

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 220 of 2006

Dated: March 30, 2007

Present:

**Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member**

M/s Polyplex Corporation Limited
Regd. Office- B-37, Sector-1,
Noida, Ghaziabad -Appellant(s)

V/s.

1. Uttaranchal Power Corporation Limited,
Urja Bhawan, Kanwali Road, Dehradun
through its Chairman and Director
2. The Executive Engineer, Electricity Distribution Division,
Uttaranchal Power Corporation Limited, Rudrapur,
District Udham Singh Nagar
3. The Ombudsman, Uttaranchal Electricity Regulatory
Commission, 24 Vasant Vihar, Phase-II,
Dehradun- 248006
4. The Chairman Consumers' Grievances' Redressal Forum,
Kumaon Zone, 132 KV S/S Compound,
Post Office Kathgodam, District Nainital
5. The Appellate Committee, Uttaranchal Power Corporation
Limited, Head quarter Appellate Committee Dehradun
6. Uttaranchal Electricity Regulatory Commission,
24 Vasant Vihar, Phase-II, Dehradun-248006
Through its Chairman -Respondent(s)

Counsel for the Appellant(s): Mr. M.L. Lahoty with Mr. P.K.
Sharma & Ms. Poonam Lahoty
Counsel for the Respondent(s) : Mr. P.S. Bhullar with Mr. Shashwat
Kumar for UERC
Mr. Pradeep Misra for UPCL

JUDGMENT

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson

This appeal is directed against the Order of the Appellate Committee of the Uttaranchal Power Corporation Ltd. (for short 'UPCL') dated December 10, 2003, Order of the Consumers' Grievances Redressal Forum (for short 'CGRF'), Kumaon Zone dated May 13, 2005, Award of the Ombudsman dated November 29, 2005 and finally the Order of the Uttaranchal Electricity Regulatory Commission (for short 'UERC') directing return of the petition of the appellant by its letter dated March 29, 2006 on the ground that "the Uttaranchal (U.P. Electricity Reforms Act) Adoption and Modification Order, 2001 has been replaced".

2. The facts leading to the appeal are as follows:

The appellant with a view to run its industrial unit set up for the manufacture of polyester films, applied to the Uttar Pradesh State Electricity Board (for short 'UPSEB') for a load of 2500 KVA. Accordingly, electric connection No. HP 14 was provided to it with the sanctioned load of 2500 KVA, which was released through existing 33 KV feeder originating from 132 KV Lohia Sub-station. The agreement, in this regard, was executed by the appellant and the UPSEB on June 29, 1987.

3. Subsequently, the appellant, on moving a fresh application, was sanctioned a new connection No. HP 18 with a load of 1000 KV for manufacture of chips.

This load was released through the 33 KV feeder, starting from 132 KV Lohia Sub-station. This feeder was already supplying power to the appellant through connection No. HP-14 and to two other consumers, namely, (1) M/s Easter Industries Limited and (2) M/s Khatima Fibers Limited.

4. On July 27, 2000, the Uttar Pradesh Electricity Regulatory Commission (for short 'UPERC') issued its first tariff order, effective from August 9, 2000.

The tariff order, inter-alia, laid down as follows:

“A special rate for seasonal industries has been introduced. To ensure availability of power to industries connected to independent feeders emanating to 132 KV, 220 KV and 400 KV sub-stations, they shall be allowed to operate during the peak hours as well. They will be able to do so by paying small additional charge of 15% of the amount of bill in month. These consumers will be ensured minimum 500 hours supply. In case of shortfall in the guaranteed hours of supply a rebate of 1% per 10 hours or part thereof shall be admissible on the total amount of the bill.

Fixed charges Rs. Per KVA per month and energy charges Paise per unit.

*UPERC
As approved*

Demand Charges 130 per unit

*PLUS
Energy Charge 3.90 per unit*

For consumers getting power supply in restricted hours

15% surcharge on demand and energy charges

For consumers getting power supply on independent feeders emanating from 400/200/132 KV

15% surcharge on demand and energy charges and have the assured supply of minimum 500 hours in a month. In case of shortfall in the guaranteed hours of the supply a rebate at the rate of 1% per ten hours or part thereof shall be admissible on the total amount as computed under the rate of charge.”

As is apparent from above, to ensure minimum 500 hrs. of availability of power during peak hours to industries connected to independent feeders, originating from 400/220/132KV the tariff order required the industrial consumers to pay an additional surcharge of 15% on demand and energy charges.

5. Pursuant to the fixation of tariff, the Uttar Pradesh Power Corporation Ltd. (for short UPPCL), which succeeded the UPSEB, issued Rate Schedule on August 7, 2000. The Rate Schedule, amongst others, stipulates as under:

(a) In respect of consumers who opt for supply during restricted/peak hours an additional surcharge of 15% on the amount billed at the “Rate of Charge” under item-4A above i.e. Demand and Energy Charges shall be levied.

(b) However, in respect of consumers getting power supply on independent feeders emanating from 400/220/132 KV sub-stations an additional of 15% on demand and energy charges shall be charged further subject to condition that these consumers will get an assured supply of minimum 500 hours in a month. In case of shortfall in above guaranteed hours of supply a rebate @ 1% for each 10 hours short fall, will be admissible on the total amount computed under “Rate of Charge.”

6. On September 8, 2000, a circular was issued by the UPPCL providing that in the case of consumers drawing electricity through an independent feeder, the aforesaid surcharge of 15% would not be levied, if they submit an application stating that they are not intending to draw 500 hours of assured supply during the peak hours.

7. It is the case of the appellant that inspite of fact that it had neither exercised the option for availing an assured 500 hours guaranteed supply during peak/restricted hours nor was it getting supply through an independent feeder, the UPPCL levied the aforesaid additional surcharge of 15% as reflected in its bill for the month of September 2000 and for the subsequent months. The bills, however, were paid by the appellant under protest and the protest letters were lodged by the appellant with the UPPCL.

8. After the State of Uttaranchal came into existence on November 9, 2000, UPCL was incorporated on Feb. 12, 2001. Even the UPCL continued with the levy of surcharge inspite of the fact that the UPCL had rescinded its circular dated September 8, 2000.

9. On November 11, 2002, the appellant filed an Appeal under Electricity Supply (Consumers') Regulations, 1984 before the Appellate Committee challenging the levy of surcharge.

10. On December 10, 2003, the Appellate Committee rejected the appeal of the appellant on the ground that the appellant was drawing power through an independent feeder. This order, however, was communicated to the appellant on December 30, 2003.

11. Aggrieved by the order passed by the Appellate Committee, the appellant filed a petition before UERC claiming refund of 15% surcharge realized by the UPCL alongwith interest/damages/compensation and imposition of penalty. During the pendency of the petition before the UERC, the UPCL refunded 15% surcharge only for the period, 16.9.2001 to 19.9.2003. The refund, however, was paid without any interest. On June 22, 2004, the UERC transferred the petition of the appellant to the Consumers' Grievances Redressal Forum (for short 'CGRF'), Kumaon Zone.

12. On May 13, 2005, the CGRF partly allowed the petition directing payment of interest by the UPCL on refund of surcharge for the period, September 16, 2001 to September 19, 2003. The rest of the claim, however, for refund of the surcharge for the period September 8, 2000 to September 15, 2001 was rejected.

13. Not satisfied with the order of the CGRF, Kumaon Zone, the appellant filed a representation/petition before the Ombudsman on July 12, 2005. The Ombudsman by its award dated November 29, 2005 rejected the representation/petition of the appellant.

14. Thereafter, the appellant filed a petition before Uttaranchal Electricity Regulatory Commission. As already pointed out the UERC returned the petition to the appellant through its letter dated March 29, 2006. Aggrieved by the return of its petition by the UERC, the appellant has filed the instant appeal.

15. We have heard the learned counsel for the parties. The learned senior counsel for the appellant submitted that in the bills sent to the appellant by the utility surcharge was levied without any authority of law. The main contention of the appellant is that the supply was not being made through an independent feeder and as such no surcharge could be levied. The learned counsel referred to the decision of the Allahabad High Court in L.M.L. Ltd, Kanpur Vs. State of Uttar Pradesh, wherein it was observed as follows:

“----The word “independent feeder” has not been defined in the tariff and the learned counsel for the parties have placed reliance on the dictionary meaning of the word. ‘Independent’ means not depending or contingent upon something else for existence, operation etc.; not relying on another or others for aid or support. The meaning of the word “feeder” in the context in which it is used here is a conductor or group of conductors connecting primary equipment in an electric power system.----“

16. The learned senior counsel also pointed out that in the facts and circumstances of that case, the Allahabad High Court, came to the conclusion that the consumer was getting supply from an independent feeder line emanating from

132 KV Sub-station. He invited our attention to the following conclusion of the High Court:

“....A copy of monthly readings and the power consumption from January to August, 2000 has been filed as Annexure CA-5 to the counter-affidavit. The last two columns of this document mentioned the units supplied at Navabasta sub-station and billed at consumer (petitioner) end and they almost tally with each other. This is a conclusive proof of the fact that the entire quantum of electricity supply emanating from Navabasta sub-station is being received by the petitioner. Had there been any tapping in between or any other consumer was getting supply from the same feeder line, the quantum of electricity supply received by the petitioner would have been much less and would not have tallied with the supply emanating from Navbasta sub-station. ...”

17. The learned senior counsel for the appellant also referred to Chambers’ Science and Technology Dictionary, wherein the following meaning has been ascribed to the words ‘Independent Feeder’:

“A feeder in an electric power distribution system which is used solely for supply to a substation or a feeding point and not as an inter connector. Also called dead-ended feeder, radial feeder”

18. Our attention was also drawn to paragraph 2.2 of the U.P. Electricity Supply Code 2002 and paragraph 2.2 of the U.P. Electricity Supply Code 2005.

These paragraphs are quoted below:

Paragraph 2.2 of the U.P. Electricity Supply Code 2002

“2.2

(aa) “Independent feeder” means a feeder constructed at the cost of a consumer and supplying electricity to only that consumer.”

Paragraph 2.2 of the U.P. Electricity Supply Code 2005:

“2.2 ----

(ff) “Independent feeder” means a feeder emanating from a grid substation, for supplying electricity to a single consumer, or, a group of consumers having similar process, on the same or contiguous premises.”

In conclusion, it was asserted by the learned senior counsel that the appellant was not drawing energy from an independent feeder.

19. On the other hand the learned counsel for the respondents submitted that the appeal was rightly returned by the UPERC, since it did not have the jurisdiction to deal with the matter as it was essentially a billing dispute. It was contended that the Tribunal also does not have the jurisdiction to deal with an appeal relating to a billing dispute. It was also urged that no appeal lies to this Tribunal against the impugned orders passed by the Ombudsman, the Consumers’ Grievances Redressal Forum and the Appellate Committee of the UPCL. Besides, it was submitted that Ombudsman on the basis of the evidence on record has come to the conclusion that appellant was drawing power from an independent feeder. According to the learned counsel for the respondent, the question whether

the appellant was drawing power from an independent feeder or not is a question of fact and is a billing dispute.

20. The fundamental questions involved in the appeal are:

(i) Whether the Uttarachal Electricity Regulatory Commission had the jurisdiction to deal with the subject matter of the petition, viz. a billing dispute, filed before it;

(ii) Whether an appeal from the impugned order of the UERC arising from a billing dispute will lie to this Tribunal;

(iii) Whether a Regulatory Commission has the jurisdiction to entertain a cause arising from the orders of Ombudsman, Consumers' Grievances Redressal Forum or bodies like Appellate Committee; and

(iv) Whether an appeal lies to this Tribunal from the orders of Ombudsman, Consumers' Grievances Redressal Forum and the Appellate Committee.

Question No. (i)

21. The answer to the first question depends upon the identification of the powers and functions which have been vested in the Regulatory Commission. In this regard it must be noticed that the State Commission is charged with the duty to discharge the functions assigned to it by Section 86 of the Electricity Act, 2003 (for short the 'Act') read with Section 61 thereof. Section 61 of the Act requires

the appropriate Regulatory Commission to specify the terms and conditions for determination of tariff. Section 86 lays down the various functions which the State Commission is required to discharge. The functions of the State Commission can be classified under the following heads, which can be described with reference to various provisions of Sections 86 and 61 of the Act:

(a) **Quasi-Judicial Functions**: The State Commission is required to discharge quasi judicial functions as ordained by Sub-clauses (a), (b), (f) and (j) of Subsection 1 of Section 86. Functions prescribed by each of the Sub-clauses are detailed as under :

- (i) Sub-clause (a) requires the State Commission to determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the state.
- (ii) Sub-clause (b) empowers the Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity is to be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the state.
- (iii) Sub-clause (f) empowers the State Commission to adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration.

- (iv) Sub-clause (j) Confers power on the State Commission to fix the trading margin in the intra-state trading of electricity, if considered necessary.

(b) **Administrative Functions**: Sub-clauses (c), (d), (e) and (g) of Sub-section

(1) of Section 86 confers administrative powers on the state commission:

- (i) Sub-clause (c) requires Commission to facilitate intra-state transmission and wheeling of electricity.
- (ii) Sub-clause (d) vests power in the Commission to issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the state.
- (iii) Sub-clause (e) mandates the Commission to promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and to specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee.
- (iv) Sub-clause (g) empowers the Commission to levy fee for the purposes of the Act.

(c) **Quasi Legislative Functions**: Section 61, 86(1) (i) and (h) confer quasi-Legislative powers on the State Commission.

- (i) Under Section 61 of the Act, the Commission is required to formulate the terms and conditions for determination of tariff.
 - (ii) Under Sub-clause (i) of Sub-section (1) of Section 86 of the Act, the Commission is mandated to specify standards with respect to quality, continuity and reliability of service by the licensees.
 - (iii) Sub-clause (h) of Sub-section (1) of Section 86 confers power on the Commission to formulate a Grid Code for the state.
- (d) **Supervisory Functions**: Under Section 86(1)(i) the State Commission has the supervisory jurisdiction to enforce the standards laid down by it with respect to quality, continuity and reliability of service by the licensees.
- (e) **Residuary Functions**: Section 86(1)(k) empowers the State Commission to discharge such other residuary functions as may be assigned to it under the Act.
- (f) **Advisory Functions**: The State Commission has also been assigned with advisory functions under Sub-section (2) of Section 86 of the Act. The State Commission can be called upon by the State Government to advise on the following matters:
- (i) promotion of competition, efficiency and economy in activities of the electricity industry;
 - (ii) promotion of investment in electricity industry;
 - (iii) reorganization and restructuring of electricity industry in the State;

- (iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government;

22. Thus, from the aforesaid analysis, it is clear that neither under Section 61 of the Act nor under Section 86 thereof, the state Commission has been empowered to deal with billing matters. We have not been referred to any other provision of the Electricity Act, 2003 which authorizes the State Regulatory Commission to deal with such matters.

23. In view of what has gone before us, we hold that the Uttaranchal Electricity Regulatory Commission has no jurisdiction to deal with a matter relating to billing of a consumer. Therefore, we hold that the UERC did not have the jurisdiction to deal with a billing matter.

Question No. (ii)

24. As regards the second question, the answer is not far to seek. Since the UERC does not have the jurisdiction to deal with the subject matter of the petition filed before it by the appellant herein, a fortiori, this Tribunal will also have no jurisdiction to deal with such a matter. Second question is decided accordingly.

Question No. (iii)

25. For determination of the third question, we would need to look at various provisions of the Act, and the Rules framed thereunder.

26. Sub-section (5) of Section 42 of the Act requires every distribution licensee to establish a forum for redressal of grievances of the consumers in accordance with the guidelines specified by the State Commission. Any consumer can move the Consumer Redressal Forum constituted under Section 42(5) of the Act for redressal of his grievance. In the event of non redressal of his grievance, he can, under Sub-Section (6) of Section 42 of the Act, make a representation to the Ombudsman, who is required to be appointed or designated by the State Commission. Rule 7 of the Electricity Rules, 2005 makes provisions for effectuating the purposes of Sub-sections (5) and (6) of Section 42 of Act. Sub-rule 1 of Rule 7 provides that the distribution licensee shall establish a forum for redressal of grievances of consumers under Sub-section (5) of Section 42 consisting of officers of the licensee. Sub-rule (2) of Rule 7 of the Rules vests the State Commission with the power to appoint an Ombudsman in consonance with the provisions of sub-Section (6) of Section 42 of the Act. Sub-rule 3 of Rule 7 of the Rules requires the Ombudsman to consider the representations of the consumers consistent with the provisions of the Act, Rules and Regulations or general orders or directions given by the appropriate Government or the appropriate Commission. Sub-Rule 4(a) of Rule 7 of the Rules requires the Ombudsman to prepare reports on six monthly basis, giving details of the nature of the grievances of the consumers dealt by the Ombudsman. The report is also required to contain response of the licensees for the redressal of grievances and the opinion of the Ombudsman on the licensees' compliance of the standards of

performance as specified by the Commission under Section 57 of the Act during the preceding six months. Sub-rule 4 (b) of Rule 7 of the Rules requires Ombudsman to forward the report to the State Commission and the State Government within 45 days after the end of the relevant period of six months.

27. No provision has been brought to our notice under which a consumer can file a petition before the Regulatory Commission against the award of the Ombudsman. The same also applies to the orders of the Consumers' Grievances Redressal Forum and the Appellate Committee. Therefore, we hold that a Regulatory Commission has no jurisdiction to entertain a cause arising from the orders of Ombudsman, Consumers' Grievances Redressal Forum and the bodies like Appellate Committee.

Question no. (iv)

28. In order to answer the fourth question, it is necessary to refer to Section 111 of the Electricity Act 2003. Under Section 111 of the Act, appeal lies to the appellate Tribunal from an order passed by the appropriate Commission or by the Adjudicating officer. Section 111 of the Electricity Act 2003 reads as follows:

“111. Appeal to Appellate Tribunal. – (1) Any person aggrieved by an order made by an Adjudicating Officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:

Provided that any person appealing against the order of the Adjudicating Officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realization of penalty.”

29. It was submitted by the learned senior counsel for the appellant that an Ombudsman or Consumers' Grievances Redressal Forum or bodies like Appellate Committee is an 'Adjudicating Officer' and under Section 111 of the Act, an appeal would lie to this Tribunal against the orders passed by any of them. The question to be considered is whether any of these authorities is an 'Adjudicating Officer'. The answer lies in Sections 143 and 144 read with Sections 29, 33 and 43 of the Act. These seem to be the only provisions, which are capable of shedding light on the question.

30. Section 143 of the Act empowers the Appropriate Commission to appoint any of its members as the Adjudicating Officer for holding an enquiry after giving the person concerned reasonable opportunity of being heard before imposing any penalty on him. Section 144 of the Act lays down the factors which are to be taken into account by the Adjudicating Officer while adjudicating the quantum of penalty under Section 29 or Section 33 or Section 43 of the Act. Section 29 of the Act empowers the Regional Load Dispatch Centre to issue such directions and exercise such supervision and control as may be required for ensuring stability of

grid operations and for achieving the maximum economy and efficiency in the operation of power system in the region under its control. Sub-Section (2) of Section 29 of the Act requires every licensee, generating company, generating stations, substations and any other person connected with the operation of the power system to comply with the directions issued by the Regional Load Dispatch Centre under Sub-section (1) of Section 29 of the Act. Sub-section (3) of Section 29 of the Act provides that all directions of the Regional Load Dispatch Centre to any Transmission Licensee of the State Transmission Lines or any other licensee of the State or Generating Company or sub-station in the State shall be issued through the State Load Dispatch Centre and the State Load Dispatch Centre shall ensure that such directions are duly complied with by the licensee or generating company or sub-station. Sub-section (6) of Section 29 of the Act makes a provisions for the imposition of penalty upto Rs. 15 lakhs on the licensee, generating company or any other person who fails to comply with the directions issued by the Regional Load Dispatch Centre under Sub-section (2) or sub-section (3) of Section 29 of the Act.

31. Section 33 of the Act requires every licensee, generating company, generating stations, sub-stations and any other person connected with the operation of the power system to comply with the directions issued by the State Load Dispatch Centre. In case of default in complying with the directions by any of the aforesaid entities or persons, a penalty up to Rs. 5 lakhs can be imposed.

32. Section 43 of the Act requires a distribution licensee to supply electricity to owner and occupier of any premises on demand by an applicant within specified period of time. In case of default the distribution licensee is liable for penalty, which can extend to Rs. 1000/- for each day of default. Thus penalty can be imposed for violation of directions of Regional and State Load Dispatch Centres & violation of Section 43 of the Act. The question is who can impose penalty conceived by the Sections 29, 33 and 43 of the Act. This will be clear from a reading of Section 143. Section 143 of Act reads as follows:

“Power to adjudicate – (1) For the purpose of Adjudicating under the Act, the Appropriate Commission shall appoint any of its members to be an Adjudicating Officer for holding an inquiry in such manner as may be prescribed by the Appropriate Commission, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the Adjudicating Officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the Adjudicating officer, may be useful for or relevant to the subject matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of section 29 or section 33 or section 43, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

33. Thus, according to Section 143 of the Act, it is the Adjudicating Officer, who can impose the penalty and the Adjudicating Officer is the one who is a member of the Appropriate Commission and is appointed by it. It is against the

order of the Adjudicating Officer that a person can file an appeal u/s 111 of the Act. Any person appealing against the order of the Adjudicating Officer under Section 111 is required to deposit the amount of such penalty unless the Tribunal dispenses with such deposit. The fact that the first proviso to Section 111 of the Act requires the defaulter to deposit penalty levied by an Adjudicating Officer, shows that the Adjudicating Officer is the one conceived by Section 143 of the Act. It is the Adjudicating Officer appointed under Section 143, who is empowered to impose penalty under Sections 29, 33 and 43 of the Act. The Ombudsman appointed under the Act by the appropriate Commission is not the Adjudicating Officer within the meaning of Section 111 of the Act as the Adjudicating Officer can only be appointed under Section 143 of the Act, while the Ombudsman is appointed under Section 42(6) of the Act and has no jurisdiction to levy any penalty. On the same token, neither the Consumer Grievances Redressal Forum nor the Appellate Committee can be considered as an Adjudicating Officer conceived by Section 111 of the Act read with Section 143 thereof.

34. Having regard to the aforesaid discussion and answers to the aforesaid questions, we hold as under

- (1) No petition/appeal/application lies before any Regulatory Commission or this Tribunal in respect of a billing matter.

- (2) No petition/appeal/application lies to any Regulatory Commission or the Appellant Tribunal from an order passed by an Ombudsman or Consumer Grievances Redressal Forum or any other body like Appellate Committee.
- (3) The petition filed before the UERC was rightly returned by the Commission.
35. Accordingly, the appeal fails and is hereby dismissed.

(Justice Anil Dev Singh)
Chairperson

(A.A. Khan)
Technical Member

Dated: **the March 30, 2007**