

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

Case No. EOJ/01/2015

M/s Sartaj Hotel ..... Applicant(s)  
Versus  
JUVNL & Others ..... Respondent(s)

Present:

Shri Ramesh Chandra Prasad : Electricity Ombudsman  
Advocate for the Applicant : Sri. Nitin Pasari  
: Sri. Sudhir Singh  
: Mrs Ranjana Mukherjee  
Counsel for the Respondent : Sri. Rahul Kumar  
: Sri. Prabhat Singh

**ORDER**

(Passed on this 18<sup>th</sup> day of June, 2015)

1) The instant petition has been filed for execution of the order dated 15.05.2014 passed by the V.U.S.N.F., Ranchi in Case No. 07/2013 which was upheld by order in Appeal No. EOJ/05/2014 dated 04.09.2014, but appropriate action has not been taken by the Licensee.

**2) Chronology of the events:**

Pursuant to the order of the Hon'ble High Court, Jharkhand the petitioner preferred two cases which were registered as Case No. 12/2003 and Case No. 75/2003 in Consumer Grievance Redressal Forum. In the said case various issues were raised including the issues of load of unconnected

plug point, delayed payment surcharge, billing on the basis of 144 units during the period the meter remained defective. Initially sanctioned load of the appellant is said to be 15 KW (Cons. ST 40C/T-6665) but the load was found 45 KW on joint inspection by erstwhile JSEB officials and consumer on 26.11.1999. Following the said inspection on 26.11.1999 a sum of Rs. 1,43,640.00 was charged in December, 1999 as per the provision of BSEB's 1993 tariff, clause 16.9(IV). Aggrieved by this, the consumer approached General Manager cum Chief Engineer, Electric Supply Area, Ranchi (herein after referred to as GM cum CE) for redressal of grievances vide letter dated 28.03.2003 and subsequently filed petition before Consumer Grievance Redressal Forum (herein after referred to as CGRF) on 07.08.2003 bearing Case No.75/2003 which was disposed of by order dated 07.01.2004 directing the GM cum CE to get the matter examined within two months, after giving an opportunity of hearing to the consumer. The consumer represented before GM cum CE on 13.01.2004 and hearing was fixed on various dates i.e. on 29.01.2004, 12.02.2004 and 24.02.2004. It is stated that there was an inspection of the premises of the consumer by the then Asstt. Electrical Engineer on 30.10.2001 and the meter was said to be found defective in terms of running slow. Accordingly, bill for the month of October, 2001 was raised on the basis of average unit of 6480KWh (144X 45). Prior to that consumer was billed on minimum guarantee unit i.e. 50X45KW=2250KWh. In this scenario, average unit was charged from October, 2001 to January, 2003. Subsequently, the meter was replaced in February, 2003 and thereafter bills were raised on actual consumption.

The consumer aggrieved by average charging of 6480 unit filed a writ petition before Hon'ble High Court, Jharkhand bearing Case No. WP(C) - 2708/02. The said case was remanded to CGRF vide order dated 08.01.2003.

The case was admitted in CGRF bearing Case No.-12/2003 which was disposed off by order dated 04.06.2003 wherein direction was given to revise the bill and delete and withdraw the DPS. Accordingly bill was revised and communicated by the concerned official of the Board to the consumer vide letter number, 2974 dated 14/6/2005 for Rs. 6,52,505.00 but for some reason the revision of bill could not be given effect in the ledger carrying out the said arrear with DPS. Again as per advise for waiving of Rs.6,52,505.00+9,45,257.00(DPS on 6,52,505)=15,97,762.00 was sent in the month of August,2012 to billing agency but due to some technical reasons agency deducted only Rs.7,47,030.70 out of Rs.15,97,762.00 in the bill for the month of September,2012 and the rest amount Rs.9,58,394.00 including DPS was got deducted in the bill for the month of July,2013 and total rectified bill of Rs.22,81,256.00 up July,2013 was issued by the concerned Electrical Executive Engineer and sent to the consumer vide letter 978 dated 02.08.2013 .

The premise of the Consumer is stated to have been inspected on 20.01.2004 by Board's officials and connected load was found 66KW. Following this inspection a bill under Clause 16.9(IV) of 1993 tariff for loss amount for Rs.70,308.00 was raised and sent to the consumers vide EEE,Urban-1 letter no-407,dated 31.01.2014 under the signature of Electrical Executive Engineer,Urban-1 Division, Ranchi. The Consumers moved before Hon'ble High Court against the bill so issued .The case was registered bearing Case No. WP(C) 2057/04.

The Hon'ble High Court quashed the bill amounting to Rs.70308.00with a direction to JSEB to hear the case a fresh and issue a demand notice under section-126 of the Electricity Act, 2003. In compliance of the said order provisional assessment was made and bill was prepared

for an amount of Rs.66,144/- only and sent to the consumer who is said to have not mentioned any objection at that point of time and so, the concerned Electrical Executive Engineer passed an order of final assessment for the same amount of Rs.66,144.00 on 20.03.2010 and communicated to consumer vide letter No.514,dated 25.03.2010 and letter no.522,dated 27.03.2010.The aforesaid amount is stated to remain unpaid by the consumer and so the amount is being reflected in the bill as arrear adding to this, the DPS. The operation, execution and implementation of the order dated 15.05.2014 of VUSNF, Ranchi including the order dated 04.09.2014 in EOJ/05/14 has not been complied with by the respondents.

3) The learned counsel Sri Pasari submitted that the licensee was directed to serve on the petitioner revised energy bill without charging any DPS along with calculation chart .The DPS sought to be levied on the disputed bills since 1999 is not permissible when the onus lies on the licensee to revise the bills but the same could not be done because the officers of the licensee were sleeping over the issue for unimaginable period of 11 to 12 years. The current energy charges directed to be paid as per direction of the Hon'ble High Court as an interim measure do not constitute DPS component on the disputed bills as being carried over every month by the licensee. Moreover, the order passed in EOJ/05/14 has become functus officio.

4) Per contra, the learned counsel for the respondent submitted that the sole basis of the order passed by the learned VUSNF is the letter issued by the then Electrical Executive Engineer, Electrical Supply Division, Central, Ranchi vide memo no. 1497 dated 25.07.2011 and in the light of the aforesaid letter energy bill of the petitioner has been revised and a bill amounting to Rs.21,49,088/- is payable by the Consumer. If the petitioner is still aggrieved by the calculation, then they are at liberty to challenge the

same by way of filing a fresh case before the learned Court of VUSNF. The learned VUSNF has not given any finding with regard to manner in which calculation of bill is to be carried out rather a direction was given to the respondents to revise the bill in the light of letter issued by the then Electrical Executive Engineer, Electrical Supply Division, Central, Ranchi vide memo no. 1497 dated 25.07.2011. Therefore, there arises no question of deviating from the direction indicated in the aforesaid letter. Moreover, in pursuance of the order of the Hon'ble High Court in WP(C) 2057/04, wherein direction was given to hear the petitioner afresh and issue demand notice as per Section 126 of the Electricity Act, 2003 and in compliance of the said order bill was prepared amounting to Rs.66, 144/- only which was not paid by the petitioner and, therefore, the same is being carried out in the bill as arrear adding the DPS as well. Therefore, the petitioner has rightly been served with a revised energy bill amounting to Rs.21, 49,088 only for payment. The Respondents thus prayed that the Representation/Petition be rejected as per laid down rules and regulation and provisions of law and to direct the Petitioner to make full payment without any further delay.

6) From above chronology of events, it would be seen that the officials of the respondents have not acted diligently as per directions of the Hon'ble High Court's delivered in WP(C) 2057/04 as well as dealing with the application in terms of Section 126 of the Electricity Act, 2003.

The Respondent stated in their submission that opportunity of appeal was available to the petitioner as per Section 127 of the Act, however the Petitioner has not availed the same. The flaw in initiating action under Section 126 of the Act, if any, can only be adjudicated by the statutory authority under Section 127 of the Act. One of the pertinent issue requires to be addressed is in respect of report of inspection carried out by the officials

of the licensee to assess load of the petitioner. The inspection report has neither been placed in course of discussion nor annexed with the counter.

During the inspection carried out by the Asstt. Electrical Engineer on 30/10/2001 the meter was found defective but interestingly, the so called defective meter was never tested though, there is a laid down procedure of billing in the event of defective meter explained in Clause 11.3 of the (Electricity Supply Code) Regulation, 2005 which reads as follows:

**“Subject to the provisions of the part XII and Part XIV of the Act in case of a defective meter not recording accurately (slow or fast) the bill of the consumer shall be adjusted on the basis of the test report of the meter for the period of the meter was defective subject to a maximum period of three months prior to the date on which the defect was detected.**

**Provided that before testing the meter licensee shall give 7 days notice to the consumer to be present during testing of meter intimating date, time and place of testing and if the consumer or his representative is present the testing shall be done in his presence and he will sign the report as a token of Witness.**

**Provided further that in case the meter is defective or burnt and has stopped recording or lost, the consumer shall be billed on the basis of the average consumption of the last twelve months immediately preceding the month in which meter was last read (including that month) for the period for which meter was stopped recording subject to maximum period of 3 months.**

**Provided that in case of tampering the assessment shall be carried out as per provisions of Section 126 or Section 135 of the Act, depending on the circumstance of each case.”**

7) The petitioner relied upon the judgement of Patna High Court in case of M/s Gaya Roller Flour Mills Pvt. Ltd. Vs The Bihar State Electricity Board and Ors. Reported in (1995) 715 and, also Manvendra Narain Agarwal V/s The Bihar State Electricity Board and Ors. Reported in (2002) 3 PLJR 510.

8) Heard the learned counsel for the Petitioner as well as the Respondent. I have also gone through the written submissions filed by the learned Counsel for Petitioner and Respondent as well as the aforesaid judgements very carefully.

From chronology of events, it would be seen that the officials of the respondents have not acted diligently as per direction of the Hon'ble High Court's order in WP(C) 2057/04 in dealing with the application in terms of Section 126 of the Electricity Act, 2003. It is no doubt true that Section 126 on the first blush, if literally read means that inspection must be done by the Assessing Officer. The Assessing Officer in the explanation to Section 126, means the officer of the State Government or Board or licensee, as the case may be, designated as such by the State Government. Even if, there was any flaw in initiating action under Section 126, remedy is appeal under Section 127 of the Act. In the instant case the procedure as stipulated in the aforesaid code and provisions of the Act have not been followed in letter and spirit thereby the Respondents have unconscionably kept on acting arbitrarily. The repeated acts of imposing DPS and interest thereupon at best can be considered conscious act for causing harassment to a consumer. I am unequivocally of the view that the respondents should have been guided by the various orders of the Hon'ble High Court and also of the VUSNF.

It may be seen that no Spot Inspection Report verifying the load of the Petitioner is on record. Hence, the monthly consumption should be calculated as per Clause 11.3 of the (Electricity Supply Code) Regulation, 2005 for the period the meter remained defective. Accordingly, the impugned bill has to be revised by taking monthly consumption so calculated and without adding Delayed Payment Surcharge and interest there upon.

In view of overall facts and circumstances and going through the material on record, in my opinion ends of justice would be served if I hold and pass the following order,

- a) The Petition is allowed,
- b) The energy bill for the impugned period may be revised as per Clause 11.3 of the (Electricity Supply Code) Regulation, 2005 without charging DPS and Interest there upon and also taking into consideration the credit already given to the Petitioner.
- c) Compliance be reported within one month,
- d) No order as to cost.

Sd/-  
Electricity Ombudsman