

Uttarakhand Power Corporation Limited vs M/S. India Glycols Limited & Ors on 18 May, 2026

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 190 of 2018

Dated : 18th May, 2026

Present: Hon'ble Ms. Seema Gupta, Officiating Chairperson
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Uttarakhand Power Corporation Limited
Through its Managing Director
"Victoria Cross Vijeta Gabar Singh Urja Bhawan,"
Kanwali Road, Dehradun - 248001, Uttarakhand

Versus

1. M/s. India Glycols Limited
Through its Managing Director
A-1, Industrial Area Bazpur Road,
Kashipur, Uttarakhand - 244713
2. M/s. Hindustan National Glass Limited
Through its Managing Director
Malviya Nagar, Virbhadra Rishikesh,
Uttarakhand - 249202
3. M/s. Easter India Limited
Through its Managing Director
Sohan Nagar, Chaubeta, Khatima,
U.S. Nagar, Uttarakhand - 262308
4. Uttarakhand Electricity Regulatory Commission
Through its Secretary

Appeal No. 190 of 2018

"Vidyut Niyamak Bhawan",
Near I.S.B.T., P.O. Majra Dehradun
Uttarakhand - 248171

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Counsel for the Appellant(s)

:

Pradeep Misra
for App. 1

Counsel for the Respondent(s) : Anand K. Ganesan
Swapna Seshadri
Neha Garg
for Res. 1 & 3

C. K. Rai
Anuradha Roy
Vinay Kumar Gupta
for Res. 4

JUDGMENT

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Appellant, Uttarakhand Power Corporation Ltd. (in short UPCL) is aggrieved by the order dated 12th April, 2018 passed by the 4th Respondent - Uttarakhand Electricity Regulatory Commission (hereinafter referred to as "the Commission") in suo-moto proceedings initiated by it on the representation submitted by 1st Respondent M/s India Glycols Ltd. Vide the said impugned order, the Commission has held that the long-term and mid-term open access consumers are not liable to pay cross subsidy surcharge in terms of Regulation 22 of UERC (Terms and Conditions of Intra State Open Access) Regulations, 2015 (hereinafter referred to as

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Open Access Regulations) and accordingly directed the Appellant to refund the amount so recovered by it as cross subsidy surcharge to the Respondent Nos. 1 to 3 as well as other concerned long term/mid-term open access consumers by adjustments in next three monthly bills starting from May, 2018.

2. The Appellant is a Distribution Licensee in the State of Uttarakhand and the Respondent Nos. 1 to 3 are mid-term open access consumers of the Appellant.

3. It appears that vide letter dated 29th January, 2018, the Appellant informed the 1st Respondent that by mistake cross subsidy surcharge of the amount of Rs.33,42,186/- has not been levied on the power purchase by it through open access under Mid-Term Open Access (MTOA). Vide reply dated 31st January, 2018, the 1st Respondent explained to the Appellant that as per Regulation 22 of UERC Open Access Regulations, 2015 cross subsidy surcharge is not payable on the power purchase through mid-term open access and therefore, no such surcharge can be levied on it. However, since the explanation so offered by the 1st Respondent was not acceptable to the Appellant, the 1st Respondent sent

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representation dated 2nd February, 2018 in this regard to the Commission.

4. The Commission, upon receipt of the said representation from 1st Respondent, initiated suo-moto

proceedings in the matter and sent notices to the Appellant as well as Respondent Nos. 2 & 3 calling for their responses. Upon hearing all the parties and after analysing their rival contentions, the Commission passed the order dated 12th April, 2018 which has been impugned in this appeal.

5. We have heard Mr. Pradeep Misra, Learned Counsel for the Appellant, Mr. Anand K. Ganesan, Learned Counsel for Respondent Nos. 1 & 3 and Mr. C.K. Rai, Learned Counsel for Respondent No. 4. We have also perused the impugned order as well as the written submissions filed by the Learned Counsels.

6. Following two issues arise for our consideration in this appeal:-

(i) Whether the representation of the 1st Respondent revealed only "Billing Dispute" which ought not to have been entertained by the Commission?

(ii) Whether, in view of the 2nd proviso to Regulation 22 of UERC Open Access Regulation, 2015, no cross subsidy surcharge

is to be levied from long-term and mid-term open access consumers?

Our Analysis

(i) Whether the representation of the 1st Respondent revealed only "Billing Dispute" which ought not to have been entertained by the Commission?

7. It was vehemently argued by the Learned Counsel for the Appellant that the representation dated 2nd February, 2018 sent by 1st Respondent to the Commission disclosed only "Billing Dispute" and, therefore, it ought to have approached the Consumer Grievance Redressal Forum (in short CGRF) for redressal of its grievances and the Commission had no jurisdiction to entertain the same.

8. We are unable to agree to the submission of the Learned Counsel.

9. In the above noted representation, the 1st Respondent had specifically referred to Regulation 22 of UERC Open Access Regulation, 2015 to contend that mid-term open access consumers like it, are not liable to pay cross-subsidy surcharge and the Appellant is illegally seeking to levy such surcharge from them. Therefore, clearly, the dispute before

----- the Commission was not a mere billing dispute but it related to rights and liabilities of open access consumers and involved explanation as well as interpretation of the open access Regulations. On this aspect, we may profitably refer to the judgement of this Tribunal dated 28th July, 2011 in Appeal No. 36 of 2011 Maharashtra State Electricity Distribution Company Ltd. Vs. Maharashtra State Electricity Regulatory Commission and others in which it was held as under :-

"46. The dispute relating to the Open Access would be dealt only by the Commission as the Act clearly provides that the Commission must ensure fulfillment of the mandate to provide such Open Access which would include issuing directions to grant Open Access which has rightly been given in the impugned order. This, jurisdiction vested with the Commission can not be usurped or taken away by the Consumer Grievance Redressal Forum. In other words, the Consumer Grievance Redressal Forum established by the Distribution Licensee will have no jurisdiction to entertain or decide a dispute where the statutory mandate to provide Open Access has been violated by the Distribution Licensee. Therefore, the dispute in question

can be resolved by the State Commission alone and not by the Consumer Grievance Forum. As such, there is no infirmity in the impugned order."

10. Similarly, in another judgement dated 22nd March, 2011 passed in Appeal No. 181 of 2010 Uttar Gujarat Vij Company Ltd. Vs. Gujarat State Electricity Regulatory Commission & Ors.

"13. Before answering the question whether the Commission's impugned order is justifiable on merit or not it is necessary to say who is the competent authority under the statute to clarify, explain, interpret or if need be amend the tariff order. A consumer grievance redressal forum or for that matter an Ombudsman cannot possibly give an interpretation or clarification of what a quasi-judicial or quasi-legislative authority intended to mean by framing a tariff order particularly when they do not have the appellate or revision jurisdiction over the Commission. In fact, private educational institutions running on commercial basis or otherwise do not find mention in express words in

either of the three categories. There is word 'etc'. that can act as esjusedem generis to include a private educational institution, if according to the Commission the categorization of HTP-II(A) would include all such private educational institutions and that the said HTP-II(A) category is intended to cover the institutions and entities which are run from commercial view point or that these entities and institutions as mentioned in HTP-II(A) serve a common purpose. There is no word 'etc'. either in HTP-I or HTP-II(B). To our mind, the power of clarification or interpretation or amendment of the order of the Commission lies with the Commission who is the author of the order and it is only in accordance with the tariff determination order that an agreement between a distribution licensee and a consumer follows. Therefore, if a particular entity is of the opinion that it has been wrongly categorized or that there has been wrong application of the tariff order because of misunderstanding or misinterpretation then it is the Commission that has to clarify the confusion and make

the position clear. Therefore, in our estimation redressal forum or the Ombudsman cannot give legal interpretation of the tariff determination order made by a Commission and/or entertain a petition of a consumer for change of one category to another which involves powers of adjudication of fixation of tariff."

11. Following observations of the Hon'ble Supreme Court in Maharashtra Electricity Regulatory Commission vs. Reliance Energy Ltd. & Ors. (2007) 8 SCC 381 which has been relied upon by the Commission in the impugned order also, are very apt on this aspect :-

"16. When the Commission received a spate of complaints from consumers against its licensees/distribution companies that they are arbitrarily issuing supplementary/amended bills and charging excess amounts for supply of electricity, it felt persuaded to invoke its general power to supervise the licensees/distribution companies and in that connection issued notice dated 3.8.2004. There can be no manner of doubt that the Commission has full power to pull up any of its

licensee or distribution company to see that the rules and regulations laid down by the Commission are properly complied with. After all, it is the duty of the Commission under Sections 45(5), 55(2), 57, 62, 86, 128, 129, 181 and other provisions of the Act to ensure that the public is not harassed."

12. Thus, it cannot be gain said that the disputes involving interpretation as well as clarifications/explanation of Regulations cannot be entertained by CGRF or ombudsman and can only be adjudicated upon by the State Regulatory Commission. It is for this reason only that the Commission, upon receipt of the representation from 1st Respondent, decided to initiate a suo-moto petition in which the Appellant as well as other MTOA consumers were summoned and their responses were called for and accordingly impugned order was passed. Therefore, we do not find any merit in the objections raised by the Appellant that the 1st Respondent had approached the Commission only with a "billing dispute" which out not to have been entertained by the Commission.

(ii) Whether, in view of the 2nd proviso to Regulation 22 of UERC Open Access Regulation, 2015, no cross subsidy surcharge is to be levied from long-term and mid-term open access consumers?

13. The decision on this issue would clearly revolve upon the interpretation of Regulation 22 of UERC Open Access Regulations, 2015 which are extracted hereinbelow"-

"22. Cross subsidy surcharge (1) Embedded open access consumer, in addition to transmission and/or wheeling charges, shall pay cross subsidy surcharge determined by the Commission. Cross subsidy surcharge determined on Per Unit basis shall be payable, each month, by such consumer based on the actual energy drawn during the month through open access. The amount of surcharge shall be paid to the distribution licensee.

Provided that no cross subsidy surcharge shall be levied on energy drawn by such consumers, through open access, during the period of power cut imposed by the distribution licensee.

Provided further that such surcharge shall not be levied on long term/medium term such open access consumer and a person who has established a captive generation plant for carrying the electricity to the destination of his own use.

Provided also that in case power supply position or the load of such consumers, seeking open access, changes substantially, the Commission may review the Cross Subsidy Surcharge as and when required.

(2) The cross subsidy surcharge for such short term open access consumers shall be determined in accordance with the following formula:

Surcharge formula:

$S=T-C$ Where, S is the Cross subsidy surcharge;

T is the retail tariff payable by the relevant category of such consumers;

C is the average cost of supply of distribution licensee."

14. The 2nd Proviso which has been typed in bold herein above is material for our discussion. The emphasis is on the word "Such" found in 2nd line of the proviso before the words "Open Access Consumers".

15. Learned Counsel for the Appellant argued that in order to claim exemption from payment of cross subsidy surcharge, concerned entity must fulfill both the conditions i.e. it must be long-term/mid-term open access consumers and also must have established a captive generation plant. It is argued that the word "such" is used in the proviso clearly indicates that the proviso is applicable to the long-term/mid-term open access consumers who have established a captive generation plant. The submission is that this proviso providing exemption from payment of cross subsidy surcharge is not applicable to all long-term/mid-term open access consumers for the reason

that such an interpretation would be in contravention to the main provision in the Regulation mandating the embedded open access consumers to pay cross subsidy surcharge in addition to transmission and /or wheeling charges.

16. Per contra, it is argued on behalf of the respondents that the said 2nd proviso to Regulation 22 specifies two classes of consumers which

----- are exempted from payment of cross subsidy surcharge namely (i) long- term/mid-term open access consumers and (ii) the persons who have established captive generation plant for carrying the electricity to the destination of their own use. It is argued that the Commission in the impugned order has arrived at a correct and justified interpretation of the said proviso which does not call for any interference from this Tribunal in this appeal.

17. In order to analyze the rival submissions of the Learned Counsels on this aspect properly and for the sake of convenience, we reproduce the 2nd proviso to the Regulation 22 of UERC Open Access Regulations, 2015 again hereinbelow :-

"Provided further that such surcharge shall not be levied on long term/medium term such open access consumer and a person who has established a captive generation plant for carrying the electricity to the destination of his own use."

18. Even though, it is manifest that the proviso is not happily worded and is not grammatically correct yet a bare perusal of it, reveals that it

----- creates two distinct classes of consumers which are exempted from payment or cross subsidy surcharge which are :-

(a) Long term and mid-term open access consumers; and

(b) The person who has established a captive generation plant for carrying the electricity to the destination of his own use.

19. The placing of word "Such" before the words "Open Access Consumer" in the second line of the proviso is creating difficulty of which the Appellant is intending to take advantage. This word "Such" clearly appears to be superfluous and when taken away, a proper grammatical sense is imparted to the entire proviso and which would read as under :-

"Provided further that such surcharge shall not be levied on long- term/mid-term open access consumer and a person who has established a captive generation plant for carrying electricity to the destination of his own use."

20. In case the intention of the Commission was to exempt only those long terms/mid-term open access consumers who have established a captive generation plant from payment of cross subsidy surcharge, the proviso should have been worded as under :-

"Provided further that such surcharge shall not be levied on such long-term/mid-term open access consumer who have established a captive generation plant for carrying electricity to the destination of his own use."

21. The use of disjunctive "and" between the words "long-term/mid-term open access consumer" and "a person who has established a captive generation plant" in the said 2nd proviso is clearly indicative of the fact that the Commission intended to create two distinct classes of consumers who would have exemption from payment of cross subsidy surcharge.

22. We may also note that in sub-regulation (2) of Regulation 22, formula for determination of cross subsidy surcharge payable by short term open access consumers has been given.

23. The entire Regulation no where mentions the formula for determination of cross subsidy surcharge payable by long-term/mid-term open access consumers. This too manifests that long-term/mid-term open access consumers are exempted from payment of cross subsidy surcharge. In case the interpretation sought to be given to the said Regulation by the Appellant is adopted, it would lead to an absurd situation wherein short term open access consumers having a captive generation

plant would be liable to pay cross subsidy surcharge which would be in contravention to 3rd proviso to Section 42 of the Electricity Act, 2003 which exempts the captive generation plants/users from payment of cross subsidy surcharge.

24. We are conscious of the fact that Court while interpreting a statutory provision, ought not to substitute its own words for the words of Statute. In other words the Court cannot reframe the drafting of the legislation for the very good reason that it has no power to legislate. The Court being an interpreter of the statutes, is not entitled to read words into the statute and cannot add or omit or make up deficiencies which are left there. As on one hand it is not permissible to add words or fill in a gap or lacuna, on the other hand efforts should be made to give meaning to each and every word or expression used by the legislature. However, where the court finds a statutory provision defective, it is not expected to remain a mute spectator. In such a situation, the job of the court would be to find the intention of the maker of the statute in order to make the statute workable. On this aspect, we may profitably refer to following observations of Lord Denning in Seaford Court Estates Ltd. Vs. ASHER as quoted with the

approval by the Hon'ble Supreme Court in (Tirath Singh v. Bachittar Singh) AIR 1978 SC 548;

"When a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament ... and then he must supplement the written words so as to give 'force and life' to the intention of legislature. ... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.'

25. Keeping in mind this golden principle for interpretation of a statute, we have embarked upon to give a meaningful interpretation to the 2nd proviso to Regulation 22 of UERC Open Access Regulation 2015 in order to make it workable and in consonance with the intention of its makers i.e. Commission.

26. It is also important to note here that maker of this Regulation i.e. the Commission itself has very lucidly explained in the impugned order that its

intention was not to levy cross subsidy surcharge on long-term or mid- term open access consumers. The Commission has explained that the intention behind its excluding long-term and mid-term open access consumers from the levy of cross subsidy surcharge was to promote open access more so in light of the fact that UPCL was in continuous shortage of power. Therefore, when the Commission was confronted with the defect in the Regulation while deciding the suo-moto petition initiated by it vide the impugned order, it has rectified the defect and clarified its intention behind engrafting the Regulation in question.

Conclusion

27. Having regard to the above discussion, we are unable to find any error or infirmity in the impugned order of the Commission. The appeal is devoid of any merit and is accordingly dismissed.

Pronounced in the open court on this 18th day of May, 2026.

(Virender Bhat)
Judicial Member

(Seema Gupta)
Officiating Chairperson

REPORTABLE / NON REPORTABLE

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