

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

**Appeal No. 204 of 2006**

**Dated: March 7, 2007**

Uttar Pradesh Avas Evam Vikas Parishad,  
Through Superintending Engineer (E/M),  
Uttar Pradesh Avas Evam Vikas Parishad  
Office Complex,  
Bhooth Nath Mandir Marg,  
Indira Nagar, Lucknow.

... Appellant

Versus

Uttar Pradesh Power Corporation Limited  
Through its Managing Director,  
Shakti Bhawan,  
14, Ashok Marg,  
Lucknow

... Respondent

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

Counsel for the appellant(s) : Mr. Rakesh Bajpai

Counsel for the respondent(s) : Mr. Pradeep Mishra for UPPCL  
Mr. N.K. Sahid for Mr. Suresh  
Tripathy

**JUDGMENT**

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

In this appeal the appellant challenges the order of the Uttar Pradesh Electricity Regulatory Commission, Lucknow (for short 'UPERC') dated February 3, 2006 to the extent it holds that the Office Memorandum No. 209-K/XIV-A/SEB/84 dated January 17, 1984 issued

by the Uttar Pradesh State Electricity Board (for short UPSEB) has effect till June 6, 2002, the date prior to the coming into force of 'the Uttar Pradesh Electricity Supply Code, 2002' (for short 'Code of 2002). The facts giving rise to this appeal lie in a narrow compass.

1. The appellant, a Housing Board called Uttar Pradesh Avas Evam Vikas Parishad, is a body created under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 for development of colonies, residential plots, commercial plots and complexes in the State of Uttar Pradesh.

2. The respondent, Uttar Pradesh Power Corporation Ltd. (for short 'UPPCL'), a successor to Uttar Pradesh State Electricity Board, (for short 'UPSEB'), is a licensee for supply and distribution of Electricity in the State of U.P.

3. Basically, it is the statutory obligation of the licensee to undertake the job of erection and installation of transmission lines for distribution of electricity. The Government of U.P., however, by a Notification dated June 2, 1982, issued under Rule 133 read with proviso to sub-Rule (1) of Rule 45 of the Indian Electricity Rules, 1956, permitted the U.P. Avas Evam Vikas Parishad to carry out works of installation of 11 KV lines in its complexes under the supervision of a recognized Engineer/Junior Engineer (Electrical), possessing a certificate of Electrical Supervision from the Office of Electrical Inspector, subject to the conditions, *inter alia*, that before commencement of the construction of over head lines

and cable laying etc. approval of drawing pertaining to method of construction shall have to be obtained from the office of the Electrical Inspector.

4. On January 17, 1984, the UPSEB issued an office memorandum, whereby it fixed 5% of the total estimated cost of electrification work to be carried out in different parts of the State in the colonies promoted by the Housing Board, Local Development Authority and NOIDA, towards supervision charges of the UPSEB (now UPPCL). The memorandum also provided that maintenance of such installations, after transfer of the same by such promoters to the UPSEB, will be carried out by the UPSEB and service connections to individual occupants of the colony will also be provided by the UPSEB in accordance with the Rules and Regulations of the Board issued from time to time.

5. Upto April 23, 1998, there appears to be no controversy with regard to the payment of the supervision charges by the appellant to the UPSEB at the aforesaid rate of 5%. On April 24, 1998, the Respondent, UPSEB (now UPPCL) issued another office memorandum. This memorandum postulates that in respect of residential/non-residential, single storey/multi-storied building complexes and colonies developed by the public enterprises, private builders and promoters, charges at the rate of 15% of the estimated cost of the work shall be paid to the UPSEB (now UPPCL) for supervision of the work of laying of 11 KV

lines and setting up of sub-stations etc. undertaken by them (developers).

6. On issue of the aforesaid Memorandum dated April 24, 1998, the respondent required the appellant to deposit supervision charges at the rate of 15% of the estimated cost of the works. In response, the appellant, on May 3, 2001, filed a representation to the respondent, UPPCL, *inter-alia*, on the ground that the new notification applied to the deposit work and action should be taken only in accordance with the earlier Notification dated January 17, 1984. The representation of the appellant, however, was rejected by the respondent on October 10, 2001. Thereupon, the appellant filed a petition before the UPERC seeking a direction to the respondent that the claimant was governed by the Notification dated January 17, 1984 and accordingly was liable to pay supervision charges to the respondent at the rate of 5% of the total estimated cost of electrification work.

7. The Uttar Pradesh Electricity Regulatory Commission held that the Office Memorandum dated January 17, 1984 was not superseded by the Office Memorandum dated April 24, 1998 issued by the Respondent. The Commission further held that office Memorandum dated January 17, 1984 was effective till June 6, 2002, the date immediately prior to the coming into force of the Code of 2002. Consequently, the Commission directed the respondent to levy supervision charges at the

rate of 5% as per office Memorandum dated January 17, 1984 upto June 6, 2002 and make adjustments for the amount recovered in excess from the appellant.

8. The appellant is aggrieved by the order of the Commission to the extent that it has not been held that the office Memorandum dated January 17, 1984 also applies even to the period beyond June 6, 2002.

9. We have heard the submissions advanced by the learned counsel for the parties.

10. It was submitted by the learned counsel for the appellant that the Office Memorandum dated January 17, 1984 has not been superseded by the Code of 2002 and, therefore, the appellant under the Office memorandum dated January 17, 1984 is liable to pay supervision charges at the rate of 5% of the estimated cost of electrical works. On the other hand, the learned counsel for the respondent submitted that the Code of 2002 was applicable from June 7, 2002 till February 17, 2005, the date prior to the coming into force of the Electricity Supply Code, 2005. According to him, at present Electricity Supply Code, 2005 is in vogue and the appellant is being charged supervision charges @ 15% of the estimated cost of the works in accordance therewith.

11. There is no controversy that the finding of the Commission that Office Memorandum dated April 24, 1998 is not applicable to the

appellant, has become final as it has not been challenged by the respondent by filing an appeal. The only controversy which needs to be resolved revolves around the question whether the Office Memorandum dated January 17, 1984 was applicable only upto June 6, 2002 or it continued to be applicable even after the coming into force of the Code of 2002 w.e.f. June 7, 2002.

12. It needs to be pointed out that the Electricity Regulatory Commissions Act, 1998 (for short 'ERC Act, 1998') came into force on April 25, 1998. Taking cue from the ERC Act, 1998, the legislature of the State of U.P. also enacted the Uttar Pradesh Electricity Reforms Act, 1999 (for short UPER Act, 1999). In order to decide the question, we need to examine clauses (a) and (h) of Section 10 of UPER Act, 1999. Clause (a) of Section 10 of UPER Act, 1999 empowers the State Commission to fix the tariff for electricity, while clause (h) of Section 10 thereof vests it with the power to regulate the working of licensees and other persons authorized or permitted to engage in the electricity industry in the State and to make their working efficient, economical and equitable. Therefore, the State Commission, constituted under Section 17 of the Electricity Regulatory Commissions Act, 1998 and continued under Section 3(1) (b) of the UPER Act, 1999, acquired the power to regulate or fix the supervision charges of the respondent for the work of installation of transmission lines by other agencies.

13. It is also necessary to notice that the Code of 2002 has a statutory flavour as it was formulated to carry out the functions assigned to the UPERC under Section 10 of the UPER Act, 1999. This is apparent from the order of the UPERC, which was a precursor to the Code of 2002. The order to the extent relevant reads as under:

*“Electricity Supply Consumers Regulations, 1984, formulated by the erstwhile U.P. State Electricity Board covers the conditions of supply of electricity to retail consumers. After the enactment of U.P. Electricity Reforms Act, 1999, the U.P. Electricity Regulatory Commission has been assigned functions under Section 10 of the Act to regulate the distribution, supply, utilization of electricity, issue licences to regulate the working of the licensees and to set the standards of services for the consumers as well as standards for the electricity industry in the State”.*

14. We also need to look at Clauses 4.3, 4.5 and 4.45 of the Code of 2002 as they have a bearing on the question in issue. Clauses 4.3, 4.5 and 4.45 read as under:-

*“4.3. The Licensee is responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply.*

*4.5. The cost of extension and upgradation of the system for meeting demand of new consumers shall be recovered from the new consumers' through system loading charges as approved by the Commission. In areas where distribution mains do not exist, the costs for installation of new distribution mains shall normally be covered by grant from the State Government or local body or any collective body of consumers or a consumer. The Licensee may also install new Distribution Mains from the surplus available with the Licensee after meeting all expenditure. The Licensee shall submit a policy regarding the utilization of surplus funds and the installation of Distribution Mains to the Commission for approval. The ---*

*(a) responsibility of construction of the required distribution network in case of a new residential, commercial or an*

*industrial complex with load exceeding 25 KW shall be that of the body or the agency (public or private) that constructs such complex, and*

*(b) responsibility for laying the distribution network for street lights on any new road/street shall be that of the local authority concerned.*

*4.45. The estimate shall be prepared as per the provisions of the Indian Electricity Act, 1910 and on the basis of charges approved by the Commission. The Licensee shall submit once in two years a proposal to the Commission for approval of various charges to be charged by the Licensee from the consumer in the estimate. The estimate shall be valid for two months. 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”.*

15. Under clause 4.3, it is the licensee who is basically responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. At the same time clause 4.5 provides that the responsibility of construction of the required distribution network in case of new residential, commercial or industrial complexes with load exceeding 25 KW shall be that of body or the agency (public or private) that carries out the construction of such complexes. The appellant being a public body engaged in the construction of residential complexes etc. is covered under this clause. The work, however, as required by clause 4.45 is to be carried out by the appellant under the supervision of the respondent licensee, UPPCL, who is entitled to charge 15% of the estimate cost of the work as supervision charges.



16. The learned counsel for the appellant submitted that clause 4.5 of the Code of 2002 is general in nature, while Notification of the Government of U.P. dated June 2, 1982 read with Notification dated January 17, 1984 specifically applies to U.P. Avas Evam Vikas Parishad. According to him, the appellant is governed by the aforesaid specific Notifications and not by general provisions of the clauses 4.5 and 4.45 of the Code of 2002.

17. The learned counsel relied upon the decisions of the Supreme Court in *Cantonment Board & Anr. vs. M.P. State Road Transport Corporation* (1997) 9 S.C.C. 450; *A.B. Krishna & Ors. vs. State of Karnataka & Ors.* (1998) 3 SCC 495; and *Chandra Prakash Tiwari & Ors. vs. Shakuntala Shukla & Ors.* (2002) 6 SCC 127 in support of the contention that a later general law does not abrogate an earlier special one by mere implication. It was submitted by the learned counsel for the appellant that unless general rules specifically repeal the special rules, the earlier rules remain effective and operative.

18. There can be no quarrel with the principles laid down in the aforesaid decisions cited by the learned counsel for the appellant. However, these decisions are not applicable to the instant case. The Memorandum dated January 17, 1984 was issued by the U.P. State Electricity Board. It is not statutory in origin. It has been captioned as 'Office Memorandum'. In contrast the Code of 2002 has a statutory

flavour. Even otherwise the memorandum dated January 17, 1984 does not specifically apply to U.P. Avas Evam Vikas Parishad and therefore, is also general in nature, applicable to Housing Boards, Local Development Authorities and NOIDA.

19. In the circumstances, therefore, we do not find any force in the appeal. Accordingly, the same is dismissed.

**(Justice Anil Dev Singh)**  
**Chairperson**

**(A.A. Khan)**  
**Technical Member**

**Dated: the March 7, 2007**