

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

Case No. EOJ/03/2009

Dated- 22nd December, 2009

M/s Bisco Sponge Pvt Ltd.	Appellant(s)
	Versus	
JSEB through its Chairman & others	Respondent(s)

Present:

Shri Arun Kumar Datta	Electricity Ombudsman
Shri D. K.Pathak	Advocate for the petitioner
Shri Vijay Gupta	Advocate
Shri Rajesh Shankar	Advocate for the respondent Board
Shri Abhay Prakash	Advocate

J U D G E M E N T

1. The petitioner/ appellant M/s Bisco Sponge Pvt. Ltd. having its place of working at 4th Phase, Industrial Area, Gamharia, Jamshedpur, through its one of the Director Gajanand Bhalotia, Son of Late Matadeen Bhalotia, Residing at R-Road, Bistupur, Jamshedpur, Dist.-Singhbhum East, has filed this appeal against the Judgement/order passed by Learned Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as VUSNF) of Jharkhand State Electricity Board (In short to be referred as JSEB), Ranchi in case no. 36/07 dated 17.04.2009 for redressal of his grievance.

2. The brief facts of this case is that the appellant was granted an electrical connection for running his industries being consumer No.HJAP/170 at 11 KV under HTS mode of tariff for a contract demand of 210 KVA on 04.07.2000. It has been stated on behalf of the appellant that earlier the appellant had filed for correction of energy bills for the period of January, 04 and onwards before the General Manager-Cum-Chief Engineer,

Electric Supply Area, Jamshedpur for redressal of his grievances but his grievance was not redressed, therefore appellant had filed a representation before the VUSNF of JSEB, Ranchi where his grievances were not redressed. As such being aggrieved by and dissatisfied with the Judgement/ order of VUSNF of JSEB, Ranchi, the appellant has filed this representation/appeal before this Forum for redressal of his grievances.

3. According to the appellant, the respondents are still charging in accordance with 1993 tariff of Bihar State Electricity Board (In short to be referred as BSEB) which is illegal and after the framing and notification of tariff order of 2003-04 from 01.01.2004, the respondents/Board is bound to follow this present tariff order of the Jharkhand State Electricity Regulatory Commission ((In short to be referred as JSERC). The tariff order of 2003-04 of JSERC has approved the tariff for HTS consumers in table No. 5.31, 5.32 & 5.33 which are as below:

Table 5.31: Approved tariff for HT Consumers

DESCRIPTION	TARIFF
Rs./KVA/Month	DEMAND CHARGE
HTS-I	140
HTS-II	140
EHTS	140
	ENERGY CHARGE
Rs./KWh/Month	
HTS-I	4.00
HTS-II	4.00
EHTS	4.00
	Minimum Monthly Charge (MMC)
HTS-I and HTS-II	Rs. 250/KVA/Month
EHTS	Rs. 400/KVA/Month

Table 5.32: Voltage rebate for HT Consumers

Load factor	Voltage rebate
Supply at 33KV	5%
Supply at 132 KV	7.5%

Table 5.33: Load factor rebate for HT Consumers

Load factor	Load factor rebate
40-60%	5%
60-70%	7.5%
Above 70%	10%

As such, according to the appellant from 01.01.2004 there remained in the one gurantee charge namely; Minimum Monthly Charge (MMC) and the previous stipulations i.e AMG charges based on “Minimum Monthly Demand charge on the basis of actual maximum demand of the month or 75% of the contract demand whichever is higher and energy charges based on load factor of 25% /30%/50% etc. had been done away with. Thus, according to the appellant the respondents can not charge more than the tariff order of JSERC for the year 2003-04 and the appellant liable to pay only the actual recorded KVA in the meter and not on the basis of 75% of the contract demand.

4. On the aforesaid grounds the appellant has prayed for setting aside the energy bills issued by respondents Board against the appellant’s connection No. HJAP/170 for the period 01.01.2004 till date and to direct the respondents to revise all the said bills on the basis of actual recorded KVA along with the other provisions provided under the current provisions of tariff order 2003-04 subject to the Monthly Minimum Charge (MMC) and to direct the respondents to refund/adjust the excess amount paid by the appellant with interest @ 2% per month as provided under Clause 11.10.3 of the Electrical Supply (Code) Regulations.

5. The respondent Board has also contested this appeal by filing counter affidavit. It has been asserted by respondents in its counter affidavit that the tariff orders of 2003-04 issued by JSERC there are two broad parts. The schedule of tariff is contained in the first part which was made effective from 01.01.2004. The schedule of tariff means the rate on different accounts i.e., KVA, KWH on the basis of which the energy bills are to be calculated by the JSEB for raising the same towards the consumers for payments. The second part of tariff order 2003-04 of JSERC contains the terms and conditions of supply of electricity which are the integral part of any tariff order/notification. Earlier the BSEB had been issuing the tariff notifications from time to time, which was also adopted by the JSEB after its creation. While submitting the tariff petition 2003-04 before JSERC, the JSEB had submitted number of clauses of the existing terms and conditions of supply of electricity for the consideration of JSERC. Clause 5.30 of the tariff order 2003-04 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 state. 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”.

Thus, according to the respondents in view of the aforesaid Clause in spite of the submissions of existing terms and conditions of supply of electricity before the JSERC those were not dealt with the tariff order of 2003-04 in respect of power factor surcharge and delayed payment surcharge as it is required a detailed and in-depth analysis. Therefore, the JSERC has consciously mentioned in Clause 1.4 of the terms and conditions of supply of tariff order 2003-04 that all other terms and conditions shall remain the same as existing in the state. The Clause 1.4 of the terms and conditions of supply 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”.

Besides, the execution of agreement between licensee and consumer has also the integral part of supply of electricity and parties are bound by the terms and conditions of the agreement also. Clause 4© of the HT agreement clearly stipulated that the maximum demand charges for supply of electricity would be based on the maximum KVA demand for the month or 75% of the contract demand whichever is higher. Therefore, in view of Clause 4© of the HT agreement, the minimum billing on account of demand charges can not be less than 75% of the contract demand in absence of the same the complete financing structure of licensees would collapse, since licensee has to make the contracted quantum of electricity available to the consumer by purchasing the electricity from other generation/ transmission companies. As such, fixing a lower limit of consumption of 75% of the contract demand is completely justified and legal therefore, billing raised

from the consumers/ appellant for each month are therefore, fully justified in accordance with law. Thus, according to the respondents Board, the appellant is not entitled for any relief(s) as claimed by the consumer/ appellant and therefore the appeal is fit to be dismissed by this Forum.

FINDINGS

6. It has been submitted by the learned lawyer of the appellant Sri D.K. Pathak appearing on behalf of the appellant that the order of the learned VUSNF dated 17.04.2009 passed in case no 36/07 is contrary to law and principles laid down by this learned Forum as earlier held in the case of M/s Maa Chinnmastika Sponge Iron Pvt. Ltd. in case no. EOJ/14/2007 which was also the case of HTS consumers. In reply of counter affidavit filed on behalf of the respondents, the appellant has also asserted that the similar issues raised by the respondent Board as against the HTSS consumers has already been adjudicated upon, decided and set at rest by this Forum in the case of JSEB & others Vrs. M/s T&T Metals Pvt. Ltd. in case no. EOJ/01/06 and other case no. EOJ/03/06. Thus the same ratio as laid down by this learned Forum in aforesaid cases of M/s T & T Metals Pt. Ltd. and others and similarly situated cases like; in the case of M/s Maa Chinnmastika Sponge Iron Pvt. Ltd. must be followed in this case also and the appellant may be held as not entitled to charge any KVA amount from the respondents on fixed basis of 75% and they must be, in the light of provisions of current applicable tariff, and therefore respondents/Board may be directed to raise bills on the basis of actual consumed/recorded KVA and to adjust the all excess paid amount . It has been further submitted on behalf of the appellant that the JSEB in its proposal made to the JSERC itself opted for switching over from the above referred concept of “Monthly Minimum Demand Charge @ 75% of the contract demand or actual demand of the month whichever is higher” and energy charges @ “load factor of 25% and power factor of 0.85”, both the aforesaid demands on AMG based to “AMG Charge based on load factor of 25% and power factor of 0.9 on contract demand”. The Learned lawyer of the appellant has referred to HTS-I consumers at page no.111 in table no. 5.27of tariff order 2003-04. The JSERC after consideration of JSEB, refused to accept the proposals made by the JSEB and refused to enhance the tariff for HT Consumers, as demanded and decided to merge the HTS categories in order to rationalize and simplify the tariff

structure. The tariff approved by the Commission for HTS Consumers has been given in table nos. 5.31 and 5.32 at page 115 of the tariff order 2003-04 of the JSERC and as such in view of the aforesaid tariff order of the JSERC, the respondents Board are bound to charge monthly bills upon the appellant on the basis of said tariff order of 2003-04. Thus, according to the learned lawyer of the appellant the earlier tariff of 75% of the contract demand whichever is higher has been replaced by Monthly Minimum Charge (MMC) in tariff order of JSERC 2003-04 and the appellant can only be charged on the basis of actual energy units (KWH) and maximum demand units (KVA) subject to Minimum Monthly Charge (MMC). It has been further submitted that Clause 4© of the agreement is inconsistent with the tariff order of 2003-04. Clause 11 of the aforesaid HT agreement executed between the parties also laid down in case of inconsistency between the tariff order and the agreement, the tariff will prevail. The order of the JSERC dated 07.02.2006 and JSERC letter No. 03/BNP/617 dated December 19th, 2005 also goes to show that the earlier tariff issued by BSEB are not applicable after 01.01.2004 the date on which the tariff order of JSERC of 2003-04 has come into force.

7. On the other hand, it has been submitted by Sri Rajesh Shankar, learned lawyer on the behalf of the respondents Board that the contention of the appellant can not be accepted that the respondents Board can not charge the maximum demand charge for supply on the maximum KV demand for the month or 75% of the contract demand whichever is higher in view of the tariff order of 2003-04 of the JSERC and in view of the 4© of the agreement executed between both the parties. According to the learned lawyer of the respondents Board, the minimum monthly charges (MMC) is not a substitute for the maximum KV demand for the month or 75% of the contract demand whichever is higher nor it has been done away with. MMC is not concerned with demand charge rather MMC is concerned with energy charge. It is mentioned at page 115 of the tariff order 2003-04 of JSERC which reads as follows: The Commission has assumed a minimum level of supply and a minimum level of consumption.....

“The Commission would like to explicitly mention that if the consumption exceeds the mentioned load factor, no minimum charge would be applicable”.

Clause 5.4 of the JSERC tariff order of 2003-04 at page 83 & 84 goes to show that there are two parts of tariff structure and minimum gurantee charges which reads that

“a rational tariff structure requires a two part tariff structures incorporating fixed charges to reflect the fixed costs. It is, therefore, essential that these fixed costs be reflected as fixed charges recovered from the consumers”.

“For Financial year 2003-04 fixed costs comprise of approximately 28 % of the total costs of the JSEB, whereas the revenue from fixed charges at existing tariffs is only 14.61 %. There is thus a distortion in the existing tariff structure that needs to be addressed. At the same time, if the entire fixed costs are recovered through fixed charges, then there will not be sufficient incentive for the Board to maximize the sale of electricity, as a significant portion of its expenses are fixed in nature. JSERC tariff 2003-04 at page 84 further reads that “The difference between fixed charges and minimum charges is that while fixed charges are charged from consumers irrespective of consumption, minimum charges are levied only when the bill of the consumer is less than a pre specified amount”.

“Ideally, the fixed/demand charge should be levied in proportion of the demand placed by any individual consumer on the system. This is so because it facilitates the utility in designing an appropriate system to cater to the supply needs of a consumer and is therefore a just and fair mechanism for recovering fixed costs of the system. Thus, the fixed/demand charge should be proportionally related to the load of the category. In the existing tariff structure, all consumer categories are paying a fixed charge on the basis of their load except the domestic consumers and unmetered commercial consumers who are paying a fixed charge on a per connection basis. The Commission has not changed the basis for levying fixed charge on this category in this tariff order as the information and database of the Board is not adequate. The Commission however, intends to move in this direction in future and directs that the Board should make efforts to update its existing database on connected load”.

8. It has been further submitted on behalf of the respondents Board that if energy charges goes down towards the minimum level of consumption then in place of charging actual units recorded in the meter charging will be done on the basis of MMC. Demand charge is a separate charge to refer fixed costs of licensees and the same can not be mixed up with the energy charge or the MMC. Charging of 75% above of the contract demand is a demand charge whereas energy charges is based on actual recorded in the meter.

After going through the Clause 5.4 at page 83 and 84 of the JSERC tariff order of 2003-04 which is also the approved tariff of HT consumers at page 115 in table no.5.31 of tariff order 2003-04 of JSERC I am also of the view that MMC is mention at Table no. 5.31 of the tariff order 2003-04 of JSERC can not be said to have replaced the Clause 4© of the agreement executed between both the parties and it is also not inconsistent with the tariff order of 2003-04. Because of the aforesaid reasons, there is no force in contention of the learned lawyer of the appellant that the tariff approved for HT Consumers by JSERC showing MMC has down away with 75% of the contract demand whichever is higher as earlier used to be charged in the old tariff of BSEB. Further the Clause (Resolution) 5.30 at page 123 of the tariff order 2003-04 under heading terms and conditions of supply 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 at 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 “.

The Clause 1.4 at page 148 under heading terms and conditions of supply 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”.

In this regard, the learned lawyer of the appellant has submitted that this saving Clause 1.4 at page 148 and Clause/resolution No. 5.30 terms and conditions of supply at page 123 is of no help for the respondents Board because the JSERC has notified the Electricity Supply (Code) Regulations, 2005 in which there is no mention that the respondents Board can charge 75% of the contract demand whichever is higher rather Clause 3.3.1 at page 221 of the Electricity Supply (Code) Regulations, 2005 dated 28.07.2005 lays down that

“The distribution licensee shall recover the electricity charges for the electricity supplied to the consumer as per the tariff determined by the Commission from time to time in accordance with the provision of Electricity Act 2003”.

Thus after passing of the Electricity Supply (Code) Regulations, 2005 by JSERC the respondents Board can not charge the same. On the other hand it has been submitted by the learned lawyer of the respondents Board that the Electricity Supply (Code) Regulations, 2005 does not prohibit charges of 75% of the contract demand nor ordered by the JSERC dated 07.02.2006 nor the JSERC’s letter no. 03/BNP/617 dated December 19th , 2005 prohibits for charging of 75% of the contract demand. Therefore in accordance with the agreement executed between both the parties as described in Clause 4© of the agreement the appellant is bound to pay the maximum KV demand for the month or 75% of the contract demand whichever is higher.

9. This is a established law that the agreement executed between both the parties are binding if it is not specifically against any law. Clause 11 of the aforesaid agreement further lays down that in case of inconsistency between the tariff order of 2003-04 and the agreement the tariff will prevail. From the aforesaid discussions and findings made above, I am led to hold that there is no inconsistency between the agreement and the JSERC tariff order of 2003-04 and also there is no inconsistency between the Electricity Supply (Code) Regulations, 2005. Clause 5 under heading requisition for supply, Clause 5.1 in chapter 5 at page no. 222 of the Electricity Supply (Code) Regulations, 2005 also lays down that the licensees shall necessarily supply two copies of agreement format, one copy of tariff schedule and one copy of Electricity Supply (Code) along with the application forms. Chapter 7 at page 228 of the Electricity Supply Code is about the agreement. Chapter 7.3 (iii) is the sanctioned load/contract demand. Contract demand has been defined in chapter 2.1 (l) at page 220 which lays down that

“Contract Demand” means demand in Kilowatt (KW) or Kilo Volt amperes (KVA) or H.P (Horse Power) mutually agreed between the Distribution Licensee and the consumer as entered into agreement or agreed through other written communication”.

As such the agreement executed between the appellant and respondents Board are binding on both the parties because it is not inconsistent with the tariff order 2003-04.

10. Much stress has been given by the learned lawyer of the appellant on the Judgement/order passed by the previous Ombudsman in case no. EOJ/01/06 of T & T Metals (P) Ltd. and another case No. EOJ/14/07 of M/s Chinnamastika Sponge Iron (P) Ltd. The learned lawyer of the appellant has filed a ruling of the Hon'ble Supreme Court held in the case of Union of India and others Vrs. Ramlakshi Finance Corporation Ltd. reported in 992 Supp (1) Supreme Court cases at page 443 in which the Hon'ble Supreme Court has held that the order of the appellate Court/Forum is binding on lower Court/Forum. In view of the aforesaid ruling the VUSNF should have also allowed the prayer of consumer/appellant on the same principles as earlier held by previous Ombudsman in case no. EOJ/01/06 of T & T Metals (P) Ltd. & other case no. EOJ/14/07 of M/s Maa Chinnamastika Sponge Iron (P) Ltd. On perusal of the Judgement/order of the VUSNF passed in this case, it is found that the learned VUSNF has relied on the order passed by the Hon'ble Jharkhand High Court in case no. WP© no. 1687 of 2007. I have gone through the order passed by the Hon'ble Jharkhand High Court in WP© 1687 of 2007 which was passed in the case of M/s T & T Metals (P) Ltd. and the Hon'ble Court has passed an interim order that

“Considering the above, this I.A is disposed of giving liberty to the petitioner Board to raise bills in terms of the agreement between the Board and the respondent pending hearing and until further order in this writ petition”. The learned lawyer of appellant has submitted that the order passed by Ombudsman has not been stayed by the Hon'ble Jharkhand High Court. In this regard, on perusal of the aforesaid order passed in WP© 1687 of 2007 it is further found that the Hon'ble Court has held that “ So far the adjustment part is concerned, since the adjustment is of the amount paid by the consumer and the same is computable in terms of money, I find no reason to stay the said part of the order of the learned Ombudsman. However, any adjustment/payment in the meanwhile shall be subject to the result of this writ petition”. On the perusal of the aforesaid order it is found that the Hon'ble Jharkhand High Court has ordered the petitioner Board to raise bills in terms of agreement between the Board and the respondent. Beside it in another ruling held in the case of M/s Kumardhubi Steels (P) Ltd. in case no.WP© No. 5150 of 2007 the Hon'ble Jharkhand High Court has also held at paragraph 15 that “ Be that as it

may, even otherwise the Board is bound by the Agreement and the tariff of 2003-04 and its schedule thereto”.

11. Thus from the aforesaid discussions and findings I am led to hold that the agreement executed between the appellant and respondent Board is not inconsistent with the JSERC tariff order of 2003-04 therefore, the bills raised by the respondent Board to appellant (Consumer No. HJAP-170) for a contract demand of 210 at 11KV is not illegal and charging of maximum demand charge of supply in any month based on maximum KVA recorded for the month or 75% of the contract demand whichever is higher is in accordance with the agreement between the consumer/appellant and the respondent Board and as such it is legally binding on the consumer/appellant.

On perusal of the Judgement of the VUSNF I do not find any illegality in it and hence the Judgement/order of the VUSNF passed in case no. 36/07 dated 17.04.2009 hereby is confirmed and it is held that the consumer/appellant is liable to pay on the basis of the actual maximum demand recorded in the meter or 75% of the contract demand whichever is higher and therefore the consumer/appellant is not entitled for the relief(s) as prayed by him.

In the result, this appeal is devoid of any merit. Hence this appeal is dismissed.

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

Sd/-
Electricity Ombudsman