

BEFORE
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

Petion No. 189/2004

Present:

1. Shri Vijoy Kumar, Chairman
2. Shri P.N. Pathak, Member
3. Shri R. D. Gupta, Member

In the matter of:

Provisions of U.P. Electricity Supply Code 2002 clause 7.26, 7.27, 7.28 and 7.29 readable along with the provision of section 34 and 35 of UP electricity Reforms Act, 1999.

And

In the matter of:

M/s Venus Casting Pvt. Limited, Bharua, Sumerpur Industrial Area, Hameerpur

---Petitioner

and

1. UP Power Corporation through Its Chairman-Cum-Managing Director, Shakti Bhawan, 14 Ashok Marg, Lucknow.
2. The Managing Director, Dakshinanchal Vidyut Vitran Nigam Limited, Vidyut Bhawan, Gailana Road , Agra
3. The Deputy General Manager, Electricity Distribution Circle, U.P. Power Corporation Ltd., Banda
4. Executive Engineer, UP Power Corporation Limited, Electricity Distribution, Division , Hameerpur
5. The Chief Electrical Inspector, Directorate of Electrical Safety, U.P. Vibhuti Khand, Gomti Nagar, Lucknow.

----Respondents

ORDER

M/s Venus Casting Pvt. Limited Vs. Dakshinanchal Vidyut Vitran Nigam Limited

1. M/s Venus Casting Pvt. Ltd. has filed a petition on 5th August, 2004, under the provisions of UP Electricity Supply Code 2002 clause 7.26, 7.27, 7.28 & 7.29 to be read with section 34 & 35 of UP Electricity Reforms Act, 1999, praying that the Commission should direct the respondent no.2 to place the meter for testing before the test lab of Chief Electrical Inspector and also to direct the Electrical Inspector to complete the procedure in pursuance of Hon'ble High Court's Order. Subsequent to this, the petitioner also filed a prayer for Interim Relief for directing the respondent 1 & 2 to the extent of reconnecting the petitioner's premises as the same has been disconnected on 10th August 2004 and also to direct the respondents not to initiate the assessment proceedings till the disposal of the matter by the Chief Electrical Inspector. The petitioner has requested the Commission to invoke its superintending jurisdiction to command the UPPCL on above accounts. The case was listed today i. e. on 16th August, 2004 to decide on the issue of admissibility of the petition and therefore, notices were not served to the respondents.

2. While adjudicating the issue of admissibility of the above issue, we have carefully looked into the sections under which the petition has been filed. Section 7.26 to 7.29 of the Supply Code empowers the Commission to admit the appeals only on two accounts
 - (a) Cases where the licensee has failed to respond the service complaint within the prescribed time limit or the consumer is aggrieved by a decision of the licensee in above respect.
 - (b) Cases where the consumer is not satisfied with the decision of Electrical inspector in the matter related to accuracy of meter.

The present petition does not fall under either category since the matter is already subjudice before Electrical Inspector and the Inspector has yet not given his decision. It is also pertinent to mention here that the Commission is no longer an Appellate Authority to the Electrical Inspector as section 35 of the Electricity Reforms Act has been repealed by section 162(2) of the Electricity Act 2003. Therefore, the petition is not maintainable even under section 34 and 35 of the Electricity Reforms Act, 1999 as section 35, as mentioned above, has already been repealed and section 34 deals with the issues of disputes between licensees or in respect of matters related to standards of performance, which is not the case in the present petition. Further, it is also clarified that even when UP Electricity Reforms Act 1999 was in vogue, the section 35 merely gave the Commission an Appellate Jurisdiction on the order of Electrical Inspector but no where the Reforms Act, conferred upon the Commission the jurisdiction of "Superintendence and Control" over the Electrical Inspector. Hence, even under UP electricity Reforms Act, 1999 the Commission did not have the jurisdiction of directing the Electrical Inspector, when the case is subjudice before it.

3. During the course of the argument, the learned counsel for the petitioner specifically stressed on clause 7.29 of the Uttar Pradesh Electricity Supply Code 2002 by making out a case wherein he can approach the Commission under this clause if he is aggrieved by the decision of the licensee. In order to comprehend this argument, it would be prudent to have a look on the clause 7.29 of the Supply Code, which is reproduced below:

"If a consumer is aggrieved by the decision of the Licensee/Electrical Inspector as specified in clause 7.26, he may file a petition to the Commission under Section 34/35 of the Act, as per the procedure

specified in the Conduct of Business Regulation, 2000 of the Commission”.

In order to appreciate the application of this provision, Clause 7.26 is also being reproduced: -

“In case of grievance related to accuracy of meter the Commission may be approached, only if the consumer is not satisfied with the decision of electrical Inspector. In other cases, the Commission may be approached only after a consumer has exhausted the channels for redressal of grievance set up by the Licensee”.

4. Both the provisions read together make it abundantly clear that in case of a dispute related to meter accuracy, the Commission could have been approached if the consumer was not satisfied with the decision of the Electrical Inspector and therefore, clause 7.29 cannot be invoked on the ground that the licensee did not address the grievance of the consumer. Here again, at the cost of repetition it is clarified that the Commission’s Appellate Authority to the Electrical Inspector’s order is already repealed by Electricity Act, 2003. Therefore, the Commission did not find any way under which the present petition can be treated as maintainable before it.
5. Regarding the petitioner’s request to invoke “jurisdiction of superintendence” over UPPCL, it is being clarified at the outset that although the Commission do have certain powers and authority over UPPCL, as laid down in the Electricity Act, 2003, but the Act nowhere bestows the jurisdiction of superintendence on the Commission over UPPCL. The jurisdiction of superintendence is a clearly spelt out jurisdiction, wherever applicable, as is the case of article 227 of the Indian Constitution, wherein the Hon’ble High Court has jurisdiction of superintendence over all courts and tribunals within the territory in relation

to which it exercises jurisdiction. Therefore, the Commission neither has such a jurisdiction over UPPCL nor the same can be enforced.

6. Even after establishing that the petition was not maintainable before the Commission, we tried to understand the facts of the case to identify what led the licensee to take a drastic measure like disconnection and whether the Commission can do something to alleviate this situation. For the purpose, it would be useful to briefly recount the facts of the case. The meter of the petitioner (Meter No. UPERO – 59454) was removed from the site for the purposes of testing. It is the contention of the petitioner that on 23/3/2004 the petitioner was informed by Dakshinancal Vidyut Vitran Nigam that the meter would be tested in the lab of meter supplier although the petitioner had serious objections against the same on the ground that the meter supplier has relationship with UPPCL. Subsequent to it, the petitioner approached the Chief Minister of UP on 23/3/2004, who directed the Dakshinancal Vidyut Vitran Nigam to get the meter tested through Electrical Inspector. Further, the petitioner, apprehending that UPPCL might not obey the orders of the Chief Minister UP, moved to Hon'ble High Court, which directed the Electrical Inspector to dispose of the matter at the earliest. It is the contention of the petitioner that in spite of Hon'ble High Court's order dated 25/3/2004 passed in writ petition No. 1559 (MB) of 2004 as well orders of Hon'ble Chief Minister of U.P. (who is also Energy Minister) dated 10/3/2004 & 23/3/2004, the meter has not been placed before the test lab of Chief Electrical Inspector. The petitioner has also averred that in spite of various order of Chief Electrical Inspector the meter was not placed for testing before the Chief electrical Inspector and the respondents UPPCL has sent this meter in the test lab of Secure Meter supplier at Pratap Nagar Industrial Area, Udaipur and through impugned notice dated 19/7/2004 the applicants were directed to be present there on 27/07/2004. It is also the contention of the petitioner that the meter has been removed from the site of applicants on 29/2/2004,

which was the subject matter of the proceedings pending before the Chief Electrical Inspector U.P, and has been opened by secure meter supplier at Udaipur with the malicious co-relation with the UPPCL Authorities and it is apprehended that the metering instrument has been disturbed.

7. Above is the extract of the facts, as placed in the petition however; a systematic scrutiny of the petition reveals several contradictions. Para 16 of the petition says that the petitioner was not satisfied to get the meter tested by the meter supplier since the meter supplier has **healthy relation** with UPPCL. Any apprehension is justified on account of tacit and conjured relationship but not on the basis of a healthy relationship. Further, Annexure No. 2 and Annexure No. 5 of the petition, itself reveals that the petitioner had agreed to get the meter tested in M/s Secure Meter factory at Udaipur and they had also sent a fax to this effect confirming their participation. This fact has not been contested anywhere by the petitioner in the petition or during the course of arguments. Subsequently, they started pursuing the route of Electrical Inspector. Therefore, the argument of the petitioner that they never intended to get the meter tested at M/s Secure Meter factory does not cut much ice.
8. The Commission even went into the procedure under which a consumer can file his appeal before an Electrical Inspector, which is given in section 5.22 of the Electricity Supply Code 2002 as reproduced below:

“If a consumer disputes the results of testing, he may appeal to the Electrical Inspector who shall adjudicate upon the matter and give his decision within one month of the application”.

However, above provision should be invoked only when a consumer disputes the results of testing, as obtained through the procedure of

section 5.20, which has been repeatedly avoided by the petitioner. In order to further elucidate the matter, section 5.20 is being reproduced:

“In all cases of testing of a meter in the laboratory, consumer shall be informed of the proposed date of testing at least 7 days in advance so that he may be present at the time of testing, personally or through an authorized representative”.

Various annexures of the petition bear testimony of the fact that the petitioner was repeatedly informed by the respondents regarding the testing at M/s Secure Meter factory, to which he had also given his consent, but the petitioner preferred not to be present there. However, since the matter is subjudice before the Electrical Inspector and Hon'ble High Court has already issued a directive to Electrical Inspector for speedy disposal of the matter, the Commission would not like to comment on it. However, the Commission also considered the argument of learned counsel that section 5.22 of the Supply Code can be invoked after section 5.18 of the Supply Code, which is reproduced below:

“The Licensee shall have the right to test any meter and related apparatus if there is a reasonable doubt about the accuracy of the meter and the consumer shall provide the Licensee necessary assistance in conduct of test. However, the consumer shall be allowed to be present during the testing.”

But here also, the petitioner could not produce the test result that he is contesting. It would be weird on the part of the Commission to consider any relief when the petitioner has failed to produce the basic report/document that he is contesting. The petitioner also failed to submit any clinching evidence regarding his doubt on the accuracy of meter testing under section 5.18 of the Supply Code.

9. As far as disconnection of the petitioner is concerned, the petitioner has averred in Para 3 of his Application for Interim Relief that respondents have illegally disconnected the Electricity Connection of the applicants on the ground that applicants have filed a petition before the Commission. Such an argument is untenable as there are specified conditions under clause 4.66.1 of the Electricity Supply Code for effecting temporary disconnection, which are based on commercial, safety and technical aspects. It would be bizarre on the part of the Commission to accept this contention because considering the same logic; disconnection should have been effected when the petitioner approached the Hon'ble High Court or Electrical Inspector.

10. Further, the petitioner says in his Para 6 of Application for Interim Relief *“that the charges raised by the UPPCL are illegal, malicious, arbitrary and manipulated as there is nothing in the record and the test report which has been received by the Commission are due to the cause of malicious relationship with the meter supplier by the respondents and has been created in a fictitious manner. Therefore this report is liable to be turned down by this Commission”*.

The Commission has so far neither sent any notice to the respondents nor it has received any correspondence/report related to this case therefore, it is not clear to us that petitioner is referring to which report. The petition therefore, is full of inherent contradictions and it does not spell out the exact reason for the disconnection, leave aside any documentary evidence to this effect.

11. After considering the facts of the petition and the arguments of the learned counsel, the Commission does not find any justifiable ground to intervene

in the matter either in form of interim relief or for admitting the petition under the provisions it has been filed.

12. The petition is accordingly not allowed on the ground of maintainability alone. Further, considering totality of the facts and arguments placed before us, the Commission is not inclined to entertain the interim relief prayer.

(R. D. Gupta)
Member

(P. N. Pathak)
Member

(Vijoy Kumar)
Chairman

Dated : 16th August, 2004
Lucknow