

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

Case No. EOJ/02/2014

Jharkhand Urja Vikas Nigam Ltd. & Others Appellant(s)

Versus

M/s Sukh Sagar Metals Pvt. Ltd. Respondent(s)

Present:

Shri Ramesh Chandra Prasad : Electricity Ombudsman
Advocate for the Appellant : Sri. Mukesh Sinha
: Sri. Ravi Singh
Counsel for the Respondent : Sri. D.K.Pathak
: Sri. Vijay Gupta

ORDER

(Order passed on this 7th day of November, 2014)

The instant appeal by the appellant Jharkhand Urja Vikas Nigam Ltd. & Others (herein after referred to as JUVNL) arises out of the Order dated 08.03.2014 in Case No. 14/2010; 02/2012 and 11/2011; 04/2012 passed by the learned Vidyut Upbhokta Shikayat Niwaran Forum, Chaibasa at Jamshedpur (herein after referred to as VUSNF) which allowed the petition/representation of M/s Sukh Sagar Metals Pvt. Ltd (herein referred to as the respondent/consumer) in the aforementioned case.

1.) Brief of the case:

1.1) Both aforementioned Case No.14/2010;02/2012 and 11/2011;04/2012) were filed before the learned VUSNF by M/s

Sukhsagar Metals Pvt. Ltd. having its factory at Vill.- Jamdol P.O.- Kantabani Dist.- East Singhbhum ,a company registered under the companies Act and took an electric connection for running its Induction Furnace vide Consumer No. CKU-2 under HTSS mode of Tariff-2004.The connection was energized on 02.7.2005 with a contract demand of 3000 KVA. During the period January 2009 to June 2009 JUVNL had served impugned energy bills on account of defect in meter. As per the consumer the meter was stated to be running correctly and recorded electric consumption of 194760 units in the month of January 2009 but it is alleged that competent authorities of JUVNL treated the meter defective and raised bill adding 603226 units to already metered reading of 194760 for the said month of January 2009.In spite of request for changing of so called defective meter the consumer was served with a bill for the month of February 2009 raised on the basis of 850000 units. Again in the month of April 2009 bill for the month of March 2009 was raised on the basis of same 850000 units. The competent authorities of JUVNL on their own treated the said meter as defective and raised 194760 units on the basis of meter reading and arbitrarily added 603226 units for the said month of Jan.2009 total 797986 units. The consumer immediately approached the concerned officials of the licensee for correction of the bills and replacement of the so called defective meter. Without even taking meter reading in the subsequent month of Feb. 2009 a bill dated 05.3.2009 was served on the basis of 850000 units. In spite of persuasions and requests the meter was not replaced on various technical grounds rather in the month of April 2009 also a bill dated 04.4.2009 was served against the month of March 2009 on

the basis of 850000 units consumption. On verbal direction of JUVNL officials a new meter was purchased and submitted vide letter dated 18.04.2009 alongwith testing charges. But the officials of the licensee did not replace the meter on the contrary issued bills for the month of April 2009 and May 2009 on the basis of 850000 units. However the impugned meter was replaced and a new meter was installed on 19.06.2009 for which a due report was also prepared on 19.6.2009. The new meter recorded reading during the whole month and its reading was taken on 02.7.2009 but the bill dated 04.7.2009 was served for the month of June 2009 wherein the consumption reading of 199080 units for the period after 19.6.2009 till the date of reading and for the period prior to 19.6.2009 an exorbitant figure of 538333 units was added. Because of wrong charging of energy bills huge amount was accumulated and so the consumer agreed to pay the same by way of installments and also executed installment agreement with JUVNL and continued paying installments as well as current energy bills just to avoid disconnection. On 22.01.2007 officials of JUVNL visited premises of the said consumer and made allegation of theft of energy and disconnected the power supply on 22.01.2007 without even serving any notice u/s 56 of Electricity Act, 2003. Being aggrieved by the action of the licensee JUVNL, the petitioner consumer preferred Writ (W.P. (C) No. 555/07) before the Hon'ble Jharkhand High Court. The Hon'ble High Court vide Order dated 13.02.2007 declared the disconnection of power supply illegal and directed to restore the electric supply within three days from receipt of the Order. In compliance of Order dated 13.02.2007 of the Hon'ble High Court, the licensee restored the electric supply on

22.02.2007. Further, issue was raised against the claim of guarantee charges for the period 22.1.2007 to 22.2.2007 and also raised grievances against bills prepared on the basis of 100% of the contract demand. Subsequently, representation dated 17.6.08 was filed but the JUVNL officials paid no heed and no relief was given. Because of non redressal of grievances consumer approached VUSNF challenging the bills issued from July 2005 and onwards and also demanded refund/adjustment of the excess realized charges with interest as per provisions of the Supply Code. The case was registered in VUSNF. In the meantime few cheques were deposited with the concerned office of JUVNL against the energy bills which were alleged by the consumer to have not been presented by the concerned authorities in time and got dishonored by the bank. On account of dishonour of cheques, the aforesaid consumer was directed to deposit money in cash vide letter dated 24.7.2008 within 24 hours or face disconnection as well as lodging of FIR. The power supply was disconnected on 06.8.2008 without serving any notice u/s 56 of Electricity Act, 2003. After two days of disconnection of supply a legal notice dated 08.8.2008 was served u/s 80 C.P.C. in which the consumer was asked to deposit the amount within 24 hours and in compliance to that admitted to pay the entire dues in installments which was considered and for payment of the same 50 installments were allowed by the competent authority of the licensee JUVNL to cover the amount pertaining to the dishonored cheques vide order dated 03.10.2008 and subsequently, installment agreement was executed on 24.11.2008 then the power supply was restored on 10.12.2008.

1.2) The learned VUSNF heard the aforementioned cases and passed reasoned Order on 20.8.2009. Operative part is mentioned herein after:

“On the basis of discussions made above we are of the view that the petitioner has been able to prove it’s both case against the Respondents. Accordingly, both petitions are allowed. Respondents are directed to furnish fresh energy bills according to the direction given in the judgment within a period of three months after adjusting the excess payment made by the petitioner with interest as per the provisions of Supply Code Regulation, if any.”

Aggrieved by the Order dated 08.3.2014 passed by the learned VUSNF passed in Case Nos.11/2011;04/2012 and Case No.14/2010,02/2012 JUVNL & Others have preferred the instant appeal to set aside the aforesaid Order.

2) Submissions of the Appellant:

2.1) The learned counsel submitted that the Learned VUSNF has not adjudicated properly while passing the Order in Case No. Nos.14/2010&02/2012 and 11/2011&04/2012 whereby the above said case has been allowed against the Licensee in most arbitrary manner without taking into consideration the factual status which is against the legal concept. He further submitted that the petitioner consumer is having an Induction Furnace vide consumer no. CKU-2 under HTSS mode of tariff. The line was energized on 02.7.2005 with contract demand of 3000 KVA. During the period of January 2009 the unit consumption recorded was 194760 units. Defect in meter was found on 07.01.2009 and the same replaced on 23.01.2009. The bill for the month of January was prepared on the basis of average

consumption of 850000 units for 22 days and for the remaining days prepared on the basis of meter reading from 23.01.2009 to 31.01.2009. The bills for the months of February 2009, March, 2009, April 2009, May 2009 were prepared and issued on the basis of average consumption of 850000 units.

2.2) The learned counsel further submitted that the meter of the petitioner consumer was frequently found defective and as such was directed to replace the meter. After replacement of the meter on 19.6.2009, fresh bill was served for the month of April 2009 and May 2009 on the basis of 850000 units. Due to non payment of the bills, the electric line was disconnected on 07.06.2006 and reconnected on 15.06.2006. Again the line was disconnected on non payment on 28.9.2006 and reconnected on 17.11.2006. The petitioner consumer was found pilfering electrical energy and as such an FIR was lodged on 22.01.2007 and the line was disconnected on the same day. The petitioner preferred Writ bearing W.P. (C) No. 555/07 before the Hon'ble Jharkhand High Court, and the Hon'ble High Court vide order dated 13.02.2007 declared the disconnection of power supply illegal and directed to restore the electric supply within three days from receipt of the order. In compliance of the order dated 13.02.2007 restored the electric supply on 23.02.2007. A provisional bill amounting to Rs.2,64,09,207 was issued against theft of energy. The consumer issued several cheques which were dishonored resulting into disconnection of the line on nonpayment on 06.8.2008. However 50 installments were granted by the competent authority of the licensee JUVNL against which first installment of Rs. 6,06,770 was

paid by the consumer on 02.12.2008 resulting into restoration of line on 10.12.2008.

2.3) The learned counsel further submitted that a team of officers visited the premises on 09.11.2010 and theft of energy was detected, accordingly F.I.R. was lodged at Chakulia P.S and subsequently line was disconnected. In LPA No.2/2011 the Hon'ble Jharkhand High Court has passed order on 06.01.2011 and in compliance of that order line was restored on 20.01.2011. A 15 days notice was issued by the Electrical Executive Engineer (C &R), Jamshedpur vide Memo No.212 dated 27.01.2011 for payment of Rs.42,34,634/-against the current bill for the months of September, October and November, 2010 but the consumer did not pay the above amount in time, so the electric line was disconnected on 15.02.2011 which was restored on 17.02.2011 after payment of Rs.42,34,634/- along with RC+DC charges. A letter was also issued by the Electrical Executive Engineer (C &R), Jamshedpur vide Memo No.211 dated 27.01.2011 regarding non payment of installment amount as per agreement dated 24.11.2008 along with notice for filing solvent security in shape of bank guarantee was issued. The consumer submitted affidavit along with photocopy of sale deed in place of bank guarantee, which has no commercial meaning and accordingly a reply was given vide letter no.485 dated 23.02.2011 under the signature of Electrical Superintending Engineer, Electrical Supply Circle, Jamshedpur. The consumer had the opportunity to approach Chief Engineer in order to get the AMG charges waived as per clause 13 of the agreement of standard format of HT connections rather directly raising the issue before the Hon'ble High Court.

2.4) The learned Counsel further submitted that the conduct of the consumer was not clean and so it would be proper to examine the previous meter reading when the meter was functioning properly. Moreover, similar KVA issues are still pending before the Hon'ble High Court. In the result, the Order dated 08.03.2014 passed by the learned VUSNF, Chaibasa in Case Nos.14/2010,02/2012 and 11/2011,04/2012 is against the legal concept and therefore, be set aside .

3.) Submission of the Respondent:

3.1) The learned Counsel submitted that the licensee JUVNL have admittedly declared/treated the meter installed at the premises of the consumer defective at their own in the month of January, 2009 but to utter surprise the same was not sent to the third party testing as stipulated in clause 13.4 and 11.3 of the Electricity Supply Code Regulation which are mandatory for the licensee. Moreover this action has neither been justified nor denied by the Licensee.

3.2)The learned counsel further submitted that prior to 15th June, 2007 there was no provision of disconnecting the electric line on allegation of theft of energy and by amendment in sub section (1A) was added under Section 135 giving right to the Licensee for disconnection of electric supply in case of finding of theft of electricity. In view of applicable statutory provisions the Hon'ble Jharkhand High Court vide Order dated 13.03.2007 directed the Appellant to restore its electricity.

3.3) The learned counsel further submitted that the issue of illegal disconnection prior to insertion of Sub section (1A) in Section 135 has been held and settled by the Division Bench of the Hon'ble Jharkhand

High Court in the matter of M/s Stan Commodities Pvt. Ltd. Adityapur Vs Jharkhand State Electricity Board & Ors.[W.P.(C) No.109/2007] .The Licensee while giving complete go by to the provisions of clause 13.4 and 11.3 of the Electricity Supply Code Regulation have arbitrarily raised the energy charges without any logical basis of calculation for the period during which the meter was allegedly declared defective by the Licensee.

3.4) The learned counsel further submitted that the Licensee did not replace the so called defective meter within a period of three months as stipulated in the Regulation in spite of repeated request and reminder and therefore the Consumer can not be penalized for latches on their part. The learned VUSNF while appreciating the appropriate provisions of the applicable law and the provisions laid down in the (Electricity Supply Code) Regulation,2005 have given findings vide Order dated 08.3.2014 which needs no interference.

4.) Issues Involved:

4.1) Issue No. 1:

Whether monthly energy bills for the month of Nov. 2007 to July 2008 and Jan. 2009 to June 2009 were raised arbitrarily on average basis on the alleged ground of defect in meter without following the provision of Supply Code?

4.2) Issue No. 2:

Whether charging of DPS on the basis of 100% of KVA during the period 07/2005 till the date of revision of bills is legally correct?

4.3) Issue No. 3:

Whether raising Guarantee Charges for the period of wrongful disconnection i.e. on 22.01.2007 and 06.08.2008 is as per law in force?

Findings of Issue No.4.1

The submission of the learned counsel for the Appellant is that the meter was deliberately made defective so often resulting into fixing of average unit of consumption .Therefore, the conduct of the consumer can not be said to be clean.

The main thrust of the learned counsel for the Respondent is that the meter readings from 23.01.2009 to 31.01.2009 and 19.6.2009 to 02.17.2009 is stated to be correct as per the Appellant also but the same has been ignored while assessing the average consumption of energy per month against the established norms laid down in (Electricity Supply Code) Regulation, 2005.

In case of defective meter, appropriate provision has been made in Clause 13.4 of the Regulation which reads as under:

“13.4 Testing and Maintenance of Meter.

13.4.1 The distribution licensee shall be responsible for maintenance of correct meters for providing electricity supply to consumer and its periodic testing.

13.4.2 Upon written request of the consumer or otherwise if the authorized representative of the Distribution Licensee finds the meter defective and not recording accurately on inspection, the meter shall have to be tested for accuracy at a third party facility approved by the Commission.

Provided that in case of testing on the request of consumer, the consumer shall have to pay the testing fee approved by the Commission as per clause 17 of these regulations. Provided further that, if the meter is found to be recording more than the actual consumption, the test fee shall be refunded to the consumer by the licensee by adjustment in the subsequent bill.

13.4.3 Before testing the meter of a consumer 7(seven)days notice shall be issued to the consumer intimating date, time and place of testing for the consumer or his authorized representative to be present during the testing.

Consumer or his authorized representative present during testing will sign the test report as a token of witness.

13.4.4 The Distribution Licensee shall issue rectified bills on the basis of the test report with a copy of the Test Report to the consumer within one month of the testing.

In the event of defects in meters, Clause 11.3 of the Regulation has laid down specific guide lines for billing which is as follows:

“Subject to the provisions of 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 brunt 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.”

“Section 135. Theft of Electricity: - (1) Whoever, dishonestly-

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee ; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted ;or

(c) damages or destroys an electric meter, apparatus, equipment , or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised,

so as.....

(i).....

(ii).....

.....

Provided also that if it is provided that any artificial means or means not authorised by the Board or Licensee exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

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2.) [Any officer of the licensee or supplier as the case may be ,authorised] in this behalf by the State Government may-

(a) enter, inspect, break open and search any place or premises in which he has reasons to believe that electricity [has been or is being,] , used unauthorisedly ;

(b) search, seize and remove all such devices , instruments, wires and any other facilitator or article which [has been or is being], used for unauthorised use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section(1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and list of all things seized in

the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

.....

(4).....”

The so called defective meter of the Respondent was never sent to third party for testing and exparte declared the meter defective without getting test report from third party replaced the so called defective meter again and again and billed the respondent consumer arbitrarily on 850000 units per month without applying any transparent methodology which is against the provisions of (Electricity Supply Code) Regulation,2005.Moreover,from materials available on record it is not clear that any such device , instrument, wires nor any other facilitator or article which [has been or is being], used for un authorized use of electricity was found during inspection by the Licensee in the said premises of the Respondent/consumer. However, this issue shall be looked into by the appropriate court of law.

On perusal of materials on record it is apparent that the Licensee has not followed the provisions as stipulated in letter and spirit which is contrary to the Electricity Act, 2003.

Hence, this issue is decided in favour of the Respondents.

Findings of Issue No.4.2:

The learned counsel of the Respondent submitted that right from the date of electric connection the licensee JUVNL arbitrarily over billed i.e. raised bills on the basis of 100% of the contract demand on account of Demand Charges which is contrary to the provisions of Tariff Order 2004.

The thrust of the learned counsel of the Respondent is that in CWJC No.1167 of 1994 (M/s Gaya Roller Flour Mills Pvt. Ltd. v/s Bihar State Electricity Board, 1995 Vol.2 PLJR, 715) the Hon'ble Patna High Court has held that no liability on account of delayed payment surcharge can be fastened on the petitioner where he disputed about the correctness of the bill and the authority subsequently corrected the bill by making fresh calculations. Moreover, in the light of settled law passed in M/s Gaya Roller Flour Mills Pvt. Ltd. v/s BSEB the respondent cannot charge DPS from 07/2005 till the revision of the bills.

The contention of the learned counsel for the Licensee JUVNL is that appeal pertaining to similar issue of KVA charges have been filed before the Hon'ble Jharkhand High Court and is still pending.

In the light of settled law passed in M/s Gaya Roller Flour Mills Pvt. Ltd. v/s BSEB the respondent cannot charge DPS from 07/2005 till the revision of the bills. Therefore, the Appellant's letter regarding DPS charge is violative of the law. Accordingly, letter no. 1909 dated 13.07.2010 is illegal and the Forum's Order to prepare fresh bill after taking fresh calculations waiving DPS charges is not interfered.

Therefore, this issue is decided accordingly in favour of the petitioner.

Findings of Issue No.4.3:

The submission of the learned counsel for the licensee JUVNL is that in pursuance of the Order dated 13.02.2007 of the Hon'ble Jharkhand High Court a provisional bill amounting to Rs.2,64,09,207 only was served on the consumer against which 13 cheques were issued which were subsequently dishonored. The aforementioned bill

included the amount assessed against theft of electricity detected on 21.01.2007 and as such it does not attract the provisions of Section 56 of the Electricity Act, 2003 rather the same would be guided by Section 135(1A) and Clause 15.4 of the (Electricity Supply Code) Regulation, 2005. Moreover, the consumer had voluntarily approached the Appellant for settlement of dispute and fixing of installments in order to make payment. Taking compassionate stand 50(fifty) installments were fixed to pay the dues. According to the Licensee the consumer had the option to approach the Chief Engineer for getting AMG charges waived as per clause 13 of the HT agreement instead of raising the issue before the Hon'ble VUSNF and taking into account the facts and circumstances the action of the licensee was well within the ambit of law and the Regulations. The contention of the Appellant is that the learned VUSNF has erred in appreciating the contentions of the Licensee and erred in arriving at the final conclusion due to which the Appellant shall suffer irreparable loss and injury.

The contention of the learned counsel for the Respondent consumer is that since action of the licensee to disconnect the electric line of the consumer has been held illegal as per the Order dated 13.02.2007 in W.P.C.No.555/07 by the Hon'ble Jharkhand High Court therefore, charging of AMG can not be said to be lawfully correct because no person can get benefit of its own wrong and hence, no guarantee charge can be charged during the illegal disconnection period.

Hence, the learned Forum has rightly observed that guarantee charges during illegal disconnection period is illegal.

Thus, the Order passed by the Forum is based upon the relevant facts as well as applicable provisions of law and hence requires no interference.

Accordingly, the third issue is decided in favour of the Respondents.

Conclusion:

I have gone through the documents produced by the parties on record. I have carefully considered their submissions. In the result, I do not find any merit in this appeal and accordingly the Judgment/Order of the learned VUSNF passed on 08.03.2014 in Case No.14/2010;02/2012 and 11/2011; 04/2012 is hereby confirmed and this appeal is dismissed.

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

Sd/-
Electricity Ombudsman