

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

Present- Prem Prakash Pandey
Electricity Ombudsman

Case No. EOJ/05/2017

Ranchi, dated, 24th day of October, 2017

The Jharkhand State Electricity Board, now known as **Jharkhand Urja Vikas Nigam Limited (JUVNL)** through its Law Officer- namely Mithilesh Kumar, S/o- Sri. R. B. Singh, R/o- Kusai Colony, P.O. & P.S.- Doranda, District-Ranchi
 Appellant

Versus

M/s Corporate Ispat Alloys Ltd. through its Chief Executive-cum-authorized signatory Sri. Ravinder Kumar Singh, S/o- Sri. Sushil Singh, R/o- D-2 Colony Area, Abhijeet Group, Totalalwada, P.O. & P.S.- Burudih, District-Saraikela Kharsawan
 Respondent(s)

For the Appellant : Sri. Rahul Kumar (Standing Counsel)
 : Sri. Prabhat Singh (Additional Counsel)

For the Respondent : Sri. N.K.Pasari Advocate
 : Smt. Ranjana Mukherjee Advocate

(Arising out of Judgement and order dated -30/04/2016, passed in complaint case no. 01 of 2016, 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 30/04/2016, passed in complaint case no. 01 of 2016 by the Learned Vidyut Upbhokta Shikayat Niwaran Forum (VUSNF) Chaibasa

at Jamshedpur, whereby and where under, the learned VUSNF has allowed the petition of the Respondent with direction to the appellant to delete the amount shown under head demand charge for agreemental period from **12/2013 to 07/2015 in the final bill** and also to calculate demand charge for the agreemental period, if any, on the basis of first agreement, executed on 25.06.2011 or the date of energization and to recalculate the interest on security deposit at the prevalent bank rate of R.B.I.

2. The brief facts of the case, as contained in the complaint petition of the Consumer/Respondent (hereinafter referred to as Respondent) is that Respondent is a company duly registered under the Companies Act, 1956. The petitioner/ Respondent is a company of **“Abhijeet Group of Companies”**. In principle, the Petitioner/ Respondent is engaged in the business of power generation and production of iron & steel. The petitioner/ Respondent carries on its business from its registered office at Insignia Tower, EN-1, Third Floor, Sector-V, Salt Lake City, Kolkata 700091. The controversy in the present case circulates around the Captive Power Plant, installed by the Petitioner/Respondent along with Integrated Steel Plant in and around Kharsawan. However, initially, when the petitioner/ Respondent had come to the State of Jharkhand, the petitioner/ respondent was allotted a coal block in Latehar District with a condition to do value addition within the State and not to send coal out of the State and promised for allotment of iron ore mines, which are the most important raw material for manufacturing of iron, steel and power. It is further stated that in around 2008, the Respondent entered into an MOU with State of Jharkhand for setting up an Integrated Steel Plant with Captive Power Plant Project with a capacity of proximately 120 MW, and for that an application was

made for grant of electrical connection for a sanction load of 90 HP under the Low Tension Insulation Services (LTIS), for the initial stage of the construction activity, when boundary wall and small unit for residential, as also the administrative office, was to be constructed and for this purpose, deposited the security amount, as was required for the purpose of grant of electrical connection and post fulfillment of other modalities, the electric meter was installed in the premises on 08.07.2010 and the electrical connection for a sanction load of 90 HP was energized.

3-. The further case of the Respondent is that Since the Respondent/petitioner could foresee the future load requirement, the petitioner had made an application for enhancement of load from 90 HP i.e. under Low Tension Insulation Service connection to 1000 KVA under High Tension Tariff only, for construction purposes. Since the construction of the captive power plant along with integrated steel plant was at a high speed, the petitioner once again requested the Appellant to allow the petitioner/ Respondent to install a 33 KV power sub-station at the plant site vide its letter dated 28.06.2010. Yet again the Respondent/petitioner made an application to the Appellant to allow the Respondent/petitioner to avail tapping facility in order to lay 33 KV power supply line to the unit. In terms whereof, an estimation was carried out by the Appellant/ Electricity Board towards tapping, in which the licensee levied 21.5% as Departmental Charges (Supervision Charges), which was, otherwise, not permissible. However, the amount of Rs. 28.55 Lakhs was realized on account of diversion of 132 KV over headline and this calculation was yet again carried out @ 21.5% of the Departmental Charges was realized from the petitioner, which was duly deposited by the petitioner. Finally, on 09-02-2011, appellant accorded sanction of load of 1000 KVA and asked to deposit Rs 30 Lakhs, as security money,

and also charged 21.5% departmental charges and accordingly, the said amount has been deposited. Consequent thereupon, the letter of energization was released in favour of the Respondent/ petitioner vide letter dated 28.06.2011. Yet again another estimation was given to the petitioner which was also deposited without fail.

4-. The further case of the Respondent is that after energization of the load at 1000 KVA, the Respondent again made an application for **enhancement of load from 1000 KVA to 3000 KVA for the purpose of the power plant commissioning**, which was allowed vide letter dated 26.05.2012, and immediately thereafter the petitioner was directed to deposit the sum of Rs. 60.00 Lakhs towards the security deposit, in addition to what has been, already been deposited, as a result; a total amount of Rs. 90.00 lakhs has been deposited by the petitioner/ Respondent. It is further stated that the Respondent started its construction activity and even started procuring machines, boilers etc. in order to establish its power plant and as a routine matter, even took valid electric connection for construction/civil work on temporary basis. However, commercial production, which was to commence with effect from sometimes around the year 2013, the entire project of the Respondent/petitioner came to a stands till in the last quarter of 2012 for some unforeseen circumstances. Although, the Respondent/ petitioner kept on making payment of the energy bills as and when raised and till August 2013 the Respondent/petitioner had virtually made payment in excess of Rs. 27.00 Lakhs to the licensee. Although, the project of the Respondent/ petitioner could not see the sunlight, however, to the best understanding of the Respondent/ petitioner there was not a single naya paisa due to be paid by the petitioner post August 2013.

5-- The further case of the Respondent is that the Respondent had received a notice on 16.06.2015, that a certificate proceeding has been initiated against the respondent/petitioner for an amount of Rs. 33,36,023/- on account of some purported dues and accordingly, Respondent's company immediately appeared before the certificate officer on 27.06.2015, as was fixed and gave its attendance, although the learned officer did not hold the court on the same day. Since the Respondent/ petitioner had been made aware that a certificate proceeding vide certificate case no. 35/2013-14 has been initiated, the Respondent produced the details of the dues, sought to be recovered from the petitioner, in order to understand that what are dues stands for. Since the Respondent/ petitioner was not having much documents to defend itself, the Respondent/ petitioner did apply for documents before the authorities of the Electricity Board for want of documents as enumerated, with an undertaking to make payment of the charges, but the appellant has not respond on its request. Consequently, the instant case has been instituted

.6- The appellant appeared before the learned VUSNF and filed its counter affidavit, taking a specific plea that power supply to the respondent was disconnected on 12-11-2013 on account of non- payment of energy charges bill for the period of three consecutive months i.e. from September 2013. Even after disconnection, no payment was made by the Respondent, consequently, the process of certificate case was initiated for the recovery of the said dues. It is admitted that the load of enhancement was made on 17-07-2012 from 1000 KVA to 3000 KVA and as per clause 8 of the agreement, minimum agreemental period of three years was not covered on the date of disconnection. Therefore, for the recovery of dues through certificate case, demand charge of 75% of the contractual

demand was levied for the shortfall agreemental period in addition to the dues amount.

7- The further case of the appellant is that the interest on the security deposit was calculated as per the then available information. Therefore, the interest on the security deposit may be revised as per the prevailing rate of the R.B.I. and with the consent of the learned Forum. It is further stated that Respondent never came to collect the documents. Though, the office of the Appellant was always ready to handover the relevant documents to the Respondent. It is admitted by the Appellant that on 19-10-2015, when an authorized person of the Respondent turned up, the documents were handed over to him. It is further stated that the demand raised in certificate case is justified and revisable only to the extent of interest calculation. Therefore, the complaint filed by the Respondent is not justified and not entitled to get any relief, as claimed.

8- The learned VUSNF, after discussing the entire facts and taking in to consideration of the law points, as settled in M/S Ram Krishan Forging Ltd. Vs J.S.E.B & others, reported in (2008) J.C.R.228 (Jhar), allowed the complaint petition with direction to the Appellant to delete the amount shown under head demand charge for agreemental period from 12/2013 to 07/ 2015 in the final bill and also calculate demand charge for the agreemental period, if any, on the basis of first agreement, executed on 25-06-2011 or the date of energization and also recalculate the interest on security deposit at the prevailing rate of R.B.I.

9- Assailing the impugned judgment and order, passed by the learned VUSNF upon the amount shown under head demand charge, it has been submitted by the learned standing counsel for the Appellant that the learned VUSNF did not consider the fact that earlier agreement under

High Tension tariff came to end on execution of fresh agreement and therefore the three years mandatory period would have been calculated from the date on which fresh agreement was executed in proper perspective and has gravely erred in coming to the finding to allow the complaint petition with direction to the Appellant to delete the amount shown under head demand charge for agreemental period from 12/2013 to 07/ 2015 in the final bill and also calculate demand charge for the agreemental period, if any, on the basis of first agreement, executed on 25-06-2011 or the date of energization. It has further been contended that the learned VUSNF has also erred in passing the impugned order by overlooking terms and conditions of validly executed agreement dated 17-07-2012, specially; clause 8 and 9 of the said agreement, and has miserably failed to appreciate that the earlier agreement will be deemed to have come to end on execution of fresh agreement and therefore three years mentioned in clause 9 of the agreement will be computed from the date of fresh agreement. Thus, the impugned order lacks reasonableness and has been passed without any application of mind, ignoring the terms and conditions of validly executed agreement. In support of his contention, the learned counsel placed reliance upon case law decided by the Hon'ble Jharkhand High Court in W.P.C. No. 2864/13, M/s Maithan Ceramics Limited Vs The Jharkhand State Electricity Board, which is upheld by the Hon'ble Division Bench in L.P.A.No.36/2016 on 28th July,2016.

10- Refuting the contention of the learned standing counsel for the appellant, it has been submitted by the learned counsel shri N.K. Pasari, for the Respondent on 19-09-2017, while this case was fixed for argument to the Respondent, that the judgment of the Hon'ble High Court in the matter of M/S Maithan Ceramics, as state above, in the instant case,

would be of no avail, for the reasons that the said judgment does not have retrospective effect. Moreover, the Maithan Ceramic limited has already preferred a civil Review no 59/2016 with I.A. no.6681.2016 against the decision of the Hon'ble Division Bench, before the Hon'ble Jharkhand High Court, which is still pending for hearing. Thus, the subject matter in question is still subjudice, hence Appellant can not take help of that very decision. The learned counsel for the Respondent has further contended that apart in the case in hand , the other issue, which was raised by the Respondent , including the issue of interest on security deposit and wrong charges realized from the Respondent can be well established and as such the entire claim of the Respondent is genuine. The learned counsel further submitted that learned VUSNF, after considering the entire facts and circumstances of the case, allowed the petition of the Respondent. It has further been submitted that the security , as deposited by the Respondent to the tune of Rs. 90 lakhs, if the banks interest is allowed in terms of section 47 (4) of the Electricity Act 2003 read with the decision rendered by our Hon'ble High court in the matter of M/S Perfect Electric Concern Ltd vide W.P. (C) No.1091/2006 dated 25-09-2013, in that event ,the interest to be granted to the Respondent for three years and three months, would not be less than Rs. 27 Lakhs in toto, till the date of filling to the certificate proceedings, since at the relevant time , rate had been 9%, where as calculation has been carried out at rate of 3.5%, which is totally unjust. Lastly, it has been contended that there is no illegality in the impugned judgment and order, passed by the learned VUSNF, which require interference by this forum. Moreover, the other modalities in order to maintain an appeal have not been carried out and such the entire appeal has to fail. Thus, there is no merit in this appeal and is liable to be dismissed.

11- It will admit of no doubt that the Appellant is deemed licensing-cum – utility, which is engaged in the business of generation, transmission and distribution of electricity to the consumers. Respondent being a consumer made an application for electric connection of 90 HP in his premises, accordingly, on 08-07-2010 electronic meter was installed in the factory premises and sanction load of 90 HP was energized but after some time, respondent has made an application for enhancement of load from 90 HP to 1000 KVA under HT tariff and on execution of agreement under HT tariff, letter of energization was issued on 28-06-2011. Again an application for enhancement of load from 1000 KVA to 3000 KVA was made, which was also allowed vide letter dated 26-05-2012 and on deposit of security amount, a fresh agreement was executed on 17-07-2012 for a contract load of 3000KVA and accordingly, Respondent continued to pay the electric charges for few months but supply of power was disconnected on account of non- payment of energy bill for three consecutive months from September 2012. It is also admitted fact that even after disconnection of electric connection, no step was taken by the Respondent to pay the dues nor made any request for fixation of installment for repayment of dues, resultantly, a bill was prepared taking into account the fact that since fresh agreement was executed on 17-07-2012 for enhancement of load from 1000 KVA to 3000 KVA.

12- It is relevant to mention at very outset that there is two important date, in this case, for proper consideration. The first date is **25-06-2011** and second date is **17-07-2012**. The first date 25-06-2011 is the date when enhancement of load from 90 HP to 1000KVA under HT tariff of the respondent was made on his application and accordingly deed of agreement was executed ,whereas on 17-07-2012 again load of

respondent was enhanced from 1000KVA to 3000KVA and on deposit of security amount a fresh deed of agreement was executed and thereafter respondent continued to pay the electric charges for the few months but later on due to non- payment of energy bill for three consecutive months from September 2012, the power supply of the respondent was disconnected by the appellant. It is also pertinent to mention at this juncture that even after disconnection of electric connection, the respondent neither took any initiative to pay the dues nor made any request for fixation of installments for repayment of dues, resultantly, a bill was prepared by the appellant, taking into account the fact that since a fresh agreement was executed on 17-07-2012 for enhancement of load from 1000 KVA to 3000 KVA and as per clause 8 of the agreement, minimum period of three years was not covered on the date of disconnection, hence as per clause 8 and 9 of the agreement demand charge of 75% of contract demand was levied for short fall agreement period in addition to the electric due amount. Consequently, this bill is being challenged by the respondent, before the learned VUSNF on the basis of settled principle of law, as laid down in **W.P.C.6651/ 2007, in case of Ram Krishna Forging limited Vs Jharkhand State Electricity Board and others**, reported in 2008 J.C.R. page 228(Jhar), in which it was held that the agreemental period of three years can commence only with the first agreement and commencement of supply and not the subsequent agreement executed for the purpose of reduction or enhancement of load

13- It is also important to mention at very outset, at this juncture, that electric connection of the respondent was disconnected on **12-11-2012**, accordingly, appellant claimed against Respondent to pay demand charges for the agreemental period from December 2012 to July 2015. On

behalf of Appellant, a reliance has been placed upon the case law **W.P.C.2864 of 2013, M/S Maithan Ceramic Limited, Dhanbad Vs J S E B**, which has been decided by the Hon'ble High Court on **17-12-2015**, (prior to the decision of this case by the learned VUSNF) wherein, it is held that agreement can not be determined within three years from the date of fresh agreement. It is also relevant to mention here that the present case was instituted before the learned VUSNF **on 30-01-2016 and learned VUSNF has passed the impugned judgment and order on 30-04-2016**, just after decision of the Hon'ble High Court, in M/S Maithan Ceramic Limited case.

14- Now the main question for adjudication before this Forum is that **(1)-Whether the agreement period for three years can commence only with the first agreement and commencement of supply as claimed by the Respondent or**

(2)-the subsequent fresh agreement, as claimed by the Appellant in the light of recent case law? To answer these questions, I would like to mention that earlier there was decision in the case no. W.P.(C) no.6651/2007 M/S Ram Krishna Forging Ltd. Vs J.S.E.B.& others, reported in 2008(4)J.C.R. page 228 (Jhar) that agreement period of three years can commence only with the first agreement and commencement of supply and not the subsequent agreement executed for the reduction or enhancement of load and accordingly, the learned VUSNF relied upon the aforesaid settled principle of law and decided the instant case in favors of Respondent. Whereas, in recent case law, W.P.C.no.2864 of 2013 M/S Maithan Ceramics Limited, Dhanbad Vs Jharkhand State Electricity Board and others ,decided on 17-12-2015, where in, it is held by the Hon'ble Jharkhand High court that as per clause 8 and 9 of the execution of fresh agreement , the earlier

agreement entered in to by the petitioner and the Board, have come to an end, placing reliance upon the settled principle of law by the Hon'ble Apex court in General Manager-cum- chief Engineer B.S.E.B. and others Vs Raheshwar Singh and others, reported in 1990(1) SCC-741 at paragraph no 5 that “ the earlier agreement must be deemed to have come to an end on execution of the fresh agreement.....”

15- Having considered the entire facts and circumstances of the case and settled principle of law by the Hon'ble Apex court and our own Hon'ble High court, as discussed above, I do find that on execution of fresh agreement between the Appellant and respondent for enhancement of load, the earlier agreement executed between the parties, have come to an end as per clause of 8 and 9 of the fresh agreement. It is also important to mention at this stage that aforesaid finding of the Hon'ble Jharkhand High court was challenged by the M/s Maithan Ceramics Limited vide L.P.A.No.36/2016 before the Hon'ble High Court, which was heard by the Hon'ble Division bench headed by Hon'ble the then The Chief Justice and decided the same on 28th July 2016, dismissing the Letters Patent Appeal and held that the impugned order dated 17-12-2915 passed in W.P.(C) No.2864 of 2013 does not suffer from any infirmity either on facts or in Law

16- The learned counsel Mr. Nitin Kumar Pasari, appearing on behalf of Respondent has further submitted that a Civil Review No. 59 of 2016 with I.A.No.6681 of 2016, Maithan ceramics Limited Vs Jharkhand Urja Vikas Nigam Limited & others is pending for hearing before the Hon'ble Jharkhand High court , therefore till decision of that very matter , the principle of law settled by the Hon'ble High court in that very case, can not be taken in to consideration in the instant case. Taking in to consideration of the submission advanced by the learned counsel for the

Respondent I do not find any force in his submission because unless and until the aforesaid settled principle of law does not set aside by the Hon'ble court, this forum is bound to obey the command of recent settled law. Moreover, there is no order of stay by the Hon'ble court to this forum. Apart from that, this forum is bound to dispose of the case expeditiously preferably within a period of 90 days from the date of receipt of the complaint as per clause 24 (4) (Guidelines for establishment of Forum for Redressal of grievances of the consumers and Electricity Ombudsman) Regulations 2011.

17- Thus , taking in to consideration of the entire facts and settled principle of law , I find and hold that the learned VUSNF did not properly and meticulously consider the facts and settled principle of law in recent case, as discussed above, in proper perspective and has committed a manifest error in coming to the finding to accept the contention of learned counsel for the respondent and held that appellant cannot count the agreemental period on the basis of subsequent agreement and the amount shown under the head demand charge for agreemental period i.e. from 12/13 to 07/15 is liable to be deleted from the final energy bill issued by the Appellant and further the appellant can calculate the agreemental period of three years from 25-06-2011, the date on which first agreement was executed or the date on which electric supply was made under HT category. Therefore, the impugned judgment and order is unsustainable. Thus, considering all the pros and cons of the matter as well as the settle principle of law by the Hon'ble Apex court and Hon'ble Jharkhand High court, it appears that the impugned judgment and order suffers with manifest illegality, which requires an interference therein. In the result, it is therefore,

ORDERED

18- That there is merit in this appeal and it succeeds. The appeal is hereby allowed. The impugned judgment is hereby set aside. But appellant is directed to recalculate the interest on security deposit, as per prevailing bank rate of R.B.I. on the relevant date of deposit. Under the facts and circumstances of the case, the parties shall bear their own costs. Let a copy of this judgment and order be given to the concerned party.

Dated-24-10-2017

Sd/-
(Prem Prakash Pandey)
Electricity Ombudsman