

# SUPREME COURT OF INDIA

U.P. Avas Evam Vikas Parishad & Anr.

Vs.

U.P.Power Corpn Ltd.

C.A.No.4209 of 2007

(R.M.Lodha and Jagdish Singh Khehar,JJ.,)

18.10.2011

## JUDGMENT

### **Jagdish Singh Khehar,J.,**

1. The appellant herein, the Uttar Pradesh Avas Evam Vikas Parishad (hereinafter referred to as, the U.P. Avas Evam Vikas Parishad), is a statutory body constituted under the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965. The U.P. Avas Evam Vikas Parishad has been engaged in development of colonies, residential plots, residential houses, as well as, commercial plots and complexes throughout the State of Uttar Pradesh (U.P.).

2. The U.P. Power Corporation Ltd. (hereinafter referred to as, U.P. Power Corporation) is the successor of the U.P. State Electricity Board (hereinafter referred to as, UP, SEB). It has been the statutory duty of the UP, SEB (and thereafter, the U.P. Power Corporation) to erect transmission lines, associated distribution sub-stations and L.T. distribution mains, throughout the State of U.P. The aforesaid activity has also been carried out by the UP, SEB (and thereafter by the U.P. Power Corporation) in colonies/multistoried buildings, developed/raised in the State of U.P. The aforesaid statutory duty is cast on account of the fact, that the said authorities are "designated licensees", for supply and distribution of electricity, under section 26 of the Electricity (Supply) Act, 1948. The aforesaid provision has been re-enacted as a part of section 86 of the Electricity Act, 2003.

3. The UP, SEB (and thereafter, the U.P. Power Corporation) used to exclusively carry out its legal obligations, of erection of transmission lines, associated distribution sub-stations and L.T. distribution mains, throughout the State of U.P., as a "designated licensee". The aforesaid activity was also carried out in colonies/multistoried buildings by the aforesaid, again as a "designated licensee". For carrying out the said activities in colonies/multistoried buildings, the concerned depleting agency was required to deposit with the "designated licensee", the estimated cost of the transmission lines, associated distribution sub-stations and L.T. distribution mains. The said work was entrusted to the UP, SEB (and thereafter, the U.P. Power Corporation) as "deposit work".

4. The State of U.P., in exercise of power vested in it under rule 133 (1) read with the proviso to sub-rule (1) of rule 45 of the Indian Electricity Rules, 1956, had issued a Government order dated 2.6.1982 authorizing the U.P. Avas Evam Vikas Parishad (i.e., the appellant herein) to carry on by itself, in the colonies/multistoried buildings raised by it, the work of erection of transmission lines, associated distribution sub-stations and L.T. distribution mains up to 11 K.V., subject to the conditions envisaged in the said Government order. A relevant extract of the Government order dated 2.6.1982, which was duly notified, is being reproduced hereunder:-

"The Governor is hereby pleased to provide relaxation under the provisions of Rule 45(1) of Indian Electricity Rules, 1956 with respect to the works of installations upto 11 K.V. in the land etc. of complex of Avas Evam Vikas Parishad in pursuance of the provision of 133(1) of Indian Electricity Rules, 1956 read with provision of rule 45(1).

1. All the installation of electrification works shall be done under the supervision of recognized engineer/Junior Engineer (Electrical), who has got the certificate of Electrical Supervisor from Electrical Inspector Office.
2. The work of wiring and installation of overhead line shall be got done by the persons and linemen having the permit of wireman obtained from Electrical Inspector Office. Only those persons shall come under the category of lineman, who have passed the lineman trade test from I.T.I. or who have worked on the post of linemen minimum upto 10 six months in any institution.
3. There must be one Electrical Supervisor, two Wiremen and two linesmen separately for the execution of electrification work in every area.
4. Before commencement of construction of overhead lines and cable laying etc., an approval of drawing regarding method of construction shall have to be obtained from Electrical Inspector Office."

A perusal of the aforesaid Government order reveals, that no supervision charges were prescribed as payable by the U.P. Avas Evam Vikas Parishad to the UP, SEB.

5. Supervision charges were levied by the UP, SEB for the first time through an office memorandum dated 17.1.1984. At the aforesaid juncture, the UP, SEB was pleased to levy 5% of total estimated cost of the electrification work as supervision charges. The memorandum dated 17.1.1984 prescribing 5% as supervision charges, was applicable for housing boards, local development authorities and NOIDA who opted to carry out on their own, the work of erection of transmission lines, associated distribution sub-stations, and L.T. distribution mains in the colonies/multistoried buildings promoted/raised by them. The office memorandum dated 17.1.1984 laid down the following pre-conditions to be fulfilled by the

housing boards/local development authorities/NOIDA who were desirous to take up the aforesaid electrification activity on their own:-

"1. Specifications of materials to be used in such constructions will be approved by the Superintending Engineer concerned of the U.P. State Electricity Board.

2. The materials to be used in such constructions will be inspected and approved by an officer of the U.P. State Electricity Board to be authorized by the Superintending Engineer concerned of the Board. In case, however, the UPSEB is satisfied that promoters of a colony have engaged qualified and experienced Engineers for this job, this condition may be waived by express written orders of the Superintending Engineer concerned of the UPSEB.

3. The quality of the work to be executed will be supervised by the UPSEB's officer so that there is no difficulty in taking over of the works of UPSEB. 4. 5% (five percent) of the total estimated cost of electrification work has been deposited with the UPSEB towards supervision charges, with provisions for its adjustment as per final cost when works are completed. For this purpose, the Housing Board/Local Development Authority/NOIDA etc. shall first submit detailed estimate of work proposed to be undertaken by them to enable UPSEB work out above 5% amount for initial deposit. On completion of work, they will submit 'as executed'. On detailed account of work to the concerned authority of the UPSEB."

It is not a matter of dispute, that the appellant herein commenced to deposit the aforesaid supervision charges at the rate of 5% of the total estimated cost of electrification work, consequent upon the issuance of the office memorandum dated 17.1.1984. It would also be relevant to mention, that the memorandum dated 17.1.1984 provided, that maintenance of such installations, after the transfer of the electrification works by such promoters to the UP, SEB (now, the U.P. Power Corporation), would be carried out by the UP, SEB. It also provided, that service connections to individual occupants of colonies/multistoried buildings, would be provide by the UP, SEB in accordance with its rules and regulations, issued from time to time.

6. On 24.4.1998, the UP, SEB (presently, the U.P. Power Corporation) issued another office memorandum, whereby the supervision charges were revised upwards from 5% to 15%. As per the office memorandum dated 24.4.1998, the aforesaid supervision charges were payable in respect of residential/non-residential, single/multi-storied building complexes and colonies; developed by public enterprises, private builders and promoters. Based on the memorandum dated 24.4.1998, higher supervision charges were demanded from the appellant. Disputing the applicability of the memorandum dated 24.4.1998, the U.P. Avam Evam Vikas Parishad (i.e., the appellant herein), addressed representations to the "designated licensee" asserting, that the memorandum dated 24.4.1998 was not applicable to it. The appellant herein claimed, that supervision charges were recoverable from it, as per the earlier office memorandum dated 17.1.1984. The various representations made by the appellant

(i.e., the U.P. Avas Evam Vikas Parishad) came to be rejected by the U.P. Power Corporation on 10.10.2001.

7. The appellant herein assailed the order dated 10.10.2001 by preferring an appeal before the Uttar Pradesh Electricity Regulatory Commission, Lucknow. On 30.7.2002, the Uttar Pradesh Electricity Regulatory Commission held, that the appeal preferred by the appellant herein was maintainable. Accordingly, notices were issued to the U.P. Power Corporation. Thereafter the matter came to be finally adjudicated on merits, vide an order dated 3.2.2006. The appeal preferred by the U.P. Avas Evam Vikas Parishad was allowed. The operative part of the order dated 3.2.2006 is being reproduced hereunder:-

"It is concluded on the basis of said findings that Office Memorandum No. 209-K/XIV-A/SEB/84 dated 17.1.1984 has never been superseded, so far as it concerns levy of supervision charge on the petitioner, in any manner by other said Office Memorandums on which the respondent has relied upon. This Office Memorandum has effect till 6th June, 02, the date prior to 'The Electricity Supply Code, 2002' came into force. Therefore, the respondent is directed to levy supervision charges @ of 5% as per Office Memorandum No. 209-K/XIV- A/SEB/84 dated 17.1.1984 up to 6.6.02 and make adjustments for the amount recovered in excess from the petitioner."

Accordingly, inspite of the office memorandum dated 24.4.1998, the U.P. Avas Evam Vikas Parishad was allowed to pay supervision charges at the rate of 5%, as were prescribed by the office memorandum dated 17.1.1984.

8. It, however, emerges from the operative part of the appellate order dated 3.2.2006, that it had been held that the payment of supervision charges at the rate of 5% (under the office memorandum dated 17.1.1984) was permissible only upto 6.6.2002 i.e., upto the date preceding the date from which the Electricity Supply Code, 2002, came into force. It would be pertinent to mention that the Electricity Supply Code, 2002 became enforceable with effect from 7.6.2002. The inference emerging from the appellate order dated 3.2.2006 was, that supervision charges with effect from the date of the enforcement of the Electricity Supply Code, 2002, would be governed by the said Code. This determination at the hands of the Uttar Pradesh Electricity Regulatory Commission was not acceptable to the U.P. Avas Evam Vikas Parishad (i.e., the appellant herein). It is, therefore, that the U.P. Avas Evam Vikas Parishad preferred an appeal before the Appellate Tribunal for Electricity, assailing the determination of Uttar Pradesh Electricity Regulatory Commission to the effect, that supervision charges as prescribed by the office memorandum dated 17.1.1984, would be applicable only upto 6.6.2002. The challenge raised was that the appellant herein could not be required to pay supervision charges stipulated under the Electricity Supply Code, 2002. The appeal preferred by the U.P. Avas Evam Vikas Parishad was dismissed by the Appellate Tribunal for Electricity on 7.3.2007. Dissatisfied with the order dated 7.3.2007, the U.P. Avas Evam Vikas Parishad has preferred the instant Civil Appeal.

8. It was the vehement contention of the learned counsel for the appellant, that the Uttar Pradesh Electricity Regulatory Commission's order dated 3.2.2006, as also, the order dated

7.3.2007 passed by the Appellate Tribunal for Electricity, were liable to be set aside. It was submitted, that the aforesaid adjudicating authorities had failed to take into consideration, that the electrification work carried out by the appellant, i.e., the U.P. Avas Evam Vikas Parishad, in colonies, as well as, complexes raised by it, were governed by the office memorandum dated 17.1.1984. It was submitted, that the aforesaid memorandum had never been rescinded or superseded. It was, therefore, the contention of the learned counsel for the appellant, that supervision charges could have been demanded from the appellant, only at the rate stipulated in the office memorandum dated 17.1.1984. In conjunction with the aforesaid contention, it was also the contention of the learned counsel for the appellant that the U.P. Avas Evam Vikas Parishad (i.e., the appellant herein) was expressly permitted by the State Government vide Government order dated 2.6.1982, to execute on its own, electrification work in colonies/complexes developed by it. It was submitted, that the aforesaid order dated 2.6.1982 had been issued under rule 133 (1) read with the proviso to sub-rule (1) of rule 45 of the Indian Electricity Rules, 1956 and as such, had statutory force. It was, therefore, the contention of the learned counsel for the appellant, that without the supersession of the order dated 2.6.1982, there was no justification for the respondent to claim from the appellant, supervision charges at the rate of 15%. Additionally, it was the submission of the learned counsel for the appellant, that the adjudicatory authorities had failed to consider the responsibility vested in the appellant, namely, that the appellant was engaged in raising colonies/buildings/houses for the general welfare of the citizens of this country, on a no profit no loss basis; and in case, supervision charges were raised from 5% to 15%, the eventual effect would have to be suffered by those who are provided with the buildings constructed by the appellant i.e., the general public. It was accordingly submitted by the learned counsel for the appellant, that if the rate of supervision charges is increased, the eventual cost of construction would also naturally enhance. It is, therefore, the submission of the learned counsel for the appellant, that the determination by the adjudicatory authorities was devoid of genuine and valid consideration.

9. To start with, we shall deal with the Government order/notification dated 2.6.1982. There is no doubt that the aforesaid Government order/notification has statutory trappings, inasmuch as, it was issued by the State Government in exercise of power vested in it under rule 133 (1) read with the proviso to sub-rule (1) of rule 45 of the Indian Electricity Rules, 1956. However, insofar as the present controversy is concerned, in our considered view, the aforesaid notification dated 2.6.1982 is of no relevance. The subject matter of consideration in the instant appeal, pertains to supervision charges claimed by the UP, SEB (and thereafter, by the respondent U.P. Power Corporation). The Government order/notification dated 2.6.1982, did not stipulate any supervision charges. It merely allowed the U.P. Avas Evam Vikas Parishad, by way of relaxation, the liberty to carry out electrification works which were exclusively vested with the "designated licensees" (the UP, SEB and thereafter, the U.P. Power Corporation). The fact that the aforesaid relaxation granted by the Government order/notification dated 2.6.1982, had neither been rescinded nor been withdrawn is, therefore, inconsequential to the present controversy. It is, therefore, not factually/legally correct for the appellant to contend that the Electricity Supply Code, 2002, by varying the supervision charges, had amended/modified the Government order/notification dated 2.6.1982. Since the Government order/notification dated 2.6.1982 does not make any

reference to supervision charges, it is not possible for us to accept that the Electricity Supply Code, 2002 in any manner altered the Government order/notification dated 2.6.1982. Accordingly, the contention advanced at the hands of the learned counsel for the appellant based on the Government order/notification dated 2.6.1982 is devoid of any merit.

10. The office memorandum dated 17.1.1984, as already noticed above, was the primary basis for the appellant to assail the determination rendered by the two adjudicatory authorities, on the issue of levy of supervision charges. According to the adjudicatory authorities, the supervision charges depicted in the office memorandum dated 17.1.1984 would be applicable upto 6.6.2002. The aforesaid determination was based on the fact, that the Electricity Supply Code, 2002 would be applicable with effect from 7.6.2002. As per the determination rendered in the impugned orders (passed by the adjudicatory authorities referred to hereinabove), the supervision charges depicted in the office memorandum dated 17.1.1984, would be applicable till 6.6.2002, whereafter, the same would be recoverable in terms of the provisions of the Electricity Supply Code, 2002. We find merit in the determination at the hands of the adjudicatory authorities. Firstly, the office memorandum dated 17.1.1984 had no statutory force. It was issued as an administrative order passed by the UP, SEB. The Electricity Supply Code, 2002, on the other hand, has statutory bearings. It is relevant to notice, that the Electricity Supply Code, 2002 had been drawn to carry out the responsibilities vested with the Uttar Pradesh Electricity Regulatory Commission under section 10 of the U.P. Electricity Reforms Act, 1999. Section 10 of the Uttar Pradesh Electricity Reforms Act, 1999 is being reproduced hereunder:-

"S.10. Functions of the Commission The Commission shall have the following functions; namely,-

(a) to determine the tariff for electricity, wholesale, bulk, grid or retail, as the case may be;

(b) to determine the tariff payable for the use of the transmission facilities;

(c) to regulate power purchase and procurement process of the transmission

utilities and distribution utilities including the price at which the power shall be procured from the generating companies, generating stations or from other sources for transmission, sale, distribution or supply in the State;

(d) to promote competition, efficiency and economy in the activities of the electricity industry to achieve the objects and purposes of this Act;

(e) to regulate investment approval for transmission, distribution or supply of electricity to the entities operating within the State;

- (f) to aid and advise the State Government in matters concerning electricity generation, transmission, distribution and supply in the State;
- (g) to issue license for transmission, distribution or supply of electricity and determine the conditions of the license;
- (h) 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;
- (i) to require licensees to formulate plans and schemes for the promotion of generation, transmission, distribution, supply or utilization of electricity and quality of service and to device proper power purchase and procurement process;
- (j) to set standards for the electricity industry in the State including standards relating to quality, continuity and reliability of service;
- (k) to promote competitiveness and make avenues for participation of private sector in the electricity industry in the State, and also to ensure a fair deal to the consumers;
- (l) to lay down and enforce safety standards;
- (m) to aid and advise the State Government in formulating power policy for the State;
- (n) to collect and record information relating to generation, transmission, distribution or utilization of electricity;
- (o) to collect and publish data and forecasts on the demand for, and use of electricity in the State and to require the licensees to collect and publish such data;
- (p) to regulate the assets, properties and interest in properties relating to the electricity industry in the State in such manner as to safeguard the public interest;
- (q) to adjudicate upon the dispute and differences between a licensee and utility or to refer the same for arbitration;
- (r) to co-ordinate with environmental regulatory agencies for evolving policies and procedures for appropriate environmental regulation of Electricity Sector in the State; and
- (s) to aid and advise the State Government on any other matter referred by the State

Government."

The Electricity Supply Code, 2002 which has statutory trappings was formulated to carry out functions earlier assigned to the U.P. Electricity Regulatory Commission under Section 10 of the U.P. Electricity Reforms Act, 1999 (already extracted above). This is apparent from the order of the U.P. Electricity Regulatory Commission, reproduced hereunder:-

"Electricity Supply Consumers Regulation, 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 licenses 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."

Since the provisions of the Electricity Supply Code, 2002, has statutory trappings, the same would override and supersede the stipulations contained in the office memorandum dated 17.1.1984, which has the force of merely an administrative order.

11. We are also satisfied, that the Appellate Tribunal for Electricity, while adjudicating upon the controversy in question, was fully justified in relying upon clauses 4.3, 4.5 and 4.45 of the Electricity Supply Code, 2002. The aforesaid clauses are being reproduced hereunder:-

"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."

The cumulative effect of the aforesaid statutory provisions leave no room for any doubt, that the responsibility of erection of transmission lines, associated distribution sub-stations and L.T. distribution mains, throughout the State of U.P., was originally exclusively being carried out by the UP, SEB, and thereafter by the U.P. Power Corporation, as "designated licensees". The aforesaid activity was also being carried out exclusively in colonies/multistoried buildings by the aforesaid, again as "designated licensees". Subsequently, through the Government order/notification dated 2.6.1982, by relaxing the provisions of the Indian Electricity Rules, 1956, the U.P. Avas Evam Vikas Parishad was permitted, subject to its complying with certain conditions, the liberty to carry out the aforesaid electrification works. The delegated work was liable to be carried out in terms of the prescribed standards. To ensure that works were being executed as per norms, clause 4.45 of the Electricity Supply Code, 2002, provided for supervision of the works by the U.P. Power Corporation. The aforesaid supervision work was liable to be carried out by charging 15% of the estimated cost of the work. No fault can be found, for having done so.

12. According to the learned counsel for the appellant, the rate of supervision charges was hiked from 5% to 15% unauthorizedly, and without application of mind. The submission was, that the supersession of the office memorandum dated 17.1.1984 would have an adverse effect on the public at large, inasmuch as, the eventual cost of construction of houses offered by the U.P. Avas Evam Vikas Parishad to the general public would be costlier. The subject matter under consideration is erection of transmission lines, associated distribution sub-stations and L.T. distribution mains. The aforesaid activity though indispensable, has dangerous connotations. If appropriate standards are not maintained and if adequate safety measures are not adopted, disastrous consequences are possible. Delegation of such activity has necessarily to be regulated by supervision, so as to avoid any lapses. Supervision needs inputs which have to be paid for. The Electricity Supply Code, 2002, stipulates 15% of the total estimated cost of electrification works as supervision charges. It is not the case of the appellant, that the aforesaid charges are disproportionate to the work involved or have been fixed arbitrarily. It is not as if the appellant has any compulsion of carrying on these works by itself. It has chosen to do so, by taking the responsibility on itself. If the supervision charges are unacceptable, the appellant can require the U.P. Power Corporation to undertake the electrification work by depositing the estimated cost with the respondent. In our considered view, the fact, that the public at large would have to bear the brunt of the hike in supervision charges, is totally unacceptable, especially in the background of the position noticed above. The instant contention is even otherwise irrelevant to the subject matter under consideration. Supervision charges have been levied, so that the agencies, such as the

appellant herein, who decide to carry out the activities of erection of transmission lines, associated distribution sub-stations and L.T. distribution mains, on their own, abide by the minimum prescribed norms. Higher public cost ensuring prescribed safety measures, would certainly override the cost consideration projected by the learned counsel for the appellant. We find no merit in the instant contention as well.

12. Even otherwise, the contention raised at the hands of the learned counsel for the appellant, that the appellant was not liable to reimburse supervision charges stipulated under the Electricity Supply Code, 2002, does not lie in the appellant's mouth. This is so, because the appellant has unilaterally accepted to pay supervision charges under the Electricity Supply Code, 2005. The aforesaid Electricity Supply Code, 2005 became enforceable w.e.f. 18.2.2005. All the pleas raised by the appellant, to avoid payment of supervision charges under the Electricity Supply Code, 2002, are also available to the appellant to avoid payment of such charges under the Electricity Supply Code, 2005. If the appellant has accepted the enforceability of the Electricity Supply Code, 2005 over and above the office memorandum dated 17.1.1984, it is not possible for us to understand why the appellant has failed to accede to abide by supervision charges levied under the Electricity Supply Code, 2002. For exactly the same reasons, for which the appellant has accepted the Electricity Supply Code, 2005, it is liable to accept the levy of supervision charges under the Electricity Supply Code, 2002.

13. For the reasons recorded hereinabove, we find no merit in the instant Civil Appeal and the same is accordingly dismissed.