

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

Appeal No. EOJ/03/2013

Dated- 09th October, 2013

Jharkhand State Electricity Board & others ... Appellant

Versus

M/s B.M.C. Metal Cast Ltd. ... Respondent/Consumer

Present:

Electricity Ombudsman - Shri Arun Kumar Datta

**Advocate for the appellant - Shri Rahul Kumar
Shri Prabhat Singh**

**Advocate for the respondent - Shri M.S. Mittal
Mrs. Shilpi John**

J U D G E M E N T

1. The appellant/J.S.E.B. has filed this appeal against the Order/Judgement dated 25.05.2013 passed by learned Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as V.U.S.N.F.) of J.S.E.B., Chaibasa at Jamshedpur in case No. 33 of 2011/06 of 2012 by which the learned V.U.S.N.F. has been pleased to allow the application filed by the respondent/consumer for grant of voltage rebate as per tariff of 2010-11 and directed the appellant/J.S.E.B. to issue revised bill to the petitioner/respondent from May 2010 by allowing voltage rebate under new tariff of 2010-11.

2. Being aggrieved by and dissatisfied with the aforesaid Judgement/Order of the learned V.U.S.N.F. of J.S.E.B. Chaibasa at Jamshedpur the appellant/J.S.E.B. has filed this appeal before this forum.

3. The case of appellant/J.S.E.B. in brief is that in accordance with tariff order 2010-11 voltage rebate and load factor rebate are barred to the consumers who are in arrears. The respondent M/s BMC Metal Cast Ltd. was in arrear of Rs. 9,91,621/- on account of fuel surcharge and Rs. 2,42,136/- on account of AMG charges for the period of 2000-01 along with DPS of Rs. 62,995/-. According to appellant/J.S.E.B. the earlier provision for grant of voltage rebate to the consumer whose arrears are stayed by the court has been deleted after coming into force of the tariff order 2010-11 w.e.f. 01-05-2011 and as such the bills were rightly issued to the respondent as per tariff order 2010-11. On the basis of aforesaid fact the appellant/J.S.E.B. has prayed to set aside the order dated 25.05.2013 passed by learned V.U.S.N.F. of J.S.E.B. Chaibasa at Jamshedpur in case No. 33/2011 /06/2012.

4. On the other hand the case of respondent M/s BMC Metal Cast Ltd. (consumer) is that the learned V.U.S.N.F. of J.S.E.B. Chaibasa at Jamshedpur has correctly interpreted that the respondent company is not in any arrears because the respondent consumer is paying its current bills regularly up till now, rather the amount which is being misinterpreted and high lighted by the appellant/J.S.E.B. as “arrears” is nothing but the amount stayed by the Hon’ble court towards fuel surcharge which is still

sub-judice. Therefore the learned V.U.S.N.F. of Chaibasa at Jamshedpur has rightly directed the appellant/J.S.E.B. to issue bills granting voltage rebate and as such this appeal filed by the appellant/J.S.E.B. is fit to be dismissed.

5. On the basis or pleadings of both the parties and after hearing the learned lawyers of both the sides the only issue which arises for determination in this case is that whether the consumer/respondent is entitled to get voltage rebate under the tariff order 2010-11, or not.

FINDINGS

6. Shri Rahul Kr. the learned standing counsel of J.S.E.B./appellant has submitted that the learned V.U.S.N.F. of Chaibasa at Jamshedpur has failed to appreciate that earlier voltage rebate were allowed to HTS consumers in the light of letter No. 226/CE/Rev. dt. 26.06.2004 which was only payable under tariff order 2003-04. But as per the tariff order 2010-11 voltage rebate and load factor rebate are barred to the consumers having arrears. The consumer/respondent is running in arrear of Rs. 9,91,621/- on account of fuel surcharge and Rs. 2,42,136/- on account of AMG charges for the period of 2000-01 along with DPS of Rs. 62,995/-. Thus the learned V.U.S.N.F. has failed to appreciate the fact that after coming into force of the tariff order 2010-11 w.e.f. 01-05-2011 the earlier provision for grant of voltage rebate to the consumers who are in arrears are stayed by Hon'ble court have been deleted and order granting voltage rebate to

consumer/respondent is liable to be rejected and set aside. The learned standing counsel of J.S.E.B. has further contended that the voltage rebate was started to be given to the respondent/consumer only after coming into force of the tariff order of 2011-12 in which the HTS consumers whose arrears are stayed by any competent court the voltage rebate are also allowed to such consumers, which provision was not allowed to such consumer who are in arrears and their arrears have been stayed by the court. As such the bills of the respondent/consumer were rightly issued to the respondent/consumer in accordance with tariff order 2010-11 and therefore this appeal is fit to be allowed and the order dated 25.05.2013 passed by learned V.U.S.N.F. in case No. 33/2011/06/2012 is fit to be set aside.

7. On the other hand Shri M.S. Mittal the learned senior advocate appearing on behalf of consumer/respondent has submitted that the learned V.U.S.N.F. of Chaibasa, Jamshedpur has correctly interpreted that the respondent/consumer company is not in any arrears because the respondent is paying its current bills regularly up till now . and therefore the V.U.S.N.F. of Chaibasa at Jamshedpur has correctly not treated “the kept in abeyance amount” as arrears because the amount which is being treated as arrears by the J.S.E.B./appellant are the amount which have been stayed by the Hon’ble court towards fuel surcharge which is still pending before the Hon’ble court. Therefore, according to shri Mittal the learned V.U.S.N.F. Chaibasa at Jamshedpur has rightly decided the issue in favour

of consumer/respondent in the light of the tariff of 2010-11 issued by the Jharkhand State Electricity Regulatory Commission because the respondent/consumer is not running in to any arrears and therefore it is entitled to voltage rebate.

8. Shri Mittal the learned senior counsel appearing on behalf of consumer/respondent has also relied a decision held in case No. 20/2006 of M/s Usha Martin Ltd. versus J.S.E.B. and others which was a similar matter before the learned V.U.S.N.F. of J.S.E.B. at Ranchi in which the similar view was held which was also confirmed by this Forum of the Electricity Ombudsman. I also find myself in agreement with the aforesaid contentions of Shri Mittal the learned senior counsel appearing on behalf of consumer/respondent and this Forum has relied a decision of Hon'ble High Court in CWJC No. 1633 of 2001 passed on 24.04.2001 and another ruling of Hon'ble Supreme Court in M/s Pulak enterprises reported in 2009 (2) JCR 182(S.C.). Relying on the aforesaid ruling it was held by this forum of the Electricity Ombudsman in appeal No. EOJ/09/2010 that the "consumer/respondent is not in arrear of fuel surcharge". In this case also the aforesaid rulings is applicable and the consumer/respondent is getting timely payment rebate from the appellant/J.S.E.B. in monthly energy bills which also shows that the consumer/respondent is not in any arrears on any account and the arrears shown in the energy bills of the Respondent is arrear of fuel surcharge which must be treated as the "amount kept in abeyance". In view of the aforesaid rulings of the Hon'ble Apex Court and

the Hon'ble High Court the amount which has been stayed by the Hon'ble Court cannot be deemed to be an arrear. As such the V.U.S.N.F. Chaibasa at Jamshedpur has rightly interpreted the specific provisions on voltage rebate and load factor rebate as issued by the tariff order of 2010-11 by Jharkhand State Electricity Regulatory Commission. As such I am also led to hold that the respondent/consumer was wrongfully being denied voltage rebate by the appellant/J.S.E.B. because of the misinterpretations by the J.S.E.B. with regard to the concept of "arrears" with respect to "fuel surcharge".

9. Thus from the aforesaid discussions and findings made above I am led to hold that the learned V.U.S.N.F. of Chaibasa at Jamshedpur has rightly allowed the complaint of the consumer/respondent and it has rightly directed to issue revised bill of the consumer/respondent from May 2010 by allowing voltage rebate under new tariff 2010-11 of Jharkhand State Electricity Regulatory Commission.

10. Accordingly the Judgement/Order of the learned V.U.S.N.F. of Chaibasa at Jamshedpur is upheld without any interference and the appellant/J.S.E.B. is directed to issue revised bill to the consumer/respondent from May 2010 by allowing voltage rebate under new tariff of 2010-11 issued by Jharkhand State Electricity Regulatory Commission within one month from the date of receipt of this Order/Judgement failing which the consumer/respondent may move this forum of the Electricity Ombudsman for implementation of this order.

11. In the result there is no merit in this appeal, hence this appeal is dismissed.

Let a copy of this order be sent to both the parties for information and for compliance of the order.

Sd/-
Electricity Ombudsman