
(2012) 01 UK CK 0032

In the Uttarakhand High Court

Case No : Special Appeal No. 178 of 2010 and Special Appeal No. 06 of 2011

Uttarakhand Power Corporation Ltd. and another APPELLANT

Vs

Ombudsman and others
 Executive Engineer Vs RESPONDENT
Consumer Grievances Redressal Forum and another

Date of Decision : 02-01-2012

Acts Referred:

Electricity Act, 2003 — Section 42(5), 42(6), 43, 46

Citation : AIR 2012 Utt 34 : (2012) ELR 403

Hon'ble Judges : Barin Ghosh, C.J; Umesh Chandra Dhyani, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—All these appeals have raised identical questions of fact and law, and accordingly, they are being disposed of by this common judgment and order.

2. Uttarakhand Electricity Regulatory Commission, constituted by and under the Electricity Act 2003, made and published tariff order on 8th September 2003, whereby and under, it provided "no system loading charge will be payable" under the heading "industrial consumers?". In the next tariff order for the Financial Year 2005-06, UERC repeated what it had stated in its order dated 9th September 2003, and on top of that directed refund of the same together with interest at bank rate.

3. Appellant subsequent to 8th September 2003, charged system loading charge from the respondents. Respondents, accordingly, approached the Consumer Grievances Redressal Forum, constituted by the appellant under sub Section (5) of Section 42 of the Act. Forum held that system loading charge is no part of tariff, and accordingly, UERC had no authority to speak in relation thereto in the tariff order. Being aggrieved by the said decision of the Consumer Grievances Redressal Forum, the respondents went before the Ombudsman, appointed or designated by the State Commission under sub Section (6) of Section 42 of the Act. The Ombudsman held that a decision has been taken by UERC that no

system loading charge will be payable, and accordingly, the respondents have no obligation to pay the same, and at the same time the appellants had also no right to claim the same. That being the situation, the Ombudsman set aside the order of the Consumer Grievances Redressal Forum, and directed refund of system loading charge collected by the appellant from the respondents along with interest at bank rate. Aggrieved thereby, the appellants filed writ petitions, where the principal contention was that UERC had no jurisdiction to deal with system loading charge, as the same was not the part of the cost of supply of electricity, but was part of the cost of making the same available at the doorstep of the consumer. It was also the contention of the appellant that UERC did not give any opportunity of hearing to the appellant in relation to its claim pertaining to system loading charge. A learned Single Judge of this court, while dealing with the said writ petition, held that in the absence of UERC, the contentions raised in the writ petition cannot be decided, and accordingly, dismissed the writ petitions.

4. In the present appeals too, it is being contended by the appellant that UERC had no authority to go into the question of deciding the claim of the appellant on account of system loading charge, while settling a tariff order, and in any event the contentions of the appellant pertaining to its claim on account of system loading charge has not been heard by UERC before it passed the order dated 8th September 2003. It has also been contended that system loading charge is part of capital expenditure required to be incurred for reaching electricity at the doorstep of the consumer, and in terms of the provisions contained in Section 43 of the Act, the appellant has right to recover the same. It has further been contended that in relation to such right of the appellant, though UERC has power to issue a Regulation u/s 46 of the Act, but as yet it has not issued any such Regulation, and accordingly, there is no impediment on the part of the appellant to collect the same.

5. Since these were the questions, we thought that it would be appropriate to permit the appellants to add UERC as a party to the appeals, and accordingly, UERC has been added as party to the appeals. However, the fact remains that the validity of the order of UERC dated 8th September, 2003 and follow up orders are required to be successfully challenged by the appellant to enable it to claim from the respondents payment of system loading charge, inasmuch as, by the tariff order dated 8th September 2003, made and published in the manner prescribed in the Act, a representation has been made to the world at large, including the respondents, that no system loading charge is recoverable by the appellant or payable by the respondents. In the circumstances, until the appellant successfully removed the direction to the effect that no system loading charge will be payable, from the tariff order dated 8th September 2003, since the appellant is equally bound by the said tariff order and the directions contained therein, it could not claim the same. The Consumer Grievances Redressal Forum and the Ombudsman, constituted / designated or appointed, as the case may be, under the provisions of the said Act, had and have no jurisdiction to determine the correctness of a tariff order. In those circumstances, in the writ petition filed

by the appellant, in the form as it was filed, the question whether the decision contained in the tariff order dated 8th September 2003, to the effect that no system loading charge will be payable is or is not correct could not, nor can be gone into. The same has to be challenged in the manner provided in the Act, and that is by preferring an appeal.

6. We are told that a writ petition was filed to challenge the same, which has since been withdrawn.

7. In view of what has been stated above, since it is nobody's case that an appeal preferred against the tariff order dated 8th September 2003, has been rejected and such rejection order has reached finality, it would be appropriate on our part to preserve liberty of the appellant to prefer such appeal, and to obtain appropriate order, including interim orders from the appellate authority. But as aforesaid, until the tariff order dated 8th September, 2003 is not altered, the appellant is bound not to collect any system loading charge from the respondents and if the appellant has collected the same, is bound to refund the same with interest at bank rate.

8. In the circumstances, we dispose of the appeals without interference to the judgments and orders under appeals, but with specific liberty to the appellant or appellants to take recourse to prefer a statutory appeal against the tariff order dated 8th September 2003, before the appropriate authority / Forum constituted by and under the Act. Until one month from today the parties are directed to maintain status quo with liberty to the appellant to take such recourse to law, as it may be advised, before the appellate authority.