

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Bhanu Bhushan, Member**
2. **Shri R. Krishnamoorthy, Member**

**Petition No.131/2007
(Suo motu)**

In the matter of

Default in payment of Unscheduled Interchanges (UI) charges for the energy drawn in excess of the drawal schedule

And in the matter of

Uttar Pradesh Power Corporation Ltd.

...**Respondent**

ORDER

A writ petition No.(3014/2007) had been filed before the Lucknow Bench of Allahabad High Court by Uttar Pradesh Power Corporation Ltd (UPPCL) on 16.5.2007 challenging the UI ceiling rate enhancement from Rs. 5.70/kWh to Rs. 7.45/kWh with effect from 30.4.2007 by the Commission. During pendency of the writ petition, UI vector was revised with effect from 7.1.2008, fixing ceiling UI rate of Rs.10/kWh.

2. It was brought to the Commission's notice that UPPCL was defaulting in making payments of UI dues, resulting in accumulation of arrears, which were to the tune of about Rs.767 crore (principal amount) as on 31.3.2008. The Commission by its order dated 11.4.2008, directed UPPCL to pay the entire amount of arrears in 6 monthly instalments with the condition that an amount of at least Rs.128 crore was paid before the last day of each month. The payment of arrears was in addition to the timely payment of current UI dues. UPPCL filed a civil Misc. Application before the Hon'ble High Court for stay of the Commission's order dated 11.4.2008.

3. Against the above backdrop, an order dated 2.5.2008 has been made by the Hon'ble High Court, which is reproduced herein in full (as it provides the required background):

“Heard Sri S.K. Kalia, learned Senior Advocate assisted by Sri D.D. Chopra for the petitioner, and Sri A.T.M. Rangaramanujam assisted by Sri Ram Raj and Sri S.S. Chaudhary for the respondents.

The question regarding U.I. Charges and its enhancement from time to time and realization thereof in pursuance of the order passed by the Commission is the subject matter of controversy in the present petition. Initially U.I. Charges were fixed at Rs.4.20 per unit, which were enhanced to Rs.6.00 but later on they were reduced to Rs.5.70 per unit. This fixation of Rs.5.70 is also under challenge in Writ Petition No.2023 (MB) of 2004.

During the pendency of the aforesaid writ petition, U.I. Charges have again been enhanced to Rs.7.45 per unit. This enhancement is under challenge in the present petition. In the meantime, the U.I. Charges have again been enhanced w.e.f. 7.1.2008 to the tune of Rs.10/- per unit. Initially an interim order of stay was passed in this petition staying the notification dated 26.4.2007 issued by the Commission. Consequently, the petitioner was at liberty to deposit the amount @ Rs.5.70 per unit.

The Commission went in appeal before the Supreme Court against the said order and the apex court in Civil Appeal no.2907 of 2007, set aside the aforesaid interim order, but made it clear that it will be open to the petitioner to ask for a fresh interim order in the presence of the respondents after exchange of affidavits between the parties which may be filed at an early date and if a fresh application for interim order is filed by the petitioner, the High Court shall decide the same without being influenced by any of the observations made in the said order. The High Court was also requested to decide the writ petition within two months from the date of placing a copy of the said order before it.

The arguments of the petitioner are going on but since it could not be concluded, therefore, the matter is still pending consideration. During the course of arguments, an application for interim relief has been moved by the petitioner, but no orders have been passed on that application.

However, in view of the fact that Supreme Court vacated the earlier interim order granted by this Court and no interim order was passed by this Court in the fresh application for interim relief filed by the petitioner, the Commission suo motu for execution of the orders and for realization of amount which has become due under its order, which are under challenge before this Court, passed the order on 11th April, 2008 directing the petitioner to deposit Rs. 128 Crores every month w.e.f. May, 2008. It appears that the Commission, suo motu took notice of the fact that the petitioner has not deposited the amount due under its order and, therefore, after giving opportunity to the petitioner to show cause, the Commission has passed the order directing the

petitioner to take necessary action to liquidate the entire U.I. arrears in six equal monthly instalments by paying Rs. 128 Crores every month starting from May 2008. Such payments are to be made before the last day of the month. The Commission also allowed a flexibility to make the payment on different dates within the same month in instalments with the condition that the amount of at least Rs. 128 Crores per month is paid before the last day of the particular month. The Commission further made it clear that this deposit shall be in addition to the timely payment of current U.I. dues, if any, as per the weekly U.I. Charges statements issued by NRPC Secretariat, and it also made it clear that if the respondent (petitioner) fails to comply with the above directions, the Commission may be constrained to direct the NRRLDC to physically curtail the supply to the respondent (petitioner) without any further proceedings.

It is under these circumstances that the second application of interim relief has been filed.

The main objection of the respondents is that despite there being no interim order by any Court and initially interim order having been vacated by the Supreme Court, the petitioner was not at liberty, not to make the payment as per the orders passed by the Commission, nor they could have refused the payment of their own unless of course there was any protection given to them by any Court of law.

Their further submission is that assurance earlier given, which find mention in the impugned order also, have not proved to be true and the indulgence shown has been misused by the petitioner. Their further submission is that so far the payment of U.I. Charges is concerned, that could not have been avoided by the petitioner and mere pendency of the petition will not entitle them to withhold the payment.

Sri Chaudhary argued that this order of the Commission is a fresh cause of action, and therefore, no direction can be issued against the said order in the present petition, as the petitioner is at liberty to challenge the aforesaid order afresh. He further submits that the current U.I. Ceiling rate has again been enhanced to Rs.10/- per unit and the petitioner is liable to pay the same and, therefore, the petitioner have to pay the U.I. Charges accordingly.

Sri A.T.M. Rangaramanujam, learned Senior Advocate assisted by Sri Ram Raj appearing for respondents 2 and 3, only asserted that the payment should be made by the petitioner and sufficient time has already been granted by the Commission, which need not be extended and in making the payment, they would have objection.

So far the plea of Sri Chaudhary is concerned, we find that the present order, against which an interim relief is being claimed is not a substantive order or an independent order, than the one which is the subject matter of the petition but only a consequential order.

The notification issued by the Commission, enhancing the U.I. rates to Rs.7.45, is under challenge and this order has been passed by the

Commission, though suo motu taking into account that the petitioner despite notification being issued and there being no interim order did not deposit the amount. It means that in case, the notification is altered by the Court or set aside or quashed, the demand so raised and the order so passed would automatically fail. It thus does not require filing of a fresh petition for challenging the order of demand or a direction which has been issued for making the payment as the same would depend upon the outcome of the writ petition. Thus, we can entertain this application and can also see into the claim of the interim relief as pleaded by the petitioner. So far further enhancement of U.I. Charges is concerned, that is not the subject matter of challenge in the present petition, and if the petitioner feels aggrieved, they are at liberty to challenge the same.

On perusal of the order passed by the Commission, it appears that the Commission has passed the aforesaid order with a view to realise the amount from the petitioner and for that matter they have also given a time schedule for payment of the amount into six equal monthly instalments alongwith the timely payment of current U.I. dues as per the weekly U.I. charges.

Sri S.K. Kalia appearing for the petitioner says that the Corporation is prepared to deposit the amount subject to any decision which might be taken in the writ petition, but the instalments made by the Commission are proportionately larger, and the Corporation is not in a position to make such deposit every month. He further says that the petitioner has paid Rs.240 Crores towards U.I. Charges on different dates starting from 6.10.2007 to 21.4.2008. He further says that the petitioner undertakes to make payment of Rs. 50/- Crores per month towards payment of arrears of U.I. till they are liquidated fully. Finally, he suggested that the petitioner be allowed to make the deposit in twelve equal monthly instalments, with timely payment of current U.I. dues @ Rs. 7.45 per unit.

Both the parties have arrived at a consensus that the petitioner may be given some more time for making the deposit, but they should be directed to deposit the amount as per the time schedule directed in the order, failing which, action as per law may be taken.

Learned counsel for the respondents Sri Ram Raj, however, says that six instalments have been provided by the Commission, instead ten instalments may be given. In our opinion the request made by the learned counsel for the petitioner that they should be allowed to deposit the amount within twelve equal monthly instalments, is not so unreasonable so as not to accept the request. We allow the petitioner to deposit the amount aforesaid in 12 equal monthly instalments alongwith current U.I. dues at the rate of Rs. 7.45 per unit. This deposit shall be made without prejudice to the rights of either parties.

List this matter in the month of July, 08.”

(UPPCL was the petitioner before the Lucknow Bench of Allahabad High Court. CERC, NRLDC, PGCIL and the State Utilities of Rajasthan, Delhi, Haryana,

Punjab, Himachal Pradesh, J&K, Union Territories of Delhi and Uttranchal were the respondents.)

4. In order to operationalise the implementation of the Commission's order dated 11.4.2008 in the light of the Hon'ble High Court order dated 2.5.2008, the matter has been considered and is being discussed in the succeeding paragraphs.

5. In the order dated 11.4.2008, we had directed UPPCL to pay Rs.128 crore per month starting from May 2008, toward liquidation of the principal UI amount of Rs.767 crore, outstanding on 31.3.2008 in six monthly instalments. In view of the order dated 2.5.2008 of the Hon'ble High Court, the monthly instalment stands modified to Rs.64 crore per month starting from May 2008, for liquidation of UI arrears as on 31.3.2008 in 12 monthly instalments.

6. In the order dated 11.4.2008, we had clarified that the payment of the above instalments had to be in addition to the timely payment of current UI dues. As the Hon'ble High Court in its order dated 2.5.2008 has allowed UPPCL to pay the current UI dues at the rate of Rs. 7.45 per unit, it would be necessary for NRPC Secretariat to work out afresh the amount payable by UPPCL. Pending computation by NRPC Secretariat of the current UI amount which became due for payment by UPPCL (in terms of the Hon'ble High Court's order dated 2.5.2008) on the basis of frequency linked UI rate with ceiling rate of Rs. 7.45 per unit, the amount which is required to be paid by UPPCL in May, 2008 has been calculated as given in next paragraphs.

7. UPPCL shall have to pay an amount of Rs.64 crore as the monthly instalment towards liquidation of principal UI amount of Rs. 767 crores due on 31.3.2008. In

addition, UPPCL is required to pay the current dues. As the order has been made by the Hon'ble High Court on 2.5.2008, only the UI amount which became due for payment by UPPCL in the month of May, 2008 is being considered as "current dues" for the month of May, 2008. Weekly UI statements were issued by NRPC Secretariat on 29.4.2008, 1.5.2008 and 8.5.2008 as per which the amounts payable by UPPCL are Rs.924 lakh, Rs.3594 lakh and Rs.3602 lakh respectively, aggregating to a total of current UI dues of Rs.81.2 crore. These amounts were computed by NRPC Secretariat on the basis of UI charges applicable with effect from 7.1.2008 which have highest ceiling rate of Rs.10/kWh. These were payable by 9.5.2008, 12.5.2008 and 19.5.2008 respectively. The amount payable by UPPCL in May 2008 towards current UI dues may be taken as $\text{Rs.81.2 crore} \times (7.45/10.00) = \text{Rs. 60.5 crore}$, for the purpose of implementation of the order dated 11.4.2008 read with the Hon'ble High Court's order dated 2.5.2008. In other words, UPPCL would be deemed to have complied with our order dated 11.4.2008, (in the light of the order dated 2.5.2008 of the Hon'ble High Court) only if it pays at least Rs.124.5 crore (Rs.64 crore + Rs.60.5 crore) into the NR UI pool account during May 2008.

8. The UI amount which became due for payment by UPPCL in the month of April, 2008, the difference between the UI amount which became due in May, 2008 to be computed by NRPC Secretariat as indicated in para 6 above and the amount of Rs.60.5 crore as computed in para 7 above, and the interest on the principal UI amount outstanding from time to time shall be payable by UPPCL separately.

9. The recovery of UI amount, arrears as well as the current dues, in terms of this order, is subject to review after conclusion of the proceedings presently pending before the Hon'ble High Court.

Sd/-
(R. KRISHNAMOORTHY)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

New Delhi dated the 29th May 2008