

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

Case No. EOJ/06/2016

M/s Singhwahini Cement Pvt. Ltd. Appellant

Versus

JUVNL & Others Respondent(s)

Present:

Electricity Ombudsman : Shri Ramesh Chandra Prasad
Advocate for the Appellant : Sri. Navneet Prakash
Counsel for the Respondent : Sri. Rahul Kumar
: Sri. Prabhat Singh

ORDER

(Order passed on this 3rd day of November, 2016)

The instant Appeal has been filed by the Appellant against the Order dated 20/05/2016, passed in Case No.14/2014, by the learned Vidyut Upbhokta Shikayat Niwaran Forum, Hazaribag (herein after referred to as VUSNF) which reads as follows:

“Based on records available in the file and arguments from both parties forum is of firm view that

- 1. In the month of April 2002 and May 2002 the bills will be issued under clause 16.8 of 1993 tariff.*
- 2. No interest will be paid on security deposit under clause 15.3 of 1993 tariff.”*

2. Brief of the Case:

2.1 The appellant started an industrial unit registered as a small scale industry. For availing electrical power the consumer entered into an H.T. agreement with the Bihar State Electricity Board (here in after referred to as BSEB) on 03.10.1994 bearing consumer number KJ 6605. It has been stated by the appellant that due to paucity of working capital and other operational problems / market problems the company became sick in the year 1998 and declared as sick unit. The State of Bihar came out with Industrial Policy, 1995 which allowed different benefits to industries. After creation of State of Jharkhand and formation of Jharkhand State Electricity Board (herein after referred to as JSEB) , the Secretary, Jharkhand State Electricity Board vide memo no. 143 dated 06.02.2010 passed an order thereby the benefits arising out of industry's sickness was allowed and the appellant's industry also got benefit from that order.

2.2 Pursuant to memo no. 143 dated 06.02.2010 issued under signature of the Secretary, JSEB the Electrical Superintending Engineer, Electrical Supply Circle, Hazaribag issued letter no. 1411 dated 30.04.2010 along with its enclosure mentioning therein that the bill of the appellant has been revised and is entitled to have refund of Rs. 1,10,209 excluding 23111/- being payable by the appellant on account of arrear against fuel surcharge. Along with the said letter a copy of full statement was also enclosed. Dissatisfied with the calculation shown in the enclosed statement, appellant filed representation dated 17.05.2010 to the concerned authority which was looked into and accordingly the Electrical Superintending Engineer, Electrical Supply Circle, Hazaribag vide letter No.2127 dated 22.06.2010 revised the bill and the refundable amount was corrected to Rs. 1,11,257.00

in place of Rs. 1,10,209.00 but, the appellant noticed discrepancies in the calculation in respect of refund amount and communicated the same to the Secretary, JSEB vide letter dated 18/08/2010 which is stated to be as follows:

i) Rs. 2632.00 wrongly charged on account of power factor short fall in the month of Nov. 2001.

ii) Rs. 54634.00 wrongly charged as monthly energy bill of April 2002.

iii) Rs. 3609.00 wrongly charged as monthly energy bill of May 2002 for 2 days.

iv) Interest on security: The petitioner found that interest on security deposit has been allowed only up to April 2002 the date of disconnection but as per norms/terms and condition of JSEB interest on security deposit is to be paid till the refund of such security deposit. Further if the security deposit is not paid within 60 days from the date of disconnection then in that case for delay over 60 days an additional interest is to be paid at the rate of 2% till the refund of such security deposit.

The appellant vide their communication dated 03/10/2013 filed petition to Secretary, JSEB claiming a sum of Rs.1,62,862.00 in view of order passed on 03.09.2012 in W.P.(C) No.165 of 2012. The issues raised by the appellant was looked into by the Chief Engineer, (C&R), JSEB and the finding was communicated to the appellant vide memo number 2175 dated 17.11.2012. Aggrieved by the aforesaid findings of the Chief Engineer, (C&R), JSEB the appellant preferred writ W.P. (C) No.2456 of 2013 before the Hon'ble Jharkhand High Court which was disposed of with a direction to exhaust the available remedies as per law. Pursuant to the direction of the Hon'ble High Court the appellant filed petition before VUSNF, Hazaribag

who after giving due diligence to the issues passed the aforementioned order. Aggrieved by the order of learned VUSNF the appellant filed the instant appeal.

3. Submission of the appellant:

3.1 The learned advocate submitted that while preparing the bill under clause 16.8 of 1993 Tariff the licensee Board should have taken into account, Clause 3(C) of the HT agreement which provides that such average bills should be raised having due regard to the condition of working. Owing to the fact that the unit became sick and exempted from the AMG charges, the respondents should not have raised bill on the higher side for the month under dispute. In fact, the arrangement so made in the tariff is for healthy units and, therefore, Clause 3(C) of the HT agreement should have been taken into consideration while preparing the average bill for the disputed period.

3.2 The learned advocate further submitted that the respondents have granted interest on security deposit only up to April, 2002, the date of disconnection but as per term and condition of JSEB, interest on security deposit is to be paid till the refund of such security deposit in totality. Moreover, if the security deposit is not paid within 60 days from the date of disconnection then in that case for delay over 60 days an additional interest is to be paid at the rate of 2% till the refund of such security deposit.

3.3 The learned advocate contended that due to paucity of working capital and other operational problems the industry became sick in the year 1998 and declared sick unit. The State of Bihar came out with Industrial Policy, 1995 which allowed different benefits to sick industries and accordingly

after creation of State of Jharkhand the Secretary, JSEB vide memo no. 143 dated 06.02.2010 passed an order wherein the benefits arising out of sick unit's stature was given. It is pertinent to mention that the licensee JSEB has not taken into consideration the situation arising out of strike in the unit since December, 2001. Instead of going through Clause 16.8 of 1993 tariff read with the relevant Clauses of the HT agreement, raised the bill only on the basis of Clause 16.8 of the 1993 tariff which is against law of natural justice. Therefore, respondent JSEB should be directed to revise the bill for the month of May, 2002 on the basis of average of the bills of last three months preceding April, 2002.

3.4 The learned advocate further submitted that the certificate case instituted by JSEB has already been withdrawn and, therefore, interest on security deposit at the rate of 6% per annum as per Board's order dated 27.05.1988 is admissible as per rule but the same has been denied. In fact it should have been paid at the rate of 6% per annum till the date of full and final payment of security amount is made to the appellant.

3.5 The learned advocate relied upon the following Judgements of the Hon'ble High Court and that of JERC to put stress for allowing the instant appeal:

i) W.P. (C) No.1091 of 2006 [M/s Perfect Electric Concerned Ltd V/s JSEB & Ors.]

ii) C.W.J.C No.778 of 1999 (R) [Murliwala Minerals Pvt. Ltd V/s BSEB &Ors.]

iii) AIR 1995 Patna-43[Dumraon Textiles Ltd V/s BSEB &Ors]

iv) CWJC No.3182 of 1999(R) [Shyam Steel V/s BSEB &Ors]

v) Jharkhand State Electricity Regulatory Commission (JSERC) Order dated 16.03.2011 in Case No.04/2011

4 Submission of Respondents:

4.1The Learned counsel submitted that the as per Clause 15.3 of 1993 Tariff, security deposit is a due from the consumer in respect of supply of electricity. The appellant is claiming interest on security on the basis of a letter issued in the year 1988 under the signature of Secretary, BSEB. Since the appellant had taken electric connection on 03.10.1994, the provisions made under tariff order of 1993 will be applicable. Hence, Gazette Notification will supersede the provisions made under any such circular.

4.2 The learned counsel further submitted that the process of calculation of interest on security deposit was started after the appellant had deposited original copy of money receipt and in this regard the Electrical Superintending Engineer, Hazaribag vide memo no.2127 dated 22.06.2010 made request to the appellant to submit original money receipt to initiate refunding process initiated. The refund of security deposit to the tune of 1,11,257.00 was made through cheque no.076572 dated 29.07.2010. The provision made under (Electricity Supply Code) Regulation, 2005 cannot be made applicable in the instant case because the final bill was served to the appellant in the year 2003. Moreover, pursuant to issuance of bill, a certificate case was also instituted for recovery of due amount in the year 2002-2003 vide Certificate Case No.02/E/0304.

4.3 The learned counsel contended that the bill for the month of April 2002 and for two days in the month of May 2002 was raised on the basis of

provisions made in Clause 16.8 of the 1993 Tariff wherein methodology to be adopted in case of meter becoming defective has been described but nothing regarding situation arising out of strike has been dealt in the said tariff order. In fact, situation arising out of strike come under “force majeure condition” and for this provision has been made under Clause 13 of the HT agreement to allow proportionate relief in AMG charges which has already been given to the appellant. While billing for the month of May 2002 average of corresponding three months of previous year being on the higher side has been taken because the appellant was exempted from MMG. Therefore, the grievances raised in the instant memo of appeal are not legally tenable.

4.4 The learned counsel further submitted that the issue of interest on security deposit till the year 2011 being agitated by the appellant is of civil consequences and, therefore, may be pleaded before the appropriate court of law.

4.5 The learned counsel relied upon the following judgements of the Hon’ble Jharkhand High Court to justify his line of argument:

i) Ambika Wheat Private Ltd.v/s Bihar State Electricity Board (order passed on 11December,2000)

ii) Associated Cement Companies Ltd vs Bihar State Electricity Board(order passed on14 March,1997)

5 issues involved:

- 6** i) Whether raising of energy bill on the basis of Clause 16.8 of 1993 Tariff without taking into account provision of Clause 6 of HT Agreement is justified?

ii) Whether liability of JUVNL not to pay interest on security deposit till final payment of the security amount is tenable as per law?

6) The first issue involved in the appeal is related to the impugned energy bill for the month of May 2002 for two days which was charged as per clause 16.8 of 1993 tariff. The said provision of the tariff reads as under:

“In the event of meter being out of order i.e. burnt/stopped or having ceased to function for any reason during any month/months, the consumption for that month/months shall be assessed on average consumption of previous 3 (three) months from the date of meter being out of order or the average consumption for the corresponding three months of the previous year’s consumption or, the Minimum Monthly Guarantee whichever is the highest. Such consumption will be treated as actual consumption for all practical purposes until the meter is replaced /rectified. Operational surcharge, power factor surcharge and electricity duty shall be levied on consumption so calculated.”

Clause 3(C) of the agreement reads as follows:

“Subject to clause 6 appearing hereinafter in the agreement, in the event of any meter ceasing to register or found to be defective or the Board’s employees’ having been unable to read meter, the reading during the period of such cessation or defective registration of non-reading shall be based on the average reading of the previous three months, in which the meter ran correctly and reading was duly recorded. In taking such average due regard shall be given to the conditions of working during the month under dispute and during the previous three months. In case of failure to take reading by

the Board's employees proper adjustment shall be made when actual reading is taken next."

By way of submission the learned advocate contended that while preparing the bill under Clause 16.8 of 1993 tariff, JSEB should have taken into account Clause 3(C) of the agreement which provides that such average bills should be raised having due regard to the condition of working of the month under dispute and during the previous 3 months. The industry became sick and exempted from AMG charges thus the respondents should not have raised the bill on higher side, since the tariff is applicable to the healthy units. Per contra the learned counsel contended that the appellant were already given relief in terms of AMG charges on the basis of sick industry's status. While considering three months for preparing bill, previous year's production in the factory was taken into consideration and, therefore, in view of Clause 16.8 of 1993 tariff, energy bill for the month of May, 2002 for two days was charged on the basis of average of corresponding three months of previous year being on the higher side.

The meter of the appellant had become defective during the impugned period. No action was taken as per provision of Clause 6 of the agreement which reads as follows:

"6. Should the consumer dispute the accuracy of any meter not being his own property, the consumer may upon giving notice and paying the prescribed fee have the meter officially tested by the Electrical Inspector Government of Bihar in accordance with sub-section (6) of Section 26 of the Indian Electricity Act, 1910. In the event of the Electric Inspector, Government of Bihar and found to be beyond the limits of accuracy as

prescribed in the Indian Electricity Rules, 1956, or any other statutory modification thereof as may be in force from time to time the testing fee will be refunded and the amount in respect of the meter readings of the three months prior to the month in which the dispute has arisen or of three months as provided in clause 3 (c) above, as the case may be, will be adjusted in accordance with the result of the test taken, due regard being paid to the conditions working during the month under dispute and during the previous three months. ”

Admittedly, the provision of Clause 6 of the agreement was not followed by either of the parties. Therefore, keeping in view the production/ energy consumption , working condition during the month under dispute and during the previous three months in the factory and , 1993 tariff as well as Clause 6 of the agreement , average of corresponding three months of previous year being on the higher side is justified .

7) The second question, in view of the rival contention of the parties, which requires consideration, is as to whether interest would be paid towards the deposit of security amount till final payment of the same is made.

Interest on security deposit has been decided by the Hon’ble Jharkhand High Court in WP(C) No.1091 of 2006 in M/s Perfect Electric Concerned Ltd. V/s JSEB &Ors. wherein the Hon’ble Court has given it’s finding as below:

“However it is further made clear that the respondent Board will be liable to pay interest for the period prior to 10.6.2003 on the security amount deposited by the petitioner at the rate of saving bank account deposit as revised from time to time in terms of the circular dated 27.5.1988. For the period post 10.06.2003, the distribution licensee and the commission both

have filed their counter affidavit in the instant case stating therein that licensee would be liable to pay interest at the rate equivalent to the bank rate notified by the RBI from time to time in terms of Clause 10.6 of the Electricity Supply Code and Section 47(4) of the Act, 2003.”

The bill of the appellant has been revised pursuant to memo no. 143 dated 06.02.2010 and accordingly the appellant was entitled to refund of Rs. 1,10,209/- excluding Rs. 23,111/- being payable by the appellant on account of arrear against fuel surcharge.

In the similar matter an order was passed by JSERC, Ranchi dated 16.03.2011 in Case No. 04/2011(M/S Jharkhand Small Industries Association V/s Jharkhand State Electricity Board) in which the Hon'ble Commission has made following observation:

“Section 47 of the Electricity Act, 2003 speaks about the requirement of security. It says any person who requires supply of electricity in pursuance of section 43, has to provide reasonable security as may be determined by Regulations. The JSERC (Electricity Supply Code) Regulations, 2005 speaks about the security deposit. Clause 10.6 of the said Regulations says that the distribution licensee shall pay interest on the amount of security deposited by the consumer at a rate prevalent to Bank rate of the Reserve Bank of India. From the aforesaid Regulations, it is abundantly clear that the respondent-licensee-JSEB is left with no other option but to pay the interest on the amount of security deposit at a rate prevalent to Bank rate of the Reserve Bank of India. From this follows that the respondent-licensee-JSEB is duty bound to ascertain about the Bank rate and make payment to the consumers accordingly.”

In the matter of Ambika Wheat Private Ltd.v/s Bihar State Electricity Board (order passed on 11December,2000) the Hon'ble High court has made the following observation:

“Having regard to the facts of the case and following the principles laid down by the Supreme Court, I am also of the view that the security deposit made by the consumer in accordance with the tariff cannot be equated to a fixed deposit. As a matter of fact, the security deposit is furnished to ensure timely payment of amount under the bills. Hence the consumer shall not be entitled to claim interest at the rate payable in a commercial transaction. At best the consumer would be entitled to interest in terms of the clauses contained in the tariff and not otherwise.”

In the matter of Associated Cement Companies Ltd. vs. Bihar State Electricity Board & Ors. on 14 March, 1997, equivalent citations: 1997(2) BLJR 1056 the issue decided was pertaining to deposit of security in the shape of bank guarantees which has no application in the instant case.

Admittedly, the amount of security deposit is taken from the consumer in accordance with the provisions of the tariff. After making available receipt of deposit of security amount by the appellant to the concerned official, the Electrical Superintending Engineer, Electric Supply Circle, Hazaribag issued revised bill vide letter no.1411 dated 30.04.2010 wherein balance amount payable up to 02.05.2002 is stated to the tune of Rs.1,10,209.00. In the instant case, the appellant had deposited security amount of Rs.1,38,710.00 in cash on 22.09.1994. The appellant was allowed interest on security deposit only up to April,2002, the date of disconnection where as the claim is that the interest on security deposit should be paid till final payment of the same.

When the relevant provision of the tariff as well as that of the agreement is found to be valid, this forum can not put any additional ground for rejecting the claim of the appellant as far as interest on security amount deposited with the licensee is concerned.

8) Heard both the parties and also I have gone through the written submission filed by the learned advocate for the appellant and the documents produced by the parties on record.

9) In the result, I therefore pass the following order:-

a) The appeal is partly allowed.

b) The appellant would be entitled to the interest on security amount deposited till it's final payment as per the Regulation .

c) Compliance be reported within 30 days.

10) The appeal is accordingly disposed of with no order as to costs.

Let a copy of this order be served on both the parties.

Sd/-
Electricity Ombudsman