

BEFORE THE
UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW

Petition No. 208/2004

Present:

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

In the matter of:

Non-compliance of the Commission's order dated 23rd July, 2003

And

In the matter of:

M/s Rathi Ispat Limited, Ispat Nagar, Ghaziabad

---Petitioner

And

1. U.P. Power Corporation Limited, Shakti Bhawan, 14 Ashok Marg, Lucknow through its Managing Director.
2. Paschimanchal Vidhyut Vitran Nigam Limited, Victoria Park, Meerut through its Managing Director
3. Executive Engineer, UP Power Corporation Limited, Electricity Distribution Division -1 , 33/11 KV Substation Kamla Nagar, Ghaziabad

Respondents

Order

M/s Rathi Ispat Limited Vs. UPPCL

1. M/s Rathi Ispat Limited has filed a petition on 24th August, 2006 before the Commission for enforcement and compliance of the Commission's order dated 23rd July, 2003 in the matter of validity of agreement, peak hour penalty, correctness of MRI procedure, accuracy of meter and enhancement of security deposit. In the interim, the petitioner has prayed before the Commission to restrain the respondents from realizing the illegal demand of additional security deposit raised without complying the aforesaid order of the Commission and also direct the respondents not to take any coercive measure against him including disconnection of electricity for his refusal to pay the above demand on account of additional security deposit.
2. Before analyzing the present petition, it would be in fitness to recall and reproduce the directions of the Commission in its order dated 23rd July, 2003 issued on the petition filed by M/s Rathi Ispat Limited on 17th September, 2002. The directions of the Commission are being reproduced below :
 - a. That in wake of the defective mechanism as brought out by an inherently contradictory and legally perverse agreement, the agreement has been held ultra vires and the respondents have been directed to enter into an agreement with the petitioner to treat the 33 KV side of the transformer as the "Point of Supply" and accordingly revised the petitioners bill, on the basis of the then 33 KV tariff, from December 2000.
 - b. The exact amount of security deposit should be worked out on the basis of average power consumption for two months after revising the previous bills and the remaining amount should be adjusted.
 - c. For the purpose of imposition of peak hour penalty, the respondents have been directed to impose the same after providing a cushion of 190 KVA over and above the figure of 2250 KVA (15% of the contracted demand) on account of KVA drop in the transformers, that is, only on those readings, where the consumption of the petitioner's factory has exceeded 2440 KVA during restricted hours. After analyzing the peak hour

violations on above basis, the differential process penalty should be imposed if there is a peak hour violation in a month.

- d. On the basis of the records placed before us, there is little justification for questioning the MRI report.
 - e. As far as prospective arrangement of the 33 KV substation is concerned, the parties have been directed to arrive at a negotiated cost of the substation on which the petitioner should purchase the same from the respondents within four months time or else he should construct a new substation, as requested, within a period of one year.
3. As the licensee did not comply with the orders of the Commission, the petitioner filed an application on 6th August, 2004 for enforcement of above directions. The petitioner averred in his petition that in spite of his repeated requests neither the licensee has complied the Commission's order for the purposes of retrospective modification of bills, determination of revised peak hour penalty charges and security deposit on the basis of point 2(a), 2(b) & 2(c), as given above, nor the licensee has shown any willingness to sell the dedicated 33 kV substation in question or in the alternative, to allow him to construct a new 132 kV sub station.
4. As respondents preferred not to submit any counter affidavit in the matter in spite of the reminders issued by the Commission, the Commission listed the matter for hearing on 16th December 2004. Meanwhile, a letter was filed by Mr. Ranjit Saxena, Legal Advisor, UPPCL, on behalf of UPPCL, before the Commission on 13th December, 2004 requesting the Commission to grant some more time, as they are likely to get a stay from the Hon'ble High Court against the order of the Commission, which is before the Hon'ble High Court in FAFO NO. 1141/03, UPPCL Vs. Rathi Ispat Limited. The relevant portions of the letter are being reproduced below:

"कल दिनांक 14.12.2004 को उपरोक्त अपील की दरखास्त पर बहस होगी। इस संदर्भ में आपसे अनुरोध है कि पावर कारपोरेशन को दो सप्ताह का समय और देने की कृपा करें। उ0प्र0 पावर कारपोरेशन की तरफ से दिनांक 2.12.03 को अपील दायर की गई थी और लिस्टिंग समस्या के कारण उपरोक्त अपील में बहस नहीं हो पायी। अपील में दिनांक 18.12.02, 05.01.04, 19.08.04, 06.10.04, 02.11.04, 10.12.04 को एप्लीकेशन दी गई है.....इस सम्बन्ध में हम आपसे प्रार्थना करते हैं कि आप कृपया उपरोक्त मामले में प्रार्थी को अभी और समय दे क्योंकि

न्यायालय के तमाम न्यायमूर्ति के छुट्टी पर जाने की वजह से ळी केस की बहस होने में विलम्ब हो रहा है फिर भी हमारा पूर्ण प्रयास है कि जल्द से जल्द स्थगन आदेश पारित हो जाये। इस सम्बन्ध में आपको हम सूचित करना चाहते हैं कि प्रबंध निदेशक, पश्चिमांचल विद्युत वितरण निगम लि० के द्वारा हमको लगातार निर्देश पारित हो रहे हैं कि इस अपील में बहस की जाय। परन्तु न्यायालय की अनुपस्थिति के कारण तथा राठी स्पात लि० के अधिवक्ता की अनुपस्थिति के कारण उपरोक्त केस में कई बार तारीख पड गई है। जिससे कि विलम्ब हो गया है। इस सम्बन्ध में आपसे अनुरोध है कि आप करीब एक महीने बाद तारीख लगाने की कृपा करें उसी के अंदर हम कोशिश करेंगेकि उच्च न्यायालय से भी निर्णय प्राप्त हो जाये।”

5. The Commission vide its order dated 16th December, 2004 observed that although it is clear that in absence of a stay from the Hon'ble High Court after roughly one and half years from the date of issuance of the Commission's order dated 23rd July, 2003, the attitude of the licensee is a clear manifestation of non-compliance however, since the construction of 132 kV sub station involves huge investment therefore, a stay from the Hon'ble High Court in the matter might affect the petitioner adversely accordingly, the Commission granted respondents further time up to 31st January, 2005 to abide by the order dated 23rd July, 2003 in totality, if they fail to get a relief from Hon'ble High Court. The operative portion of the Commission's order dated 16th December, 2004, while dealing with the issue of non-compliance, is reproduced below:

“Therefore, the Commission has given some more time to respondents to comply its order dated 23rd July 2003 before invoking section 142. In view of sustained non compliance of the Commission's order it is being directed that if the order is not complied by 31st January, 2004, It will be deemed that the clearance with respect to construction of 132 kV sub-station has been given apart from invoking section 142 for other issues of the order.”

6. Subsequent to this, the respondents filed an affidavit before the Commission on 31st January, 2005, wherein it was stated that the licensee has allowed the petitioner to construct new 132 kV sub station but as far as other issues are concerned, they are hopeful of getting favourable interim order from the Hon'ble High Court as the case is listed in second week of February and accordingly, they prayed before the Commission to allow them two months time to obtain favourable stay order from the Court.

7. It is contemptuous on the part of licensee to not comply with the Commission's order dated 23rd July, 2003, although they have failed to get any stay order from the High Court roughly after the passage of three years of the Commission's order despite Commission accommodating their requests, to grant them further time before proceeding against non-compliance, on many occasions and at the same time raising a fresh demand of additional security in utter disregard of the Commission's order. It is unjustifiable on the part of the licensee to selectively apply the rules only in its benefit by way of asking additional security deposit while still not complying the directives of this Commission, as discussed in point 2(a) to point 2(c) of this order i.e. revision of bills from retrospective effect, re-determination of peak hour penalty as well as amount of security deposit in accordance with the principles laid down in the Commission's order dated 23rd July, 2003. It also needs mention that the bill dated 14/8/2006 raising additional security deposit mentions date of disconnection as 6/9/2006, which is in contravention of clause 4.20(d) of Electricity Supply Code 2005.
8. In view of above, the Commission feels that prima facie there is no justification for the licensee to raise the bill of additional security deposit worth Rs. 1,76,36,760.00 in view of sustained non-compliance of the Commission's order and accordingly the aforesaid demand of additional security deposit is being stayed and respondents are being directed not to take any coercive action against the petitioner including disconnection of supply of electricity provided he continues to pay his current consumption bills till the matter is finally decided by the Commission. Respondents are also directed to submit reply to this petition within three weeks and Executive Engineer of the concerned division should be present before the Commission in the next listing of the case, a notice of which will be issued separately, to explain the reasons of non-compliance and why an action should not be initiated by the Commission under section 142 of the Electricity Act, 2003.

(R.D. Gupta)
Member

(P.N. Pathak)
Member

(Vijoy Kumar)
Chairman

Dated : Lucknow : 29th August, 2006

Place : Lucknow