

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri R. Krishnamoorthy, Member**

**Petition No. 132/2007
(Suo-motu)**

In the matter of

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

And in the matter of

Power Development Department, Govt. of J & K, Srinagar **...Respondent**

Following was present:

Shri Abdul Rashid, CE, J&K, PDD

**ORDER
(DATE OF HEARING : 7.10.2008)**

The Commission by its order dated 13.5.2008 directed the respondent to liquidate the principal amount of UI arrears in 6 equal monthly installments @ Rs. 111 crore per month, starting from June 2008, in addition to payment of current UI dues. The directions of the Commission were also conveyed to the senior functionaries of Government of Jammu & Kashmir and the Central Government including the Chief Secretary, Government of J & K.

2. The respondent paid an amount of Rs. 109.98 crore in the month of June 2008, but no payment was made during the months of July and August 2008, thereby leading to non-compliance of specific direction of the Commission as contained in the said order dated 13.5.2008. Under the above circumstances, the Commission by its order dated 10.9.2008 issued show cause notice to the

respondent directing it to explain, as to why penalty under Section 142 of the Electricity Act, 2003 (the Act) , be not imposed on it. Accordingly, matter was listed for hearing after issue of the show cause notice.

3. The representative of the respondent stated that the installments @ Rs. 111 crore per month for the months of July, August 2008 (the subject matter of the show cause notice) and September 2008 could not be paid due to the then prevailing extraordinary disturbed conditions in the State, Jammu as well as Kashmir regions. He informed that during the period of trouble, the agitators damaged around thirty thousand consumer energy meters which adversely affected the billing process. As a result, revenue realization process received a severe setback, it was stated. The representative of the respondent informed that despite the adverse conditions, payment of Rs. 61.14 crore was made in the end of September 2008. It was further stated that a credit of over Rs. one hundred crore accrued in favour of the J & K State in the form of UI till August 2008.

4. The representative of the respondent requested that in view of the extraordinary circumstances which the State faced, it may be exempted from operation of penalty clause and the notice be discharged. He sought relaxation in payment schedule of outstanding UI charges decided by the Commission in its order dated 13.5.2008. He undertook to pay a sum of Rs. 28 crore during the current month (October 2008) and Rs. 20 crore per month thereafter. Subsequently, an affidavit on these lines has been filed on behalf of the respondent by Shri Abdul Rashid, CE.

5. In the past there had many instances of over-drawl by the respondent, and accumulation of UI arrears for which proceedings for recovery of dues were initiated. However, these proceedings were dropped after the assurances similar to those given in the present proceedings, with a fond hope of reasonable behavior on the part of the respondent. The liberal attitude adopted by the Commission in the past has, however, not been able to persuade the respondent to maintain grid discipline as also the financial discipline. Any over-drawl by a State from the grid is paid only through UI mechanism. UI accounts are issued on a weekly cycle basis as per the Grid Code. The constituents are required to pay the indicated amount into regional pool account operated by RLDC within 10 days. Over-drawl from the grid in itself is undesirable as it deprives some other utility of its legitimate entitlement. Non-payment of the dues for such over-drawl compounds the matter further. The constituent, whose share has been drawn by another utility, has made payment to the generating company and the transmission utility for its share of power. However, its payments are withheld by the over-drawing utility and in this manner the former suffers financially as well. Therefore, reckless and unabated over-drawls, coupled with non-payment of dues for such over-drawl cannot be permitted endlessly.

6. From the undertaking given by the respondent, we get a feeling that it has not adopted a reasonable attitude. It has proposed to pay UI dues @ of Rs.20 crore per month starting from November 2008. At this rate, it will take a long time to liquidate the arrears already accumulated. In addition, with the on set of winter season, going by the past experience, there are likely to be further over-drawls, payments for which are not committed. Therefore, we are not inclined to accept the undertaking given by the respondent, as regard the future payments.

7. The defence of the respondent on non-compliance of the Commission's direction contained in the order dated 13.5.2008 is not tenable since it is too general. Situation might not have been very congenial in the State for some period, but it stated normalizing thereafter. There is no escape from the conclusion that the respondent is guilty of non-compliance of the Commission's order dated 13.5.2008 till now.

8. We are satisfied that the non-compliance of the Commission's directions by the respondent is contumacious and we hold it guilty on that count. Therefore, we direct imposition of a penalty of Rs. one lakh under Section 142 of the Act on the respondent. The amount of penalty shall be deposited by the respondent latest by 25.10.2008 through a demand draft in favour of Assistant Secretary of the Commission.

9. Under Section 149 of the Act, when an undertaking is found guilty of non-compliance of the Commission's directions, etc. the person in-charge of and responsible for the conduct of its business is as well as deemed to be guilty of having committed the offence and such a person is also liable to be proceeded against and punished. Therefore, in exercise of power under Section 149 of the Act, we direct issuance of notice to the Commissioner and Secretary, Power Development Department, Govt. of J & K, the respondent, to show cause, latest by 6.11.2008, as to why penalty should not be imposed on him also and recovered accordingly.

10. Penalty imposed for past defiance and non-compliance of the Commission's directions does not absolve the respondent of its liability to pay the UI arrears as per the order dated 13.5.2008. We, therefore, reiterate that the entire amount payable up to the month of October 2008, including arrears for the months of July, August and September 2008 shall be paid latest by 31.10.2008.

11. List the matter for further directions on 11.11.2008.

12. A copy of this order be sent to the Chief Secretary, Govt. of J & K as also the Secretary, Ministry of Power, Govt. of India, in addition to the Commissioner and Secretary, Power Development Department, Govt. of J & K.

Sd/-
(R. KRISHNAMOORTHY)
MEMBER

Sd/-
(DR. PRAMOD DEO)
CHAIRPERSON

New Delhi, dated the 10th October 2008