

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

Case No. EOJ/03/2008

Dated- 09th May, 2008.

JSEB through its Chairman & Others

.....Appellants(S)

Vrs.

M/s Stan Commodities Pvt. Ltd

.....Respondent/ (S)

Present:

Mr. Sarju Prasad

Electricity Ombudsman

Mr. Rajesh Shanker

Counsel for the JSEB & others

Mr. Abhay Prakash

Advocate

Mr. Ajit Kumar

Counsel for the respondent

Mr. Vijay Kr. Gupta

Advocate

J U D G E M E N T

This appeal has been directed against the order/Judgement dated 06/12/2007 passed in case no. 27/2007 by Vidyut Upbhokta Shikayat Niwaran Forum (in short VUSNF) of JSEB, Ranchi, whereby and where under the petition filed by the consumer/respondent M/s Stan Commodities Pvt. Ltd has been allowed and the impugned electric bills raised by the appellant/JSEB from January' 04 to November, 07 have been quashed, and JSEB has been directed to serve the revised bills on the basis of actual KVA/ maximum demand, recorded in the meter of the consumer for each month and also to adjust the excess payment made by the consumer/ respondent in subsequent bills.

The brief facts; giving rise to this appeal is that M/s Stan Commodities Pvt. Ltd, is a HTSS consumer with induction furnace with contract load of 1200 KVA. The electric connection was energized mon 06-09-1999. The appellant/JSEB started serving on energy bills on the basis of 100% of the contract demand. As per the consumer, the tariff order of Jharkhand State Electricity Regulatory Commission (in short JSERC) which is effective from 1st January, 2004 there is no provision for charging 100% of the contract demand in case the maximum demand recorded in the meter of the consumer is less than the contract demand. Although, in the tariff order of Bihar State Electricity Board (in short BSEB) for the year 2001 there was a provision for billing on the basis of 100% of the contract demand in case there is shortfall on the actual demand recorded in the meter of the consumer on the basis of which the JSEB was charging on 100% of the contract demand where the maximum demand was recorded less than the contract demand, but in the tariff order of JSERC which has been issued under the provisions of new Electricity Act, 2003, there is no provision for billing on the basis of 100% of the contract demand in case there is shortfall in the actual demand recorded in the meter of the consumer. In other words, the JSEB can charge only on the basis of actual maximum demand recorded in the meter of the consumer plus the actual units consumed by the consumer w.e.f. January 2004. But against the provisions of tariff order 2003-2004, the JSEB is charging on the basis of new rates fixed by JSERC in its tariff order and is also charging on the basis of 100% of the contract demand even after the tariff order of JSERC, which is illegal therefore the consumer/respondent moved VUSNF by filing the case no. 27/2007. The JSEB has contested the case and ultimately vide Judgement dated 06/12/2007, the VUSNF allowed the prayer of respondent/ M/s Stan Commodities Pvt. Ltd and directed

the JSEB to issue revised energy bills on the basis of actual maximum demand recorded in the meter of the consumer for each month and to adjust the excess amount paid by the consumer in subsequent bills of the consumer. Against the aforesaid order/Judgement of VUSNF, the present appeal has been filed.

It is worth to mention that in the old Electricity Act the power to fix the tariff was with the respective Boards of the States but under the new Electricity Act, 2003 the power to fix tariff has totally vested upon the States Electricity Regulatory Commissions. Under the aforesaid power, the JSERC has fixed the tariff for the year 2003-04 onwards which is applicable with effect from 01/01/2004.. No doubt in the tariff order of BSEB there was a provision for charging 100% of the contract demand in case of HTSS consumers with induction furnace, in case there is any shortfall on the actual maximum demand recorded in the meter of the consumer. The JSEB has been bifurcated from BSEB with effect from 01/04/2001, the tariff order for induction furnace consumer was introduced for the first time with effect from 01/09/99 which was subsequently repealed by another tariff order, 2001 of BSEB which was notified on 7th May, 2001 and in both the tariff orders there was a provision for charging 100% of the contract demand in case there is any shortfall in the actual maximum demand recorded in the meter of the consumer for each month. Although, the tariff order of BSEB for the year 2001 was published in the official Gazette of Bihar State on 07/05/2001 much after the bifurcation of the JSEB from BSEB but it is apparent that there is no notification in the official gazette of Jharkhand State adopting the tariff order of 2001 issued by BSEB. However, the JSEB went on charging on the basis of 100% of the contract demand in case any shortfall on the actual maximum demand recorded in the meter of the consumer. In the

meantime, the JSEB approached JSERC for fixing the tariff with respect to all categories of consumers including the HTSS consumer with induction furnace. In the tariff order of 2003-04 for the HTSS category of consumer, which appears in page 117 in Clause 5.25 onwards, we find that in place of the existing tariff the JSEB proposed to raise the demand charge from Rs.700/KVA/m to Rs. 750 and the energy charges from Rs.1.20/ unites to Rs. 1.25 . But JSERC did not conceed the demand of JSEB and fixed the demand charge at the rate of Rs. 300/KVA/m however, the energy charge was increased more than double at the rate of Rs. 2.50/ unites and a new provision regarding minimum monthly charge was also introduced at the rate of Rs. 400/KVA/m as it is apparent in table no. 5.36 . The JSERC has mentioned in tariff order a number of other terms & conditions in tariff application of JSEB and JSERC in the terms & conditions of supply at Clause 1.4 in page 148 has mentioned that “all other terms and conditions in respect of meter rent, supply of lower voltage, capacitor charges, circuit breaker charge, Electricity Duty, Rebate, Security Deposit, Surcharge for exceeding contract demand etc. shall remain the same as existing in the State”. While making a saving clause the JSERC has not at all mentioned the demand charges with respect to HTSS category consumer with induction furnace will also remain unchanged.

On other hand, we find the JSERC has made a provision of minimum monthly charges at the rate of Rs. 400 /KVA/m that means to be minimum monthly guarantee if there is less consumption or the maximum demand recorded is less then the consumer is liable to pay at the rate of Rs. 400/KVA/m at least.

The learned lawyer for the appellant has drawn my attention towards the saving clause as provided in clause 1.4 at page 148 of the tariff order for the year 2003-04. But I

find that although in that provision it has been mentioned as subjects with respect to which there will be no change in the terms and conditions but there is no mention of the maximum demand charges although there is mention of penalty for exceeding the contract demand. Since the JSERC has not made any provision which can be said that the JSEB can charge on the basis of 100% of the contract demand in case there is shortfall in the actual maximum demand recorded in the meter of the consumer. Therefore, I find that the VUSNF has rightly held that the JSEB is not entitled for raising bills on the basis of 100% contract demand recorded in the meter of the consumer and has rightly made the direction for revising bills and adjusting the amount which has been realized in excess from the consumer.

In similar case of M/s T & T Metals Pvt. Ltd. and number of other cases in the category of HTSS this court has already held that the JSEB is entitled for raising bills only on the basis of actual maximum demand recorded in the meter of the consumer or minimum monthly guarantee amount and can not raise bill on the basis of 100% of the contract demand in case there is shortfall in the actual maximum demand recorded in the meter of the consumer. Therefore, I do not find any merit in this appeal.

In the result, this appeal is dismissed and the JSEB is directed to comply with the order of the VUSNF within 30 days from the date of receipt of the order failing which the JSEB will have to pay interest at the rate on which the JSEB charges as delayed payment surcharge from the consumer.

Sd/-
Electricity Ombudsman