**(2019) 09 UK CK 0141**

**In the Uttarakhand High Court**

**Case No :** Writ Petition (M/S) No. 1726 Of 2012

M/s Datt Infrastructure & Services Ltd — APPELLANT

Vs

Uttarakhand Power Corporation Limited & Others — RESPONDENT

**Date of Decision :** 20-09-2019

**Acts Referred:**

Electricity Act, 2003 — Section 2(15), 185
Indian Electricity Act, 1910 — Section 12, 13, 14, 15, 16, 17, 18, 37, 53, 67, 68, 69
Electricity (Supply) Act, 1948 — Section 69(1)
General Clauses Act, 1897 — Section 6
Uttaranchal (Uttar Pradesh Electricity Reforms Act) Adaptation And Modification Order, 2001 — Section 52
Indian Electricity Rules, 1956 — Rule 82(5)
Electricity Supply (Consumers) Regulations, 1984 — Regulation 17(ii)

**Citation :** (2019) 09 UK CK 0141

**Hon'ble Judges :** Sudhanshu Dhulia, J

**Bench :** Single Bench

**Advocate :** P.R. Mullick, D.S. Patni, Dharmendra Barthwal

**Final Decision :** Dismissed

## Judgement

Sudhanshu Dhulia, J

1. The petitioner before this Court is an Industrial Estate Developer which had set up an industrial estate in Roorkee, District Haridwar pursuant to the industrialization policy of the State of Uttarakhand, which came up after the creation of the new State on 09.11.2000. The industrial estate was being developed by the petitioner jointly with the instrumentality of the State, namely, State Infrastructure and Industrial Development Corporation of Uttarakhand Limited (from hereinafter referred to as SIDCUL). The development was to take place in Village "Bandakhedi" in Roorkee.

2. It is an admitted fact that the Department of Industries, Government of Uttarakhand vide its letter dated 26.12.2003 had directed the Uttarakhand Power Corporation Limited (from hereinafter referred to as "UPCL") to make necessary

 

power allocation for the industrial estate. In order to built an industrial estate, the petitioner had to, inter alia, construct a 33KV line from a concerned 132/33KV sub-station to the industrial area and further a 33/11 KV sub-station had to be installed inside the industrial estate.

3. It has also come, both from the pleadings as well as from the records, before this Court that the petitioner as well as the Power Corporation and the Government right from the very beginning were conscious of the fact that the entire cost of electrical infrastructure shall be borne by the petitioner. In other words, the entire cost i.e. the cost for installing the 33KV line as well as 33/11KV sub-station was to be borne by the petitioner and not by the UPCL. In addition to this, according to the UPCL, the petitioner also had to give expenses known as "supervision charge". Though the petitioner before this Court does not deny its liability for paying the "supervision charges", but his case before this Court is that he is liable to give only 15 per cent of the labour charges as "supervision charges" and not the entire "supervision charges".

4. To the contrary, the case of the UPCL is that the entire "supervision charges" have to be given by the petitioner.

5. After 33KV line was set up by the UPCL and 33/11KV sub-station was to be installed, the petitioner sought details from the UPCL as to the cost of the distribution of line. Prior to the installation, a demand of Rs. 69,23,592/-(Rupees Sixty Nine Lakh Twenty Three Thousand Five Hundred Ninety Two only) was raised by the UPCL, which was paid by the petitioner. Consequent to the notice of the petitioner as to the cost incurred by the UPCL on installation of line, an information was given to the petitioner that the cost incurred is Rs.61,10,705/-(Rupees Sixty One Lakh Ten Thousand Seven Hundred Five only). The petitioner then demanded a refund of the remaining amount. Apart from this, the petitioner also demanded a refund of Rs. 7,38,969/-(Rupees Seven Lakh Thirty Eight Thousand Nine Hundred Sixty Nine only) as excess supervision charges. UPCL in return asked the petitioner to deposit an amount of Rs.15,78,600/-(Rupees Fifteen Lakh Seventy Eight Thousand Six Hundred only) as supervision charges at the rate of 15 % on the cost incurred for installation of 33/11KV sub-station, which was Rs.1,05,24,000/- (Rupees One Crore Five Lakh Twenty Four Thousand only). The petitioner ultimately moved an application before the Consumer Grievance Redressal Forum stating as under:-

"(a) The order has been passed without proper application of mind and is based on a vague order of the erstwhile UPSEB.

(b) The Forum has erred in clubbing the issue taken by the petitioner to them with an altogether different issue relating to construction of 33/11 KV substation.

(c) The Forum has not made any effort to ascertain and confirm the relevance and validity of certain orders of erstwhile UPSEB from the Uttarakhand Electricity Regulatory Commission (Commission), who under law are now the sole authority for fixing charges that UPCL can realize from its consumer. Further based on these un-validated orders the Forum has worked out and validated not only the expenditure incurred on the 33 KV line but also on the substation constructed by the petitioner himself and calculated the petitioner's liability relating to the same even though the issue had not been raised before the Forum by the petitioner.

(d) The Forum has failed to give any finding on the issue whether as per UPSEB's 1984 Supply Code Regulations the supervision charges are payable on the cost of material, labour, plus transport or only on labour and transport, even though this point had been agitated before them.

(e) In its order, the Forum has justified levy 18.45% charges on the basis of Director (Operation), UPCL's office memorandum dated 30.01.2002 even though he had no authority to prescribe any such charges unless approved by the Regulator."

6. The petitioner thereafter demanded a refund of Rs.8,12,574/-(Rupees Eight Lakh Twelve Thousand Five Hundred Seventy Four only) towards excess amount paid by him for the construction of the line plus Rs. 7,38,969/-(Rupees Seven Lakh Thirty Eight Thousand Nine Hundred Sixty Nine only) towards excess payment of supervision charges.

7. The Consumer Grievance Redressal Forum vide order dated 07.01.2008 rejected the complaint of the petitioner. The Consumer Grievance Redressal Forum recorded a finding that an amount of Rs. 15,78,600/- (Rupees Fifteen Lakh Seventy Eight Thousand Six Hundred only) is liable to be paid by the petitioner to the UPCL and the petitioner is liable to be refunded an amount of Rs. 8,12,574/-(Rupees Eight Lakh Twelve Thousand Five Hundred Seventy Four only) towards excess payment for construction of sub-station. Hence, the Consumer Grievance Redressal Forum came to the conclusion that the UPCL has a right to recover an amount of Rs. 7,66,026/- (i.e. Rs. 15,78,600 - Rs.8,12,574/-).

8. Aggrieved, the petitioner approached before the Electricity Ombudsman challenging the order passed by the Consumer Grievance Redressal Forum.

9. The following issues were framed by the Ombudsman:-

"(i) Whether the petitioner is not the consumer and complainant under the Electricity Act, 2003, if so its effect.

(ii) Whether the Supply Code, Rules & Regulations of UP Regulatory Commission are applicable, if so its effect?

(iii) Whether under the Electricity Act, the petitioner is liable to pay the charges for the transmission line?

(iv) Whether SIDCUL is a necessary party?

(v) Whether the respondents are entitled to the supervision charges from the petitioner? If so, to what extent?

 

(vi) What relief, if any, the petitioner is entitled?"

10. Initially there was a dispute as to whether the petitioner can really be termed as a "consumer" under Section 2(15) of the Electricity Act, 2003. An issue was framed by the Ombudsman to this effect and it was decided that the petitioner is a "consumer" as defined under Section 2(15) of the Electricity Act, 2003. Ultimately, this issue was decided holding that the petitioner is a consumer. This issue in fact has attained the finality and there is no dispute regarding the fact that the petitioner will be considered as a "consumer".

11. As regarding issue nos. 2 & 3, the learned counsel for the petitioner has relied upon Rule 82(5) of the Indian Electricity Rules, 1956. Rule 82(5) reads as under:-

"82. Erection of or alternation to buildings, structures, flood banks and elevation of roads.-

(1)...

(2)...

(3)...

(4)...

(5) In the absence of an agreement to the contrary between the parties concerned, the cost of such alteration of the overhead line laid down shall be estimated on the following basis, namely :-

(a) the cost of additional material used on the alteration giving due credit for the depreciated cost of the material which would be available from the existing line'

(b) the wages of Labour employed in affecting the alteration;

(c) supervision charges to the extent of 15 per cent of the wages mentioned in clause (b); and

(d) any charges incurred by the supplier in complying with the provisions of section 16 of the Act in respect of such alterations."

12. Learned counsel for the petitioner has also relied upon the Electricity Supply (Consumers) Regulations, 1984 which have been framed under the Electricity (Supply) Act, 1948. The reliance is on Regulation 17(ii). Regulation 17(ii) reads as under:-

"17(ii) If the supply to a consumer is disconnected on request or in default before the compulsory period of two years is over, he shall be liable for payment of minimum charge for the remaining period by which it falls short of two years or for the period of six months from the date of disconnection, whichever is less, together with the estimated expenditure on the erection and demolition of the sub-station and the line (not paid by the consumer) actually dismantled due to the disconnection, together with the estimated expenditure on the cartage of the salvaged materials to stores and the cost of unsalvaged materials plus 15% supervision charges on the labour and cartage only."

13. This argument of the petitioner is based upon the fact that the Electricity Act, 2003 although was framed by the Parliament being Act No. 36 of 2003 and received the assent of the President on 26.05.2003 and came into force on the said date has a repealing and saving clause contained in Section 185 of the Act. Section 185 of the Electricity Act, 2003 reads as under:-

"Section 185. Repeal and saving.- (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are hereby repealed.

(2) Notwithstanding such repeal.-

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have effect until the rules under Sections 67 to 69 of this Act are made;

(c) the Indian Electricity Rules, 1956 made under Section 37 of the Indian Electricity Act, 1910 as it stood before such repeal shall continue to be in force till the regulations under Section 53 of this Act are made;

(d) all rules made under sub-section (1) of Section 69 of the Electricity (Supply) Act, 1948 shall continue to have effect until such rules are rescinded or modified, as the case may be;

(e) all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government.

(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.

(4) The Central Government may, as and when considered necessary, by notification, amend the Schedule.

(5) Save as otherwise provided in sub-section (2), the mention of particular

 

matters in that section, shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897, with regard to the effect of repeals."

14. The argument of the petitioner would be that although the Indian Electricity Act of 1910 as well as the Electricity (Supply) Act, 1948 stand repealed, yet there is a saving clause also which says that the Regulations and Rules made therein shall be effective until such Regulations and Rules are made under the Electricity Act, 2003.

15. At this juncture it may be necessary to refer to para 1.3 from the Statement of Objects and Reasons contained in the Electricity Act, 2003. Para 1.3 of the Statement of Objects and Reasons of the Electricity Act, 2003 reads as under:-

"1.3. Over a period of time, however, the performance of SEBs has deteriorated substantially on account of various factors.

For instance, though power to fix tariffs vests with the State Electricity Boards, they have generally been unable to take decisions on tariffs in a professional and independent manner and tariff determination in practice has been done by the State Governments. Cross-subsidies have reached unsustainable levels. To address this issue and to provide for distancing of the Government from determination of tariffs, the Electricity Regulatory Commissions Act, was enacted in 1998. It created the Central Electricity Regulatory Commission and has an enabling provision through which the State Governments can create a State Electricity Regulatory Commission. 16 States have so far notified/created State Electricity Regulatory Commissions either under the Central Act or under their own Reform Acts."

16. Electricity Act of 2003 was enacted after a gradual reforms were made in this field i.e. electricity law. Under the Electricity Supply (Consumers) Regulations of 1984, the erstwhile State of Uttar Pradesh framed a Code of Electricity Supply, 2002. This Code was applicable only to "area served by UPPCL i.e. Uttar Pradesh Power Corporation Limited, Kanpur Electricity Supply Company limited (KESCO) and Noida Power Company Limited (NPCL).

17. All the same, there was a memorandum of understanding between the Ministry of Power, Government of India and Government of Uttaranchal on 30.03.2001 which, inter alia, stated as under:-

"The UP State Regulatory Commission which has been vested with full power under the UP Electricity (Reforms) Act, 1999, continues to exercise jurisdiction over Uttaranchal. The State Govt. commits itself to extending full support to the Commission in exercise of its statutory duties."

18. The Uttarakhand Electricity Regulatory Commission Fees & Fines Regulations, 2002 adopted the Regulations in exercise of the powers conferred on it by Section 52 of the Uttaranchal (Uttar Pradesh Electricity Reforms Act) Adaptation and Modification Order, 2001. In other words, the Code of 2002 stood adopted in

 

the State of Uttarakhand as well.

19. Clause 4.45 of the UP Electricity Supply Code, 2002 reads as under:-

"4.45. that the estimate shall be prepared as per the provision of the Indian Electricity Act, 1910 and on the basis of charges approved by the Commission...If the work is to be done by the applicant Licensee shall charge 15% of the estimate as supervision charges that shall need to be deposited before work begins. In other cases, Licensee shall commence the work after the applicant, has deposited the full amount of the estimate."

(Emphasis provided)

20. Thereafter there was another Electricity Supply Code of 2005. Clause 4.9 of the said Code reads as under:-

"4.9. responsibility of construction of the required distribution network in cases of ....Industrial complex with load exceeding 25 KW shall be that of the ...promoter that construct such complex. This further provides that "the promoter shall bear the cost of the distribution system (including the cost of transformer and/or substation wherever required) on the basis of sanctioned load...if the load is above 2550 KW up to 8500 KW (10,000 KVA), 33 KV feeder from 33 KV or 132 KV substation...The above limits are indicative, and the Licensee may decide differently the mode of giving supply in individual cases after due approval of its MD, to manage the Infrastructure expeditiously."

21. In view of the above provisions, it is absolutely clear that a licencee which in this case is Uttarakhand Power Corporation Limited can charge 15 per cent of the estimate as supervision charges. These charges have to be borne by the present petitioner. The Ombudsman has therefore rightly come to the conclusion that the supervision charges, which is 15 per cent of the total estimate of construction of the sub-station has to be borne by the petitioner.

22. The reliance of the petitioner on the Electricity Supply (Consumers) Regulations, 1984 is totally misconceived inasmuch as although Section 185 of the Electricity Act, 2003 save the Regulations, however, that is for a limited period till Uttarakhand Power Corporation and the Authorities frame their own Regulations. Since this has been done, what would be applicable is what was adopted or made applicable by the Uttarakhand Power Corporation Limited for the State of Uttarakhand. Therefore, the petitioner is liable to pay the charges.

23. The writ petition has no merit and the same is hereby dismissed. Interim order dated 03.09.2012 is hereby vacated.

 