

BEFORE THE ELECTRICITY OMBUDSMAN, JHARKHAND
4th FLOOR, Bhagirathi Complex, Karamtoli Road, Ranchi-834001

Case No. EOJ/01/2009

Dated 27th August, 2009.

M/s Mars Mercantiles Pvt. Ltd.

..... Petitioner

-Versus-

Jharkhand State Electricity Board & Others

..... Respondents

Present:

Sri Arun Kumar Datta

Electricity Ombudsman

Smt. Jaswinder Majumdar

Advocate for Appellant

Sri Shamsheer Singh Rekhi

Advocate

Smt. Nisha Rai

Advocate

Sri Rajesh Shankar

Advocate for the respondent Board

Sri Abhay Prakash

Advocate

J U D G E M E N T

1. The aforesaid appellant has filed this appeal/representation against the majority Judgment/ order of learned Vidyut Upbhokta Shikayat Niwaran Forum (In short VUSNF) of Jharkhand State Electricity Board (In short JSEB), Ranchi passed in Case no 47/2007 (Inadvertently written as Case No. 29/2007 in the majority Judgement dated 03/12/2008) dated 03/12/2008 by which the learned VUSNF has refused to grant any relief to the appellant on the ground of lack of jurisdiction and dismissed the case of the appellant.

2. The brief fact of this case is that the petitioner/appellant was granted an electrical connection of 200 KVA on 11KV supply under HTIS tariff bearing connection No. GR-

547 on 02/09/2004 at Chota Ambona, Nirsa, Dhanbad. The aforesaid factory of the petitioner/ appellant was inspected by the Anti-power theft team constituting the officers of the JSEB on 13/02/2006 and found that Y and B phase of CTs were reversed by the petitioner/appellant and installed in the low voltage side (LV) chamber of the distribution transformer of the petitioner/appellant supplying power to the meter terminals as a result of which low consumption was recorded in the meter. The seal of the CTs placed inside the low voltage (LV) side of transformer were also found broken and tampered. Due to aforesaid interference with the CTs, the meter was recording low consumption and as such it was found to be case of theft of electrical energy. On 14/02/2006 a supplementary penal bill of Rs. 40,02,405.00 (Forty lacs two thousand four hundred five) was raised and served to the petitioner consumer for its payment and the consumer also made the payment of the said bill on 15/02/2006.

3. Thereafter the petitioner/appellant filed objections before the Electrical Superintending Engineer, Electric Supply Circle, Dhanbad for reassessment of the bill which was dismissed and thereafter the petitioner/appellant also filed an appeal before the General Manager-cum-Chief Engineer, Electric Supply Area, Dhanbad for redressal and reassessment and after hearing the General Manager-cum-Chief Engineer, Dhanbad dismissed the appeal of the petitioner/appellant on 12/09/2007 confirming the findings of the Electrical Superintending Engineer, Electric Supply Circle, Dhanbad that it is a case of theft of Electrical energy and penal bill raised and issued to the petitioner/appellant is correct.

4. Thereafter the petitioner/appellant has filed an application before the VUSNF of JSEB, Ranchi praying therein to quash the orders passed by the Electrical Superintending Engineer, Electric Supply Circle, Dhanbad dated 10/10/2006 and also the order of the General Manager-cum-Chief Engineer, Electric Supply Area, Dhanbad. The appellant has also prayed for quashing the supplementary assessment bill dated 14/02/2006 amounting to Rs. 40, 02,405.00 (Forty lacs two thousand four hundred five) and to refund the entire amount with interest.

5. Being dissatisfied with and aggrieved by the said Judgment/order of learned VUSNF, the appellant has filed this appeal before this Forum for redressal of grievance and the learned lawyers of both sides have been heard in length and it has come today for Judgment .

FINDINGS

6. The learned counsel appearing on behalf of appellant has challenged the findings of VUSNF on the ground that the impugned bill for Rs. 40,02,405.00 (Forty lacs two thousand four hundred five) has been raised under clause 16.9A of the 1993 tariff and neither under section 126 nor under section 135 of the Electricity Act, 2003 as inferred by the learned VUSNF. The impugned bill shows that it was raised under clause 16.9A of 1993 tariff which was framed in exercise of the power conferred on the Board under section 49 of the Indian Electricity Supply Act, 1948 which has been repealed by the Electricity Act, 2003 with effect from 10/06/2004. It has been further argued that the learned VUSNF has failed to apply its mind to the provisions of Section 172 of the Electricity Act, 2003 by virtue of which all licensees authorizations, approvals, clearances and permissions granted under the provisions of the repealed laws could continue to operate for a limited period notwithstanding any thing to the contrary contained in this Act. There is a strong conflict between the penal provision in the tariff of 1993 and Electricity Act, 2003 because the 1993 tariff provides penal charge for three times of the computed assessment, whereas the Electricity Act, 2003 provides for one and a half times of the tariff applicable in cases of use of Electrical Supply through a tempered meter under section 126(6) of the Act, operating at the relevant time. The 1993 tariff of the Board has, therefore, ceased to be operative as much as it has provided for a penal bill amount contrary to Section 126(6) of the Electricity Act, 2003 and the tariff 1993 was not saved by Sections 172 and 185 of the Electricity Act, 2003 and as such it is fit to be quashed. It has been further submitted by the learned lawyer of the appellant that the learned VUSNF has failed to apply its mind to the fact that the seals affixed to the

transformer bushings box housing the CT in a box and the meter box could not be presumed to have been broken and tampered because the last meter was read in January, 2006 when irregularity was not found nor recorded in the report by officers of the Board therefore it can not be charged for six months and at best it can be theft of electrical energy for a period of one month. The learned counsel appearing on behalf of the appellant has further argued that the impugned bill for Rs. 40,02,405.00 dated 14/02/2006 was not raised under sections 135 to 141 of the Act nor accidents and inquiries as specified in Section 161 of the Act therefore jurisdiction of the VUSNF and also this Forum is not barred by law and therefore the findings of the learned VUSNF is wrong when it concluded that learned VUSNF has no jurisdiction under aforesaid ground and the findings of the learned VUSNF in Para 2.3 of its order dated 03/12/2008 are also incorrect to the extent that the bill was set to have been raised under section 135 of the Act. The impugned bill do not show that it has been raised under section 135 of the Act or clause 15.5 of the (Electricity Supply Code) Regulations, 2005 dated 28/07/2005 of Jharkhand State Electricity Regulatory Commission (In short JSERC) rather the impugned bill shows that it was raised on the basis of clause 16.9 (A) of 1993 tariff which has ceased to exist before 13/02/2006. Section 135 of the Electricity Act, 2003 is a penal provision and there is no provision in the Act, for issue of a penal assessment bill under section 135 of the Act. In support of his contention the learned counsel of the appellant has relied the ruling reported in AIR 1990 S.C. 882.

7. The learned counsel appearing on behalf of the appellant has also challenged clause 15.5 of the (Electricity Supply Code) Regulations, 2005 of JSERC which is ultravires because it can not frame the regulations contrary to any provision of the Electricity Act as delegated legislature power granted under section 181 (2) (read with Section 50 of the Electricity Act). In support of his contention the learned counsel of the appellant has relied upon the rulings reported in AIR 1975 SC 1331, AIR 1994 SC 2544, (1985) I SCC 641, AIR 1986 SC 2160, 1995(I) PLJR 607, 2003 (i) PLJR 535. According to the learned counsel of appellant, the (Electricity Supply Code) Regulations, 2005 of JSERC has gone beyond its delegated powers because it has repealed the Section 126 of

the Act and said substitute penal provision of Section 135 of the Act by it is on unauthorized provision. According to the learned counsel of the appellant, the Electricity Act, 2003 especially provides for assessment charges when the meter is tampered. The CTs is an integral part of the meter and tampered CT means a tampered meter. The appellant has filed objections under section 126 (3) of the Electricity Act and both the Electrical Superintending Engineer and the General Manager-cum-Chief Engineer has conducted the proceedings thereunder therefore the learned VUSNF can not ignore this fact of law and rely on irrelevant clause 15.5 for assessment prescribed by JSERC and the learned VUSNF is bound by Section 126 of the Act. It has also been argued by the learned counsel of the appellant that it is a settled law that a person can not be punished more than once for the same offence, whereas the law of legislature itself provides two punishments for the same offence, one under section 126 and the other under section 135 of the Electricity Act for tampering of the meter and Regulation, 15.5 of the (Electricity Supply Code) Regulations, 2005 which provides three punishment. Therefore the Regulation must yield to the law of legislature as laid down by the Regulatory Commission in chapter 20 saving and interpretation provision. The learned counsel appearing on behalf of the appellant has further submitted that the findings of the learned VUSNF is incorrect that it has no jurisdiction to hear the case which is related to Sections 126, 127 and 135. It is only the cases relating to Section 135 to Section 141 which has been illegally excluded from the jurisdiction of the learned VUSNF in Para 12 of the Board's notification No. 5217 dated 29/09/2005. The JSEB has neither instituted a case against the appellant in a court of competent jurisdiction under section 135 of the Electricity Act nor started any proceedings, nor could they do so in view of the provision to Section 126(4) of the Electricity Act and as such any reference to Section 135 of the Act and 15.5 of the (Electricity Supply Code) Regulations, 2005 of the JSERC are irrelevant and wrongfully relied upon by the learned VUSNF in determining its jurisdiction. According to the learned counsel of the appellant, the learned VUSNF is constituted under Section 42(5) of the Electricity Act for redressal of grievances of the consumers and Section 42(6) empowers the Ombudsman for redressal of grievances of

the consumers and therefore barring the jurisdiction of VUSNF by JSEB notification NO. 5217 dated 29/09/2005 can not make undue restriction or curtailment of the VUSNF as well as this Forum, which has been conferred by law of legislature. In support of aforesaid contention, the learned counsel of appellant has relied the ruling reported in (2007) 8 SCC at page 396 at Para 33 wherein the Hon'ble Supreme Court of India has held that "therefore now by virtue of sub-section (5) of Section 42 of the Act, all individual grievances of consumers have to be raised before this Forum only". Therefore, according to the learned counsel of the appellant, the learned VUSNF and this Forum have got jurisdictions under section 42(5) and 42(6) of the Electricity Act, 2003 for redressal of the grievances of the consumers and as such clause 15.5 of the (Electricity Supply Code) Regulations, 2005 of JSERC can not restrict the jurisdiction of the VUSNF as well as this Forum for redressal of the grievance of the appellant.

8 On the aforesaid ground it has been prayed on behalf of the appellant to grant all the relief(s) as prayed before VUSNF after setting aside the Judgment/order dated 03/12/2008 of learned VUSNF passed in case no 47/2007 (inadvertently written as case no. 29/2007 in the majority judgment dated 03/12/2008).

9. On the other hand, the learned lawyer of the respondent has submitted that the majority Judgment/order of the learned VUSNF of JSEB, Ranchi dated 03/12/2008 passed in case no. 47/2007 do not require any interference because the appellant has failed to make out any case and the learned VUSNF has rightly held that in view of the provisions of the Electricity Act, 2003 and the (Electricity Supply Code) Regulations 2005 the dispute with regard to assessment pursuant to theft of electricity committed by the petitioner/appellant there is no jurisdiction of the VUSNF in view of Sections 126, 127 and 135 of the Electricity Act, 2003 and clause 15.5 and 15.6 of the (Electricity Supply Code) Regulations, 2005. The supplementary bill dated 14/02/2006 amounting to Rs. 40, 02,405.00 raised and issued by the JSEB on the petitioner/ appellant on account of detection of unauthorized use of electricity as per inspection report dated 13/02/2006 is also justified and the same requires no interference by this Forum. The Central Government in exercise of its power conferred by Section 183 of the Electricity Act,

2003 (power to remove difficulties) vide S.O. No. 790(E) dated 08/06/2005 has authorized the State Regulatory Commission under section 50 of the Act to include certain measures including the method of assessment of electricity charges payable in case of pilferage of electricity and in pursuance of the said clarification issued by the Central Government vide S.O. No. 790 (E) dated 08/06/2005, the JSERC, Ranchi in its (Electricity Supply Code) Regulations, 2005 issued by notification dated 28/07/2005, included the method of assessment to be made by the licensee against the consumers in case of theft/pilferage in clause 15.5 and the same has a statutory force with effect from 28/07/2005. The assessment of the compensatory amount as contained in bill dated 14/02/2006 has been done in accordance with clause 15.5 of the (Electricity Supply Code) Regulations of JSERC, Ranchi and as such there is no infirmity in the aforesaid Regulation and as such the appellant is liable to make the payment of Rs. 40,02,405/- in accordance with the bill dated 14/02/2006. The learned counsel for the respondent further submitted that the compensatory bill dated 14/02/2006 will not automatically vitiate only because clause 16.9 of 1993 tariff has been mentioned therein. Section 185 (2) (a) of Electricity Act, 2003, contains the saving provisions and the mode of calculation as existed under clause 16.9 of the tariff notification 1993 is similar to clause 15.5 of the (Electricity Supply Code) Regulations, 2005 i.e. the billing has to be made equal to three times the tariff applicable to the consumer and therefore, the bill dated 14/02/2006 is legal which requires no interference. In reply to the contention of the learned counsel of appellant that on inspection in January, 2006 reading was recorded by the team of officers of respondent Board and no irregularity nor recorded in the report the learned counsel appearing on behalf of the respondent has submitted that the meter reading reports can not be equated with an inspection report because in the monthly meter reading report meter is noted down for the purpose of billing, whereas in the inspection report there is meticulous examination of the complete electrical installations of the consumer including the meter and metering units are made. On the aforesaid ground it has been submitted on behalf of the respondent that the appellant is not entitled for the relief(s)

claimed by it in paragraph 1 of the appeal and the prayers made in the prayer portion of the appeal and thus this appeal/representation is fit to be rejected.

10. The learned VUSNF has rejected the petition of the appellant mainly on the ground that VUSNF has got no jurisdiction in view of under section 126, 127 & 135 of the Electricity Act, 2003 and clause 15.5, 15.6 of (Electricity Supply Code) Regulations, 2005 issued by JSERC, Ranchi which has been challenged by the appellant/petitioner and it has been submitted on behalf of the appellant that VUSNF as well as this Forum of Ombudsman has got jurisdiction under section 42(5) and 42(6) of the Electricity Act, 2003 which can not be taken away in view of under clause 15.5 and 15.6 of the (Electricity Supply Code) Regulations, 2005 of JSERC, Ranchi . In support of the aforesaid contention the learned lawyer of the appellant has relied upon the rulings reported in AIR 1990 SC 882, AIR 1975 SC 1331, AIR 1994 SC 2544, (1985) I SCC 641, AIR 1986 SC 2160, 1995 (I) PLJR 607, 2003 (i) PLJR 535. On the basis of aforesaid rulings the learned counsel of the appellant has further submitted that the Electricity Act, 2003 which empowers the VUSNF and the Electricity Ombudsman under section 42(5) and 42(6) for redressal of grievances of the consumers is an Act of legislature and therefore under clause 15.5 and 15.6 which is an administrative order of executive and therefore it can not over ride the law of the land. But I don't find myself in agreement with the aforesaid contention of the learned counsel of the appellant because this power to make regulations has been conferred to the State Commission i.e. JSERC by Section 181 of the Electricity Act, 2003. Further Section 182 of the Electricity Act, 2003 provides that "every rule made by the State Govt. and every regulation made by the State Commission shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House". Therefore clauses 15.5 and 15.6 can not be said to be an administrative order or executive order rather it has also got force of law in view of Sections 181 and 182 of Indian Electricity Act, 2003.

11. Clause 15.5 lays down that “an assessment of the compensation payable to the licensee for theft of electricity under the meaning of Section 135 of the Act shall be made for the entire period for which the dishonest abstraction, consumption or use of electricity can be clearly established”.

“Provided however that where the period of dishonest abstraction, consumption or use of electricity under section 135 of the Act can not be clearly established it shall be presumed to be six months prior to the date of detection”.

“Provided further that the assessment shall be made at a rate equal to three times the tariff application to the category of service so assessed”.

12. Therefore, I find force in the submissions of the learned counsel of the respondent that clause 16.9(A) of 1993 tariff and clause 15.5 of the (Electricity Supply Code) Regulations 2005 of JSERC, Ranchi are same and therefore aforesaid impugned bill can not be challenged before VUSNF or before this Forum on this ground especially when this a matter which is beyond the jurisdiction of VUSNF and also beyond the jurisdiction of this Forum to give a final decision in this regard because when jurisdiction is barred then there can not be such decision on this point and it has been only observed in the context with the contentions of the learned lawyers of both sides.

13. The learned counsel of the appellant has also filed and relied upon the ruling reported in (2007) 8 SCC at page 396 Para 33 and submitted that the Hon’ble Supreme Court of India has clearly held in this ruling that “by virtue of sub section-5 of Section 42 of the Act, all the individual grievances of consumers have to be raised before this Forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a Forum has been created under the Act for this purpose”. On the basis of aforesaid ruling the learned counsel of the appellant has further submitted that VUSNF as well as this Forum have got full jurisdiction to decide the consumer’s grievance (Appellant) and as such jurisdiction of VUSNF and this Forum are not barred. On the other hand, the learned counsel appearing on behalf of the respondent has submitted that in the case of aforesaid ruling the Maharashtra Electricity Regulatory Commission had decided the consumer grievance

which was within the jurisdiction of the VUSNF and Electricity Ombudsman under section 42(5) & 42(6) of the Electricity Act, 2003 and therefore the Hon'ble Supreme Court has held that it is only the VUSNF or Electricity Ombudsman which has got jurisdiction and State Commission has got no jurisdiction to decide the consumer grievances. In my view the aforesaid ruling also does not help the case of appellant because this case has not been decided by JSERC. There is also no dispute that VUSNF or this Forum has no jurisdiction to decide the consumer grievances in view of Section 42(5) and 42(6) of the Electricity Act. But in my view, in a case of theft of electrical energy the consumer can not come either before VUSNF or before this Forum under section 42(5) and 42(6) of the Electricity Act, 2003. Clause 15.6 of (Electricity Supply Code) Regulations, 2005 of JSERC clearly lays down that "wherever unauthorized use of electricity is detected and the Assessing Officer issued a final order, the consumer shall be entitled to file an appeal to the appellate authority under section 127 of the Act". Therefore, I find myself in agreement with the submissions of the learned counsel of the respondent that Section 126 and 127 of the Indian Electricity Act, 2003 clearly lays down that when any consumer has any grievance in assessment on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the Assessing Officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use. In this case also the officers of the JSEB had found theft of electrical energy and if in assessment any consumer or even appellant has got any grievance he may file his representation before the Electrical Superintending Engineer or the General Manager-cum-Chief Engineer of concerned area Board and even any consumer has any grievance against assessment then such consumer may prefer an appeal under section 127 of the Indian Electricity Act before the appellate authority i.e., Chief Electrical Inspector of the Govt. of Jharkhand. In this case also the appellant had put his representation before the Electrical Superintending Engineer and the General Manager-cum- Chief Engineer but instead of filing the appeal

before the appellate authority i.e., Chief Electrical Inspector of Govt of Jharkhand the appellant has filed representation before VUSNF which is against the law. Section 127(4) clearly lays down that “the order of the appellate authority referred to in sub-section (1) passed under section (3) shall be final”. In my view also, there is clear provision laid down under section 126 and 127 of Indian Electricity Act, 2003 for a consumer of theft of electrical energy by JSEB. For assessment of the bill there are clear provisions laid down under section 126 and 127 of the Indian Electricity Act and recourse of Section 42(5) and 42(6) are not available to such consumer and even to the appellant. There is no force in the contention of the learned counsel of the appellant that any consumer has got two Forums for redressal of his grievance one under sections 126 and 127 and the other under sections 42(5) and 42(6) of the Electricity Act and as such the appellant has chosen this Forum as well as earlier Forum of VUSNF. At the cost of repetition, I am again constraint to say that the consumer who has been found in theft of electrical energy can not move the Forum of VUSNF or this Forum and as such consumer has only one recourse under sections 126 and 127 of the Electricity Act, therefore the appellant is not entitled for any relief(s) in this appeal/representation in view of clause 15.5 and 15.6 of the (Electricity Supply Code) Regulations, 2005 of JSERC.

14. From the aforesaid discussion and findings, I do not find any merit in this appeal/representation filed on behalf of the appellant and accordingly the majority Judgment /order passed in case no. 47/2007 dated 03/12/2008 (Inadvertently written as Case no. 29/2007 in the majority Judgment dated 03/12/2008) is hereby confirmed. In the result, this appeal/ representation is hereby dismissed without any cost.

Let the copy of this order be served to both the parties.

Sd/-
Electricity Ombudsman