

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

**Appeal No. EOJ/02/2011**

**Dated- 19<sup>th</sup> July, 2011**

<b>JSEB through its Chairman &amp; others</b>	.....	<b>Appellant(s)</b>
	<b>Versus</b>	
<b>M/s Mangalam Plastics</b>	.....	<b>Respondent(s)</b>

**Present:**

<b>Shri Arun Kumar Datta</b>	<b>Electricity Ombudsman</b>
<b>Shri Rajesh Shankar</b>	<b>Standing Counsel for appellant Board</b>
<b>Shri Dheeraj Kumar</b>	<b>Addl. Counsel for appellant Board</b>
<b>Shri D.K. Pathak</b>	<b>Counsel for respondent</b>
<b>Shri Vijay Gupta</b>	<b>Advocate for respondent</b>

**J U D G E M E N T**

1. This appeal has been filed by the appellant Jharkhand State Electricity Board ((In short to be referred as J.S.E.B) against the Judgement/order dated 24/02/2011 passed in case No. 13/2010 by the learned Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as V.U.S.N.F.) of JSEB, Ranchi by which the learned V.U.S.N.F. of JSEB, Ranchi has allowed the representation/complaint of consumer/respondent and has quashed the bills from November, 2009 to February, 2010 and directed the JSEB/appellant to refund/adjust the illegal amount charged and recovered from the complainant/respondent to the tune of Rs. 83,455/- with interest as per supply code.

2. The brief fact of this case is that the complainant/respondent namely M/s Mangalam Plastics is a consumer of JSEB bearing consumer No. HK-5429 and the complainant was granted an electrical connection for 105 KVA load at 11K.V. supply voltage for running its plastics industry under H.T.S.-I tariff. The date of commencement of supply is 04/09/2007. The further case of complainant/respondent before the V.U.S.N.F. and also before this Forum is that maximum demand of consumer for the

month of November, 2009 was recorded more than the 115% of the contract demand and therefore the appellant/JSEB charged the maximum demand on the basis of actual recorded K.V.A. i.e, 128.85 K.V.A. because if the said exceeded demand was supposed to be treated as contract demand of the complainant, the only burden which would have been imposed upon the consumer/complainant is the maximum demand/KVA charges and nothing else. The aforesaid bill for the month of November, 2009 of consumer was arbitrarily charged Rs. 12,262/- without any basis under the heading “correction if any“. Similarly the appellant/JSEB in the same arbitrarily fashion has charged in the bills of December, 2009, January, 2010 and February, 2010 amounting to Rs. 22,894/-, Rs. 21,710/- and Rs. 26,589/- respectively under the heading ‘correction if any’. As such the complainant/respondent had approached the JSEB/appellant for redressal of its grievances and the appellant replied that the aforesaid amounts have been charged under the heading correction if any “on energy units by calculating the gurantee charges on the basis of exceeded KVA”. But according to the consumer/respondent no gurantee energy charges would have been raised on that basis of the contract demand of HT consumer. According to the respondent/consumer if any consumer exceeds its sanctioned load in that case the exceeded load shall be treated as contract demand for the purpose of maximum demand charges for six months and its impact would come only upon K.V.A. charges and minimum monthly charges. According to complainant/respondent the appellant/JSEB has already charged maximum demand charges on the basis of exceeded load every month from November, 2009 to February, 2010 besides the unit charges recorded in the meter and as such the maximum realizable charge by way of demand charges and unit charges has already been charged from the consumer/respondent exceeding the contract demand. Therefore there was no occasion to further charge any unit charges under the heading correction if any. According to consumer/respondent it has himself approached the appellant/JSEB for enhancement of his contract demand which was allowed by the appellant/JSEB and a fresh agreement was also executed for the same. The complainant/respondent is only aggrieved with the appellant/JSEB for charging energy charges as gurantee in the aforesaid bills which could not have been raised in view of the tariff order, 2003-04 of Jharkhand State Electricity Regulatory Commission (In short to be referred as J.S.E.R.C.). According to consumer/respondent

the appellant/JSEB has grossly overlooked the provisions of Clause 16.5 of 1993 tariff as well as Clause 1.4 of tariff order 2003-04. Because there is specific provision to deal with a situation where the HT consumer exceeds its contract demand by more than 110%, therefore the appellant has no authority and jurisdiction to interpret the provisions of law in their own way and illegally realized huge amounts treating the case of unauthorized use of electricity. The appellant/JSEB on the basis of the said assumed contract demand of the consumer/respondent only the following two factors to determine in the monthly bill (i) Maximum demand/K.V.A. charge on the basis of the recorded demand or 75% of the contract demand whichever is higher, therefore the appellant/JSEB had a right to charge the K.V.A. charges on the basis of exceeded demand i.e., 128.85 K.V.A.. (ii) Monthly minimum charge would be assessed as Rs. 32,212.5/-. The aforesaid factors become irrelevant because the aforesaid monthly bills of the consumer/respondent were more than the aforesaid monthly minimum charge. According to consumer/respondent the appellant/JSEB has not justified ground on which the appellant can plead for setting aside of the order of the learned VUSNF passed on 24/02/2011 in case no. 13/2010 and accordingly the respondent has prayed for dismissal of this appeal.

3. On the other hand the case of JSEB/ appellant in brief is that the energy bills for the months of November, 2009 to February, 2010 have been raised in accordance with the law and in accordance with the tariff. The contract demand of consumer/respondent was 105 K.V.A. and during that period the consumer has exceeded 115% of the contract demand i.e. 120.75 K.V.A., therefore charges were levied in the concerned monthly energy bills. The maximum demand of the consumer was recorded more than 115% of contract demand which comes under the category of unauthorized use of electricity and as such the consumer/complainant is liable to pay energy charges and K.V.A. charges twice the rate on the above 115% exceeded of the contract demand. On the aforesaid ground the appellant/JSEB has prayed for setting aside the Judgement/order dated 24/02/2011 passed in case no. 13/2010 by the V.U.S.N.F. of JSEB, Ranchi.

### **FINDINGS**

4. The learned Standing Counsel Sri Rajesh Shankar appearing on behalf of appellant/JSEB has submitted that the learned V.U.S.N.F. has failed to appreciate that the

tariff notification of 1993 provides for raising surcharge bill when the contract demand of the consumer exceeds 110% of the contract load and the same recorded value would be the contract demand for the whole financial year and energy charge shall be payable on that basis. The same has been saved in tariff notification of 2003-04 of J.S.E.R.C. in Clause 1.4. The Board had subsequently revised the surcharge clause vide notification no. 5058 dated 29/08/2002 and the exceeded limit was increased from 110% to 115%. The complainant/consumer had increased the requisite contracted load and the recorded maximum contracted load was the contract demand for the said financial year and the consumer was bound to pay the minimum monthly charges and other charges for the required period. As such, the learned V.U.S.N.F. has committed a gross error in observing that no other chargeable except the balance of K.V.A. is chargeable. Beside it the learned V.U.S.N.F. has committed a serious error in not appreciating the fact that the exceeding K.V.A. beyond 115% is unauthorized extraction of power. During the aforesaid period in question the consumer/respondent has exceeded the 115% of the contract demand i.e., 120.75 K.V.A. therefore the charges were levied in the concerned monthly energy bills. Sri Rajesh Shankar, learned Standing Counsel of appellant/JSEB has further submitted that minimum monthly charges of new tariff of 2003-04 of the J.S.E.R.C. covers the minimum consumption of energy charges and it has nothing to do with the demand charge. Clause 16.5 of 1993 tariff is an independent provision of charge and it can not be mixed up with the monthly minimum charges. The provision at page 115 of J.S.E.R.C. 2003-04 tariff is for compensating the minimum level of energy consumption and it is not concerned with demand load. Therefore according to the learned Standing Counsel of appellant/JSEB the Judgement/order of learned VUSNF passed in case no. 13/2010 on 24/02/2011 is fit to be set aside because the bills issued to the consumer/complainant from November, 2009 to February, 2010 is not illegal rather it has been correctly issued in accordance with the 1993 tariff and also in accordance with the tariff order of 2003-04 of the JSERC.

5. On the other hand it has been submitted by the learned Counsel of consumer/respondent M/s Mangalam Plastics that the monthly minimum charge is supposed to be fixed on the basis of contract demand of an HT consumer, e.g. if the contract demand of the respondent has been 105 K.V.A., the monthly minimum charge

for him was fixed as Rs. 26,250/- only. The demand charge of the HT consumers is raised by the appellant/JSEB on the basis of provisions of Clause 4(b), and 4(c) of the HT agreement. If the contract demand of consumer is 1000 K.V.A. it is charged maximum demand or K.V.A. @ the K.V.A. recorded by the maximum demand in meter in a month or 75% of the contract demand/K.V.A. whichever is higher and accordingly such consumer will be billed for maximum demand/KVA for 750 K.V.A. or more K.V.A. if recorded by its meter in any month whichever is higher. The provisions of the tariff of 1993 lays down under Clause 16.5 that “ if during any month in a financial year (April to March next year) the actual maximum demand of a consumer exceeds 110% of the contract demand then the highest demand so recorded, shall be treated as the contract demand for that financial year and the minimum base charges, both in respect of maximum demand and energy charge shall be payable on that basis. Subsequently the aforesaid higher limit of 110% has been raised to 115% and the period for surcharge has been reduced from twelve months to six months meaning thereby in case of an HT consumer having exceeded its contract demand beyond 115%, the exceeded demand/higher recorded K.V.A. is supposed to be treated as the contract demand of such consumer for a period of six months and the K.V.A. charges as well as the minimum monthly charge has to be realized on that basis. The aforesaid provision of raising surcharge for exceeding contract demand has been saved and has remained as before and the same has been mentioned under Clause 1.4 of the terms and conditions of supply of the aforesaid tariff order of 2003-04 of the J.S.E.R.C. which 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.” As such, the Electricity Supply Code Regulation also do not contain any contrary provision therefore the appellant/JSEB has illegally and arbitrarily charged excess in the bills of November, 2009, December, 2009, January, 2010 and February, 2010 in the name of “correction if any” against the provision of Clause 16.5 of 1993 and also against the Clause 1.4 of tariff order 2003-04 of J.S.E.R.C.. Because there is specific provision to deal with the situation where the HT consumer exceeds its contract demand by more than 110%. Sri D.K. Pathak, learned Counsel appearing on behalf of consumer/respondent has also submitted

that the billing of the respondent as per the tariff order 2003-04 is supposed to be done in two type systems i.e. demand charge which is known as KVA charges @ Rs. 140/KVA/month and energy charge on the basis of Rs. 4.00/Kwh/unit/month. The said charges are raised on the basis of meter reading. A minimum monthly charge is also fixed Rs. 250/KVA/month and in case a consumer's monthly bill goes down the figure of monthly minimum charge, the said monthly minimum charge is at least payable.

6. I find myself in agreement in the aforesaid contentions of the learned Counsel of consumer/respondent and I am also of the view that the appellant/JSEB has illegally raised the bills of consumer/respondent from November, 2009 to February, 2010 against the tariff and therefore the learned VUSNF has rightly quashed the aforesaid bills. I also find myself in agreement with the findings of the learned VUSNF that there is provision for raising surcharge bill in the tariff notification of 1993 where a maximum demand of a consumer exceeds 110% of the contract demand and the same recorded value will be the contract demand for the whole financial year and the minimum base charge, both in respect of maximum demand and energy charge shall be payable on that basis. This provision has also been saved in the tariff notification of 2003-04 of J.S.E.R.C. in Clause 1.4. This is an admitted fact in between both the parties that the appellant/JSEB had revised the clause of surcharge vide notification no. 5058 dated 29/08/2002 by which the exceeding limit has been increased from 110% to 115% and reduced from twelve months to six months .

7. There is no force in the contentions of the learned Counsel of consumer/respondent that J.S.E.R.C. has clarified the position of unauthorized use of electricity in the Supply Code Amendment Regulation, 2010 wherein it has been specifically provided that where a consumer is billed on demand basis but the connected load exceed the sanctioned load, the same shall not be considered as unauthorized use of electricity and in such cases one month notice is to be served by the licensee indicating additional load to be regularized by the consumer because as rightly pointed out by the learned Standing Counsel of JSEB that the aforesaid Supply Code Amendment Regulation, 2010 has got no application in this case because it has been notified in the gazette on 1<sup>st</sup> September, 2010 and bills in question are from November, 2009 to February, 2010.

8. From the discussions and findings made above I am of the view that consumer's maximum demand exceeded maximum demand in four consecutive months from November, 2009 to February, 2010 and maximum K.V.A. is recorded in the month of February, 2010 which is 135 K.V.A. therefore 135 K.V.A. should be the revised maximum demand chargeable for six months i.e. from September, 2009 to January, 2010 as the surcharge for February, 2010 has already been charged and realized from the consumer with current bill of that month. I am also of the view that the consumer/complainant has covered the monthly minimum charge in all these months, therefore no other charges is chargeable except the balance of K.V.A. charges from September, 2009 to January, 2010.

9. As such it is held that the bills of consumer/respondent from November, 2009 to February, 2010 raised by the appellant/JSEB is not in accordance with the tariff and therefore they are held to be illegal and as such bills from November, 2009 to February, 2010 are quashed and the appellant/JSEB is directed to revise /adjust the aforesaid illegal amount charged and recovered from the consumer/respondent amounting to Rs. 83,455/- with interest in accordance with the supply code.

10. In the result there is no merit in this appeal hence this appeal is dismissed and the Judgement/order of the learned V.U.S.N.F. of JSEB, Ranchi dated 24/02/2011 passed in case no.13/2010 is hereby confirmed without any interference.

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

Sd/-  
Electricity Ombudsman