

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

Case No. EOJ/03/2010

Dated- 30th September, 2010

| | | |
|---|---------------|----------------------|
| JSEB through its Chairman & others | | Appellant(s) |
| | Versus | |
| M/s Renuka Ispat Pvt. Ltd. | | Respondent(s) |

Present:

| | |
|------------------------------|--|
| Shri Arun Kumar Datta | Electricity Ombudsman |
| Shri Rajesh Shankar | Counsel for appellant Board |
| Shri Dheeraj Kumar | Addl. Counsel for appellant Board |
| Shri Ajit Kumar | Counsel for the respondent |
| Shri Vijay Gupta | Advocate for the respondent |

J U D G E M E N T

1. Being aggrieved by and dissatisfied with the Judgement/order dated 17/03/2010 passed in case no. 16/2007 by the Learned Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as VUSNF) of JSEB, Ranchi this appeal has been filed by the appellant/ JSEB. The learned VUSNF of JSEB, Ranchi by its Judgement/order dated 17/03/2010 passed in case no. 16/2007 has allowed the representation of the respondent/consumer and has held that the disconnection of the respondent's firm was illegal and therefore the impugned energy bill dated 02/05/2007 for the period from 11/2006 to 03/2007 raised on the basis of minimum monthly charges was quashed on the ground that the respondent's electrical connection was illegally disconnected on 16/11/2006, though no compensation was allowed to respondent/consumer.
2. The brief facts of this case is that the respondent's company is a consumer having Consumer no. KT 1719 under H.T.S.S. mode of tariff 2003-04 and the respondent's

electrical connection was energized by the appellant/JSEB on 01/02/2006 and thereafter the JSEB/appellant started raising bills in accordance with the aforesaid tariff and in accordance with the HT agreement executed between both the parties. The further case of appellant/JSEB is that the bills for the month of November, 2006 to March, 2007 is completely justified legal and payable by the consumer/respondent and as such the disconnection notice dated 01/06/2007 amounting to Rs. 91, 11,963 (Rs. ninety one lakhs eleven thousand nine hundred & sixty three) is also justified because the respondent/consumer failed to deposit the said amount. The JSEB has raised a demand of Rs. 34, 88, 466/- (Rs. thirty four lakhs eighty eight thousand four hundred & sixty six) in the monthly energy bills of October, 2006 in which included the arrear for the month of September, 2006 amounting to Rs. 17,38,136/- (Rs. Seventeen Lakhs thirty eight thousand one hundred & thirty six) and the current energy bill of October, 2006 also shows the arrear of Rs. 26,40,860/-(twenty six lakhs forty thousand eight hundred & sixty) in relation to the dues of the installment fixed by the JSEB up to August, 2006 for payment of security deposit but the aforesaid installment dues were not included in the demand raised in the monthly bill of October,2006 which was raised on 01/11/2006. The consumer/respondent did not deposit the monthly bill of September, 2006 till due date which was 23/10/2006 and even till 01/11/2006 which is the date of raising of the bill for the next month of October, 2006, a disconnection notice was issued for non-payment of energy bill of Rs. 17,38,136/-(Rs. Seventeen lakhs thirty eight thousand one hundred & thirty six) on 01/11/2006 itself by which the respondent/consumer was asked to make the payment of the aforesaid dues within 15 days from the date of issuance of the said notice. But in spite of the aforesaid demand notice the consumer/respondent did not deposit the aforesaid dues of the appellant/JSEB in spite of disconnection notice dated 01/11/2006 till 16/11/2006, therefore the electrical connection of the respondent was disconnected after office hours at 5.00 P.M.. Thereafter the consumer/respondent had moved before the Hon'ble High Court of Jharkhand, Ranchi by filing WP© no. 557/2007, which was disposed of vide order dated 28/03/2007 giving liberty to the consumer/respondent to deposit the amount contained in bill date i.e, 01/11/2006 and in doing so the JSEB was directed to restore its electrical connection of respondent/consumer within 24 hours. According to the JSEB/Appellant the disconnection of electricity connection of the

consumer/respondent made by the JSEB on 16/11/2006 was not declared illegal by the Hon'ble Jharkhand High Court, Ranchi in its order dated 28/03/2007. But the consumer/respondent re-agitated this issue of disconnection of its electrical line on 16/11/2006 which the respondent had already raised before the Hon'ble Jharkhand High Court, Ranchi in WP© No. 557/2007 and as such prayer of the respondent/consumer is bared by principle of constrictive resjudicata. Further the consumer/respondent again raised about the legality or illegality of the disconnection of his electrical line on 16/11/2006 because the respondent did not make the payment of dues amounting to Rs. 17, 38,136/- ((Rs. Seventeen lakhs thirty eight thousand one hundred & thirty six) as mentioned in the notice dated 01/11/2006 till the disconnection was made. Besides it the respondent/consumer also can not say that the disconnection was made by the JSEB without giving clear 15 days notice when no payment was made by it within the said period as per its counting and non-payment of the due amount by the respondent/consumer shows it is malafide intention to evade the lawful demand of the Board. Therefore the minimum gurantee bill raised by the appellat/JSEB from 16/11/2006 to 31/03/2007 for an amount of Rs.84, 00, 000/- lakhs (Rs. Eighty Four lakhs) is completely justified and payable by the consumer/respondent. Besides it the respondent is also liable to pay Rs. 7, 11,963/- (Rs. Seven lakhs eleven thousand nine hundred & sixty three) towards the arrear of load factor rebate and as such the respondent is liable to make full payment of Rs. 91, 11,963/- (Rs. Ninety one lakhs eleven thousand nine hundred & sixty three) as mentioned in subsequent notice of disconnection dated 01/06/2007. The financial lose caused to the respondent/consumer can not be attributed to the JSEB and as such according to the appellat/JSEB the Judgement/order of the learned VUSNF of JSEB, Ranchi is fit to be set aside by which the VUSNF vide its order dated 17/03/2010 in case no. 16/2007 has quashed the impugned bills dated 02/05/2007 raised by the JSEB/appellant which bill was raised on the basis of minimum monthly charges (MMC) for the period from 11/2006 to 03/2007 during which the power supply of the consumer/respondent remained illegally disconnected.

3. On the other hand, the case of consumer/respondent in brief is that on 01/11/2006 the respondent/consumer was served a bill for the month of October, 2006 amounting to Rs. 34, 88,466/- (Rs. thirty four lakhs eighty eight thousand four hundred & sixty six)

which also included the arrears of Rs. 17, 38,136/- ((Rs. Seventeen lakhs thirty eight thousand one hundred & thirty six) upon which there was already an agreement of installment with the JSEB. On 02/11/2006 the respondent/consumer was served a disconnection notice for a demand of Rs. 17, 38,136/- (Rs. seventeen lakhs thirty eight thousand one hundred & thirty six). The aforesaid disconnection notice was served to the respondent/consumer on 02/11/2006 in the afternoon which is proved from the certificate given by the concerned Post office, which was sent from the Office of the JSEB/ appellant through registered post bearing R.No. 5643 on 01/11/2006.

4. The further case of respondent/consumer is that in accordance with the settled law the period of 15 clear days notice has to be served to the consumer/respondent omitting the both terminal dates and as such this 15 clear days notice was to be completed on 18/11/2006 but the appellant/JSEB had illegally disconnected the power supply of the respondent/consumer two days earlier i.e, on 16/11/2006 but the JSEB/appellant did not allow the respondent/consumer the full notice period and have disconnected the power supply of electricity premature which has caused huge production and financial losses to the respondent/consumer. As the disconnection of power supply of the consumer/respondent was illegal therefore the respondent/consumer is not liable to pay any gurantee charge for the disconnection period and the respondent/consumer is rather entitled to get suitable compensation from the appellant/JSEB for its financial and production losses suffered by it. The respondent/consumer had moved the Hon'ble Jharkhand High Court in WP© no. 557 of 2007 for immediate restoration of power supply and other reliefs and the Hon'ble Court vide its order dated 28/03/2007 in the aforesaid writ petition has directed the consumer/respondent to deposit the bill dated 01/11/2006 and on depositing the bill amount the electricity supply of consumer/respondent was ordered to be restored by the JSEB within 24 hours and thereafter the respondent deposited the energy bill dated 01/11/2006 and the electrical connection of respondent was restored soon thereafter on 31/03/2007. The respondent has further asserted that the disconnection dated 16/11/2006 was itself illegal, but the JSEB/appellant very illegally vide bill dated 02/05/2007 had raised energy bill for the month of April,2007 and also included the minimum monthly charges for the disconnection period i.e, from 11/2006 to 03/2007 amounting to Rs. 16,80,000/- per

month which is illegal and against the settled law of the land and therefore the learned VUSNF of JSEB, Ranchi has rightly quashed the illegal demand of the appellant/JSEB. Therefore, the respondent/consumer had again moved the Hon'ble Jharkhand High Court by filing WP© No. 3193 of 2007 and the Hon'ble Court had directed the consumer/respondent to move the learned Forum within 10 days and in the meantime no coercive steps shall be taken against the respondent/consumer and in accordance with the direction of the Hon'ble High Court of Jharkhand, the respondent had moved the learned VUSNF of JSEB, Ranchi which was registered as case no. 16 of 2007 and the learned VUSNF has disposed of the case of the respondent on 17/03/2010. On the aforesaid grounds the respondent/consumer has prayed that the Judgement/order passed by the VUSNF of JSEB, Ranchi is fully justified and it does not require any interference by this Forum as such the appeal of the appellant/JSEB is fit to be dismissed.

5. On the pleading of both the parties and documents filed on behalf of the both the parties, the following issues are framed for their discussions and decisions thereon.

ISSUES

- (1) Whether the JSEB/appellant gave 15 clear days notice to the consumer/respondent for paying the energy bill before the disconnection of power supply on 16/11/2006 by the appellant/JSEB?
- (2) Whether the impugned energy bill dated 02/05/2007 for a period from 11/2006 to 03/2007 raised on the basis of minimum monthly charges is fit to be quashed or not .
- (3) Whether the consumer/respondent is entitled for any compensation for its production and financial lose in view of the alleged disconnection of power supply of the consumer/respondent during the aforesaid period from 11/2006 to 03/2007.

FINDINGS

6. **Issue no. 1.** - On this issue it has been contended by Shri Rajesh Shankar, the learned Standing Counsel appearing on behalf of appellant/JSEB that, Section 56 of the Electricity Act, 2003 only lays down to give not less than 15 clear days notice for disconnection of power supply in writing and the Section 56 of the Electricity Act, 2003

does not say that the power supply of any consumer can be disconnected after serving 15 days clear notice. The aforesaid demand notice was given to consumer/respondent on 01/11/2006 and electrical line of respondent/consumer was disconnected on 16/11/2006 which is after 15 days of notice. Further, it has been argued on behalf of appellant/JSEB that after disconnection of electrical line of the respondent on 16/11/2006, the consumer/respondent did not make the payment of dues amounting to Rs. 17, 38,136/- as mentioned in the notice dated 01/11/2006. In view of proviso of Section 56 of the Electricity Act, 2003 by which the consumer/respondent could have deposited aforesaid amount under protest and therefore the ruling of the Hon'ble Andhra Pradesh High Court reported in AIR 1986 A.P 36 held in the case of Andhra Pradesh Carbides Limited Vrs. Andhra Pradesh State Electricity Board, Hyderabad does not help the respondent/consumer because in the aforesaid case the consumer has deposited the dues amount. Therefore according to the learned Counsel of appellant the aforesaid ruling does not help the consumer/ respondent in this case because the consumer/respondent has not deposited the dues amount under protest. On the other hand the ruling reported in (1999)7 Supreme Cases of 510 held in the case of K. Bhaskaran Vrs. Sankaran Vaidhyan Balan and another fits in this case in which the Hon'ble Apex Court has held that "the context envisaged in Section 138 of the Act invites a liberal interpretation for the person who has a statutory obligation to give notice because he is presumed to be the loser in the transaction and it is for his interest the very provision is made by the Legislature.....A payee can send for the notice doing his part for giving the notice. Once it is dispatched his part is over and the next depends on what the sendee does. Therefore, according to the learned Counsel of appellant in view of the aforesaid ruling the appellant/JSEB has given 15 days notice on 01/11/2006 and when the dues amount was not deposited by the respondent/consumer then after 15 days of giving notice the electrical connection of consumer/respondent was disconnected on 16/11/2006 after office hour. On the other hand it has been submitted by Shri Ajit Kumar, the learned Counsel appearing on behalf of consumer/respondent that the aforesaid ruling is not applicable into the facts and circumstances of this case because the aforesaid ruling has been made while interpreting the Section 138 of the second part of Negotiable Instruments Act where the payee has the statutory obligation to "make a the demand" by

giving notice, the words in clause (b) of the proviso to Section 138 of the aforesaid Act. I also find force in the aforesaid argument of the learned Counsel of consumer/respondent because the aforesaid ruling has been made while interpreting Section 138 Clause (b) of the Negotiable Instruments Act.

7. In the aforesaid ruling it has been held by the Hon'ble Apex Court that "on the part of the payee he has to make a demand by "giving a notice" in writing. If that was only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such "giving" the travails of the prosecution would have been very much lessened. But the Legislature says that failure on the part of the drawer to pay the amount should be within 15 days "of the receipt" of the said notice. It is, therefore, clear that "giving notice" in the context is not the same as receipt of notice giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer at the correct address. Therefore, in my view the aforesaid ruling relied and filed on behalf of appellant does not help the case of appellant into the facts and circumstances of this case rather ruling reported in (1961) 3SCR 609. AIR 1967 SC 684 held in the case of Pioneer Motors (P) Ltd. Vrs. Municipal Council, and AIR 1986 AP 37 which have been filed on behalf of consumer/respondent is fully applicable into the facts and circumstances of this case. In the aforesaid Andhra Pradesh ruling the Hon'ble High Court has clearly held at paragraph 15 of its Judgement that the 15 days notice for payment of electricity charges is to be counted not from the 'date' mentioned in the demand notice but from the "date of service" of the said demand notice. The Hon'ble Andhra Pradesh High Court has relied on the ruling held in the case of Hon'ble Supreme Court in the case of Raja Harish Chandra Vrs. Deputy Land Acquisition Officer, reported in AIR 1961 SC Court 1500. The learned Counsel appearing of behalf of consumer/respondent has also relied and filed a aforesaid ruling of the Hon'ble Supreme Court which has been reported in AIR 1961 SC 1500 in which the Hon'ble Supreme Court has also held that the period of limitation prescribed from the date of the award in Section 18(2) (b) of Land Acquisition Act has to be due computed towards "date of the award" due as amounting of receipt of the award. This is also the view of the Hon'ble Supreme Court held in the case of Pioneer Motors (P) Ltd. Vrs Municipal Council which has been reported in (1961) 3SCR 609,

AIR 1967 SC 684. In the aforesaid ruling the Hon'ble Supreme Court has held at paragraph 8 that the words "not being less than one month" do imply that clear one month's notice was necessary to be given, i.e., both the first day and the last day for the month had to be excluded. To Put it in the language used by Maxwell on interpretation of statutes, 10th Edition at page 351 is that "when not less than' so many days are to be intervene, both the terminal days are excluded from the computation". Similarly the Section 56 of the Electricity Act, 2003 also lays down that after giving not less than 15 clear days notice in writing before disconnection of the supply in default of payment by the consumer may be made. The learned Counsel appearing on behalf of consumer/respondent has also relied and filed the ruling reported in (2) PLGR 810 (Ranchi Bench) held in the case of I.V.O Pharmaceutical (P) Ltd. and others Vrs BSEB and AIR 1987 Rajasthan 33 held in the case of Rajasthan State Electricity Board, Jaipur Vrs. Dr. Madan (P) Joshi. In the aforesaid ruling reported in AIR Rajasthan AIR 1987 Rajasthan 33 and (2) PLGR 810 Ranchi Bench, the Hon'ble Court has held that the Board must serve a separate notice under Section 24(I) before cutting of supply of energy and the bill can not be construed to be service of notice. Both these rulings help the case of consumer/respondent that in both the cases service of notice has been held to be served on the consumer/respondent before 15 days clear notice for disconnection and therefore I do not find any force in the contention raised on behalf of appellant/JSEB that by only giving 15 days notice the appellant/JSEB is legally entitled to disconnect the electrical connection of the consumer/respondent.

8. It has been asserted by the appellant/JSEB in its Memo of appeal that the consumer/respondent had agitated about the illegal disconnection in WP© no. 557/2007 but the Hon'ble High Court of Jharkhand has not held that the disconnection of the respondent as illegal and as such the case of the respondent/consumer is bared by principle of constructive resjudicata. On the other hand it has been submitted by the learned Counsel of the consumer/respondent that the principle of constructive resjudicata does not apply in this case because this matter has not been adjudicated or decided by the Hon'ble Jharkhand High Court in WP© no. 557/2007 and in WP© no. 3193/2007 dated 21/06/2007. The Hon'ble Jharkhand High Court has directed the respondent to approach the Forum within 10 days and in accordance with the aforesaid direction the consumer

had moved before the learned VUSNF and the learned VUSNF has allowed the representation of the respondent/consumer and the learned VUSNF had quashed the impugned energy bills dated 02/05/2007 and also held that the disconnection of the electric connection of the consumer/respondent was illegal and therefore the appellant/JSEB is not entitled to raise the minimum monthly charges for the period from 11/2006 to 03/2007. I also find force in the aforesaid contentions of the learned Counsel of respondent/consumer that in this case there is no application of constructive Resjudicata. The Hon'ble Jharkhand High Court has not decided that the disconnection of respondent/consumer was illegal or legal and hence this constructive resjudicata can not apply in this case.

9. In the ruling reported in AIR 1986 AP 37, (1961) 3SCR601, AIR 1967 SC 684 Pioneer Motors (P) Ltd. Vrs. Municipal Council, (2) PLGR at page 810 Ranchi Bench, AIR 1987 Rajasthan (33) and AIR 1961 SC 1500 this principle is decided that both intermittent days have to be excluded. In this case the notice of disconnection was issued to respondent/consumer on 01/11/2006 which was served on the respondent/consumer on 02/11/2006 and as such both the terminal dates i.e., 02/11/2006 and 17/11/2006 have to be excluded because the respondent had the time till 17/11/2006 to make payment of dues of the appellant and as such the appellant could have disconnected the electrical supply of respondent on 18/11/2006. The disconnection by the appellant/JSEB on 16/11/2006 is against the Section 56 of the Electricity Act, 2003 and therefore it is held that the appellant/JSEB has illegally disconnected the electrical connection of the respondent/consumer without giving 15 days clear notice to the consumer/respondent and as such this issue no 1 is decided in favour of the consumer/respondent and against the appellant/JSEB.

10. **Issue No. 2.-** On the aforesaid issue it has been contented on behalf of appellant/JSEB that even though the disconnection of electrical connection of the respondent/consumer was disconnected on 16/11/2006 which was for month of September, 2006 of Rs. 17,38, 186/- which was legal bill and as such the disconnection of the electrical connection of consumer/respondent can not be said to be illegal at best it can be termed as irregular and therefore the appellant can not be deprived of huge amount which was dues on account of minimum monthly charges from 11/2006 to 03/2007. On

the other hand it has been submitted by the learned Counsel of consumer/respondent that disconnection of electrical connection of respondent/consumer is illegal because without serving 15 days clear notice the disconnection was made on 16/11/2007 by the appellant/JSEB. This disconnection is illegal because it violets the mandate of law which was envisaged under Section 56 of the Electricity Act, 2003. I found myself in agreement with the aforesaid contentions of the learned Counsel of respondent/consumer that since the disconnection of consumer/respondent was made in violation of the mandate of law which was envisaged under Section 56 of the Electricity Act then it must be held to be illegal and therefore the appellant/JSEB can not raise minimum monthly charges for a period from 11/2006 to 03/2007. This view also finds supports in the ruling held in the case of M/s Electric (Patlipurta) Power Equipment (P) Ltd. Vrs. BSEB and others reported in 1992(2) PLGR at page 62 in which the Hon'ble Division Bench of Patna High Court has held that if the disconnection itself has been found illegal then minimum monthly charges can not be levied on the consumers. There is no force in the contentions of the learned Counsel of appellant/JSEB that the aforesaid ruling has been made when the Hon'ble High Court had directed to connect the electrical supply of the consumer. In the aforesaid ruling the Hon'ble Division Bench of Patna High Court has held at paragraph 4 of its Judgement that "if the Board unlawfully stops supply of energy to the consumer then as to whether it can still lawfully claim annual minimum gurantee charges. The answer is emphatic 'No'. None can be allowed to take advantage of its own wrong or fraud". In view of the aforesaid ruling the energy bill dated 02/05/2007 raised on the basis of minimum monthly charges from 11/2006 to 03/2007 must be quashed and it is accordingly quashed. Accordingly this issue is decided in favour of consumer/respondent and against the appellant/JSEB.

11. **Issue No. 3** - On this issue it has been asserted by the learned Counsel of appellant/JSEB that production and financial losses to the consumer can not be attributed to the appellant/JSEB because the consumption pattern of the petitioner during the month of September, October, November,2006 (upto the date of disconnection) itself goes to show that the energy consumption during the said period had been quite poor i.e., September, 2006 -5000 Kwh, October, 2006- 6600 Kwh, November,2006- 3600Kwh where the average consumption of the consumer/respondent should have been around 10-

12 lakhs Kwh per month. On the other hand it has been submitted by the learned Counsel of respondent/consumer that because of the illegal disconnection of electricity supply of the respondent/consumer, the respondent had suffered the heavy losses of production and financial which should be compensated by this Forum. On perusal of counter affidavit dated 18/08/2010 filed on behalf of respondent/consumer it is mentioned at paragraph 3 that “the order passed by the learned Court below is fully justified and does not require any interference by this Court”. On perusal of Judgement/order of the learned VUSNF dated 17/03/2010 passed in case no. 16/2007 it is mentioned that on this point the learned VUSNF has held that the consumer/respondent is not entitled to any compensation as the losses are bound to occur in both the event whether disconnection of power is legal or illegal. I am also of the same view and therefore it is held that the consumer/respondent is not entitled for any compensation because of the facts and circumstances of this case and accordingly this issue is disposed of.

12. From the aforesaid discussions and findings made above I am led to hold that because of the illegal disconnection of electrical connection of the consumer/respondent without giving 15 days notice to consumer/respondent the energy bills dated 02/05/2007 for the period from 11/2006 to 03/2007 raised on the basis of minimum monthly charges is fit to be quashed, and it is accordingly quashed but in the facts and circumstances of the case the consumer is not entitled for any compensation for illegal disconnection by appellant/JSEB.

13. In the result there is no merit in this appeal, hence this appeal is dismissed and the Judgement/order of learned VUSNF of JSEB, Ranchi dated 17/03/2007 passed in case No. 16/2007 is upheld without any interference.

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

Sd/-
Electricity Ombudsman