

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

**Present:**

Shri Vijoy Kumar, Chairman

Shri P.N. Pathak, Member

Shri R.D. Gupta, Member

IN THE MATTER OF:

Non-Compliance of the Commission's order dated 13<sup>th</sup> April, 2005.

And

IN THE MATTER OF:

M/s Lucknow Alloys(P) Limited (now known as "Tribhuvan Industries Ltd.") Gindan Khera Amausi,  
Station Road, Amausi Lucknow.

**---Petitioner**

AND

1. The Executive Engineer, Electricity Distribution Division, Rahim Nagar, Madhyanchal Vidyut Vitran Nigam Limited, Lucknow.
2. The Deputy General Manager, Electricity Distribution Circle, LESA, Madhyanchal Vidyut Vitran Nigam Limited Lucknow.
3. The General Manager, LESA, Madhyanchal Vidyut Vitran Nigam Limited Lucknow.
4. The Managing Director, Madhyanchal Vidyut Vitran Nigam Limited, Lucknow Discom

**---Respondents**

## ORDER

### M/s Tribhuvan Industries Limited Vs. UPPCL

**Date of Hearing 23<sup>rd</sup> August, 2005**

1. The Commission, vide its order dated 13<sup>th</sup> April, 2005, had directed the respondents to restore the supply of the petitioner, at full load, provided the petitioner continues to pay his current consumption subject to the final decision of the Commission. However, the Executive Engineer did not comply with the order and therefore, the Commission, vide its order dated 10<sup>th</sup> May, 2005, once again directed the petitioner to restore the supply or else a penal action will be invoked U/s 142 of the Electricity Act, 2003.
2. Challenging the jurisdiction of the Commission, UPPCL filed a writ petition before the Hon'ble High Court, wherein Hon'ble High Court, vide its order dated 12<sup>th</sup> May, 2005 stayed the operation of penal action against the Executive Engineer without commenting on the jurisdictional issue.
3. The Commission again took up the matter for hearing on 15th July, 2005. At the hearing, the counsel of the petitioner stated that the above stay order of the Hon'ble High Court was effective only till 16th May, 2005 i.e. the next listing of the case whereas, the counsel of the respondents averred that the stay continues even after 16th May, 2005. The Commission asked the parties to get a clarification in above respect from the Hon'ble High Court within a week. Further, the Commission again directed the respondents to comply with the Commission's order of restoring the power supply to the petitioner, as Hon'ble High Court has not stayed this directive of the Commission's order dated 13th April 2005.
4. Subsequently, the respondents withdrew their petition from the Hon'ble High Court and accordingly they don't have any stay order in their favour from the Hon'ble High Court. The case was again listed on 10th August, 2005. The Commission took serious cognizance of the fact that more than three months have passed since the order of 13th April, 2005 but the Executive Engineer has not complied with it although, he had agreed to complete the work within a week in the open court during the hearing of 10<sup>th</sup> May, 2005. The Commission considered it as a standing noncompliance of its order in spite of repeated directives.
5. At the hearing on 10<sup>th</sup> August, 2005, the counsel for the respondents sought a time of 10 days to resolve the issue. The Commission granted the sought time as a last

opportunity to the respondents to comply with the order or else the Commission will be left with no other option but to initiate the proceeding under section 142 of the Electricity Act, 2003. The Commission directed the Managing Director, MVVNL and the Executive Engineer, EDD Rahim Nagar, to appear before the Commission, on 23<sup>rd</sup> August, 2005, in person, to explain why their action should not be taken as noncompliance of the Commission's order and why a penal action should not be initiated against them.

6. At the hearing today, the counsel for the respondents filed an application of vacation of interim order dated 13<sup>th</sup> April, 2005 and stated that the interim order of the Commission cannot be implemented on account of certain technical difficulties without mentioning these. However, the same was not taken in cognizance by the Commission for today's proceedings as respondents have been making categorical promises to implement the order on last three hearings subsequent to 13<sup>th</sup> April, 2005 viz on 10<sup>th</sup> May, 2005, 15<sup>th</sup> July, 2005 & 10<sup>th</sup> August, 2005 and never during the course of these hearings, the respondents raised the issue of vacation of interim order or stated any technical difficulty. Therefore, the Commission feels that it does not behove the respondents to make repeated promises to implement the order and then suddenly turn back and file an application for vacation of interim order in the fourth hearing after the issuance of interim order dated 13<sup>th</sup> April, 2005. However, during the course of hearing, the counsel for the respondents stated that there is a difficulty in implementing the order as the Commission has granted a relief, which was not even sought by the petitioner, as the petitioner had only sought a relief of restoration of supply without mentioning full load, which was granted by the Commission. In this context, it requires mention that the prayer made before the Commission was restoration of the electricity supply without charging MCG. It is agreed that the term "full load" was not mentioned in the prayer but if we look at the facts of the case, the petitioner applied for a load reduction from 2650 KVA to 100 KVA on 31/12/2002, which was turned down by the respondents on the ground that there were pending arrears on the consumers related to subjudice matters before the Hon'ble High Court. Therefore, the respondents, by rejecting the load reduction application of the petitioner, treated the load of the petitioner as 2650 kVA at which the restoration order was given. Legally, the contracted load of the petitioner is 2650 kVA, as per records of the respondents and accordingly, the supply could have been restored at only this load unless otherwise directed by the Commission. Still, the Commission opted to clarify the restoration at 2650 KVA by saying "restoration at full load" as the billing procedure and consequential activities of the respondents in the present case have been extremely ad-hoc and arbitrary. The same bill has been subject to frequent revisions starting from Rs. 54,19,718.00 in November, 2002 to Rs. 37,79,206.00 then again to Rs.

21,20,981.00 which was again revised to Rs. 26,78,368.00 at different points of time. Not only revisions of bill but also the manner in which the grievance settling mechanism of the licensee treated the grievance of the petitioner wherein, his grievance was shuttled among various fora of the licensee, lent sufficient ground to the Commission to believe that unless the Commission issues an unambiguous order probably, the same will also not been implemented for one reason or another. The apprehension of the Commission came true when in spite of issuing the categorical order dated 13<sup>th</sup> April, 2005 to restore the supply at full load, the Executive Engineer filed a petition on 4<sup>th</sup> May, 2005 seeking a clarification whether the term "full load" should be interpreted as 2650 KVA or as 100 kVA. It is unbecoming of the respondents to first not accept the reduction of load request, then to seek clarification from the Commission whether full load means 2650 kVA or 100 kVA and then again state before the Commission that it has gone beyond the prayer by saying "full load" in the order, which was not prayed for. It is also speaks about the conduct of the respondents that in spite of getting a clarification of "full load" by this Commission's order dated 10<sup>th</sup> May, 2005, the same has not been implemented even after passage of three months.

7. The Managing Director, MVVNL stated that the act of the respondents is not a non-compliance of the Commission's order and the same is in the interest of Discom. We express our shock that if the above conduct is not a non-compliance then probably the word "non-compliance" has a different meaning in the dictionary of the Managing Director. Further, as far as his averment regarding protecting the Discom is concerned, the Commission is at loss to understand that how the interim order of the Commission – "restoration of the power supply at full load provided the petitioner continues to pay his current monthly bills" subject to final disposal of the case on merits- is going to adversely affect the interest of the Discom as by restoring the supply, they would be getting at least monthly consumption bills from the petitioner i.e. from a high revenue yielding industrial consumer, which they are losing at the moment. As far as final disposal of the case is concerned, it is always open for the respondents to exercise their appellate power if they remain unsatisfied with the order of the Commission. The Managing Director also said that the Commission should have made the Executive Engineer responsible for non-compliance and that he cannot be made accountable alone without involving the intermediate chain i.e. Deputy General Manager and Chief General Manager. However, it is on record before the Commission that concerned Chief General Manager, LESA and Deputy General Manager, EUDC LESA had directed the Executive Engineer to implement the Commission's order dated 13<sup>th</sup> April, 2005 immediately after its issuance and therefore, it was not considered appropriate to call for their personal presence to

explain non-compliance. The Executive Engineer, EDD Rahim Nagar stated that he has nothing to say for non-compliance of the order rather he has filed this application for vacation of interim order, which was not taken into consideration by the Commission for reasons stated above. The counsel for the respondents also told the Commission that although he does not have a stay in his favour from the Hon'ble High Court but that does not mean that their petition before the Hon'ble High Court is not under active consideration. We do not deny this averment however, in absence of a stay, it is not open to the respondents to defy the Commission's order repeatedly. Further it requires mention that in one of the previous hearings the counsel of the respondents had himself admitted that even when there was a stay from the Hon'ble High Court against any punitive action on Executive Engineer, the Hon'ble Court had said in the open hearing that there is no stay on carrying out the activity of restoration of supply.

8. Having said that the Commission feels that it is a case of clear cut non-compliance of the Commission's order and after providing repeated hearing on the matter and also the personal presence of the officers, who could not offer proper justification to explain the non-compliance, the Commission is left with no other option than to invoke section 142 of the Electricity Act, 2003 and impose a fine of Rs. 20,000 on Mr. I Sheikh, the Executive Engineer, EDD Rahim Nagar, to be deducted in installments of Rs. 5000/- per month from his salary commencing from the salary of September 2005, and further a fine of Rs. 50,000 on the licensee i.e. MVVNL. The respondents are again directed to comply with the Commission's order dated 13<sup>th</sup> April, 2005 within 15 days of this order failing which a fine of Rs. 5000/- per day will be imposed on the licensee (MVVNL) for each day of continuing failure. Furthermore, the Commission recommends the suspension of Mr. I Sheikh, Executive Engineer, after 15 days of this order if the order is not complied with. The Managing Director, MVVNL is directed to take appropriate action in above respect. The fine as imposed above shall be deposited with the Commission.

(R.D. Gupta)  
Member

(P.N. Pathak)  
Member

(Vijoy Kumar)  
Chairman

Dated : 23<sup>rd</sup> August, 2005  
Place : Lucknow