

BEFORE THE ELECTRICITY OMBUDSMAN, JHARKHAND-RANCHI
(4th floor, Bhagirathi Complex, Karamtoli Road, Ranchi – 834001)

Present- Prem Prakash Pandey
Electricity Ombudsman

Case No. EOJ/01/2017

Ranchi, dated 24th,day of August 2017

The Jharkhand Urja Vikas Nigam Limited through its Law Officer namely
Mithilesh Kumar, S/o- Sri. R. B. Choudhary, R/o- Kusai Colony, P.O. & P.S.-
Doranda, District- Ranchi ...Appellant

Versus

M/s K.Y.S. Manufacturers & Exporters (P) Ltd. through its authorized signatory
Sri. Hemant Choudhary, S/o- Late V.K. Choudhary, R/o- Mango Sahara City, P.O.
&P.S.-Mango,Jamshedpur,District-East Singhbhum Respondent(s)

For the Appellant : Sri. Rahul Kumar (Standing Counsel)
: Sri. Prabhat Singh (Additional Counsel)
For the Respondent : Sri. D.K.Pathak :

(Arising out of Judgement and order dated 12/11/2016, passed in complaint case no. 03 of 2015 by the Learned V.U.S.N.F., Chaibasa at Jamshedpur)

J U D G E M E N T

1. The instant appeal is directed against the impugned judgment and order dated 12/11/2016, passed in complaint case no. 03 of 2015 by the Learned Vidyut Upbhokta Shikayat Niwaran Forum; here in after called VUSNF, Chaibasa at Jamshedpur, whereby and where under, the learned forum ,while, quashing the bill dated 10.09.2014 amounting to Rs. 4,00,32,057/- has directed the Appellant(JUVNL) to prepare fresh bill considering the date of approval of reduction of load from 07.04.2011 on the

basis of reduced demand and serve the same to the Respondent within one month.

2. The Petitioner (hereinafter referred to as “the Respondent”) had moved before the learned Court of Vidyut Upbhokta Shikayat Niwaran Forum ,Chaibasa at Jamshedpur (hereinafter referred to as “the VUSNF”) in Case No. 03 of 2015 with a prayer for quashing the bill dated 10.09.2014 for Rs. 4,00,32,057/- and also for commanding upon the Appellant to revise entire energy bill from January 2010 by calculating the KVA charges on reduced contract demand of 2900 KVA as per clause 9.2.4 of the Supply Code Regulation and thereupon to remove entire DPS from the bill.

3. The factual matrix of the case, as described in brief , in his complaint petition by the (petitioner) respondent is that the Respondent is a HTSS consumer of the Appellant (hereinafter referred to as “the Appellant”) since 01.04.1998 on 33 KV supply. Initially, the sanctioned load of the Respondent was 1800 KVA, which, time to time, enhanced upto 5100 KVA. It is alleged that petitioner decided to surrender 2400KVA due to poor supply of power as well as negative market impact w.e.f.01-12-2009, accordingly, an application- cum -representation vide letter dated 27-10-2009, duly served on 03-11-2009 upon the appellant and on the same date, submitted an application for the reduction of load 5100 KVA to 2700KVA in duly prescribed Form along with required fee and got the same. But appellant has not acted upon the aforesaid application, thereafter, a reminder was served on 08-12-2009 but no action was taken by the appellant for reduction of load rather in the month of march 2010, appellant constituted a committee for the inspection of the premises with view to verify the load; who, inspected the premises and drafted a report on 04-03-2010, mentioning

the dismantle of equipment and removal of one furnace. Apart from that, appellant did not reduce the contract demand and went on billing on contract demand of 5100KVA and accordingly, charged huge amount, although, the actual KVA recorded in the meter has remained much less since the petitioner (Respondent) has already dismantled one furnace from its unit in the month of January 2010.

4- The further case of the petitioner (Respondent) is that the General Manager cum Chief Engineer finally approved for reduction of load vide memo no.797 dated 07-04-2011. Further case of the petitioner is that since petitioner had already removed one of its furnace with its related equipments and its actual demand since January 2010, had reduced to almost half, the reduction of load had also been confirmed by the board's team, the petitioner has paid the KVA charges on reduced contract demand, whereas, the appellant billed the KVA charges as usual, resulting into accumulation of fictitious arrears, and the same was accepted by the appellant but balance amount of wrongful energy bill were carried forward in the next month by imposing DPS and DPS over DPS merely on the ground of fictitious arrear and also disallowed the all payable rebates to the petitioner. It is alleged that appellant served a notice u/s 56 of the Electricity Act 2003, vide letter no. 2440 dated 10-09-2014 and threatened to disconnect the electric connection in case of nonpayment of the same. Along with the disconnection notice, appellant had also annexed one chart, wherein, deliberately, suppressed the basis of charging KVA charges, which also does not show the details of the rebates. After receiving the disconnection notice, petitioner immediately replied, vide representation dated, 20-09-2014 but appellant had not redressed the grievances of the

petitioner. Thereafter, the instant case has been instituted before the learned VUSNF. It is relevant to mention at this juncture that during pendency of this case before the learned VUSNF, another disconnection notice was served upon the petitioner by the appellant, whereupon, an interlocutory petition was filed by the petitioner for the relief, as prayed, in main petition.

5- Appellant appeared before the learned VUSNF and filed its counter affidavit, admitting therein, that respondent (petitioner) is a HTSS consumer since 01-04-1998 on 33 KV power supply. Initially, sanctioned load of the consumer was 1500 KVA, which was enhanced 2400 KVA as per measurement of crucible since 15-09-1999. Again load was reduced from 2400KVA to 1800 KVA on 19-07-2003. An additional load of 600 KVA was sanctioned for enhancement of load from 1800 KVA to 2400 KVA vide letter no 06 dated 03-01-2005 and agreement was executed. Further an Additional load of 2700 KVA was sanctioned vide G.M. cum Chief Engineer, Jamshedpur, letter no. 230 dated 31-01-2006 from 2400 KVA to 5100 KVA and an agreement was executed on 01-03-2006. Lastly, again applied for reduction of load from 5100 KVA to 2700 KVA on 03-11-2009, which was forwarded to G.M. cum Chief Engineer, Singhbhum Area, Jamshedpur, vide office letter no.2748 dated 26-12-2009 for approval after inspection conducted on 23-12-2009. Whereupon, a letter no.75 dated 15-01-2010 was sent to Chief Engineer(C&R) JSEB, Ranchi, to send a team for measurement of crucibles. Thereupon, a Board's team visited the premises of respondent on 11-03-2010 and found that one no. power transformer & one control panel were not in circuit but were lying on the earth, which were liable to be removed on account of reduction of load. Accordingly, report dated 11-03-2010 was sent to the G.M. cum chief Engineer, Singhbhum

Area, Jamshedpur, for needful vide letter no. 604 dated 15-03-2010, who requested to the Chief Engineer (C.R.) J.S.E.B. Ranchi for fixation of capacity of induction furnace crucible vide letter no. 568 date 30-03-2010 . The Respondent was requested vide letter no.1544 dated 04-06-2010 & letter no.1615 dated 12-06-2010 for the compliance of shifting of power transformer and panel out of the premises. The Respondent vide letter dated 25.11.2010, informed that the power transformer and panel has been removed from the premises. The Appellant authorities acting upon the said representation of the Respondent again carried out an inspection on 11.12.2010 and recommended for the reduction of load. The report was submitted before the G.M. cum Chief engineer, Singhbhum area, Jamshedpur, who approved reduction of load from 5100KVA to 2900 KVA vide letter no 797 dated 07-04-2011, subject to payment of security amount.

6- The further case of the appellant is that as per approval security of Rs.21,41,300/ was demanded from the respondent vide letter no 1018 dated 21-04-2011 but the respondent did not deposit the security amount rather the respondent applied for installment of security amount vide letter dated 15-04-2011, which was forwarded to G.M cum Chief engineer , Jamshedpur vide letter no.3210 dated 23-12-2011.the installment of security amount was granted vide letter no. 16 dated 06-01-2012 issued from the office of the Chief engineer (C. & R.) JSEB Ranchi the agreement of installment was executed on 14-02-2012. The respondent has deposited first installment on 13-03-2012 and power was energized on 29-09-2012. The respondent has deposited post dated cheque for second and third installment, which was dishonored, therefore, the bill for the reduced load 2900 KVA was raised in the month of November, 2012.

7- The further case of the appellant, that during inspection on 3/4-05-2011, it was detected that respondent was pilfering power, accordingly, an F.I.R. was lodged and electric line was also disconnected, which was restored on 26-05-2011 as per order dated 18-05-2011, passed by the Hon'ble High Court, Ranchi, in W.P.(C) No. 2602/11. A bifurcated and undisputed amount for the period 05/2010 to 07/ 2014 was calculated as per prevailing tariff order and Rs.4,00,32,057/ was found, the payable amount, and accordingly, a notice u/s 56 Electricity Act 2003, was served upon the respondent, for payment of the due amount. The respondent was served notice vide letter No. 1130 dated 16-06-2016 for the payment of Rs. 4,66,20,616/. Lastly, it was prayed to dismiss the petition of the respondent.

8- The learned VUSNF has considered the entire facts & circumstances and evidence on record and coming to the finding that respondent was not entitled to get benefit of reduction of load from 24-12-2009 because he had taken much time in removing the power transformer and control panel from the plinth, which shows own fault of the respondent. Lastly, it is held by the learned VUSNF that the date of sanction for reduction of load will be the fit date for the reduction of load and the energy bill prepared and served by the appellant from the month of December, 2012, is liable to be quashed and accordingly, the petition of the Respondent was partly allowed. The energy bill vide letter, dated 10-09-2014 has been quashed with direction to the Appellant to prepare fresh bill, taking in to consideration of date of approval for the reduction of load i. e. 07-04-2011 on the basis of reduced contract demand and served upon the respondent within one month, who will pay the same within stipulated period.

9- Assailing the impugned judgment and order , passed by the learned VUSNF, it has been submitted by the learned Additional standing counsel for the Appellant that the order passed by the Learned VUSNF is erroneous and has been passed without appreciating correct facts of the case and settled principles of law, as enumerated under clause 9.2.6 of the Supply code Regulation, 2005 and has stretched too for interpreting said clause and in fact, totally misconstrued the main object behind the said clause and further committed an error in holding the date of reduction of load as 07-04-2011, the date on which approval of reduction of load was accorded vide letter dated 07-04-2011,(Annexure-1) which was subject to fulfillment of certain terms and condition but the same were never complied by the respondent. It has further been contended that learned VUSNF failed to consider Para 9 of the aforesaid letter, which specifically states that if the entire conditions are not complied within three months from the date of issue of letter, then approval for reduction of load shall automatically stand cancelled. Para 2 clearly states that the security amount as calculated and demanded by the E.S.E.,Jamshedpur for 2900 KVA load of 33KV under HTSS tariff will have to be deposited in the shape of Bank draft, Banker's cheque in the office of the AEE,.....on any working day before execution of the agreement , if required. But respondent failed to comply/ pay the required security amount within three months and therefore the force of letter dated 07-04-2011(Annexure-1) ceased to have any binding effect on the appellant. Apart from that the learned VUSNF has also failed to consider that even clause 9.2.6 of the Supply Code Regulation 2005 says that after execution of agreement, the load of a consumer shall be treated to be reduced and in the present case agreement has been executed on 14-02-2012, but learned VUSNF on none's ground have hold that the load of

reduction shall be treated from the date, on which approval was accorded. The learned VUSNF has also failed to consider that even after execution of agreement on 14-02-2012, the post dated cheques given by the Respondent by way of security deposit had been dishonored on its presentation on due date and therefore the agreement came to an end and on the date of dishonor of the cheque, the Appellant were totally justified in levying of bill on the basis of 5100KVA for the entire period. Thus, the learned VUSNF ought to have considered that due to violation of terms and condition, as enumerated under the agreement for reduction of load dated 12-02-2012, approval for reduction of load stands cancelled. The learned counsel further submitted that the requisite formalities, as enumerated under clause 9.2.2 of supply code Regulation 2005, were not complied with by the respondent. A team of the appellant Company visited the premises of the Respondent on 11-03-2010 and it was found that power transformer and control panel were not circuit but were lying on plinth, which was required to be removed before giving approval for reduction of load from 5100KVA to 2700 KVA. The direction given by the inspecting team was not complied by the Respondent for a considerable time period. Though, the Respondent was repeatedly requested by the authorities of the Appellant for compliance of direction, given by the inspecting team in, its report dated 11-03-2010. Thereafter, the General Manager- cum- Chief Engineer, vide his letter no. 1330 , dated- 08-06-2010 submitted a report, wherein, it was stated that power transformer and control panel is still lying on the plinth and Respondent has not complied the earlier direction. Apart from that the Respondent was again requested by the authorities of the Appellant to shift the power transformer and panel vide letter no.1615 dated 12-06-2010. However, after much delay, the Respondent submitted an application dated 25-11-2010, informing about

removal of power transformer and panel from the premises. Thereupon , the authorities of the Appellant again carried out an inspection on 11-12-2010 and accordingly, submitted report dated 07-04-2011 with submission that approval for reduction of load could be accorded subject to fulfillment of other requisite formalities like payment of security amount and other formalities and accordingly, approval for reduction of load was accorded through letter dated 07-04-2011, which itself attached with several conditions, but out of them , some of condition were not complied, which delayed the process of reduction of load. Therefore, under the aforesaid facts and circumstances of the case as well as law, as provided under Supply Code Regulation 2005, the impugned judgment and order is liable to be set aside.

10- Refuting the contention advanced on behalf of the Appellant, it has been submitted by the learned counsel for the respondent that present appeal has been filed is devoid of any merit and full of misleading facts. Moreover, the grounds contended by the learned additional standing counsel for the Appellant is absolutely nonest and, as such, fit to be out right rejected, because the learned VUSNF has minutely gone in to the specific provisions of the Supply Code Regulation 2005 and after considering the entire aspects of the matter, has partially allowed the application of the Respondent. However, if the issue is taken in right perspective under specific provision of the Supply Code Regulation 2005, the load of the respondent is supposed to be reduced w.e.f. January 2010, in view of the deeming provisions contained in clause 9.2.4 of the Supply Code Regulation 2005. Therefore, the order passed by the learned VUSNF is perfectly justified and does not require any interference therein. It has further been

submitted that the inspection report dated 11-03-2010, which was specifically made for the purpose of reduction of load, does not stipulate that the transformer and control panel, which was out of circuit, was supposed to be removed from the plinth before giving approval for reduction of load. As matter of fact, the inspecting team never directed/ informed to the Respondent that unless the transformer and control panel is not removed from the plinth, the reduction of load shall not be approved. After about three months from the date of inspection, the EEE, Jamshedpur informed for shifting transformer and control panel out of premises. There is no such report dated -07-04-211, rather the Respondent had prepared a report dated -11-12-2010, showing removal of transformer etc. and the said report does not suggest w.r.t. security deposit, as submitted by the appellant. Actually, after given information about removal of transformer etc. on 10th Sep., 2010, the Appellant made an inspection on 11-12-2010 i.e. after three months.

11- The learned counsel for the Respondent has further submitted that the basic principle of requirement for reduction of load is an application, after completion of three year agreement period and removal of plant and machinery from the circuit/ connection to the extent of reduceable load. If that much requirement is confirmed upon inspection. The load is supposed to be reduced immediately. The other paper formalities like calculation of security deposit are of later stage and may not come in the way. Though, there is a provision in supply Code Regulation 2005 w.r.t. assessment of required security deposit of a running consumer after 12 months, which is being determined on the basis of three months average. Certainly after reduction of load, the unit consumption of the Respondent been reduced substantially and there was no occasion to demand security deposit from the

respondent, being a running consumer, for the purpose of reduction of load. There may not be any rational to allow a consumer to avail electricity on a higher load of 5100 KVA with a given amount of security deposit and disallow the same consumer to avail electricity at lesser load on the same amount of security deposit. Lastly, it has been submitted by the learned counsel for the Respondent that learned VUSNF has passed the impugned judgment and order, after considering the entire facts and circumstances of the case and relevant provisions of Regulation and as such the same may not require any interference at the instance of the Appellant. However, if this Forum considering the provisions of the clause 9.2.3 of the Supply Code Regulation 2005 may modify the order for reduction of load w.e.f January, 2010. Thus, as per aforesaid submission, this appeal is fit to be dismissed with cost.

12- It will admit of no doubt that Respondent is a HTTS consumer of the Appellant since 01-04-1998 on 33 KV power supply. Admittedly, at initial stage, the sanctioned load of the Respondent was 1500 KVA, which, was time to time, enhanced up to 5100 KVA and an agreement to this effect was executed on 01-03-2006. It is also admitted fact that Respondent made an application for reduction contract demand of load from 5100 KVA to 2700 KVA on 03-11-2009 along with requisite fee. The Learned VUSNF has observed on perusal of the aforesaid application (Annexure-1) that respondent had not submitted application form with required test report of the Licensee Electrical contractor and Respondent had not complied the essential requirement as mentioned in clause 9.2.2 of the Supply Code Regulation. Admittedly, against that very observation, no appeal has been filed by the Respondent, hence at this stage, respondent is not entitled to get any benefit on this score. However, on that very incomplete application, the authorities of

the Appellant acted upon in the month of March 2010. It is also admitted fact that on 11-03-2010 , a committee of Board had inspected the premises of the Respondent and found that one number of power transformer and one number of control panel was not in circuit but on plinth, which clearly established that the same had not been removed from the premises by the Respondent. There upon, Appellant requested to the Respondent (Annexure C-A-3 of L.C.R.) for shifting the same but the same was not complied then again a letter was issued. Thereafter, the same was removed and information for removal of the same was given by the respondent to the authority of the Appellant. It is also admitted fact that it was clearly submitted by the learned counsel for the respondent before the learned VUSNF that the date of reduction of load should be 24-12-2009 but learned VUSNF had found no force in his submission because the Respondent had taken much time in removing the power transformer and control panel from the plinth hence respondent cannot take the benefit of his own fault. Admittedly, against that very finding, no appeal or counter appeal has been filed by the Respondent before this forum, therefore, in my view, the respondent is not entitled to get any relief from this forum on this score.

13- It is relevant to mention at very outset that at the time of submitting an application for reduction of load by the Respondent ,Electricity Supply Code, regulation 2005 was in force, therefore, at this stage it is relevant to see with regard the provision of reduction of contract demand/ sanction load under (ELECTRICITY SUPPLY CODE) REGULATIONS, 2005. Admittedly **Chapter 9 - deals with enhancement and Reduction of contract demand/ sanctioned load.** The relevant provision regarding **Reduction of Contract demand/ Sanctioned Load** is provided under Clause 9.2.1 to 9.2.6. The learned VUSNF has taken much pain to deal with

aforesaid provision, therefore, I would not like to repeat the same at this juncture. Simply, I would like to mention the important aspect. *Clause 9.2.5 reads –The reduction of contract demand / sanctioned Load shall come into effect from the first day of the month following the month in which the reduction of load has been sanctioned or have been deemed to be sanctioned.*

Clause 9.2.6 reads- After the sanction of the reduction of Contract demand/ Sanctioned Load the consumer shall execute a supplementary agreement and the licensee shall recalculate the security deposit excess security deposit if any shall be refunded by way of adjustment in the minimum number of succeeding Bills of the consumer.

14- Now the only issue for adjudication before me is that Whether even after availing reduced load, the consumer is liable to pay the KVA charges on old contract demand? OR Whether the date of sanction (07-04-2011) for the reduction of load would be the fit date for the reduction of load in this case? Admittedly the learned VUSNF, after discussing the entire facts and circumstances of the case, coming to the finding that the date for sanction for the reduction of load is the fit date for the reduction of load and accordingly directed to the Appellant to prepare fresh energy bill, considering the date of approval i.e. 07-04-2011, for the reduction of load and served on the respondent within one month and respondent was also directed to pay the same within stipulated period.

15- Having considered the entire facts and circumstances of the case, as discussed above, I do find that respondent is HTTS consumer since 01-04-1998. Firstly his sanctioned load was only 1500 KVA but time to time, he has enhanced his load up to 5100 KVA and at the time of enhancing load, he

had also completed all required formalities. It was first time i.e. dated 01-12-2009, while he had decided to surrender 2400KVA due to poor supply of power as well as negative market impact, accordingly , Respondent had submitted his application for reduction of load from 5100 KVA to 2700 KVA ,vide his letter, dated 27-10-2009, which was served upon the Appellant on 03-11-2009 but no action was taken by the Appellant till 07-12-2009 , consequently, a reminder letter was given on 08-12-2009 but Appellant did not take any decision for reduction of load, rather in the month of march , 2010, on the basis of that very application , Appellant constituted a team of inspection of the premises of the respondent with view to verify the load, The said team inspected the premises and prepared report on 04-03-2010, mentioning the dismantle of equipment and removal of one furnace . It is admitted fact that respondent had two furnaces, out of them, one was dismantled for reduction of load but power transformer and control panel was still lying on the plinth. Lastly, by way of application dated 25-11-2010, the respondent informed the appellant with regard to removal of the same from his premises. Thereupon, appellant again carried out an inspection on 11-12-2010 and submitted report but inspecting team in its report dated 07-04-2011 had clearly stated that reduction of load could be accorded subject to fulfillment of other requisite formalities like payment of security amount and other formalities. Subsequently to feasibility report, G.M.-cum- Chief Engineer Jamshedpur accorded its approval for reduction of load and communicated the same to the Respondent through a letter vide memo no.797 dated 07-04-2011 with several conditions, which were not complied by the respondent within stipulated period, resulting thereof, delay was caused in processing the reduction of load. It is also pertinent to mention at this juncture that in approval letter dated 07-04-2011 (Annexue-1), it is specifically mentioned in para 9 that “ All the

above mentioned formalities are required to be completed within three months from the date of issue this letter, failing which approval for reduction of load shall automatically stand cancelled.”

16- Now the question arises that whether Appellant was empowered under Supply Code Regulation 2005 to impose any condition upon the respondent, at the time of granting approval for reduction of load? .I have deeply and with care and caution perused the relevant provision of Chapter 9 of the Supply Code Regulation 2005 and do find that there is no such provision to empower the appellant to fix any condition. Moreover, I do find that conditions mentioned in that very letter was a formality, which was to be carried out between Respondent and Appellant, after sanction of reduction of load and that very conditions do not create any hurdle in reducing the load. Thus, taking into consideration of the entire facts and submissions advanced on behalf of both sides, I find and hold that as per clause 9.2.5 and 9.2.6 of the Supply Code Regulation 2005, the reduction of contract demand/ sanction load shall come into effect from the first day of the month following the month in which the reduction of load has been sanctioned. Further, I do find and hold that Learned VUSNF has properly and meticulously scrutinized the facts and relevant provision of Supply Code Regulation 2005, on the record with due care and caution and has committed no error in coming to the finding, partly allowed the petition of the Respondent and quashed the energy bill prepared and served upon the respondent from the month of Dcember,2012 and directed to the appellant to prepare fresh bill considering the date of Approval for the reduction of load i. e. 07-04-2011 on the basis of reduced contract demand. As such, the impugned judgment and order does not require any interference therein.

17- Thus, there is no merit in this appeal and it fails. In the result, it is therefore,

ORDERED

That, this appeal is hereby dismissed. The judgment and order passed by the learned VUSNF is hereby affirmed. Under the facts and circumstances of the case, I hereby, direct to the parties to bear their respective costs. Let a copy of this judgment and order be given to the parties.

Sd/-
(Prem Prakash Pandey)
Electricity Ombudsman