

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Pet. No. 38 of 2023

In the Matter of:

Miscellaneous Petition challenging the Regulation No. 6.1 of the Uttarakhand Electricity Regulatory Commission (The Electricity Supply Code, Release of New Connections and Related Matters) Regulation, 2020, on the ground of the same being ultra-vires the mandatory provision of Section 56(1) of the Electricity Act, 2003 and the retrospective implication of the same, being used by UPCL in treating the Bill as a Bill cum Disconnection notice.

And

In the Matter of:

M/s Uttaranchal Iron & Ispat Ltd.,
(Furnace Division), Plot No. 5, 6 & 7,
Industrial Area, Jashodharpur,
Kotdwar, District Pauri Garhwal

...Petitioner

&

In the Matter of:

Managing Director,
Uttarakhand Power Corporation Ltd. (UPCL),
VCV Gabar Singh Urja Bhawan,
Kanwali Road, Dehradun

...Respondent

Coram

Shri D.P. Gairola	Member (Law) /Chairman (I/c)
Shri M.K. Jain	Member (Technical)

Date of Hearing: September 15, 2023

Date of Order: October 31, 2023

ORDER

The Order relates to the Petition filed by M/s Uttaranchal Iron & Ispat Ltd. (hereinafter referred to as “the Petitioner”) under Section 50 read with Section 94(1)(f) & read with Section 181 of The Electricity Act, 2003, challenging the Regulation No. 6.1 of the Uttarakhand Electricity Regulatory Commission (The Electricity Supply Code, Release of New Connections and Related Matters) Regulation, 2020, (hereinafter referred to as “The Supply Code Regulations 2020”).

Background

2. The Petitioner's company is an induction furnace situated at Jashodhar industrial area Kotdwar, Uttarakhand and has a contracted load of 6000 kVA and is connected to the network of Uttarakhand Power Corporation's Ltd.'s (hereinafter referred to as "Distribution Licensee" or "UPCL") network for supply of electricity to run its industry.
3. The instant Petition was filed on 31.07.2023 whereby Petitioner has challenged the Regulation 6.1 of the Supply Code Regulation, 2020, on the ground of the same being ultra-vires the mandatory provision of Section 56(1) of the Electricity Act, 2003 (hereinafter referred to as "the Act") and the retrospective implication of the same, being used by UPCL in treating the Bill as a Bill cum Disconnection notice.
4. The principal grievance of Petitioner is that a separate 15 days clear notice be issued by UPCL in case of non-payment of dues by consumer which should not be clubbed with the electricity bill issued by it. As per Petitioner, the concept of Bill cum Disconnection notice provided in the impugned Regulation 6.1 of the Supply Code Regulations, 2020 is not in sync with the Section 56 (1) of the Act and therefore, the said Regulations needs to be turned down.
5. Petitioner has sought following relief:

"It is therefore, most respectfully prayed; that the Ld. UERC, Dehradun; shall most respectfully be pleased, to pass suitable orders:-

- a. declaring the Regulation 6.1 of the Supply Code, 2020 to be non-est in law; and to retrospectively amend the same and incorporate the language of Regulation 4.1 of the Supply Code, 2007; in order to bring consistency in the Supply Code, 2020 with the mandatory provisions of Section 56(1) of the Electricity Act, 2003;*
- b. declare that all the Electricity disconnections, which have been made not only in the case of the petitioner but in all other cases by UPCL, without adhering to a clear 15 days notice in writing (as mandated u/s 56 of the Act of 2003); to be patently illegal, without authority of law; and to drop any consequential demand and other penalties, which accrued qua such illegal disconnections, in interest of natural justice and fairplay.*
- c. Allow any other such consequential reliefs, as expedient in law; on the facts and circumstances of the case."*

6. In the above, the Commission decided to hear the parties on admissibility of the Petition on 15.09.2023 and accordingly communicated the same to the parties vide letter dated 05.09.2023. Meanwhile, UPCL vide letter dated 04.09.2023 submitted its comments on admissibility of the Petition.
7. On the day of hearing i.e., on 15.09.2023 the Commission heard the Parties in detail where both sides contested their arguments vehemently. Thereafter, the Commission vide order dated 15.09.2023 decided to reserve its judgment.

All the arguments, written and oral have been recorded and analyzed in the following paras of this order.

Submission by Petitioner:

8. The Petitioner made the following submissions:
 - (1) On the issue of admission, the Petitioner requested that the instant Petition and the argument therein touches upon the elements of section 56(1) and section 56(2) of the Electricity Act, 2003 (The Act) which have not being dealt in any other forum and therefore, this Commission has full jurisdiction to proceed with the matter.
 - (2) On the vires of Regulation 6.1 of the Supply Code Regulations 2020, Petitioner has submitted that the provisions relating to disconnection of supply of the erstwhile UERC (The Electricity Supply Code) Regulations 2007, (hereinafter referred to as "Supply Code, 2007) were totally legal (confirming to the mandatory provision enshrined u/s 56(1)) and should not have been replaced the impugned Regulations which is patently ultra vires; going against the provisions of Section 56(1) of the Act.
 - (3) That UPCL is illegally and retrospectively interpreting the intention of the Legislature as being the covenants of Regulation 6.1 of the Supply Code, 2020; and is interpreting, to consider the "Bill", so as to read the same to be a "Bill cum Disconnection notice"; and further, in utter disregard to the mandatory provisions of Section 56(1); issuing such unbridled power, to suddenly, disconnect the power supply; after waiting for 15 days i.e. after having issued the "Bill"; by considering the said "Bill", as a "Bill cum Disconnection notice".

- (4) That the impugned Regulation 6.1 has conferred an unbridled power to UPCL; who are misusing the same; and are retrospectively misusing the said Regulation 6.1 enacted on 29.10.2020, to their advantage.
- (5) That it is challenging the vires of the Regulation 6.1 of the Supply Code 2020 and requesting the Commission to suitably amend the said Regulation and to hold that the same is ultra vires Section 56(1) of the Electricity Act, 2003.
- (6) That the disconnections carried out during 11.08.2016 to 29.10.2020, were required to be covered under the 'UERC (The Electricity Supply Code) Regulation, 2007'; whereas the disconnections post 29.10.2020 onwards, were covered under Supply Code Regulations, 2020; however despite the legally valid Supply Code, 2007 (providing for clear 15 days' Notice); the Licensee, acting upon their whims and fancies and deriving an unbridled power under Supply Code Regulations, 2020, have taken liberty to disconnect the electricity supply, without any 15 days clear notice, as mandated u/s 56(1); unilaterally treated the "Bill" as a statutory "Bill cum Disconnection notice"; whereas the earlier Regulation 4.1 of the 2007 Supply Code, was a perfectly legal provision, keeping in mind the mandate of Section 56(1) of the Electricity Act, 2003.
- (7) That Regulation 6.1 of the Supply Code, 2020 happens to negate the requirement for 15 days clear written notice before disconnection, as mandated u/s 56 of the Electricity Act, 2003; hence the same needs to be declared void-ab-initio and replaced by the earlier Regulation No. 4.1 of the Supply Code, 2007, and be declared to be patently inconsistent with the Act of 2003.
- (8) That the Commission must exercise its power of review u/s 94(1)(f) in retrospectively amending Regulation No. 6.1 of the Supply Code, 2020.

Submission by Respondent:

9. UPCL vide its letter No. 4148/UPCL/Com dated 04.09.2023, submitted its reply wherein it has stated that:
 - (1) The present Petition has been filed under section 50 r/w section 94(1)(f) and r/w section 181 of the Electricity Act, 2003 and that no petition lies before the Commission under the said provisions of law.

- (2) The Respondent is complying with the provisions of the Act and the Supply Code Regulations 2020 in totality.
- (3) That Section 56(1) of the Act provides for not less than 15 days notice in writing in case any person neglects to pay any charges for electricity. However special power to regulate the intervals for billing of electricity charges and disconnection of electricity for non-payment thereof is conferred by the statute on the state Commission under section 50 of the Electricity Act, 2003, and under which the supply code Regulations are framed. The said provision specifically confers power upon the State Commission to specify the electricity charges and provide for disconnection of supply for its non payment as has been done by way of said Regulation 6.1 of the aforesaid Regulations and the said mandate is clearly fulfilled as UPCL is providing bill cum disconnection notice whereby the due date for payment of bills and disconnection date are categorically mentioned on the written bills cum disconnection notice served to the consumers.
- (4) That not only will the special provision of Supply Code Regulation 2020 framed under Section 50 of the Act will prevail over the general power of disconnection as provided in Section 56(1) of the Act, but even otherwise and without prejudice to aforesaid submission it is further submitted that the principle of natural justice incorporated under Section 56(1) providing for 15 days notice is even otherwise met by Regulation 6.1 of the said Regulations. That there is no apparent inconsistency between the two provision, the petitioner cannot claim that he is entitled for a separate notice or some special notice under section 56(1), the only requirement of the said section is of 15 days notice, which in any case is even otherwise met.
- (5) That not only the petitioner but rest of the consumers are fully aware that the bills generated are as per the Regulation, they clearly specify the amount due and the due date for payment and further provides for the date of disconnection, hence every consumer is aware that after the due date if payment is not paid within 15 days the connection may be disconnected, the consumer who even after knowing this does not make the payment cannot be permitted to say that fresh notice should be issued to inform him the default, which he is already aware of. That the whole purpose of giving

15 days time before disconnecting the supply, is to provide any opportunity to defaulting consumer who might due to mistake or oversight have missed the due date, the consumers are fully aware of the billing cycle and cannot be permitted to say that unless separate notice is given they will not make the payment to avoid disconnection.

- (6) The petitioner has no *locus standi* to file the present petition, moreover the Regulations of the Commission cannot be challenged by way of petition as it is not a matter of any adjudication but relates to challenge of the vires of the Regulation which can only be done by invoking a constitutional remedy before the constitutional courts.
- (7) The petition is totally malafide and amounts to misuse of judicial process, the petition needs to be dismissed with heavy cost to desist such malafide endeavors in future, which wastes precious time of the Hon'ble court. The Petition is barred by law, is not legally maintainable, and is not liable to be admitted.

Commission's Observations, Views & Decision:

- 10. The instant hearing was conducted and the submission/arguments are analyzed on the question of admissibility of the Petition. Whether, the State Commission should or can deliberate upon the vires of its Regulations and whether Regulation 6.1 of the Supply Code Regulations, 2020 suffers from any infirmity or is violative of Section 56 (1) of the Act is for us to ponder upon in this Order.
- 11. At the very outset we wish to clarify that the Commission after due consultation, soliciting comments from public specifies a Regulation, underlining theme of which is to improve the sector and facilitate its growth with protection of interest of all stakeholders as its cardinal mantra. Any difficulty in application of the Regulations due to any practical reason or for it being inconsistent with the provisions of the Act that appears apparent is the duty of this Commission to immediately rectify by either exercising its power to remove difficulty or initiate the process of amendment when such apparent/patent infirmity is highlighted before the Commission. In the following paras of this Order, we will delve into finding out if any apparent infirmity exists in the Regulation 6.1 of the Supply Code Regulations, 2020.

12. For addressing the above concern, let us import Regulations 6.1 which stipulates that:

“6.1. The bill issued by the licensee to the consumer shall be treated as Bill cum Disconnection Notice. By Bill cum Disconnection Notice it is meant that the Licensee shall give a due date of atleast 15 days for payment of dues from the bill date and subsequent to the due date, the licensee shall give further 15 days for disconnection as per Section 56 of the Act. Therefore, the Licensee may temporarily disconnect consumer’s installation on expiry of the said notice period by disconnecting service line/connection from distributing mains. If the consumer does not clear all the dues including arrears within 6 months of the date of temporary disconnection, such connections shall be disconnected permanently by removing meter and other equipment as the case maybe, installed at the consumer’s premises for connection. Final amount due to the consumer shall be adjusted against the Security Deposit including interest on the same and balance recoverable amount shall be recovered through the applicable laws of Revenue Recovery.

...”

From the above it is understood that the aforesaid Regulation is evoked when a consumer defaults in making timely payment of its dues to Distribution Licensee. However, the said Regulation clarifies that the Distribution Licensee shall give 15 days for payment of dues from the bill date to the consumer and subsequent to the due date shall give further 15 days for payment of dues to avoid disconnection. The bill issued by UPCL is defined as ‘Bill cum Disconnection Notice’. This too has been clarified in the very first line of the said Regulation. However, Petitioner is dissatisfied with this arrangement of issuance of notice for disconnection and has argued that a separate notice should be issued intimating date for disconnection. This is not the first time that Petitioner has raised this issue before the Commission, in the past Petitioner had approached the Commission in the matter of *“Filing of Miscellaneous Petition, inter alia amongst other grounds concerning refund of Minimum Demand Charges (MDC)/Late Payment Surcharge (LPS) charges by illegal disconnection and for determining whether Minimum Demand Charges/ Late Payment Surcharge can be imposed, if power supply is disconnected u/s 56(1), without proper and clear 15 days notice u/s 181 r/w Section 50 of The Electricity Act, 2003”*.

[Emphasis added]

The above petition was rejected by the Commission on admissibility vide Order dated 23.03.2022, holding recovery of charges by UPCL as fair in the matter and regarding the issue of treatment of "Bill" as "Bill cum Disconnection Notice", which is also the issue in the instant matter, the Commission at page 13 of para 17 of the aforesaid Order dated 23.03.2022, has elaborately explained why a Bill should be treated as "Bill cum Disconnection Notice" and how this arrangement is in sync with the spirit of Section 56(1) of the Act. Relevant para of the said order is reproduced hereunder:

"Further, on the submission of the Petitioner that 15 days clear notice is not provided to it by the Distribution Licensee before disconnecting the supply and that the bills issued to it cannot be construed as disconnection notice and that a separate notice 15 days prior to disconnection of supply should be issued, it is to clarify that, bill issued by the Distribution Licensee is a bill-cum-disconnection notice, it is for the reason that the Distribution Licensee should not engage/burden its office and machinery in issuing bills and notice separately, when a combined bill-cum-disconnection notice serves the purpose. The intention of section 56(1) of Act is to ensure intimation to the consumer 15 days prior to the date of disconnection is achieved when a bill declaring date of disconnection is communicated/issued 15 days in advance of such purported date of disconnection to the consumer. Moreover, this practice of issuing bill-cum-disconnection notice is not new and is not restricted in this State but is also conveniently in vogue in other States as well.

In times when a blue tick on WhatsApp messenger is recognized as legal mode of communication, a printed bill communicating the date of disconnection cannot be considered invalid. In fact, the Commission has recognized bill-cum-disconnection notice as a legit mode of communicating disconnection date under section 56(1), through Regulation 2.2.2(14) of the UERC (The Electricity Supply Code, Release of New Connections and Related Matters) Regulations, 2020. No further clarification whatsoever is required in the matter when the law is loud and clear."

13. The above order of the Commission is challenged by the Petitioner before the Hon'ble APTEL. Nevertheless, the issue for our consideration is whether Regulation 6.1 of the Supply Code Regulations, 2020 is in sync with the Section 56 (1) of the Act. As seen from the above, this issue has already been deliberated upon by the Commission and we still stand by the same view. Why a bill should be

treated as Bill cum Disconnection Notice has been explained in the best possible way in the aforesaid Order. We do not think it is relevant to revisit the same question again and again only because it is wrapped in a cover of different legal remedy.

14. Further regarding the submission of Petitioner that the Regulation 6.1 has conferred an unbridled power to UPCL and that it is retrospectively misusing it to their advantage, it is to clarify that the erstwhile UERC (The Electricity Supply Code) Regulations 2007 did not have such an elaborate explanation about the issuance of bill cum Disconnections Notice, and hence, in the Supply Code Regulations 2020, this explanation has been deliberately incorporated to eliminate any scope for apprehensions or argument, despite this, litigants such as Petitioner are not deterred to create unnecessary confusion for themselves.
15. Besides, we are aware that Petitioner has been defaulting in payment of its dues since 2016. In our last order, (dated 23.03.2022) we have written in detail about the history of its delinquent behavior. Petitioner is misusing tools of legal remedies to stall the process of recovery of its unpaid dues, needless to say that such acts are mischievous action that needs to be reprimanded. We are of the view that the instant Petition has no substance and is clearly an attempt to waste the precious time of the Commission. Petitioner is warned to be cautious in filing such frivolous matters before the Commission or it shall have to face hefty penalty in future.
16. In light of the above, the Commission is of the view that the Petitioner does not have a legit case and is only attempting ways to delay the payment of dues. The Regulation 6.1 of the Supply Code Regulations, 2020 does not suffer from any infirmity and is perfectly in sync with Section 56 (1) of the Act. Therefore, the Commission has decided to reject the petition as not being admissible.

Ordered accordingly.

(M.K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law) / Chairman (I/c)