

Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)

**I.A. No. 291 of 2012 in**  
**DFR No. 1482 of 2012**

**Dated: 19<sup>th</sup> October, 2012**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson**  
**Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of:**

**Uttarakhand Power Corporation Ltd.,**  
Through its Chairman & Managing Director,  
Urja Bhawan, Kanwali Road,  
Dehradun, Uttarakhand

**....Applicant/Appellant**

**Vs.**

- 1. Uttarakhand Electricity Regulatory Commission,**  
Institution of Engineers (I),  
1<sup>st</sup> Floor, Near ISBT, Majra, Dehradun,  
(Uttarakhand)-248006.
- 2. M/s. Moti Ram Rolling Mills Ltd.,**  
Village Raipur, Bhagwanpur,  
Roorkee, District Haridwar-247661
- 3. M/s. Uttarayan Steels (P) Ltd., UPSIDC**  
Salampur, Rajputam Near Ramnagar,  
Industrial Area, Roorkee,  
District Haridwar,  
Uttarakhand-247667.
- 4. Kashi Vishwanath Steels Limited,**  
Bajpur Road, Kashipur,  
District Udham Singh Nagar,  
Uttarakhand-244713
- 5. M/s. Sidheshari Paper Udyog Ltd.,**  
Moradabad Road, Kashipur,  
District Udham Singh Nagar,  
Uttarakhand-244713

- 6. Khatima Fibers Ltd.,**  
UPSIDC Industrial Area,  
Lohia Head Road, Khatima,  
District Udham Singh Nagar,  
Uttarakhand-262310
- 7. M/s. Shivangee Crafts Ltd.,**  
Ramnagar Road,  
Kashipur Through its Director-244713
- 8. Ombudsman appointed by the**  
Uttarakhand Electricity Regulatory Commission,  
24, Basant Vihar, Phase-II,  
Dehradun-248713

**... Respondents**

**Counsel for the Applicant(s) : Mr. Pradeep Misra  
Mr. Daleep Kr. Dhyani  
Mr. Manoj Kr. Sharma**

**Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan for R-1  
Mr. Suresh Tripathy for R-4**

### **ORDER**

This Application is filed by Utrrakhand Power Corporation Ltd. for condonation of delay for 8 years and 347 days in filing the Appeal against some findings in the Order dated 08.09.2003 passed by the Uttarakhand Electricity Regulatory Commission determining tariff of the Applicant/Appellant for the FY 2003-04.

2. The brief facts of the case are as under:

i) The Applicant/Appellant is a distribution licensee. The Applicant had been levying System Loading Charges from the

industrial consumers at the time of sanction of a new electricity connection for meeting the expenses for strengthening of the distribution network.

ii) The State Commission passed the first Tariff Order dated 08.09.2003 for the Applicant/Appellant wherein the State Commission held that no System Loading Charges would be payable by the consumers. The Applicant challenged the said Tariff Order by filing Writ Petition before the High Court of Uttarakhand. However, the said Writ Petition was withdrawn by the Applicant with the liberty to raise the objections raised in the Writ Petition at the time of tariff fixation for the FY 2004-05 before the State Commission.

iii) The State Commission in the Tariff Order dated 25.04.2005 for the subsequent year reiterated its earlier decision that System Loading Charges would not be leviable and further directed the Applicant to refund the same to the consumers.

iv) In the year 2005, some consumers (Respondents 2 to 7 herein) preferred complaint before the Forum for Redressal of Grievance of Consumers ('CGRF') contending that the System Loading Charges have been illegally recovered by the Applicant/Appellant. However, the Forum did not grant any relief to

the consumers. Therefore, the consumers filed the Appeal before the Ombudsman against the order of the CGRF. The Ombudsman set aside the order of the CGRF and decided that in view of Tariff Orders dated 08.09.2003 and 25.04.2005 passed by the State Commission holding that the Appellant could not impose the System Loading Charges and directing that the amount realized by the Applicant should be refunded to the consumers.

v) The Applicant challenged the said award passed by the Ombudsman in the Writ Petition before the High Court contending that the Regulatory Commission had no jurisdiction to pass an order regarding recovery of the System Loading Charges.

vi) On 09.08.2010, the single Judge of the High Court held that the Tariff Order had become final and was binding on the Appellant and the Ombudsman had the jurisdiction to decide about the issue of System Loading Charges. Accordingly, the Writ Petition was dismissed.

vii) Against the above judgment passed by the Single Judge of the High Court, the Appellant filed the Writ Appeal before the Division Bench of the High Court. The Division Bench in the judgment dated 2.1.2012 held that the Tariff Order dated 08.09.2003

was binding on the Applicant/Appellant. However, the High Court granted liberty to the Appellant to prefer an Appeal against the State Commission's order dated 8.9.2003 before the appropriate authority within one month from the date of the judgment.

viii) Instead of filing the Appeal against the Tariff Order, the Applicant/Appellant filed Special Leave Petition before the Hon'ble Supreme Court which came up for hearing on 18.07.2012. The Hon'ble Supreme Court dismissed the SLP but extended the time by the High Court to file the Appeal before the Tribunal by two months. Thereafter, on 21.07.2012, this Appeal was filed.

3. We have heard Shri Pradeep Misra, the learned counsel for the Applicant/Appellant on the application for condonation of delay. This application is stoutly opposed by the Learned Counsel for the Respondent.

4. The Learned Counsel for the Appellant argued that the delay is bonafide and unintentional as all along the Appellant was under the impression that the State Commission has no jurisdiction to pass the impugned order and hence it ought to have been set aside by the Court and as such the delay had occasioned since the Appellant was

bonafidely pursuing the matter before the High Court as well as the Hon'ble Supreme Court. According to him, the Appellant had to challenge the impugned order dated 8.9.2003 in view of the findings of the Division Bench of the High Court that the Tariff Order passed by the State Commission has not been challenged and is, therefore, binding on the Ombudsman.

5. We find that the Appellant had filed Writ Petition against the impugned order dated 08.09.2003 before the High Court. However, the Appellant himself withdrew the Writ Petition with permission to raise the issue relating to System Loading Charges before the State Commission at the time of fixation of the next year's Tariff Order. In the next year's Tariff Order dated 25.04.2005 the State Commission reiterated its earlier decision and further directed the Applicant to refund the System Loading Charges collected by the Applicant. However, the Appellant did not comply with the directions of the State Commission. As a result, the consumers were compelled to approach the CGRF and Ombudsman. Finally, the Ombudsman by its award dated 07.02.2007 decided that in view of the Tariff Orders of the State Commission dated 08.09.2003 and 25.04.2005 the Appellant could not impose the System Loading Charges and

directed the Applicant/Appellant to refund the amount realized from the consumers with interest.

6. Instead of complying with the order of the Ombudsman, the Appellant challenged the award before the High Court. The single Judge of the High Court in the order dated 9.08.2010 dismissed the Writ Petition filed by the Appellant. Against the same, the Appellant filed Writ Appeal before the Division Bench of the High Court. Even after the Division Bench dismissed the Appeal on 02.01.2012 giving liberty to challenge the impugned order before the Appellate Authority, the Applicant did not file the Appeal before this Tribunal but challenged the jurisdiction of the State Commission in a Special Leave Petition before the Hon'ble Supreme Court.

7. The Appellant instead of refunding the System Loading Charges despite orders from State Commission, Ombudsman and the High Court illegally retained the same all along depriving the consumers of the fruits of the various orders of the State Commission, Ombudsman and High Court.

8. It is not open for the Appellant having voluntarily withdrawn the Appeal filed before the High Court against the impugned order dated 8.9.2003 with liberty to raise the issue before the State

Commission in the subsequent tariff order proceedings, to again file the Appeal against the same very order of the State Commission after the Applicant failed to get the order in its favour in the next tariff order dated 25.04.2005.

9. The Applicant/Appellant has also not challenged the subsequent tariff order dated 25.4.2005 passed by the State Commission in which the issue of System Loading Charges was again raised by the Applicant but the State Commission reiterated its earlier decision directing the Applicant/Appellant to refund the charges collected from the industrial consumers. This order of the State Commission has also attained finality.

10. Having exhausted the remedy available to the Applicant at alternate forum, the Applicant after a long delay of almost nine years has now challenged the order dated 8.9.2003, to further delay the benefit of the various orders of the State Commission, Ombudsman and the High Court to the consumers. The consumers have already suffered for a long period and they had to run from pillar to post to get the justice.

11. By filing this Appeal, the Applicant wants to further delay the refund of charges long overdue to the consumers. Further, in this

Appeal the main ground related to the jurisdiction of the State Commission. Having submitted to jurisdiction of the State Commission while withdrawing the appeal before the High Court challenging the impugned order and raising the issue of jurisdiction in WP/SLPs before the High Court and the Hon'ble Supreme Court, it is not open to the Applicant/Appellant to again raise the issue of jurisdiction of the State Commission in this Appeal. In our opinion, the Applicant has not come before us with clean hands, as pointed out by the Learned Counsel for Respondent.

12. In view of above, we do not find sufficient cause to condone the long delay of nearly 9 years. Accordingly, the Application is dismissed. The Appeal is also rejected. However, there is no order as to cost.

13. Pronounced in the open court on this  
**19th day of October, 2012.**

**(Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

vs