

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 37 of 2005

Dated: May 2, 2006

Garrison Engineer (West)
Military Engineers Services,
Bareilly Cantt (UP) ... Appellant

Versus

Madhyanchal Vidyut Vitran
Nigam Ltd. & Ors. ... Respondents

Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member

Counsel for the appellant : Mr. Vipin Kumar Jain

Counsel for the respondents : Mr. Pradeep Mishra,
Mr. Suresh Tripathy

JUDGMENT

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson

This appeal is directed against the order of the Uttar Pradesh Electricity Regulatory Commission, Lucknow (for short 'UPERC') dated April 29, 2005 rendered in Petition No. 210/2004. By that order the Commission rejected the prayer

of the appellant seeking refund of Rs. 27, 67, 12,230/- paid by the appellant to Madhayanchal Vidyut Vitran Nigam Ltd. (MVVNL) pursuant to the alleged wrong bills raised by the said respondent for the following two spells:

- i) September 16, 2001 to November 8, 2002
- ii) November 9, 2002 to August 31 2003.

The appellant, Military Engineers Services (MES), Bareilly Cantt. receives electricity from the Uttar Pradesh Power Corporation Ltd., at a single take over point at 33 KVA main receiving station, and in turn supplies the same to the Cantonment of Bareilly, which has predominantly residential area. Besides, in pockets it has offices and commercial locations.

Earlier the sanctioned load of the appellant was 2600 KVA but later on it was increased to 4500 KVA.

On September 16, 2001, the Uttar Pradesh Power Corporation Ltd. in consonance with the tariff order passed by the U.P. Electricity Regulatory Commission dated Sept. 1, 2001 in exercise of the powers under Section 24 of the U.P. Electricity Reform Act, 1999, notified the revised rate schedule

effective from September 16, 2001. The relevant part of rate schedule LMV-4 reads as follows:-

“ (A) Light, Fan & Power for Public Institutions

1.....

2.....

3.....

4. Rate of charge:

Fixed Charge	PLUS	Energy charge
a. For individual consumer: Rs. 35/- per connection per month for load upto 1 kW Rs. 70/- per connection per month for load above 1 kW and upto 4 kW Rs. 200/- per connection per month for load above 4 kW		First 300 units/month 250 paise/unit Above 300 units/month 350 paise/unit
b. For Townships, residential colonies having minimum contracted load of 500 kW receiving supply at single point and having contracted load of not less than 80% for domestic purposes Fixed charges Nil		300 paise per unit

After the issue of the aforesaid Notification, the appellant was billed by the MVVNL on the basis of the aforesaid para 4 (a) of the rate schedule LMV-4 @ Rs. 3.50 per unit.

The appellant made payments of the bills under protest.

Subsequently again the rate schedules were revised vide UPERC's order dated Oct. 22, 2002 with effect from November 9, 2002. The relevant part of the revised rate schedule LMV-4 reads as follows:

“ (A) Light, Fan & Power for Public Institutions

1.....

2.....

3.....

4. Rate of charge:

Fixed Charge	PLUS	Energy Charge
a. For Public Institutions		
Fixed Charge - Rs. 60/- per kW per month		First 300 units/month Rs. 2.50/kWh Above 300 units/month Rs. 3.50/kWh
b. For Townships, residential colonies(mixed load) having minimum contracted load of 500 kW receiving supply at single point		
Fixed charges Rs. 20 per kW per month		Rs. 2.90/kWh

After the issue of the aforesaid revised rate schedule, the appellant was billed as per para 4(a) thereof. The bills were paid by the appellant under protest.

Subsequently, the appellant addressed a representation to the respondent, MVVNL for refund of Rs. 27,67,12,230/- on the ground that the bills against the appellant ought to have been raised under para 4(b) of the Rate Schedule LMV-4 of

both the notifications. In the representation, it was, *inter alia*, contented that the Military Engineers Services is supplying power to the Army Cantonment, Bareilly which is predominantly domestic area and there is only marginal load of offices. It was also stated that the bills for the period October 4, 2001 to Aug. 31, 2003 were paid under protest. It appears that the representation failed to have the desired effect with the result that the appellant had to approach the UPERC with a petition. The Commission, however, did not accept the contentions of the appellant and rejected the petition on April 29, 2005. The appellant aggrieved by the order of the UPERC has filed the instant appeal.

It was contented by the learned counsel for the appellant that for the period September 16, 2001 to November 8, 2002, the appellant ought to have been billed @ Rs. 3/- per unit in accordance with para-4 (b) of LMV-4 of Notification dated September 10, 2001 issued by the U.P. Power Corporation Ltd. in consonance with the tariff order of the UPERC dated September 9, 2001. On the other hand, learned counsel for the respondent maintained that the appellant was correctly

billed under para 4 (a) of Rate Schedule LMV-4 at the rate of Rs. 3.50 per unit as the appellant was correctly considered as an individual consumer.

We have considered the submissions of the learned counsel for the parties.

It appears to us that the aforesaid para 4(b) of the Rate Schedule LMV-4 of 2001 would apply for billing purposes in case a rate payer fulfils the following conditions:

- i) The power is supplied to the ratepayer for township/ residential colony;
- ii) The rate payer receives supply at a single point;
- iii) The minimum sanctioned load of the ratepayer is 500 kW for the township/residential colony;
- iv) 80% of the contracted load is used by the ratepayer for domestic purposes.

The appellant undoubtedly satisfied all the aforesaid conditions. This is apparent from the following facts:

- (1) The appellant, Military Engineer Services is a defence organization, being a part and parcel of the Central Govt;

- (2) The appellant is drawing power at a single point for the predominant purpose of supplying electricity to the residential colony;
- (3) The appellant has a contracted demand of over 500 kW;
- (4) The appellant is utilizing 80% of the contracted load for domestic purposes.

Since in the case of the appellant all the conditions of para 4(b) of the rate schedule of 2001 were satisfied, it should have been billed at the rate of Rs. 3/- per unit for the period September 16, 2001 to November 8, 2002.

The learned counsel for the respondents submitted that there is no evidence to show that the appellant was utilizing 80% of the contracted load for domestic purposes. The argument reflects that the respondents have not undertaken any survey to ascertain the extent of power, which was being consumed by the appellant for domestic purposes. The respondents ought to have undertaken an exercise to find out the basic facts as the application of the aforesaid clauses of

the rate schedule depends upon their determination. The respondent cannot claim right to bill a consumer without undertaking a study of the essential facts. In any event the respondent itself has relied upon and placed on record Annexure R-1 to the counter affidavit which is based on a survey made by the appellant. It will be worthwhile to refer to annexure R-1 of the counter affidavit:

TOTAL LOAD EACH FEEDER WISE AT 33 K.V. SUB STATION

11 KV Feeder	Sadar	Lokhart Line	MTTC Area	M.H.	B.K.Road/Local	JFC	BWL	Max. Load	Total
Total Load Of daff Feeders in Amps. (11 K.V. Feeder)	74	30	36	38	23	48	05	304 Amps	
Married Accom Living area	65	74	30	14 (Res) 15(MH)	23	40	05	266	
Offices	-	06	06	06	-	08	-	26	
Commercial	09	-	-	03	-	-	-	12	

$$\begin{aligned} & \% \text{ of Domestic} \\ \text{Load} &= \frac{266 \times 100}{304} = 87.5 \% \\ & \text{say } 88\% \end{aligned}$$

The chart shows that for domestic accommodation 266 Amps were being consumed by the appellant. The contract demand/sanctioned load in the beginning was 2600 KVA (equivalent to 136 Amps), which was enhanced to 4500 KVA (equivalent to 240 Amps). Domestic consumption of 266 Amps. obviously is much higher than even the enhanced contracted demand of 4500 KVA. The appellant in his

submission has stated that a penalty of Rs. 15.71 lakhs was paid by it to the respondents for drawing more power than the sanctioned load. From the data contained in the aforesaid chart, which is not disputed by the respondents, it is clear that the consumption of the appellant for domestic purposes was more than the contracted load and not merely 80% of the contracted load but way beyond it, for which it even paid a penalty. Therefore, the appellant ought to have been billed under para 4(b) of the aforesaid rate schedule for the period Sept., 16, 2001 to November 8, 2002 at the rate of Rs. 3/- per unit.

It is significant to note that for the period, November 9, 2002 to August 31, 2003, there was no condition that the consumer should be utilizing 80% of the contracted load for domestic purposes. According to the Notification issued as per the U.P. Electricity Regulatory Commission's order dated October 22, 2002, for the application of para 4(b) of rate schedule LMV-4, only the following three conditions need to be

satisfied:

- i) Power is supplied to the ratepayer for Township/residential colony (mixed load);
- ii) Minimum contracted load of the ratepayer is 500 kW for the Township/residential colony ;
- iii) The power is received by the ratepayer at single point.

The appellant fulfils the above three conditions.

In an earlier petition, being Petition no. 165/2004, which was instituted by the Garrison Engineer, MES Lucknow Cantonment, before the Uttar Pradesh Electricity Regulatory Commission for refund of the excess amount charged by UPPCL under LMV-4 of the Notification issued in consonance with the order of the Uttar Pradesh Electricity Regulatory Commission dated October 22, 2002, it was held that the Cantonment ought to have been billed by the respondent in sub category 4(b) of LMV-4. The Commission in its order dated January 30, 2004 pointed out that at various places, cantonments were being billed by the respondent in sub-category 4(b). The UPERC also referred to the fact that requirement of 80% of the domestic load has been dispensed

with by its earlier order dated October 22, 2002. In view of the aforesaid observations and directions of the UPERC, we fail to appreciate as to how the Commission could treat Cantonment, differently than the MES Lucknow Cantonment. Therefore, there is no valid reason for not billing the appellant under para 4(b) of LMV-4 of 2002 @ Rs. 2.90 per unit. There is also no justification for treating the appellant differently from other cantonments. The impugned order of the Tribunal does not advance any reason for making a distinction between the case of the appellant and the other cantonments. In fact the order is not a reasoned order at all. The Commission in the impugned order after recording the submissions of the parties merely listed the issues. After listing the issues, the Commission concluded that the respondents had billed the consumer in a correct manner and as such refund was not admissible.

In the circumstances, therefore, we hold that the appellant ought to have been billed from September 16, 2001 to November 8, 2002 under para 4(b) of the Rate Schedule LMV-4 of 2001 @ Rs. 3/- per unit and from November 9, 2002

to August 31, 2003 on the basis of para 4(b) of the Rate Schedule LMV-4 of 2002 @ Rs. 2.90 per unit.

Before parting with the order, we need to notice the preliminary objection of the learned counsel for the respondents to the effect that the appeal filed by the appellant was not maintainable. He argued that the Commission had no jurisdiction to deal with the petition of the appellant which was basically regarding a grievance relating to billing.

We have examined the issue raised by the learned counsel for the respondents. It appears that the respondents did not raise any issue relating to jurisdiction before the Commission. The appellant is not only a consumer but is also a deemed distribution licensee. Under third proviso to Section 14 of the Act of 2003, in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of the Act, such Government shall be deemed to be a licensee under the Act, but shall not be required to obtain a licence under the Act. It is not disputed that the Ministry of Power in its communication dated July 26, 2004 recognized the fact that

MES, which is a Subordinate Organisation of Ministry of Defence and which is entrusted with and engaged in supply of electric power, meets the requirement of a deemed licensee as provided in the third proviso to Section 14 of the Electricity Act, 2003. Under Section 10(q) of the U.P. Electricity Reforms Act, 1999, it is the function of the State Commission to adjudicate upon the disputes between licensees and utilities. The word 'utility' has been defined under Section 2(p) of the U.P. Electricity Reforms Act, 1999 to mean a person engaged in generation, transmission, sale, distribution and supply of electricity. By virtue of Section 185(3) of the Electricity Act, 2003, the provisions of U.P. Electricity Reforms Act, 1999 are still applicable in the State of Uttar Pradesh. Therefore, UPERC had the jurisdiction to deal with the matter. The impugned order passed by UPERC is appealable under Section 111 of the Electricity Act, 2003, which provides that any person aggrieved by an order made by the Appropriate Commission under the Act may prefer an appeal to the Appellate Tribunal for Electricity. Faced with this situation, the learned counsel for the respondents submitted that in case

the appellant is to be considered as a deemed licensee, tariff will have to be determined by the Commission under Section 62(1)(a) of the Act of 2003. According to him since the appellant was treated only as a consumer by the MVVNL, it was billed under the aforesaid rate schedules which are not meant to be applied to a deemed licensee. The submissions of the learned counsel for the appellant cannot be accepted. It is too late in the day to argue that the rate schedules are not applicable to the appellant. The aforesaid rate schedules were being applied for billing all the cantonments. It does not lie in the mouth of the respondents to take this plea at such a belated stage.

In view of the aforesaid discussion, the appeal is allowed. The impugned order of the UPERC dated April 29, 2005 is set aside. The respondents are directed to revise the bills of the appellant by applying para 4(b) of LMV- 4 of Notification dated Sept. 10, 2001 for the period Sept. 16, 2001 to November 8, 2002 and by applying sub para 4(b) of LMV-4 of Notification issued in consonance with the Order of the Uttar Pradesh Electricity Regulatory Commission dated Oct. 22, 2002 for the

period November 9, 2002 to August 31, 2003 and to refund to the appellant the excess amount of Rs. 27,67,12,230/- charged by the respondents within a period of one month from the date of the receipt of the order failing which the respondents shall pay interest to the appellant @ 12% per annum.

The Appeal is allowed.

(Justice Anil Dev Singh)
Chairperson

(A.A. Khan)
Technical Member