
(2019) 07 UK CK 0014

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 319 Of 2013

Executive Engineer, Electricity Distribution Division,
Uttarakhand Power Corporation Limited

APPELLANT

Vs

M/s Himgiri Ispat Pvt. Ltd

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Electricity Act, 2003 — Section 23

Citation : (2019) 07 UK CK 0014

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Naresh Pant, P.R. Mullick

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J

1. The petitioner before this Court is Uttarakhand Power Corporation Limited, which has challenged before this Court the order of the Ombudsman dated 12.12.2012, whereby the Ombudsman has allowed the representation of the consumer M/s Himgiri Ispat Ltd. (respondent before this Court), which has its industry in the industrial area, Kotdwar, Pauri Garhwal.

2. The question before this Court is regarding consumption of electricity during "Peak Hours". There is a dispute regarding the fact that a consumer, particularly when the electricity is being used for industrial or commercial purposes, has to pay a heavy penalty in case he consumes electricity during "Peak Hours".

3. The Regulatory Commission has got powers to impose restriction for use of electricity during "Peak Hours". These powers have been given under Section 23 of the Electricity Act, 2003 which reads as under:-

"23. Directions to licenses. - If the Appropriate Commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing

the equitable distribution of electricity and promoting competition, it may, by order, provide for regulating supply, distribution, consumption or use thereof."

4. What are going to be restricted and the "peak hours", etc. had to be given in annual tariff order, which is given out by the Commission annually. It is again an undisputed fact that in the tariff order pursuant pertaining to the year 2006-07 (with which we are presently concerned), there was a clear provision that the licensee i.e. the Power Corporation can pass restriction order and even impose penalty for use of electricity beyond permissible limits during peak hours. This Court has been informed both by the learned counsel for the petitioner as well as learned counsel for the consumer, Mr. Naresh Pant and Mr. P.R. Mullick, respectively, that the peak hours were notified as between 05:00 p.m. to 10:00 p.m. This was done on consideration of the fact that during said period students were either writing their examinations or preparing for examinations. In other words, there was a public purpose behind it and for this reason the consumption of electricity by industries was to be restricted so that regular flow of electricity be given to where it was more urgently required.

5. There is no doubt about the fact that the respondent has consumed electricity during "Peak Hours" beyond permissible limits. There is also no dispute regarding the fact that as per the tariff orders, the powers have been given to the distributor i.e. the Uttarakhand Power Corporation Limited to impose penalty for consumption of electricity by the industrial units during "Peak Hours", beyond the permissible limits. The only dispute is whether the consumer had any knowledge of this penalty and further whether the only direction was of load shedding and there was no direction of restriction.

6. It is clear from records that two publications were made by the Power Corporation on 01.01.2007 and 10.01.2007 asking the consumers not to consume electricity during "Peak Hours" beyond the permissible limit of 15% of the sanctioned power load. The learned Ombudsman has given this categorical finding but then he reasons out that actually restriction was communicated to consumer in its approval dated 25.01.2007, which was not notified to the consumer and since the consumer had no knowledge that they will be given a penalty qua the restriction, the imposition of penalty is bad.

7. This reason adopted by the Ombudsman does not seem to be proper, inasmuch as it is an admitted fact that the consumer has consumed electricity during restricted peak hours and more importantly the tariff order of 2006-07 was in his knowledge where clear cut powers were given to the distributor to impose a penalty on a consumer if he uses electricity during peak hours beyond the permissible limits.

8. That being the admitted position, whether the consumer/respondent before this Court did not had the knowledge of these restrictions becomes immaterial, as they were aware of the tariff regulations. The Ombudsman has also directed refund of the penalty with interest, which in any case is not permissible. There

has never been a dispute by the consumer as to the quantum of penalty being asked.

9. The contention raised by the learned counsel for the respondent was liable to be rejected, as admittedly they have consumed electricity during "peak hours".

10. The writ petition is therefore allowed. The order dated 12.12.2012 passed by the Ombudsman is hereby set aside.