

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

Appeal No. 128 of 2007

Dated : January 21, 2008

**Present : Hon'ble Mr. A. A. Khan, Technical Member
Hon'ble Ms. Justice Manju Goel, Judicial Member**

In the matter of:

- 1. M/s. Jalan Concast Ltd.**
Unit 2, Rolling Mill,
Nakha Jungle, Railway Crossing,
Gorakhpur – 273 007.

- 2. M/s. Jalan Concast Ltd.**
Furnace unit,
Nakha Jungle, Railway Crossing,
Gorakhpur – 273 007
Through its Managing Director ... Appellants

Versus

- 1. U.P. Electricity Regulatory Commission**
Vibhuti Khand, Gomti Nagar,
Lucknow – 226 001
Through its Chairman

- 2. The Managing Director
U.P. Power Corporation Ltd.,**
Shakti Bhawan, Ashok Marg,
Lucknow – 226 001

**3. Managing Director
Poorvanchal Vidyut Vitran Nigam Ltd.,
Varanasi**

**4. Executive Engineer
Electricity Urban Distribution Division-III
Sarojini Lane,
Basaratpur,
Gorakhpur – 273 007**

... Respondents

Counsel for the Appellant : Mr. Vishal Dixit and
Mr. Anil Kumar Mishra
Mr. Mohd. Rafi

Counsel for the Respondents: Mr. Pradeep Misra, along with
Mr. Daleep Kumar Dhyani

J U D G M E N T

Ms. Justice Manju Goel, Judicial Member

Introduction:

1. The present appeal is directed against the order of the UP Electricity Regulatory Commission (the 'Commission' for short) dated 17.07.07 in Petition Nos. 458 & 459 of 2007.

2. M/s. Jalan Concast Ltd., the appellant is a consumer of electricity from Purvanchal Vidyut Nigam, a unit of UP Power

Corporation Ltd. (UPPCL for short). The UPPCL raised a bill on 25.04.07 purportedly in pursuance of the order dated 19.10.06 of the High Court of Allahabad (Lucknow Bench) in its appeal No. FA 96 and others of 2002. The appellants filed Petition No. 458 of 2007 before the Commission challenging the bill as being barred by Section 56(2) of the Electricity Act 2003. Section 56(2) of the Electricity Act 2003 bars recovery of dues which are not being shown on the bills for two years. The appellant contended that the arrears demanded vide the bill dated 25.04.07 is seven years old and had not been shown in the intervening bills. The Commission passed the impugned order dismissing the petition filed by the appellant being No. 458/07, the application for interim relief being No. 459/07, in view of order of the High Court dated 19.10.06. This order was challenged in the High Court and the High Court vide an order dated 24.07.07 disposed of the writ petitions with the observation that the order of the Commission was appealable before this Tribunal. Hence, the present appeal.

Factual Matrix:

3. The Commission passed the tariff order on 27.07.2000 effective from 09.08.00 to 15.09.01. One of the item of tariff chargeable was as under : “for consumers getting power supply on independent feeder emanating from 200 / 220 / 132 KVA – 15% surcharge on demand and energy charges and have the assured

supply of 500 hours in a month. In case of shortfall in guaranteed hours of supply the rebate of 1% per 10 hours or part thereof shall be admissible on the total amount as computed under rate of charge". The UPPCL vide circulars dated 08.09.00 & 15.12.2000 invited options from the consumers of heavy electricity HT-industry category, contrary to tariff order and asked them to inform the Power Corporation whether the assured supply of 500 hours per month was or was not required and offering to exempt a surcharge in case of such assured supply was not required. This notification was struck down by the High Court in *LML Ltd Vs. State of Uttar Pradesh & Others 2001(2) AWC 1472* on the ground that the circular amounted to amendment of tariff order passed by the Commission and the UPPCL being the licensee had no such power. The UPPCL accordingly on 31.08.01 withdrew its circulars dated 08.09.2000 & 15.12.2000 and raised the bills as per the tariff order mentioned above for 15% independent feeder surcharge. These bills were challenged by several consumers before the Commission. Some of the consumers alleged that the bills were fictitious. The Commission rejected all these petitions vide orders dated 12.09.02 & 14.10.02. The review petitions were also rejected. On appeal the High Court vide its judgment in FA 75 & 96/2002 dated 19.10.06 held that circulars dated 8.9.00 and 15.12.00 were *otiose*, illegal and in-operative, that the tariff as approved by the Commission remained in force and that the doctrine of promissory estoppel was

not applicable to the case and dismissed the appeals. The licensee/UPPCL, on 26.04.07 issued demand pertaining to the period from 09.08.2000 to 15.09.2001. The present appellants challenged there bills before the Commission which the Commission rejected by the impugned order.

4. Meanwhile the effect of the circulars issued by UPPCL came to be examined by the Supreme Court in civil appeal Nos. 5789/02, 1106/07, 1622/07, 1623/07, 1624/07, 1625/07, 1626/07, 1627/07, 1628/07, 1716/07 and SLP No. 6721/07. The decision of the Supreme Court in those matters, dated 13.12.07, can be culled out in the following manner:

“48. The proximity of issuance of the circular vis-à-vis Notification must also be noticed. The tariff was framed on 7th August, 2000 which came into force from 9th August, 2000 whereas the circular was issued on 8th September, 2000. The consumers exercised their option on 31st October, 2000. The judgment in the case of LML (supra) was delivered on 25th April, 2001. The circular dated 31st August, 2001 undoubtedly was issued in view of the said judgment. The said judgment did not deal with the questions raised before us. In any event if the licensee violates the tariff approved by the Commission appropriate

legal action can be taken against it. But it would be too much to contend that for a mistake on the part of the Corporation, the consumers would suffer. In this view of the matter, we are of the considered view that the doctrine of estoppel shall apply in the cases where the promise was made. However, the principle of said doctrine would, however, not be applicable where no such promise was made.

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51. *In view of the fact that several matters are pending before the Commission on question of independent feeder we need not express any opinion thereupon. If any appeal is pending before the Commission on the said question it would decide the same independent of the same irrespective of the result of this decision. We, therefore, without expressing any opinion on the said question, permit the appellants to agitate the same point before the Commission.*

52. *We, therefore, allow these appeals only to the extent mentioned hereinbefore in terms of the promise made by*

the U.P. Power Corporation and allow the appeals on question of independent feeder to be withdrawn subject to the observations made by us hereinabove.”

Submissions of the parties:

5. It is contended by the learned counsel for the appellant that the Supreme Court vide the decision has settled the issue in as much as it is held that for the period during which the circular dated 08.09.00 remained operative i.e. up to 31.08.2001 the consumers to whom UPPCL had promised not to charge surcharge will not be liable for the 15% surcharge. The consumers who acted on the circular would not be liable for the 15% surcharge by virtue of promissory estoppel. According to the learned counsel for the appellant his appeal is liable to be allowed on this short ground. On the other hand the learned counsel for the respondent submits that although the Supreme Court has settled the issue of law, the present appeal is liable to be dismissed on the ground that the Commission did not have the power to adjudicate upon the dispute raised by a consumer and therefore had rightly dismissed the complaints filed before it.

Decision with reasons:

6. We have examined the impugned order of the Commission. The Commission has observed, inter alia, the absence of

jurisdiction to deal with the consumers grievances. The learned counsel for the respondent submits that the appellant should have approached the Forum for Redressal of Grievances of the Consumers established under Sub-section 5 of Section 42 of the Electricity Act 2003. The learned counsel for the appellant on the other hand submits that the issue involved in this appeal is not one which falls within the jurisdiction of such forum and that he had rightly approached the Commission. It is true that a substantial question of law has been raised by the learned counsel for the appellant. However, in view of the direction given in Para 51 of the Supreme Court's order we do not think it is necessary for us to direct the appellant to approach the Consumer Forum. The Supreme Court in Para 51 has categorically said that those who want to agitate the point can do so before the Commission. Thus even if the Commission did not have the jurisdiction under the Electricity Act 2003 it is obliged to decide the dispute on account of Supreme Court direction contained in Para 51 of the aforesaid judgment. We, therefore, do not think the appeal should be dismissed on the plea of lack of jurisdiction in the Commission.

7. We put it to the learned counsel for the respondent that in all fairness the respondent, UPPCL, itself should withdraw the disputed bill in view of the judgment of Supreme Court rather than compelling the appellant to litigate on this issue before another

forum. Mr. Misra submitted that he is unable to make any commitment for want of instruction from his client in this regard.

8. In view of the instructions contained in Para 51 of judgment of Supreme Court we do not find it necessary to go into the question of jurisdiction of the Commission to decide the dispute. Since the issue has been finally settled by the Supreme Court and the appellant cannot be denied the relief prayed for, we allow the appeal and set aside the impugned order dated 17.07.07 and quash the bill for old arrears issued on withdrawal of circulars dated 08.09.00 and 15.12.00

Pronounced in open court on this *day of* , **2008.**

**(Ms. Justice Manju Goel)
Judicial Member**

**(A. A. Khan)
Technical Member**

The End