

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

Present- Prem Prakash Pandey
Electricity Ombudsman

Case No. EOJ/08/2016

Ranchi, dated, 4th day of August, 2017

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

.. Appellant

Versus

Smt. Lily Bala Singh, wife of shri Pashupati Nath Singh, House No. 196, Takiya Mazar Road, Nawabganj, P.S.-Sadar, District-Hazaribag, Jharkhand

..... Respondent

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

For the Respondent : Sri. Pashupati Nath Singh (Advocate)

(Arising out of Judgement and order dated 21/07/2016, passed in complaint case no. 26 of 2016 by the Learned VUSNF, Hazaribag)

J U D G E M E N T

1. The instant appeal is directed against the impugned judgment and order dated 21/07/2016, passed in complaint case no. 26 of 2016, by the Learned Vidyut Upbhokta Shikayat Niwaran Forum, here in after called VUSNF , Hazaribag, whereby and where under, the learned forum passed the order as below:-

- a. Reconnection bill framed from 05/1999 to 10/2014 is quashed.
- b. Electrical connection restored in 11/2014 must be treated as fresh connection keeping in mind section 7.5 of chapter 7 of Supply Code 2005 and bill may be raised accordingly on the basis of meter reading installed on 25.11.2014.
- c. Rs. 50000/- already deposited on 24.11.14 be refunded to petitioner.
- d. Bill may be raised from 11/2014 to 09/2015 as per reading of meter installed in the premises and petitioner is liable to pay the same

Brief Facts of the Case

2. The instant case was instituted by the Respondent (petitioner) before the learned VUSNF, Hazaribag, challenging to the electrical bill dated 6-8-1998 for Rs.44,174.00, bill dated 11-11-2014 for Rs.2,67,030.00, bill dated 09-01-2015 for Rs.1,64,056.00, bill dated 06-10-2015 for Rs.1,94,033.00 and letter dated 21-01-2016, rejecting illegally, the notice dated 19-12-2015, made claim for refund of Rs.55,051.00 and Rs. 50,000.00 got deposited illegally and under due pressure in violation of legal provisions including Electricity Supply code, 2015 & Electricity Act ,2003 and has further prayed for compensation for the loss of Rs. 1,00,000/.

3. The relevant brief facts, leading to this appeal, of the Respondent/petitioner, as contained in her complaint petition, is that the Electric connection bearing consumer no. KSD00383 DS2 was released on 28.02.1989 in her House no. 196, situated in Takiya Mazar Road, Nawabganj, Hazaribag, after following the prescribed procedure i.e. after preparing the Estimate No. 493/1988-89 on 25/02/1989 and after getting the required security deposited vide receipt no. 332155 dated 28.02.1989, which show that for the supply of electricity, an electric load of 900 watt was sanctioned on 28.02.1989. The petitioner was resided in the above

house no. 196 from 28.02.1989 to August 1998 and utilized electricity supplied by Bihar Electricity Supply Division, Hazaribag. But no electricity consumption bill was ever raised during 28.02.1989 to July 1998. Only on 06.08.1998, an electric consumption bill for Rs. 44,174.00 was issued on her above address but the same was not in accordance with the rules relating to preparation & submission of the electric consumption bill, as had been served in consolidated in bulk, after an inordinate delay of about 9 years and was thus illegal being belated. Apart from the above, the bill was highly excessive and being based on the readings obtained from defective meter for which reason, payment of the said bill was not made by her. The further case of the Respondent/ petitioner, that after closing her House, No. 196, in September, 1998, she left Hazaribag and proceeded to Lucknow (U.P.) to reside with her husband, where, her husband was in government job and on her instruction, the caretaker of her House No. 196, got the electric supply disconnected by approaching the officials of the Electric Supply Division, Hazaribag in April 1999, which fact can be verified from the records of the department.

4. The further case of the Respondent/ petitioner, that she came to know that the officials of the then Bihar State Electricity Supply Division, Hazaribag have taken readings of the consumed electricity from the meter in question, which proved that the meter was defective and as such the same could not have been used for preparing the bills. The said bill had not been prepared on the basis of fixed unit in accordance with the sanctioned electric load 900 Watt as per rule. Reading taken for 7 months during 10/98 to 4/99 as obtained from the departmental records, are given below. The average reading is $1230/7= 176$

Month	Meter Reading
10/98	235
11/98	195
12/98	150
01/99	255
02/99	50
03/99	150
<u>04/99</u>	<u>195</u>
7	1230

Whereupon, the petitioner, after mentioning the above facts, made a representation dated 10/05/1999 to the Electrical Executive Engineer & requested for quashing the bill dated 06/08/1998 for Rs. 44174/- being based on readings taken from defective meter and having not been prepared on the basis of unit fixed, as per the sanctioned electric load 900 Watt. The representation remained pending till this date. It is alleged that during 9/1998 to 9/2014 the petitioner's House remained closed and no electricity was ever supplied and consumed during the above period.

5. The further case of the Respondent is that her husband retired on 31.01.2009 and after completing the various works pending in different towns of U.P., she came back to Hazaribag only in Oct., 2014. She found that the electricity connection had been disconnected. She felt the necessity of the electricity, as the family was in urgent need of electricity, resultantly, on 27.10.2014, when, she was out of Hazaribag for few days, her daughter, who was ignorant of the past story of the instant case and provisions relating to Electricity Act 2003 and Electricity Supply Code, 2005, had approached to the then SDO, Hazaribag for supply of electricity in house no. 196. The then SDO illegally misguided and wrongly suggested to her daughter that she should submit an application for regularizing of the pending bill, after depositing Rs. 55051.00, accordingly her daughter accepted the wrong

advice of the SDO. Though, her daughter not suo- motu, but in the circumstances, as stated above, submitted an application on 27.10.2014 and deposited Rs. 55051.00, after accepting the conditions as dictated and pressurized by the then SDO illegally, though, as per provision of Electricity Supply Code 2005, the connection/ consumer no.KSD-00383 had become non-est in 2006 on expiry of 180 days, as the electric supply had already been got disconnected in April 1999. The reason being that Electric Supply Code 2005 had already come in to force on 28-07-2005. It is further alleged that in the garb of the letter dated 27-10-2014 of her daughter and the consequential deposit of Rs.55051, the illegality, which could not have been cured as legally, treated as regularized and on this basis alone, the Executive Engineer, Electric Supply division, Hazaribag issued another bill for Rs.2,67,030.00 dated 11-11-2014 for the entire past period, including the period of 4/99 to 10/2014, keeping the representation- dated 10-05-1999 pending in his office, to the legal interest of the petitioner.

6. The further case of the respondent, that on 24-11-2014, when, she, personally, approached to the then SDO for new connection / consumer number, thereupon, the then SDO deliberately ignoring the above illegalities as contained in the bill dated 11-11-2014 for Rs. 2,67,030.00 and the law regulating the case, committed further illegalities by putting her in fear and asked to deposit Rs -50,000.00, further, as second installment of the bill Rs.2,67,030.00, so, that temporarily regularized connection may be replaced by installing a new meter. If, payment of dues, as shown above, is not being made, the temporarily regularized connection shall also be disconnected. Since respondent, being a lady, was in great need of the electricity and also an ignorant about the complicated laws, as contained in the various Acts & Rules, accepted not suo-moto, but under the above

circumstances, and illegal & twisted suggestion of the then SDO and accordingly, she has deposited Rs. 50,000.00 vide receipt no.508447, dated 24-11-2014. Thereupon, an order was passed by the then SDO to deposit Rs.60.00 for issuance of RCDC and Rs.140.00 for fee on account of meter testing and accordingly, the same was also deposited vide receipt no.922113 & 995755, respectively, dated 24-11-2014. Thereafter, on 25-11-2014, a new meter, duly tested, was installed in her house, under the previous agreement of 1989 with regard consumer no.KSD-00383/1989, without quashing it and without provide new connection/consumer number.

7. The further case of the respondent is that she asked for the detailed calculation chart of Rs.2,67,030.00. When detailed calculation chart, dated 16-12-2014, was received, she vide her representation dated 25-01-2015, challenged the correctness of bill dated 11-11-2014 on various ground but no decision has been communicated and it has been deliberately kept pending. However, two bill for Rs.1,64,056.00 dated- 09-01-2015 and another bill for Rs.1,94,033.00 dated-06-10-2015 were, further , issued on her aforesaid residential address. It is alleged by the respondent that these two bill being bad in law because these bill have not been prepared on the basis of correct meter reading according to the provisions of clause 11 of Electricity Supply Code 2005, rather these bill were prepared on the basis of fixed unit of 176, as fixed in the year 1989 on the basis of average of seven months (10/98 to 04/99). Since, the new meter has been installed on 25-11-2014, after due testing by the official of the electric supply division, Hazaribag, and there is nothing on record to show that installed meter was ever defective, the electric supply division Hazaribag is entitled only for the energy & duty etc. charges, in accordance with provision, under clause 11 Of Electricity Supply Code 2005, for the period 10/14 to 12/15.

8. The further case of the Respondent/petitioner is that when no response with regard any of the pending representations was received by her and commission of the irregularities & illegalities were on continuing, she has filed a representation dated 02-02-2015 before the Executive Engineer, Electricity Supply Division, Hazaribag, with request to quash the impugned bills, issued, till then, but no response has been received till date. It is further alleged that without disposing of the pending representations, dated 25-01-2015 and 02-02-2015, a further bill dated 06-10-2015 for Rs.1,94,033.00 has been issued containing the same illegalities, as were included in the previous bills. Then, she has filed a petition, bearing case no.128/2015 before the Legal Services authority (Permanent Lok Adalat) Hazaribag, for amicable compromise. Several dates were fixed but opposite party/Appellant remained reluctant to appear, and act in accordance with law, on any of the dates, resultantly, the petition was dismissed on 23-11-2015 for non appearance of the parties. Consequently, feeling annoyed with the institution of the case before Permanent Lok Adalat, the O.P. no 3(The Executive engineer, Electric Supply Division, Hazaribag) with an ulterior motive and with intent to damage the reputation and honour of the petitioner/ Respondent in the society, filed an FIR, u/s 135 of the Indian Electricity Act,2003. Lastly, it is stated that, under the aforesaid compelling circumstances, she had filed a consumer complaint case bearing no.24/2016 before the learned VUSNF, Hazaribag for the reliefs, as prayed here, but on account of some misconception, she has moved a petition for withdrawal with liberty to file fresh application and accordingly, same was allowed on 20-02-2016 and thereafter she instituted this case after making necessary correction.

9. The O.P./Appellant appeared through General manager cum Chief engineer, Electric Supply ,& others and filed their show cause without any authoritative document, before the learned VUSNF Hazaribag, stating there in; that petition filed by the petitioner is time barred and not maintainable. It is admitted that electric connection was taken by Respondent/petitioner vide consumer no KDS 00383/ 1989 and meter was installed on 28-02-1989 in her house. Electric bill for Rs.44,174.00 was sent to her on 06-08-1998 but said bill was not paid, hence, the said electric connection was disconnected in the month of April, 1999. Thereafter, she had filed a petition on 27-10-2014 in the office to regularize the bill and she also stated that electric is also running and requested to regularize the bill from L.D. period. Whereupon, on the basis of said petition, the Assistant Electric Engineer, electric supply sub division, Hazaribag ,visited the premises of petitioner/ respondent and after inspection, a report has been submitted to Executive Engineer with request to submit fresh bill and also reported that the meter was defective and reading was found only 6424, which shows that electric line was continuing, and accordingly, bill was charged from 04/1999 to 10/2014 ,which comes to Rs.2,11,978.00 and L.D. dues for Rs.55051.00, Total comes to Rs.2,67,029.00, Since meter was defective ,hence average bill was prepared and handed over to her. Thereafter, she has deposited Rs. 55051.00 and again deposited Rs.50,000.00 on 24-11-2014 but thereafter, she did not deposit the electric bill, hence balance electric bills comes to Rs.1,94,033.00 up to 09/2015 and again her electric connection was disconnected in the said month.

10. The further case of the Appellant /O.P. is that on 13-11-2015, the raiding party visited the premises of the petitioner/Respondent and

found that consumer has connected hook with the main line and was consuming electric energy, illegally, hence an FIR was lodged against her for said offence. It is alleged that the amount was due of Rs.1,94,033.00 and loss amount was Rs.3000.00. Thus, the petition filed by her is false and illegal. The bill submitted on 06-08-1998 for Rs.44174 was correct on the basis of reading of meter and accordance with Rules and Regulation of the Board. It is alleged that she has falsely mentioned in her petition that her house was closed during 09/1998 to 09/2911. No information was ever given to the Board officer. The bill dated- 11-11-2014 was true and correct. The office has issued detailed description of the bill, which is as follows:-

(1)-Bill upto 4/99= Rs-55051/=

(2)-D.P.S.-5/99 to10/14(185 months)Rs 55051x1.5/100=Rs.1,52,765.50

(3)-Energy duty etc.-5/99 to 10/14 Rs.-59212.92

Total Rs.=2,67,030.00.

Thus, the whole allegation mentioned in her petition is false and liable to be rejected.

11. Having heard to the learned counsels of both sides , the learned VUSNF, has placed reliance upon the Ext 6 and as per provision of clause 10(1) (i) of the Guide line for establishment of forum for Redressal of grievances of the consumers and electricity ombudsman regulation 2011, complaint relating to previous year pertaining to any grievances cover under clause 9 of these regulation can be filed before forum within one year of its coming into existence, and accordingly, decided that the bill dispute of the year 04/1999 is beyond the scope of this forum and question of refund of Rs.55,051.00 does not arise at all in this case. It is further held that bill dated 11.11.2014 for Rs.2,67,030.00 and bill dated 09-01-2015for Rs.1,64,056.00

& bill dated 06-10-2015 for Rs.1,94,033.00 were raised after disconnection of electricity in the premises of the petitioner/respondent on April 1999. In which, petitioner has deposited Rs.55,051.00 on 28-10-2014 as L.D. dues of disconnected premises. The learned VUSNF has further placed reliance upon Ext-7 and Ext-9 &10 and accordingly, held that aforesaid amounts were deposited by the petitioner/respondent towards bill dated 11-11-2014. The learned forum has further observed on the main question , “whether the O.P/ Appellant were right in issuing the bill dated 11-11-2014”. On this issue, it was contended by the learned counsel for the petitioner/ Respondent, before the learned forum, that section 7.5 of Electricity Supply Code 2005, after expiry of 180 days from the date of disconnection of electricity, agreement of petitioner with O.P. automatically terminated and O.P. could have issued fresh connection to the petitioner after execution of fresh agreement, because there is no provision for survival of terminated agreement. On other hand, the learned counsel appearing on behalf of O.P./ appellant has become unable to counter against this submission, hence the learned forum, having gone through entire material available on the record and submission advanced on behalf of petitioner, found favour with the evidences and accordingly, observed that bill dated 11-11-2014 is fit to be quashed and petitioner is entitled for refund of Rs.50,000.00 deposited by her on 24-11-2014. It is further held by the learned forum that there is no evidence on the record to suggest that after disconnection of electricity on 04/1999, petitioner was ever found using electricity till re-connection of electricity in her premises i.e. on 11/2014, which is evident from perusal of annexure. No case of theft was ever lodged during this period, hence O.P. could not raise bill for period 05/1999 to 10/2014, consequently, the bill raised for this period deserves to be quashed

and she is entitled to refund of Rs. 50,000.00, deposited on 24-11-2014. It is also observed by the learned forum that electricity was supplied to the petitioner on 11/2014 and disconnected on 09/2015 but electricity was utilized by her during this period for which she is ready to pay also in need of fresh connection of electricity, whereupon, O.P./ appellant has no objection. At last , the learned forum has quashed the bill from 05/1999 to 10/2014 and ordered that electric connection restored in 11/2014 must be treated as fresh connection keeping in mind section 7.5 of chapter Vii of Electric Supply Code 2005 and bill may be raised accordingly, from 11/2014 to 09/2015 on the basis of meter reading installed on 25-11-2014 and petitioner is liable to pay the same and Rs. 50,000.00 deposited on 24-11-2014 be refunded to the petitioner.

12. The learned Additional standing counsel appearing on behalf of Appellant has submitted that the learned VUSNF is erroneous and has passed order without appreciating correct facts and settled principles of law and have committed an error in not appreciating the facts that interest on security deposit was duly calculated and was paid to the Respondent. Not only that the learned Forum has exceeded its jurisdiction in directing the appellant for issuance of fresh bill, as the case was filed before the learned Forum after lodging of an FIR against the Respondent, u/s 135 & 138 of the Electricity Act ,2003. Therefore, the learned Forum ought not to have been passed an order for restoration of electrical connection in view of statutory provision made under section 135 of the Electricity Act, 2003, which specifically says that the electric line in case of theft of electricity, can be restored on deposit of provisionally assessed loss amount. Like wise, the learned Forum also failed to consider that clause 7.5 of Electricity Supply

Code Regulation 2005(now clause 12.7 of supply code Regulation 2015) which is not applicable to the facts of the case in hand..

13. The learned Additional standing counsel further submitted that learned forum ought to have considered that electric line was restored on request of the Appellant and it was not the case, where the terminated electrical connection was revived and therefore, would not have quashed the bill dated-11-11-2014, while relying upon clause 7.5 of the Supply Code Regulation 2005 and also ought to have considered that clause 10.13 of the Supply code Regulation 2015 entitles a licensee to collect from its consumers the late payment surcharge on account of non payment of electrical bill on due date and also ought to have considered clause 12.13 of the Supply Code Regulation 2015, which says that in cases of reconnection, as in the present case, the consumer is liable to pay the charges for connection and reconnection in addition to the due amount payable to the consumer.

14. Apart from the aforesaid contention , it has further been contended that the domestic electrical connection of the Respondent was disconnected in the month of April 1999, due to nonpayment of due amount of Rs.55051.00 and it was remained disconnected for a long time but Respondent made no correspondence with the Authorities of the Appellant rather after lapse of more than Fourteen Years, approached the Appellant on 27-11-2014 through a representation letter, wherein, a request had been made to regulate her electric connection . Whereupon, Assistant Electric Engineer, Electric Supply Division, Hazaribag, inspected her premises and found that electric connection was running and consumer herself had restored the supply of the electricity but Appellant instead of lodging FIR for theft of electricity energy, had decided to regularize electric connection by

realizing old dues. Thereupon, Respondent on her own deposited the same on 28-10-2014 and thereafter, her electric connection, vide her existing consumer no. KSD00383 was regularized. It has further been contended that, in meanwhile, the Authorities of the appellant calculated the amount payable by the Respondent, which came to the tune of 2,67,030.00 and accordingly, bill was prepared & communicated to the Respondent. Thereafter, she further paid Rs. 50,000.00 towards due bill on 24-11-2014 and she had also paid RCDC charges and Rs.140.00 for meter testing and subsequent thereto, new meter was installed in her consumer no.. Later on , while, she was questioning the correctness of bill, and had asked for details of calculation, accordingly, the details of calculation , as per provision made under clause 10.13 of the Electricity Supply Code, regulation, was also provided to her on 16-12-2014, including delayed payment surcharge and electricity duty, because the Licensee is entitled to take late payment surcharge in case , the consumer do not pay the bill by due date mentioned in the bill.

15. The learned Additional standing counsel further submitted that thereafter, Respondent started to pay the monthly energy bill, but later on, she arose from the slumber and taken altogether a different stand & alleged that all the earlier deposits were made by her daughter and the authorities of the Appellant had coerced her daughter to deposit such amount but later on, without being any order of learned competent court, she stopped to make payment of electric bills, so, her electrical connection was again disconnected in the month of 09/2915 on account of non payment of electric bill amounting to Rs.1,94,033.00. It has further been submitted that the Respondent without making any payment of earlier dues and without adhering to the legal formalities for restoration of disconnected electric

connection, started to utilize electricity illegally, which was detected by anti theft team on 13-11-2015, and on being satisfied, the inspection team, instituted an F I R u/s 135 & 138 of Electricity Act, against her and thereafter, she filed an application before the learned VUSNF, Hazaribag, for Redressal of her grievances. As matter of fact, she was not entitled to file a complaint case before the learned VUSNF, when An FIR had already been instituted against her for committing theft of electrical energy, since, there is specific provision u/s 154(5) of the Electricity Act to determine the civil liability against consumer or a person in terms of money for theft of energy..... In support of his submission, placed reliance upon the case law -M/S Shyam lal Iron & Steel Company Vs Jharkhand State Electricity Board & others, L.P.A.No. 59 of 2013, decided on 26th April, 2013 by the Hon'ble Jharkhand High court Therefore, the impugned judgment and order passed by the learned VUSNF is liable to be set aside.

16. Refuting the contention advanced on behalf of appellant , the learned counsel appearing on behalf of Respondent has started his argument and in mean while, also presented written submission in details, containing 33 pages with its annexure and photo copy of some case law, after serving copy to the learned Additional standing counsel of the Appellant, in which, it is stated and also submitted that on 27-09-2016,the Respondent had submitted five preliminary objections for the summary dismissal of the instant appeal, out of them, only objection regarding non refund of 50% of impugned amount as per impugned order and delayed filing of appeal has been decided, but according to that very order, other objections ,regarding filing of improper verification & affidavit, concealment of material facts & non- joinder / mis-joinder of party i.e. filing of appeal by a nominee- a law officer and not by any person, who were opposite party before the VUSNF,

could not be decided with reason so far and are required to be decided now. In support of his contention, placed reliance upon the case law- A.A.K.Nambiar Vs U.O.I. & others reported in 1969(3) SCC864. It has further been submitted that according to the appellant, the bill dated 11-11-2014 for Rs.2,67,030.00 has been quashed by the learned VUSNF is totally false. Only part Rs.2,11,978.00 i. e. reconnection charges from 5/1999 to 10/2014 of Rs.2,67,030.00 has been quashed. First part I .e. L/D dues of Rs.55051.00 has been directed to be not refunded or quashed. Thus, the fact that entire bill amount Rs.2,67,030.00 has not been quashed, has been totally concealed. Therefore, the above concealment & misleading attitude of the Appellant is only to confuse this forum, as a result, the instant appeal is liable to be dismissed.

17. The learned counsel for the Respondent has further submitted that the question of jurisdiction of the learned VUSNF, in entertaining the instant case, as raised by the learned Additional standing counsel for the appellant, being totally erroneous, deserved to be rejected merely on the ground that this plea was available to the appellant before the learned VUSNF, but the same could not be raised deliberately or unknowingly. Hence, at the stage of appeal, it can not be raise. More over , the appellant has taken a new plea that an FIR was already lodged u/s 135 & 138 of the Electricity Act, 2003, against the respondent, before institution of this case before the learned VUSNF Hazaribag , hence the Respondent had got only one remedy to approach before the learned special judge court u/s 154(5) of Electricity Act 2003 and in support of his submission placed reliance upon M/S shyam lal iron & steel company , which is not applicable in the facts and circumstances of the present case. Because before lodging an FIR, the respondent had already approached her grievances before the Permanent Lok

Adalat at Hazaribag ,under the provision of Legal Services Authority, where ,in-spite of issue several notices , appellant knowingly did not appear and lastly the said case has been dismissed. So, it was the reason, which caused annoyance to the appellant; resultantly, lodged an FIR Sadar (korra) P.S. case No.1305/15, dated 14-11-2015, u/s 135 & 138 of the Electricity Act 2003, against one Md. Kalim and the Respondent. Moreover, in course of investigation, investigating officer found true case against Md Kalim and false case against the Respondent, and accordingly submitted Final form,dated31-07-2016 through Circle Inspector Sadar ,Hazaribag before the learned Special court Hazaribag, which supports the allegation made by her against the electrical Engineer that the false FIR had been lodged with a motive to extract the illegal money from her and same has been accepted by the learned special judge vide order dated 31-09-2016 (annexure A-3 of the written argument of the respondent), against which, no protest petition has been filed by the Appellant till date in spite of issuance of notice to the informant. It has further been submitted that the appellant has also raised an objection by making argument that since on 28-02-1989, on behalf of the Bihar Electricity Board, the concerned Engineer had sanctioned an electric load of 900 watt for domestic use through registered connection/ consumer number KSD 00383, embodying & binding on the parties to create legal obligations for the supply of the electricity and making of the payments due there under, is not the agreement, is liable to be rejected ,being totally misconceived because as per clause 7.3 of the Electricity Supply Code 2005, for entering in to an agreement. An application was submitted to the then licensee, satisfying all the required condition. The prevalent prescribed procedure was followed by the respondent at relevant time, whereby, an estimate No.493/ 1988-89 dated 25-02-1989 for Rs.305.00 was prepaid and

the required security amount Rs. 150 was also deposited vide receipt No.322/55 dated 28-02-1989, accordingly, her consumer connection, as aforesaid ,was issued with electric load of 900 watt.

18. The learned counsel for the Respondent has further contended that it is raised on behalf of the appellant regarding inapplicability of clause 7.5 of the electricity supply code 2005, while, setting aside the bill, dated 11-11-2014, for Rs. 2,67,030.00 and directing refund of deposited Rs. 50,000.00. This objection is unsustainable in law because it is apparently clear from a perusal of clause 7.0 of the Electricity Supply code 2005 that clause 7.3 prescribed for the necessary elements for framing of the agreement and clause 7.4 provides for issuing of an agreement. Clause 7.5 gives right to the consumer for terminating the agreement and right to the licensee to give information after termination. Two proviso have also been added in the said clause. Thus ,the entire proviso of clause 7.5 including its two proviso are applicable to those action & omissions arising out of agreement, which are issued in accordance with clause 7.4 by the following the procedure as laid down in clause 7.3. The “ observation of Forum” as contained in the impugned order, would make it clear that the learned VUSNF had relied upon the proviso to clause 7.5, where in, it has been indicated that “ after expiry of 180 days from the date of disconnection of electricity agreement of complainant, automatically terminated”. Thus, the second proviso to clause 7.5 of the electricity supply code 2005 is fully applicable and the objection raised on behalf of appellant is liable to be rejected.

19. It has further been submitted , on the point of the factum of the instant case , that on 27-10 2014, while, respondent was out of station for few days, her daughter , who was ignorant of the past story of the instant

case and provision of the Electricity Act 2003 and Electricity Supply Code 2005, had approached to the then SDO Hazaribag for supply of the electricity in the house of her mother, but the then SDO, illegally misguided and wrongly suggested her that she should submit an application for regularizing the pending bill, after depositing Rs. 55,051.00, without any supporting bill. Whereupon, the daughter of the respondent not suo- moto but in the aforesaid circumstances, submitted an application as dictated and pressurized by the then SDO, illegally, on 27-10-2014 and also deposited Rs.55,051.00. It is further submitted that neither any application proposing illegal act, could have been entertained nor could such request for illegal regularization and deposit of Rs.55051.00 & 50,000.00 have been accepted and acted upon by the then SDO, exercising quasi-judicial power because the application made under illegal pressure and ignorance was itself void by reason of proviso to clause 7.5 of the Electricity Supply Code 2005 & section 56(2) of the Electricity Act, 2003 and the law laid down in Maharshi Dayanand University Vs surjeet kaur (2010) 11 s.c.c. 159 that even court has no competence to issue direction contrary to law nor it can direct an authority to act in contravention of statutory provisions.

20. The learned counsel for the Respondent has further submitted that section 56(2) of the Electricity Act read with proviso to clause 7.5 of the Electricity Supply Code 2005, declares that the bill for Rs.44,174.00 dated 06- 08-1998, which is included in payment amount of Rs. 55051.00 dated 28-10-2014, is void and illegal, being time barred on the basis of non-est agreement of 1989, because disconnection of electric line made on 4/99 exceeded to 180 days, remained disconnected for more than 14 years.

21. The learned counsel further submitted that assessment of Rs,2,11,975.00 of electricity charges for the period of 4/1999 to 10/2014 and

the L/D dues Rs,55,051.00= total Rs. 2,67,029.00 made on the basis of mere inference, presumption, conjectures and surmises, is wholly illegal being not based on concrete fact and legal evidence according to the law as laid down by the Hon'ble Apex court in Union of India Vs H.C. Goel ,reported in A.I.R.1964 S.C.364. It is further contended that the fallacy of the assertive motive of the appellant becomes more clear ,when the noting made by AEE on 31-10-2014, on her daughter's letter dated 27-10-2014, is compared with the contents of the bill for Rs. 44,174.00 dated 06-08-1998, which clearly shows that the meter reading pertaining to consumer connection is 33176 unit, where as, on 31-10-2014, after laps of about 16 years, meter reading has been shown to have decreased to 6424 unit, instead of increasing it ,if the electricity would have been consumed in her house during 9/1098 to 9/2014. It is stated that meter was found defective, then, in natural course, meter reading in 10/2014 would have been increased not decreased and would have been more than 33176 units during this period. It is ,thus, clear that the A.E.E. did not inspect her house and merely sitting in his office, made the remarks/noting on the basis of conjectures/surmises and presumption, which are totally prohibited to be used by law as laid down by the Hon'ble Apex court in Union of India Vs H.C.Goel, reported in A.I.R.1964 S.C. 364. It is admitted fact that Respondent never paid the monthly energy charges except following two payments :- (i)-Rs.55051.00 on 28-10-2014 by Pallavi Singh, the daughter of the Respondent and (ii) Rs. 50,000.00 by respondent herself on 24-11-2014, under the compelling circumstances and due to fraudulent activities/attitude of the dominating SDO, having monopoly over the supply of the electricity. In this regards, the circle inspector of police, Hazaribag, while closing the FIR, makes the position clear and affirms the contention of the Respondent in his report. .

Thus, under the aforesaid circumstances, two amounts, as paid by her and her daughter become refundable. The agreement of 1989 having become non-est, could not have been treated as regularized under the law as laid down in A.I.R. 1972 S.C.1768, therefore, it becomes liable to be set aside and consequently a new connection/ consumer number in replacement of the old connection is required to be issue afresh. Thus , the entire grounds ,as mentioned in the appeal is baseless, false and vague and accordingly ,this appeal is liable to be dismiss with heavy cost and the impugned judgment and order passed by the learned VUSNF is fit to be confirm.

22. It will admit of no doubt that Respondent took electric connection on 28-02-1989 in her home from Bihar Electricity Board and started to consume electric energy but she did not receive electric bill, till July 1998. First time, she received electric bill for Rs.44,174.00, after NINE YEAR , on 06-08-1998 but it was not paid by her on the ground that bill was prepared on fixed rate through defective meter and accordingly, she filed first representation on 10-05-1999 with request to quash the bill dated 06-08-1998 but no response was received. It is admitted fact between the parties that electric connection of the Respondent/petitioner was disconnected, first time, in the Month of APRIL 1999. she obtained meter reading for seven months, during 10/98 to 04/99 from the concerned department and found that average reading was $1230/7 = 176$, and accordingly, she has made ,above representation. Thereafter, she again filed second representation on 31-01-2009. It is also admitted fact that on the request of the respondent , electric line to the house of Respondent has been restored on 28-10-2014 and as per report of the then SDO, electric bill of Rs.2,67,030.00, in question, was made over to the Respondent , against which, a representation was submitted by her in the month of October

2014. As per her request, new electric meter was installed on 25-11-2014 at her home. It is also admitted fact that as per her request, a detailed calculation chart of her electric bill, dated 16-12-2014, was handed over to her, against which she has further filed representation dated 05-01-2015. She further received electric bill dated 09-01-2015 of Rs.1,64,056/ and bill dated 06-10-2015 of Rs.1,94,033/, which are in question. It is also admitted fact that respondent has not paid a single farthing towards electric bill, save and except Rs. 55,051.00 and Rs. 50,000.00 at the time of reconnection of electricity in the month of October/ November 2014. It is also admitted fact that second time; her electric connection has been disconnected in the month of September, 2015.

23. Now, the main points for adjudication before me are that:-

- (i) Whether this appeal is bad due to improper verification & affidavit and non joinder/misjoinder of parties?
- (ii) Whether the learned VUSNF has exceeded its jurisdiction to entertain this case and directing the appellant for issuance of fresh bill?
- (iii) Whether the learned VUSNF has committed an error in not appreciating the correct facts and settled principle of law and accordingly, the impugned judgment and order requires any interference by this Forum?
- (iv) Whether Respondent is entitled for recovery of Rs. 55,051.00?

24. It is relevant to mention at very out set that learned VUSNF and this forum have been setup as per Notification, dated 09 November, 2011, under Guidelines for Establishment of Forum....., Regulation 2011, by the Jharkhand state Electricity Regulatory commission, Ranchi, as per

provision of Electricity Act 2003. As per clause 9 of the aforesaid Regulation 2011, the learned VUSNF is empowered to take up any kind of grievances/ complaints as defined in clause 2(e), except the complaint pertaining to (i)-offences and penalties as specified u/s 135 to 141 of the Act; (ii)-Accident and Inquiries as specified under section 161 of the Act unless prescribed by the State Government/special order. .Clause 10 deals the procedure to file the complaint. This clause has two sub clauses. Out of them sub clause (1) deals with filing of complaints in prescribed form and non refundable application fee. This sub clause has further five sub clauses. Out of them, sub clause (i) and (ii) are the important for this appeal. Clause (i) reads as –“ The complaints relating to previous year pertaining to any grievances cover under clause 9 of these Regulation can be filed with the Forum within one year of its coming into existence.” (ii)-“ After one year of the establishment of the forum, only those complaints filed within one year of its cause of action shall be entertained by the forum. It is also relevant to mention at this juncture that instant case related with billing, which is guided by the JSERC (Electricity supply code2005 and 2015.

25- Now, I advert to take up the points, as stated above, for adjudication. First of all, I am taking **point no (ii) “ Whether the learned VUSNF has exceeded its jurisdiction to entertain this case and directing the appellant for issuance of fresh bill?”**.This point has been raised by the learned counsel for the appellant. The submissions, in respect of this point, advanced on behalf of both sides, have already been mentioned in the preceding paragraph of this judgment, therefore I do not want to repeat the same. It is true that jurisdiction of the Forum is a law point, which can be raise at any stage, including appeal also. The jurisdiction of the learned forum has been challenged mainly on the ground that F.I.R. u/s 135 & 138

Electricity Act, 2003 had already been instituted against the Respondent, prior to the institution of this case before the learned VUSNF, hence, Respondent had only one course to place her grievances for settlement of civil liability u/s 154 of the Electricity Act, 2003 before the learned Special judge, before whom the said case is pending. It is pertinent to mention here that it is case of incorrect billing of electric energy, for which, respondent had already submitted number of representation, prior institution of FIR, before the authority of the appellant but same were pending there, reason best known to the authority. Prior to the alleged occurrence of the theft electrical energy, electric connection of the respondent was disconnected, two times, due to non payment of electrical bill. Apart from that, prior institution of FIR, she had placed her matter for amicable compromise before the learned Permanent Lok Adalat Hazaribag, under the Legal Services Authority Act, where, after issuance of notice, the concerned officers of the Appellant did not appear. All these facts clearly go to show that prior lodging FIR, respondent had grievances regarding correctness of electrical bill and for that she had approached to the concerned authority but no response. In this regard, the learned counsel for the appellant has placed reliance upon case law of M/s shyam Lal Iron steel company. I have perused the case law but under the facts and circumstances of this case, the principle of law, laid down in that very case law, is not applicable in this case. Having considered the entire facts and materials, available on the record, I am the view that only learned VUSNF has got jurisdiction to entertain such type of the case. Under the facts and circumstances of the case in hand, institution of FIR does not oust the jurisdiction of learned VUSNF. Thus, I find and hold that learned VUSNF has not exceeded its jurisdiction in directing the appellant for

issuance of fresh bill, accordingly, this point has been decided against appellant.

26- Point No.(i)-Whether this appeal is bad due to improper verification & affidavit and non joinder/misjoinder of parties? This objection has been raised by the Respondent. The learned counsel appearing on behalf of Respondent has strongly contended that instant affidavit filed by the appellant in support of appeal, suffers from mischief of lack of proper affidavit, no certificate regarding falseness and concealment of material facts have been given. It is further submitted that instant appeal has not been filed by any persons, who were opposite party before learned VUSNF, where as only law officer of JUVNL has been made party in this appeal, who is only nominee of the JUVNL Therefore ,merely on these two ground, this appeal is fit to be dismissed. On the other hand , the learned Additional counsel ,appearing on behalf of Appellant has strongly opposed the aforesaid contention and clearly submitted that affidavit, filed in support of appeal, is well verified and nothing has been falsely stated and further there is no concealment of fact . Moreover, this appeal has been filed by Jharkhand State Electricity Board, now known as, Jharkhand Urja Vikas Nigam Limited (JUVNL), through its law officer, who is competent person of the department to swear affidavit and to do all necessary work, on behalf of department for quick disposal of appeal/ cases, pending in different courts and also produced relevant and required documents, when ever called upon. However, Jharkhand State Electricity Board is the main party in this case, who was opposite party before the learned VUSNF. Executive Engineer and others engineers are working under the Board and all of them are the officers of the board. Hence, there is no defects in memo of appeal. Therefore, the submission advanced on behalf of respondent has no leg to stand and it is fit

to be rejected out right. Having heard the learned counsel and after perusal of memo of appeal I do find that appeal has been filed with affidavit and its proper verification . It is true that in para 4 of the affidavit , there is two space, out of them, first space is fill up in writing ,whereas second space in not fill up rather cross with red ink. I do find that there was no need to fill up second space because by filling first para, the complete answer has come on record. Thus, taking in to consideration of the entire facts, I am considered view that instant appeal is not bad due to improper verification & affidavit and also due to non- joinder/ misjoinder of parties. Thus, this point is decided against Respondent.

27- **Point 4- Whether respondent is entitled for recovery of Rs. 55051.00?** The learned counsel appearing on behalf of Respondent has submitted that instant case was instituted with several relieves ,including “relief no.(iii) to direct refund of Rs 55,051/ and Rs. 50,000/ got deposited under pressure in violation of section 56(2) of Electricity Act,2003 and proviso to clause-7.5 of the Electricity Supply Code with 18% interest per year.” But learned VUSNF, at the time of passing judgment and order, granted part relief, such as to refund of Rs. 50,000.00 only, without interest there on, as claimed, and did not grant to refund Rs. 55,051.00. The learned counsel for the respondent has humbly submitted that the learned VUSNF has erred in holding that the prayer of the petitioner/ Respondent regarding refund of deposit of Rs.55,051.00 on 28-10-2014 by the Respondent’s daughter was not maintainable by relying upon clause 10(1)(i) of regulation 2011, because, according to Annezure-7 the bill for Rs.2,67,030.00 dared 11-11-2014 is consisting of three part, including the part of Rs. 55,051.00 and challenge to the bill dated 11-11-2014 for Rs. 2,67,030.00 being well within time of one year from the extended date 21-01-2016, of cause of action, has

been allowed by quashing re-connection bill from 05/99 to 10/2014, it would have been just and proper to have allowed the relief regarding refund of Rs. 55,051.00, since challenge was well within time. It has further been contended that the impugned bill dated 11-11-2014 for Rs. 2,67,030.00 raised for the period 05/99 to 10/2014 is the first bill, after L/D date 04/99 i.e. after 15 years, despite no electricity was supplied during that very period because of undisputed fact that electricity has been disconnected due to non payment of the impugned illegal bill dated 06-08-1998 for Rs.44,174.00 and also because , the house in question remained closed during 09/98 to 09/2014. Thus , by the reason of the provision, as contained in proviso of clause 7.5 of the Electricity Supply Code, 2005 and section 56(2) of the Electricity Act, 2003, the bill of .Rs..2,67,030.00 is not sustainable in the eye of law and is liable to be quashed being barred by limitation. Therefore, under the aforesaid facts and circumstances of the case and clear provision of law, prayer for refund of Rs. 55,051.00, deposited on 28-10-2014 by the daughter of the respondent, may kindly be allowed.

28- Refuting the aforesaid contention , the learned Additional standing counsel for the appellant has submitted that this appeal has been filed by the appellant, being aggrieved and dissatisfied from the impugned order of the learned VUSNF, whereas, no cross appeal has been filed by the Respondent for the relief, which was refused by the learned VUSNF, hence this Forum, being appellate forum , is not empowered to grant any relief to the any party without filing appeal against the impugned order from which the said party is aggrieved. The learned Additional standing counsel has further submitted that that at one place ,Respondent has admitted that the learned VUSNF had passed order on full justification, supported with cogent reasons after applying its own mind in the matter in question, which is

evident from para 2,3,& 4 of the judgment under heading of “ **Observation of Forum**” itself. Not only that, it has been specifically mentioned in para 30 at page 16 of the written argument of the Respondent. Therefore, under this circumstances, respondent is not entitled to get such relief from this forum and her prayer is liable to be rejected out right.

29- Having considered the aforesaid facts and submissions advanced on behalf of both sides , it is pertinent to mention at this juncture, that there is specific provision under clause 14 of the (Guidelines for establishment of forum for Redressal of grievances of the consumers and electricity ombudsman) Regulation 2011 that “ **The licensee or any consumer aggrieved by any order made by the forum(s) may prefer an appeal against such order to the electricity ombudsman** within period of thirty of days from the date of receipt of the order, in such form and manner as may be laid down in these regulation”. Thus, it is admitted fact that this appeal has not been preferred by the respondent rather being aggrieved and dissatisfied from the impugned judgment and order of the learned VUSNF, the Appellant has preferred this appeal. As per provision of clause 14 of the Regulation 2011, if Respondent was also aggrieved from the said impugned judgment and order, since her one relief was not granted, she ought to have file appeal before this forum within stipulated period, which is known as cross appeal and in that circumstances this forum has got jurisdiction to decide such prayer. Therefore, in absence of cross appeal filed by the respondent, this forum is unable to pass any order, as prayed by the respondent. Accordingly, this point decided against Respondent. .

.30- **Point No. (iii)- Whether the learned VUSNF has committed an error in not appreciating the correct facts and settled principle of law and accordingly, the impugned judgment and order**

requires any interference by this Forum ? This instant appeal has been filed, particularly, challenging the correctness of the impugned judgment and order , passed by the learned VUSNF, Hazaribag. The learned Additional Standing counsel for the appellant has contended that learned VUSNF failed to consider the clause 7.5 of Electric Supply Code Regulation 2005 because the electric line was restored on request of the Respondent and it was not the case where the terminated electrical connection was revived and therefore, the learned VUSNF would not have quashed the bill dated 11-11-2014. Further, clause 10.13 of the Electric Supply Code Regulation 2015, entitles a licensee to collect from its consumers the late payment surcharge on account of non payment of electric bill on due date and as per clause 12.13, in case of reconnection, as in the present case, the consumer is liable to pay the charges for connection and reconnection in addition to the due amount payable by the consumer.

31- The learned counsel for the Respondent has supported the finding of learned VUSNF and contended that clause 5,6,and 7 of the Electricity Supply Code 2005 do not provide for regularization of the action or omissions that result from situation, where the agreement of 1989 had become non- est by reason of provision to clause 7.5 of the Electricity Supply code 2005 and section 56(2) of the Electricity Act 2003, because the first time disconnection of electricity line was made on 4/99, exceeded to 180 days, remained disconnected for more than 14 years. In the resulting situation, action on the part of the then SDO, in getting the letter dated 27-10-2014, written, entertained and the direction passed thereon for regularizing the bill from 5/99 to 10/2014, without any consumption of electricity during the said period, in reference to the non-est agreement of

1989 was completely illegal, because the letter dated 27-10-2014 for regularization was itself unlawful.

32- To adjudicate this point, I would like to mention some relevant clauses of Electricity Supply Code 2005. Chapter 11, clause 11 deals –**Electricity Billing**. Out of them clause 11.6 deals payment of electricity bill. **Clause 11.6.1 says;-** *that all consumer shall pay the bill/ charges for supply of electricity by due date, failing which, the licensee may disconnect the electricity service subject to the provision of clause 11.11 of these Regulations.* **Clause 11.7** deals Additional charges for belated payment, **clause 11.8** says *-Adjustment of the amount of paid by the consumer.* **Clause 11.11** deals *disconnection of service.* **Chapter 12, clause 12** deals **provision regarding Restoration of supply of electricity,** *” If any service is disconnected on account of nonpayment of electricity charges by the consumer or any other charges due to licensee from him the consumer has to pay the charges due from him in addition to charges for disconnection and reconnection. The licensee shall restore the electrical supply within 24 hours of payment of charges along with disconnection and reconnection charges by consumer in town and cities and within 48 hours in rural area.”* Lastly, I would like to mention **Chapter- 7, which deals – agreement** but under clause 7.5 a specific provision has been provide, which runs as *“ A consumer may terminate the agreement after giving 30 days notice to the distribution license. However, if the agreement is to be terminated before expiry of the initial period of agreement, the consumer shall be liable to pay the charges as per tariff for the balance period of the initial period of agreement.*

Provided that when ever an agreement is terminated on notice given by the consumer the distribution licensee shall give a written

intimation within 15 days after termination failing which such intimation shall be deemed to have been given to the consumer.

Provided further if the service of the consumer remains continuously disconnected for 180 days not being a temporary disconnecting upon request of the consumer, the agreement shall be deemed to be terminated on the expiry of 180 days or after expiry of the initial period of agreement , which ever is later, without prejudice to the rights of the distribution licensee or of the consumer under the Act, for recovery of any amount due under the agreement.

33- Thus, as per aforesaid provisions, it is established as per chapter 11, clause 11.11 that in case of nonpayment of electrical charges dues by the consumer, licensee is empowered to disconnect the electric line of the said consumer. Clause 12 prescribed that if any services is disconnected on account of nonpayment of electricity charges by the consumer or any other charges due from him in addition to charges for disconnection and reconnection; thereupon licensee shall restore the electric supply within 24 hours and 48 hours, as the case maybe, subject to payment of charges along with disconnection and reconnection charges by the consumer in town as well as rural area, as per case. But as per Clause 7.5, second proviso, if the service of the consumer remains continuously disconnected for 180 days, then in that case recovery of any due amount can not be made, because the agreement of the parties has already automatically terminated. The case in hand, it is admitted fact that electric line of the respondent was disconnected on 4/1999 and there is no evidence at all on the record to show that Respondent was ever found using electricity energy till reconnection electricity in her house i.e. 11/2014, which is evident on perusal of annexure. It is also admitted fact between the parties that no case

of theft of electric energy was ever lodged by the authority of the Appellant against Respondent during this period. Therefore I find and hold that Appellant was not empowered to raise bill, as per second proviso of clause 7.5 Electricity supply code, 2005, the bill raise for that very period was liable to be quashed. Therefore, taking into consideration of the entire facts & circumstances of the case and Law & Regulation, I do find and hold that the learned VUSNF has meticulously consider the correct facts and evidence on record in proper perspective and has rightly coming to the findings to quash the electric bill in question and granted relief to the Respondent, to whom she was entitled. The learned VUSNF has not committed an error in passing impugned judgment and order, accordingly, this point decided against Appellant.

34- Having considered the entire facts and circumstances of the present case as well as the law and regulation applicable in this case, I am of the opinion that learned VUSNF has taken much care to the relevant provision of law & regulation and appreciating the correct facts and settled principle of law and accordingly passed the impugned judgment and order.

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

Sd/-
Electricity Ombudsman

Dated-04-08-2017

Dictated to the confidential Assistant, transcribed and type by him,
corrected and signed by me.

Sd/-
Electricity Ombudsman

Dated-04-0802017