

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

Case No. EOJ/02/2010

Dated- 26th July, 2010

JSEB through its Chairman & others	Appellant (s)
	Versus	
M/s Sati Iron & Steel Pvt. Ltd.	Respondent(s)

Present:

Shri Arun Kumar Datta	Electricity Ombudsman
Shri Rajesh Shankar	Counsel for Appellant Board
Shri Abhay Prakash	Addl.Counsel for Appellant Board
Shri Ajit Kumar,	Counsel for respondent
Shri Vijay Gupta	Advocate for respondent

J U D G E M E N T

1. This appeal has been filed by the appellant/JSEB and others against the Judgement/order dated 30/01/2010 passed in case No. 09/2009 by the learned Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as VUSNF) of JSEB, Ranchi by which the learned VUSNF ordered and quashed the impugned electrical bills raised by the appellant/JSEB from August, 2007 and onwards in which the KVA charges were raised by the appellant/JSEB on the basis of 100% of the contract demand and the appellants/JSEB was directed to issue monthly energy bills in future to the consumer/respondent M/s Sati Iron & Steel Pvt. Ltd. on the basis of actual KVA recorded in the meter or 75% of the contract demand whichever is higher in each month as maximum demand.

2. The case of appellant/JSEB in brief is that the consumer/ M/s Sati Iron & Steel Pvt. Ltd. has taken the electrical connection for 4400 KVA load on 33KV supply for running induction furnace bearing Consumer No. HT-56 under the HTSS of tariff and

had also executed an H.T. agreement with the JSEB. The connection of the consumer/ M/s Sati Iron & Steel Pvt. Ltd. was energized on 08/08/2007. The consumer being an induction furnace consumer of JSEB, therefore the bills of the consumer on account of demand charges from August, 2007 have been raised on 100% of the contract demand on the basis of tariff for induction furnace consumers vide tariff notification dated 15/03/2000 issued by the BSEB published in Bihar Gazette on 06/04/2000, which was also adopted by the JSEB on 20/03/2001. As per Clause 5 of the tariff notification dated 15/03/2000, the demand charge for induction furnace consumer has to be raised on the basis of actual maximum demand recorded in the meter during the month or 100% of the contract demand whichever is higher.

Further case of the appellant/JSEB is that the tariff order of 2003-04 of the Jharkhand State Electricity Regulatory Commission (In short to be referred as JSERC) does not contain any specific terms and conditions of supply for induction furnace consumers therefore the JSEB is constrained to resort to the terms and conditions of supply as enumerated in the induction furnace tariff notification dated 15/03/2000. Besides it Clause 1.4 of the terms and conditions of supply of the tariff order, 2003-04 of JSERC also contains the saving clause so far as the terms and conditions of supply which are existing in the State of Jharkhand from the tariff order, 2003-04 of JSERC. Though the unit charge has been enhanced from Rs. 1.25/- to Rs. 2.50/- for HTSS consumers but the rate for demand charges have been reduced from Rs. 700/- to Rs. 300/- per KVA/month and the Minimum Monthly Charges (M.M.C.) have been reduced from the existing rate of Rs. 1015/-to Rs. 400/KVA/month. As such the letter dated 19/12/2005 issued by the Secretary of JSERC is completely out placed, without jurisdiction and illegal.

Further case of the appellant/JSEB is that the tariff order of 2003-04 of JSERC has dealt with design of tariff structure and analysis of tariff in Section 5 of the above order and the terms and conditions of supply have been dealt in Clause 5.30 of the tariff order of 2003-04 which reads as follows:-

“The JSEB has submitted a number of clauses of the existing terms and conditions of supply for the consideration of the Commission. The Commission has dealt with the power factor surcharge (rebate and penalty) and delayed payment surcharge in this section. The JSEB has submitted a number of other clauses, while, the others would

have to be dealt with a later stage. This is due to the reason that a detailed and in-depth analysis of the issues involved is herewith required and hence they have not been dealt with in this tariff order”

Further Clause 1.4 of the terms and conditions of supply (at page 148)of the Tariff order 2003-04 also reads as follows:-

“All other terms and conditions in respect of meter rent, supply at Lower Voltage, capacitor charge, circuit-Breaker charge, electricity duty, rebate, security deposit, surcharge for exceeding contract demand etc. shall remain the same as existing in the state”. Thus other terms and conditions will remain the same as were existing prior to the order/tariff.

The JSEB’s rejoinder has been mentioned by the JSERC in Clause 3.6.1 of the tariff order of 2003-04 (at page 25) which are as follows:-

“ It is to be noted that HTSS is meant for a specific category of consumers, and is highly power intensive and its tariff takes into account the tonnage capacity also. The existing tariff of induction furnace was decided at the request of Induction Furnace Association by the BSEB. However, this tariff is being proposed for consideration and approval of the Commission. The Commission has invited objections from everybody and the process is fully transparent so there is no question of any discussion with Induction Furnace Association. The existing tariff of Induction furnace came into force w.e.f. April, 2001, i.e. after a lapse of more than two year, therefore there is bound to be some increase in tariff has been nominal”. As such, according to the appellant/JSEB, the Judgement/order of the learned VUSNF of JSEB, Ranchi is fit to be set aside.

3. The case of consumer/ M/s Sati Iron & Steel Pvt. Ltd./respondent in brief is that the appellants/JSEB can not raise the bills of the consumer on the basis of earlier repealed tariff of erstwhile BSEB after passing of the tariff order of 2003-04 of JSERC nor the JSEB has adopted the BSEB tariff after 01/04/2001 nor it has been published in Gazette of the State of Jharkhand. The bills of consumer/respondent can not be raised on the basis of earlier repealed tariff of BSEB because the consumer/respondent had taken the electrical connection on 08/08/2007. Therefore according to the consumer/respondent after the Gazette publication of the tariff order of 2003-04 issued by the JSERC which came into force on 01/01/2004 all previous provisions tariff issued by the erstwhile BSEB have become ceased to exist. This facts is proved from the letter dated 19/12/2005

(annexure-I) of JSERC by which the JSERC has recognized the tariff of 2001 as non applicable documents with effect from 01/01/2004. Besides it the JSERC's letter dated 21/03/2009 which was issued in reply to the letters dated 15/07/2008 and 20/03/2009 made by the JSEB with the JSERC, the earlier stand as indicated in earlier letter dated 19/12/2005 has been reiterated and reemphasized.

According to the consumer/respondent, the appellants themselves have executed an H.T. agreement under Clause 4 but the appellants/JSEB are neither billing the consumer/respondent in accordance with the tariff order of 2003-04 of JSERC nor they are giving any respect to the aforesaid clauses of the H.T. agreement.

According to the consumer/respondent that in view of the JSERC tariff order of 2003-04, the appellants/JSEB are bound to charge the bills at the rate of Rs. 2.50/Kwh on actual consumption of units and Rs. 300/KVA on actual consumption of maximum demand both subject to a minimum monthly charges of Rs. 400/KVA for the full contract demand. Therefore, charging of electrical bills of the consumer/respondent on the basis of 100% of the contract demand by the appellant/JSEB is illegal and against the tariff order of 2003-04 of JSERC.

FINDINGS

4. It has been submitted by the learned counsel appearing on behalf of appellants/JSEB that charging of electrical bills of consumer/respondent from August, 2007 and onwards is not against the tariff order of 2003-04 of JSERC because the Jharkhand Government has adopted the earlier notification of BSEB dated 15/03/2000 by which the demand charge for the induction furnace consumer has to be raised on the basis of actual maximum demand recorded in the meter during the month or 100% of the contract demand whichever is higher. Further the tariff order of 2003-04 issued by the JSERC also lays down in Section 5 and the terms and conditions of supply have also been dealt in Clause 5.30. Further Clause 1.4 of the terms and conditions of supply (at page 148) of the tariff order, 2003-04 also lays down that other terms and conditions will remain the same as were existing prior to the order/tariff.

The learned counsel Sri Rajesh Shankar, appearing on behalf of appellant/JSEB has also drawn my attention towards Clause 3.6.1 of JSERC tariff order of 2003-04 (at

page 25) and further submitted that prior to the tariff order of JSERC, the tariff for induction furnace consumers vide tariff notification dated 15/03/2000 issued by the BSEB, published in Bihar Gazette on 06/04/2000, which was adopted by the JSEB on 20/03/2001. It has been contended on behalf of appellant/JSEB that the tariff order, 2003-04 of JSERC, the unit charge for HTSS consumers have been enhanced from Rs. 1.25/- to Rs. 2.50/- but the rate for demand charges have been reduced from Rs. 700/- to Rs. 300/KVA/month and the minimum monthly charges have been reduced from Rs. 1015/- to Rs. 400/KVA/month. As such, the appellant/ JSEB has rightly raised the electrical bills of the consumer/respondent from August, 2007 and onwards at the rate of 100% of the contract demand and therefore the Judgement/order passed by the learned VUSNF of JSEB, Ranchi is fit to be set aside.

5. On the other hand, the learned counsel appearing on behalf of consumer/respondent has submitted that after passing of the tariff order of 2003-04 by the JSERC which is effective from 01/01/2004, the bills of the consumer/respondent can not be raised on the basis of old/repealed tariff order issued by the BSEB which has been held to be non applicable documents by the JSERC's letter dated 19/12/2005 (annexure-I). Further, there is no evidence that JSEB has adopted the tariff order of BSEB dated 15/03/2000. The recent communication in between the JSEB and JSERC, the JSERC has reiterated and reemphasized its earlier stand as indicated in earlier communication dated 19/12/2005 which is found in JSERC letter dated 21/03/2009 which was in reply of JSEB of its letters dated 15/07/2008, 20/03/2009. Further, the Hon'ble Jharkhand High Court has also held in the case of JSEB and others Vrs. M/s Kumardhubi Steel Pvt. Ltd. that the letter dated 19/12/2005 of JSERC has attained its finality as no appeal has been filed by JSEB against the aforesaid letter. I also find force in the aforesaid contention made by the learned counsel appearing on behalf of consumer/respondent and therefore I am led to hold that the appellants/JSEB can not raise the electrical bills of consumer/respondent from August, 2007 and onwards on the basis of repealed tariff order of BSEB on the basis of 100% of the contract demand as demand charge for that month.

6. On perusal of JSERC tariff order of 2003-04, it is found that there is no specific provision in the tariff order of JSERC of 2003-04 and in absence of specific provision in this regard, the agreement executed in between both the parties will prevail. This is also a settled principle of Law that the agreement executed in between both the parties is

binding if it is not against any specific Law. This is also the view of the Hon'ble Jharkhand High Court held in the case of JSEB and others Vrs. M/s Kumardhubi Steel Pvt. Ltd. In the case of M/s T & T Metals Pvt. Ltd. in case no. WP© No. 1687/2007, the Hon'ble Jharkhand High Court has held that the Board is at liberty to charge bills in terms of agreement between the Board and the consumer. Though, the adjustment part was not stayed by the Hon'ble Jharkhand High Court. As such in absence of any specific provisions of Law, the Clause 4© of agreement executed between the appellant and respondent will prevail. The learned VUSNF of JSEB, Ranchi has also passed the Judgement/order in the light of the aforesaid agreement and therefore the Judgement/order dated 30/01/2010 passed in case No. 09/2009 does not require any interference and it is accordingly upheld.

7. Thus from the aforesaid discussions and findings made above, I am led to hold that the appellants/JSEB can not raise the bills of the consumer/respondent from August, 2007 and onwards in which the KVA charges have been raised on the basis of 100% of the contract demand and therefore the bills of the consumer/respondent from August, 2007 and onwards in which the KVA charges have been raised by the appellants/JSEB on the basis of 100% of the contract demands, are quashed. The appellant/JSEB is directed to issue revised bills to the consumer/respondent namely; M/s Sati Iron & Steel Pvt. Ltd. on the basis of actual KVA recorded in the meter for the first 12 months from the date of connection and thereafter on the basis of actual KVA recorded in the meter or 75% of the contract demand whichever is higher in each month from August, 2008 and onwards. The appellant/JSEB shall also adjust with interest the excess money realized from the consumer/respondent in subsequent bills as per the Electricity Supply (Code) Regulation of JSERC within one month from the receipt of this order failing which the consumer/respondent will be at liberty to move this Forum for implementation of this order.

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

Sd/-
Electricity Ombudsman

