be having Static TVM and others also must be having meters with MDI facility. In such a situation, clause 9(ii) of the General Provisions of the rate schedule provides that if the maximum demand in any month of the consumers having TVM/MDI/TOD meters exceeds the Contracted Load, such excess demand shall be levied at twice the normal rate. As the Government order does not specify any treatment regarding this, this might result into a chaotic situation at the field level. Such a deeming of contracted load (on aggregation basis of individual deemed load of various machines) will also not leave the consumer with any option to get his contracted load increased. In this context, it requires mention that whenever a legal fiction is created through a deeming provision then all implications related to deeming will necessarily follow. It would be pertinent to reproduce an oft-quoted passage from a landmark judgment of Lord Asquith:

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it - . The Statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of the state of affairs”.

Therefore, in such a situation excess demand charges shall be levied, in accordance with the tariff order, whenever actual demand of the consumer exceeds the aggregated deemed contracted demand of the power loom consumer. Since, the payments are to be collected from the consumers in accordance with the Government order dated 14th June, 2006 therefore, it is not clear that in case of a violation of contracted demand, who will bear the burden of the penalty for violating the contracted demand. In view of above, the licensees are directed to get the issue clarified from the State Government and submit the same before the Commission within 15 days of the issuance of this order.

9. The Tariff order 2004-05 provides a minimum charge of Rs. 260/kW/month for power loom consumers under LMV-2 tariff getting supply as per urban schedule and Rs. 385/kW/month for consumers under LMV-6 rate schedule. If the actual bill of a power loom consumer falls below the specified minimum charges then as per the provisions of the tariff order, minimum charges will be levied. In such a situation, if the flat payment schedule from the power loom consumers also falls below the minimum charges then a harmonious construction of tariff order with the Government order will suggest that the balance amount i.e. the amount of minimum charge minus the subsidized flat payment made by the consumer will be borne by the State Government as subsidy.
10. As far as adjustment of the bills of April & May 2006 in the future bills are concerned, the Commission does not have any objection as long as subsidy against the payment of these months are ensured by the Government.

This was a unique situation, wherein the Commission had to perform its functions in accordance with statutory obligations in face of a policy direction of the Government. For Government's direction, it is said that no statute bound the crown unless the crown was expressly named therein "*Roy n' est lie per ascun statute, si il ne soit expressment nosme*". But the rules so laid down is subject to at least one exception where it was the intention of the legislature that the crown should be bound as then it will be inferred that the crown, by assenting to the law, agreed to be bound by the provisions of the statute. Therefore, the Commission attempted its best to interpret the policy direction within the four walls of legal framework while still addressing the interests of all the stakeholders i.e. the power loom consumers, the consumers in general and the licensees.

After considering various documents placed before the Commission, as discussed in the previous paragraphs of this order, and carrying out its analysis, the findings of the Commission are reproduced below:

1. The billing of the power loom consumers shall be done strictly in accordance with prevalent rate schedule of tariff order 2004-05 on the monthly basis.
2. Payment from the power loom consumers shall be collected as per the policy direction of the Government on monthly basis.
3. Exact amount of subsidy will be shown in each individual's bill by subtracting the amount under point 2 from the bill raised under point 1 above.
4. The licensees are directed to submit details regarding total subsidy requirements for the year based on the three months billing data of power loom consumers in the current financial year i.e. for the months of April, May and June 2006 for which billing must have been done in accordance with the prevalent rate schedule within one month of the issuance of this order to justify the figure of Rs. 30 Crore as advance subsidy.
5. Advance subsidy shall be collected from the Government in two half yearly installments.
6. On the basis of monthly meter reading and billing, the exact requirement of subsidy will be worked out on six monthly basis. Any shortfall and surplus shall be adjusted accordingly.
7. The existing rebate of Rs. 5000/- to power loom consumers in their last two months bills of the financial year to be discontinued.
8. Amount of security deposit, to be charged on new connections, need to be calculated on the basis of payments to be made by power loom consumers in two months, as per Government's order dated 14th June, 2006.

9. The Government should earmark capital subsidy for providing free of cost meters to power loom consumers in case of new connections.
10. The licensees are directed to seek clarification from the State Government regarding penalty for excess demand in case a power loom consumer exceeds his deemed contracted demand and submit the same before the Commission within 15 days of the issuance of this order.
11. In case the bill of the power loom consumer is prepared on the basis of minimum charges, as per tariff order, and the flat payment of consumer falls below it then the balance amount would be paid by the State Government as subsidy.
12. Adjustment of the bills of April & May 2006 in the future bills allowed.

The order is being issued in supercession of the Commission's order dated 3rd July, 2006 in the matter. The licensees are directed to comply with the direction issued in this order.

A free translation of this order in Hindi will be provided within three days of the issuance of this order.

(R.D. Gupta)
Member

(Vijoy Kumar)
Chairman

Place : Lucknow
Dated : 11th July, 2006