

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

Case No. EOJ/05/2016

JUVNL & Others Appellant/Respondents

Versus

M/s Beekay Steel Industries Ltd. Respondent/Petitioner

Present:

Electricity Ombudsman : Sri Ramesh Chandra Prasad

Counsel for the Appellant : Sri Rahul Kumar

: Sri Prabhat Singh

Advocate for the Respondent : Sri Dhananjay Kr. Pathak

: Sri. Navnit Prakash

: Sri Shashi Kant Mishra

ORDER

(Order passed on this 19th day of September, 2016)

1. By this Representation under Rule 20 of the JSERC ((Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Electricity Ombudsman) Regulation, 2011 the appellant has challenged the order dated 09/04/2016, passed in Case No.11/2013, by the learned Vidyut Upbhokta Shikayat Niwaran Forum, Chaibasa at Jamshedpur (herein referred to as VUSNF/Forum) which reads as under:

“The petition of the petitioner is hereby allowed. The respondents are directed to recalculate the interest on the security amount deposited by the petitioner and refund or adjust the same in the electric bills.”

2. Brief of the Case:

2.1 The Respondent M/s Beekay Steel Industries Ltd., is a company incorporated under the Companies Act,1956 having its plant at Adityapur Industrial Area, Gamharia, Distt.- Saraikela-Kharsawan having consumer No. HTS-18 under HTS mode of tariff for a contract demand of 3800 KVA.

2.2 Initially, the respondent took power connection for a contract demand of 1400 KVA at 33 KV vide sanction letter dated 7.10.1997 and 4.6.1998 with a direction to deposit Rs. 21,47,715/- as security deposit which was deposited by the consumer(respondent).Further on request of the consumer the appellant accorded sanction of additional load of 1267 KVA at 33 KV vide sanction letter dated 11.10.200. As per direction of the aforementioned sanction letter, deposited Rs. 49,68,395/- as additional security deposit. Again on the request of the consumer the appellant licensee accorded sanction of additional load of 1133 KVA at 33 KV vide sanction letter dated 18.09.2003 and accordingly deposited Rs. 30,65,522/- as additional security deposit. By way of three sanction letters the appellant had given sanction of total load of 3800 KVA at 33 KV against which the respondent had deposited total security money to the tune of Rs. 1,01,81,632/- in the office of the appellant to avail power supply.

2.3 The appellants have not paid any amount of interest on security deposit for the year 1998-99 and 1999-2000.However, the respondent had received interest on security deposit from the year 2000 and onwards. The appellants

have paid interest at the rate of 4% per annum from the year 2000-2001 to 2005-2006. The appellants have calculated the interest on security deposit at the rate of 3.5% per annum for the year 2006-2007 and also recalculated the interest for the period 1.4.2003 to 31.03.2007 at the rate of 3.5% per annum and adjusted the impugned excess interest paid against the interest payable for the year 2006-07. Similarly, the appellants have calculated interest at the rate of 3.5% per annum for the year 2007-08.

2.4 The appellant has surrendered the electric connection in April, 2009. Out of the total security deposit a sum of Rs. 56,71,158/- was adjusted in the energy bill for the month of December 2008 and Rs. 45,10,474/- remained unadjusted and subsequently Rs. 8,30,000/- was adjusted in the bill of February, 2009 and Rs. 36,80,474/- is still lying with the appellants by way of security deposit.

2.5 The further case is that the issue of rate of interest on security deposit was raised before the Jharkhand State Electricity Regulatory Commission (herein after referred to as JSERC) by M/s Usha Martin and M/s Perfect Electricals and the Commission was pleased to give specific direction to pay interest on security deposit at the rate of 6%. The direction of JSERC is binding upon the licensee but has paid lesser amount of interest on security deposit to the respondent. The respondent had raised the matter before the Hon'ble High Court of Jharkhand vide W.P. (C) No. 6666/2007. The Hon'ble Court heard the matter on 06.12.2012 and observed that if some of the grievances of the petitioner relating to payment of interest on the security deposit are still subsisting, the petitioner may be allowed to move before the appropriate authority and vide order dated 06.12.2012 disposed the writ petition.

In their counter affidavit, the respondent has specifically stated that the appellant have calculated and paid interest at lesser rate than provided under Electricity Supply Code, Regulation so they are bound to revise the interest and refund the balance interest amount on security deposit.

3. Submission of the Appellant :

3.1 The learned counsel submitted that the respondent is entitled only for the rate which has been duly fixed by the competent authority (herein after called JUVNL, ” the then Jharkhand State Electricity Board”) from time to time. The claim of the Respondent in regard to the rate of interest at the rate of 6% is not justified and not tenable in the eye of law. The interest on security deposit was duly calculated at the time of filing certificate case at the prevalent rate fixed by the then Jharkhand State Electricity Board which has already been adjusted in the energy bill of the Respondent. Therefore, the claim of higher rate of interest is not justified.

3.2 The learned counsel further submitted that the claims relating to money, cannot be agitated for endless period of time and even in suits relating to money one cannot agitate the matter beyond a period of three years .The learned Forum has erred in allowing the petition of the consumer and, therefore, refund of money on account of interest on security and claim thereof with effect from the year 1998, which is not subjudice before any court of law is not tenable.

3.3 The learned counsel further submitted that as per proviso to Clause 10 of the (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Electricity Ombudsman) Regulation, 2011 only those

complaints can be entertained by the Forum which has been filed within one year of cause of action. In the instant case, the learned Forum has passed impugned order for refund of security deposit w.e.f year 1998 as the same was never sub-judice before any Court and, therefore, deciding the issues way back to year 1998 and onwards was beyond the jurisdiction of the learned VUSNF. Hence, the instant appeal is justified and well within the ambit of law.

3.4 The learned counsel further contended that in the instant case the cause of action starts much before coming into existence of the Forum. Moreover, the Hon'ble High Court in its order dated 25-09-2012 has not observed that the period of limitation shall be relaxed. Therefore, entertaining claim of the Respondent consumer prior to year 2006 is beyond jurisdiction and should be summarily rejected.

4. Submission of the Respondent:

4.1 The learned advocate submitted that as per Clause 10.6 of the (Electricity Supply Code) Regulation,2005 the Distribution Licensee shall pay interest on the amount of security deposit by the consumer at a rate prevalent to bank rate of the Reserve Bank of India.

4.2 The learned advocate further submitted that the interest paid on security deposit during the impugned period was 3.5% against 6% average bank rate during that period. The very issue pertaining to rate of interest on security deposit raised in writ petition being W.P.(C) No.1091of 2006 have been considered and squarely decided in W.P.(C)No.5393 of 2006 by the Hon'ble High Court, Jharkhand wherein it was decided that the licensee would be liable to pay interest at the rate equivalent to the bank rate notified

by the R.B.I. from time to time in terms of clause 10.6 of the (Electricity Supply Code) Regulation, 2005 and Section 47 (4) of the Electricity Act, 2003. The licensee is duty bound to credit automatically interest on security deposit as per Regulation and the standing order dated 27/05/1988 but, in the instant case nothing of this sort has been done. Therefore, the Appellant is duty bound to pay interest on the security deposit for the period prior to 10.6.2003 as per standing order dated 27.5.1988 issued by the then Bihar State Electricity Board and for the post period 10.6.2003 at the rate equivalent to the bank rate notified by the R.B.I. from time to time as per provision of Section 47(4) of the Electricity Act, 2003 and Clause 10.6 of the (Electricity Supply Code), Regulation, 2005 issued by Jharkhand State Regulatory Commission (JSERC). On the basis of the facts and circumstances made above the instant appeal petition is fit to be dismissed.

5. Issue involved:

Is raising grievance of payment of interest on security deposit justified after one year of the establishment of the Forum for the period before coming into force of the Electricity Act, 2003 i. e. before 10th June, 2003 justified?

Findings

Admittedly, against total sanction load of 3800 KVA at 33 KV the Respondent had deposited a total sum of Rs. 1,01,81,632/- as security deposit on different dates. The Appellant have paid interest on security deposit for the impugned period at the rate of 3.5% where as the average bank rate during that period is stated to be higher than 3.5%.

After disconnection of electric connection the Respondent had made claim of interest on security deposits. It is submitted by the learned counsel for the Appellants that the Forum in Case No.11/2013 have failed to appreciate that the matter relating to refund of money on account of interest on security was not subjudice before any court of law and, therefore, agitating the issue beyond period of three years is not tenable as per law. Hence, claim w.e.f. the year 1998 ought not to have been entertained by the learned Forum without appreciating provisions of Clause 10.6 of the JSERC (Electricity Supply Code) Regulation, 2005.

The aforesaid contention of the learned counsel for the Appellant cannot be accepted because even after creation of the State of Jharkhand (w.e.f.15/11/2000) the Bihar State Electricity Board (BSEB) continued to function in both the States till the creation of the Jharkhand State Electricity Board. Thus, during that period the circular dated 27/05/1988 of BSEB remained operative in the area of State of Jharkhand.

During discussion, one judgement of the writ petition W.P. (C) No. 1091/2006 passed by the Hon'ble High Court Jharkhand has been filed along with the counter affidavit by the Respondent consumer. On perusal of the aforesaid judgement it is apparent that the Hon'ble Court has discussed the matter of interest on the security deposit at length and pleased to observe that the licensee Board would be liable to pay interest for the period prior to 10/06/2003 on the security amount deposited by the consumer at the rate of savings bank account deposit as revised from time to time in terms of the circular dated 27/05/1988. For the period post 10/06/2003, the distribution licensee would be liable to pay interest at the rate equivalent to the bank rate notified by the R.B.I from time to time in terms of clause 10.6 of the

(Electricity Supply Code) Regulations,2005 and Section 47(4) of the Electricity Act,2003.

Obviously, security deposit amount cannot be said to be arrears nor it is a revenue of Board or, rather it is the amount of consumer which has to be deposited by the consumer as a security in case of arrears of electrical energy remains unpaid by the consumer which has to be refunded to the consumer after adjustment of arrears of energy dues. The licensee have violated the provisions of circular dated 27/05/1988 in giving interest on security deposit to the consumer .In fact it should have been passed on automatically to the consumer by way of adjusting against the energy bill as per the aforesaid circular. The licensee cannot be allowed to take advantage of their own mistakes. Therefore, contention of the learned counsel for Appellant in respect of filing the complaints relating to previous years pertaining to any grievance with the Forum after one year of it's coming into existence is not tenable.

The Respondent had preferred writ petition W.P(C) No. 6666 of 2007 before the Hon'ble High Court, Jharkhand. The cause for action appears to have been derived from the order dated 06/12/2012 in the aforesaid writ, wherein the Hon'ble High Court has been pleased to give liberty to move before the appropriate authority to raise the grievances pertaining to payment of interest over the security deposit and subsequent thereto the Respondent had filed representation before VUSNF, Chaibasa . In that view of the matter, the issue of limitation raised by the learned counsel for the Appellant cannot be sustained and, accordingly, rejected.

Heard both the parties and carefully perused the written notes of argument on record and the judgement relied upon by the parties.

In the result, the order passed by the learned VUSNF, is well within the ambit of law and does not suffer from any infirmity in law and on facts. In the above circumstances, the order of learned VUSNF cannot be interfered with and, accordingly, the instant Appeal is dismissed with no order as to costs.

Sd/-
Electricity Ombudsman