

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL NO. 339 OF 2017

Dated: **10.02.2022**

Present: **Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

UTTARAKHAND POWER CORPORATION LTD.

V. C. V. Gabar Singh Urja Bhawan,
Kanwali,
Dehradun.

... Appellant(s)

VERSUS

1. UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Vidyut Niyamak Bhawan,
Near I.S.B.T., P.O. Majra
Dehradun
(Uttarakhand)-248171

2. FLEX FOOD LIMITED

Lal Tappar Industrial Area,
P.O. Resham Majri, Haridwar Road,
Dehradun-248140

... Respondent(s)

Counsel for the Appellant (s) : Ms. Shikha Ohri
Mr. Samyak Mishra

Counsel for the Respondent (s) : Mr. Buddy A. Ranganadhan for R-1
Mr. Rakesh Singh
for Mr. Sumit Sinha for R-2

J U D G M E N T (Oral)

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

2. On the basis of complaint of the second respondent – M/s Flex Foods Limited vide letter dated 17.01.2017, the respondent Commission made some inquiry, ordered inspection of the premises of the second respondent (consumer) and thereafter passed the order dated 29.03.2017 in *suo motu* case registered as “In the matter of Applicability of Rate Schedule RTS-4A: Agriculture Allied Activities on the connection no. 557 issued to M/s Flex Foods Limited at their Mushroom Farm at Chidderwala, Dehradun”, directing the appellant (distribution licensee) to convert the said electricity connection of the consumer (second respondent) from category RTS-7 to RTS-4A w.e.f. 01.04.2015. It may be mentioned here that RTS-7 is “LT and HT Industry” category, while RTS-4A is described as “Agriculture Allied Activities”. Feeling aggrieved by the said direction, the present appeal was filed, the grievance of the distribution licensee being that in determining the issue the Commission has added the words “*change in the form of product*” to the definition of the relevant category under the tariff order.

3. The sub-category RTS-4A (*Agriculture Allied Activities*) is described in the tariff order as under:

“Agriculture Allied Activities: All Consumers involved in nurseries growing plants/saplings, poly houses growing flowers/vegetables and. fruits which doesn't involve any kind of processing of product except for storing and preservation.”

4. In contrast, the category RTS-7 (LT and HT Industry) is provided in the tariff order thus:

“

(i) *Industries and for processing or agro-industrial purposes, power loom as well as to Arc/Induction Furnaces, Rolling /Re-rolling Mills, Mini Steel Plants and to other power consumers not covered under any other Rate Schedule.*

- (ii) *The vegetable, fruits, floriculture & Mushroom integrated units engaged in processing, storing and packaging in addition to farming and those not covered under RTS-4A shall also be covered under this Rate Schedule.”*

5. It has been the case of the second respondent that it runs an agro-farm where it is engaged in the activity of growing mushrooms in controlled atmosphere, there being a provision for storage and preservation which are activities covered by RTS-4A. The key question that may arise in this context is as to whether the activity undertaken includes “processing” of such agro-product as well.

6. We had some doubts as to the jurisdiction of the Commission to entertain and adjudicate upon such a complaint of an individual consumer. In this context, reliance was placed by the appellant on judgment dated 22.03.2011 in appeal no. 181 of 2010 (*Uttar Gujarat Vij Company Ltd v. Gujarat State Electricity Regulatory Commission and Ors.*). But then the learned counsel for the respondent Commission sought to explain that the Commission had taken it as an issue of violation of law and regulatory framework in the shape of tariff orders and consequently had also invoked, at one stage, provision contained under Section 142 of the Electricity Act, 2003, intendment being to pass an order which would apply generally to all similarly placed consumers and so as to bring clarity in the tariff orders. We find such objective not reflected in the impugned decision.

7. In our considered view, the examination of the facts by the Commission is not comprehensive enough to reach the conclusions which have been returned so as to result in the impugned directions. There seems to be some overlap in the definitions of the two categories and there is a need for the Commission to pass a more comprehensive order so that no

confusion on the applicability prevails. Needless to add such exercise cannot be undertaken without taking into account the concerns and submissions of the distribution licensee, this inclusive of the objection to the jurisdiction exercised.

8. For the foregoing reasons, we set aside the impugned order and remit the matter for fresh consideration and decision by the State Commission, after hearing all stakeholders, and in accordance with law.

9. We may clarify, for removal for doubts, if any, that the complainant shall also be a party to the proceedings to be held on the remit of the matter as directed above and will have a right of hearing.

10. The appeal is disposed of in above terms.

(Sandesh Kumar Sharma)
Technical Member

vt/mkj

(Justice R.K. Gauba)
Officiating Chairperson