

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

WRIT PETITION (PIL) NO. 93 OF 2019

RTI Club

.....Petitioner.

Vs.

Uttarakhand Power Corporation Limited and others.Respondents.

Sri B.P. Nautiyal, learned Senior Counsel assisted by Sri Mohd. Matloob, learned counsel for the petitioner.

Sri B.D. Upadhyay, learned Senior Counsel assisted by Sri Dharmendra Barthwal, learned counsel for the Uttarakhand Power Corporation Limited.

Sri Vinay Kumar, learned counsel for respondent nos. 3 & 5.

Sri C.S. Rawat, learned Additional Chief Standing Counsel for the State of Uttarakhand.

Dated : 2nd December, 2019

**Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble Alok Kumar Verma, J.**

Ramesh Ranganathan, C.J. (Oral)

In the affidavit, filed today by the Managing Director of the Uttarakhand Power Corporation Limited, it is stated that a meeting was held on 18.11.2019 between the Managing Directors of respondents 1 & 5 and the Director (Operations) as the representative of the Managing Director of the third respondent, and with the Employees Union on 19.11.2019, to reach a consensus regarding rationalizing the facility of supply of electricity at concessional rates to employees; and with an aim to maintain industrial harmony, in view of limiting the ongoing facility of employees of the Organisation, it was decided, subject to the approval of the Board, to fix the maximum ceiling limit of electricity consumption for Class-IV employees and Operating Staff at 10,000 units per annum, for Class-III employees at 11,000 units per annum, for Junior Engineers and equivalent posts at 12,000 units per annum, for Assistant Engineers / Executive Engineers and equivalent posts at 13,000 units per annum, for Deputy General Managers and equivalent posts at 14,000 units per annum, and for General Manager and equivalent posts and above at 15,000 units per annum; the aforesaid number of units are proposed to be supplied to Class-IV employees at Rs. 100/- per month, to Class-III employees at Rs. 150/- per month, to Junior Engineers and

equivalent posts at Rs. 270/- per month, to Assistant Engineers / Executive Engineers and equivalent posts at Rs. 375/- per month, to Deputy General Manager and equivalent posts at Rs. 525 per month, and to General Manager and equivalent posts and above at Rs. 640/- per month.

2. Sri B.D. Upadhyay, learned Senior Counsel appearing on behalf of the Uttarakhand Power Corporation Limited, would submit that the Managing Director would also fall in Category-6, and would be entitled to consume upto 15,000 units per annum on payment of Rs. 640/- per month.

3. Sri B.P. Nautiyal, learned Senior Counsel appearing on behalf of the petitioner, would submit that the present facility, of unlimited supply of electricity, is being given to its employees by the Uttarakhand Power Corporation Limited allegedly because of Section 23(7) of the 1991 Act, read with Clause 6(11) and Explanation-ii thereunder of the 2000 Scheme, though these provisions have no application to the case on hand.

4. The source of power, to provide such concessions, is traced by Sri B.D. Upadhyay, learned Senior Counsel, to the Uttar Pradesh Electricity Reforms Act, 1999 (for short the '1999 Act'). Section 23(7) thereof enables the State Government to provide, in any of the transfer schemes framed under Section 23, for the transfer of personnel to the Power Corporation or a company subsidiary to the Power Corporation or a generating Company, on the vesting of properties, rights and liabilities in the Power Corporation or a company subsidiary to the Power Corporation or a generating company, as a part of the undertaking transferred under Section 23; and on such transfer the personnel shall hold office or service under the Power Corporation or a company subsidiary to it or a generating company, as the case may be, on terms and conditions that may be determined in accordance with the transfer scheme subject to the conditions in Clauses (a) to (c) thereunder. Clause (c) brings within its ambit all benefits of service, which accrued before the transfer, to be fully recognized and taken into account for all purposes including the payment of any or all terminal benefits.

5. Our attention is also drawn to the U.P. Electricity Reform Transfer Scheme, 2000 (for short the '2000 Scheme'). Clause-6 thereunder relates to

‘transfer of personnel’. Sub-clause (11) of Clause-6 stipulates that in respect of all statutory and other schemes and employment related matters, including provident fund, gratuity fund, pension and any other superannuation fund or any other special fund created or existing for the benefit of the personnel, the relevant Transferee shall stand substituted for the Board for all purposes and all the rights, powers and obligations of the Board, in relation to any and all such matters, shall become those of the Transferee concerned; and the services of the personnel shall be treated as having been continuous for the purpose of application of this sub-clause. Explanation-(ii) thereunder stipulates that, for the purpose of Clause 6(11), "Terminal Benefits" would mean, among others, concessional rate of electricity.

6. *Prima facie* it is the facilities, hitherto provided to such of those employees who were working in the erstwhile Uttar Pradesh Electricity Board, which are required to be continued to be provided to them. The fact, however, remains that, even for those employees who were appointed after the State of Uttarakhand was created on 09.11.2000 and to whom neither Section 23(7) of the 1999 Act nor the Scheme made thereunder is applicable, the Uttarakhand Power Corporation Limited has been extending identical benefits on the specious plea of maintaining industrial harmony, and avoiding their employees being subjected to discriminatory treatment.

7. While the Corporation can, undoubtedly, provide such facilities to its employees, provision of such facilities cannot be so unreasonable as to violate Article 14 of the Constitution of India.

8. If the allegations made by the petitioner, as highlighted by Sri B.P. Nautiyal, learned Senior Counsel, are true, then electricity consumption continues unabated evidently because employees know that, irrespective of the number of units they consume, they are only required to pay a meagre fixed amount each month.

9. While the endeavour of the Corporation to now place a cap would rectify the previous anomalies to some extent, we cannot ignore the fact that the facilities provided to Class-III employees of the Corporation exceeds what is provided under Rule 2(E) of the High Court Judges Rules, 1956 even to Judges of the High Court. While a few States, including the State of

Uttarakhand, have provided the facility of additional units of electricity for the residential-offices of High Court Judges, the fact remains that, while Classs-III employees of the Corporation are now proposed to be extended the facility of upto 11,000 units per annum, what Rule 2(E) of the High Court Judges Rules, 1956 stipulates is that Judges of High Courts, throughout the country, are entitled to reimbursement of charges, on account of electricity consumed, not exceeding 10,000 units of power per annum.

10. When we asked the Managing Director of the Uttarakhand Power Corporation Limited, who is present in Court today, regarding the basis on which such ceiling is now proposed to be fixed, he would state that, while what is proposed is the maximum upper ceiling limit, the actual average electricity consumption is less than 625 units per annum, and since the proposal has to be approved by the Board of Directors, the Corporation would bear these factors in mind while examining whether the proposed ceiling limit should be further reduced. When we asked him when the meeting of the Board of Directors would be convened, he would submit that the next meeting of the Board of Directors of the Uttarakhand Power Corporation would be convened within one month from today, and the decision taken by the Board would be communicated to this Court by the next date of hearing.

11. Yet another complaint of the petitioner is that electricity meters have not been installed in most of the residence of employees (serving or retired) of the Corporation, including its top managerial staff.

12. Sri B.P. Nautiyal, learned Senior Counsel, would draw our attention to the information supplied to the petitioner under the Right to Information Act on 28.02.2014, to submit that even senior Executives of the Corporation have not been directed to install electricity meters resulting in their being no check or monitoring of the quantum of electricity being consumed by them, on payment of a measly fixed monthly amount towards electricity charges.

13. The Managing Director of the Corporation, who is present in Court today, states that all employees have been directed to ensure that meters are installed at their residence, and that the meters are functional; they have also been told that, in case they do not furnish a certificate that meters have been

installed, their salary for the month of November would not be paid; the process of physical verification of each residence, to ascertain whether or not electricity meters have been installed, is in progress; so far physical verification of around 8,000 residential units have been caused to ascertain whether or not electricity meters have been installed thereat; around 5,500 of these residential units have functional meters; and the residence of the remaining employees, who are being provided unlimited electricity on payment of fixed monthly charges, shall be physically verified, steps taken to ensure that all residential units have electricity meters, and a compliance report shall be filed before this Court by the next date of hearing.

14. While it does appear to us, *prima facie*, that the proposed limit, of the number of units of consumption of electricity by employees of the Uttarakhand Power Corporation, is exorbitant, we refrain from saying anything more for the present, since this proposal is said to be subject to the approval of the Board of Directors and, as pointed out by the Managing Director who is present in Court today, the Board of Directors may reduce the upper ceiling limit further.

15. An affidavit, furnishing details of the decision taken by the Board of Directors and the steps taken to physically verify whether all residential units, to which unlimited electricity at fixed monthly rate is being supplied, have installed meters shall be filed by the next date of listing.

16. Post on 6th January, 2020 under the caption “fresh admission”.

17. Personal appearance of the Managing Director of the Uttarakhand Power Corporation Limited is dispensed with for the present.

(Alok Kumar Verma, J.)

02.12.2019

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(Ramesh Ranganathan, C.J.)

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