

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

Case No. EOJ/04/2009

Dated- 7th June, 2010

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

Present:

Shri Arun Kumar Datta	Electricity Ombudsman
Shri Rajesh Shankar	Counsel for appellant Board
Shri Abhay Prakash	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. This is an appeal filed by the appellant/JSEB and others for setting aside the order/Judgement dated 14/05/2009 passed in case No. 26/2008 by the 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 by which the petition filed by the consumer/respondent M/s Galaxy Exports Pvt. Ltd. was allowed and the impugned electrical bills raised by the appellant/JSEB from October, 2006 and onwards were quashed to the extent that the KVA charges had been levied on the consumer/respondent on the basis of 100% of the contract demand instead of actual KVA (Maximum Demand) recorded in each month and the appellant/JSEB was directed to serve the revised bills from October, 2006 and onwards in favour of consumer/respondent on the basis of actual KVA recorded in the meter or 75% of contract demand whichever is higher in each month as maximum demand. The learned VUSNF has further directed

the appellant/JSEB to adjust the excess money realized from the consumer/respondent in the subsequent bills with interest as per the Electricity Supply (Code) Regulations of the Jharkhand State Electricity Regulatory Commission (In short to be referred as JSERC).

2. The brief fact of this case is that the respondent/consumer M/s Galaxy Exports Pvt. Ltd. having its place of working at 5th Floor, Ashiana Trade Centre, Adityapur, Jamshedpur at Village Bhuiadih P.O. & P.S. Chandil through one of its Directors Sri Biswanath Pansari S/o Sri Pravu Dayal Pansari, Resident of A-13 Lok Bihar, Pritampura, New Delhi had earlier filed his complaint before the General Manager-cum-Chief Engineer, Electricity Supply Area, Jamshedpur (Jharkhand) on 26/07/2008 for correction of energy bills issued for the period from October, 2006 and onwards. The grievances of the consumer/respondent was not redressed, therefore the consumer/respondent filed a representation before the learned VUSNF of JSEB, Ranchi for redressal of its aforesaid grievances and after hearing both the parties the learned VUSNF has passed the aforesaid order by which the impugned bills issued to the consumer/respondent for the period from October, 2006 and onwards in which the KVA charges have been raised by the appellant/JSEB on the basis of 100% of the contract demand were quashed and the appellant/JSEB was directed to issue the monthly energy bills in future to the consumer/respondent on the basis of actual KVA recorded in the meter or 75% of the contract demand whichever is higher in each month as maximum demand.

3. Being aggrieved by and dissatisfied with the aforesaid order/Judgment passed by the learned VUSNF of JSEB, Ranchi the appellant/JSEB has filed this appeal for setting aside the aforesaid order of VUSNF of JSEB, Ranchi passed in case No. 26/2008 dated 14/05/2009.

4. The case of appellant/JSEB in brief is that the consumer/respondent is an induction furnace consumer of JSEB and the consumer/respondent has taken an electrical connection bearing Consumer No. HT-44 under H.T. Special Service (H.T.S.S. in short) tariff (tariff meant for Induction Furnace Consumers) on 10/10/2006 and had also executed a H.T. agreement for the same. The bills of the consumer/respondent on account of demand charges with effect from October, 2006 till July, 2008 and onwards have been raised on the basis of contract demand of the consumer i.e. 2900 KVA because the consumer/respondent is an induction furnace consumer of JSEB. The new tariff order,

2003-04 of JSERC is applicable from 01/01/2004. The Tariff order, 2003-04 of JSERC does not contain any specific terms and conditions of supply for induction furnace consumers, therefore the JSEB has adopted the terms and conditions of supply as enumerated in the induction furnace tariff notification dated 15/03/2000 issued by the Bihar State Electricity Board (In short to be referred as JSEB) published in Bihar Gazette on 06/04/2000 which was adopted by the JSEB on 20/03/2001. According to the appellant/JSEB, as per the Clause 5 of the tariff notification dated 15/03/2000 the demand charge for the induction furnace consumers has to be raised on the basis of actual maximum demand recorded in the meter during the month or 100% of the contract demands whichever is higher. In the tariff order, 2003-04 of JSERC in Clause 5.29 at page 114 the Commission has introduced a voltage rebate on energy charge for receiving supply at higher voltage levels, as the cost of supply at higher voltage is lower. This provision is applicable for HTS categories of consumers but the same has not been provided in the HTSS tariff applicable for Induction Furnace Consumers. According to the appellant/Board, the demand charge is a fixed charge and the same has been levied in order to meet the fixed expenses of the Board. Clause 1.4 of tariff order of 2003-04 of JSERC relates to terms and conditions of supply which is a saving clause which reads that "All other terms and condition in respect of meter rent, supply at lower voltage, capacitor charge, circuit break charge, Electricity duty, rebate, security deposit, surcharge for exceeding contract demand etc. shall remain the same as were existing in the state".

Therefore, the other terms and conditions will remain the same as were existing prior to the earlier tariff/order. Further JSERC's Regulations in Clause 3.6.1 at page 25 of tariff order 2003-04 under heading the JSERC's rejoinder which reads as under:-

" It is to be noted that HTSS is meant for a specific category of consumers, and is highly power intensive and its tariff takes into account the tonnage capacity also. The existing tariff of induction furnace was decided at the request of Induction Furnace Association by the BSEB. However, this tariff is being proposed for consideration and approval of the Commission. The Commission has invited objections from everybody and the process is fully transparent so there is not question of any discussion with Induction Furnace Association. The existing tariff of Induction furnace came into force w.e.f. April, 2001, i.e. after a lapse of more than two year, therefore there is bound to be

some increase in tariff has been nominal". Therefore, accordingly to the appellant the letter dated 19/12/2005 issued by the Secretary of JSERC is completely out placed, without jurisdiction and illegal.

5. On the aforesaid ground the appellant/JSEB has prayed for setting aside the order/Judgement dated 14/05/2009 passed in case No. 26/2008 by the learned VUSNF of JSEB, Ranchi and the appellant/JSEB has further prayed that the electrical bills of the consumer/respondent has been rightly raised from October, 2006 and onwards on the basis of 100% of the contract demand therefore there is no illegality for the same and it is fully justified.

6. The respondent/consumer has also appeared with power through his learned counsel and the respondent/consumer has also filed its counter affidavit and contested this appeal mainly on the ground that the earlier tariff issued by the BSEB for its Induction Furnace Consumers under HTSS can not be made basis for raising bills of consumer/respondent because after 01/01/2004 JSERC has issued its own tariff notification and the bills in the State of Jharkhand has to be raised in accordance with the tariff order of 2003-04 issued by the JSERC. According to the consumer/respondent, the new tariff order of 2003-04 does not provide for such charging at the rate of 100% of the contract demand and according to the tariff order of 2003-04 issued by the JSERC the appellant/ respondent are also bound to hold the bills at the rate of 2.50/- per KWH on actual consumption of units and Rs. 300/- per KVA on actual consumption of maximum demand both subject to a Monthly Minimum Charge of Rs. 400/- per KVA for the full contract demand. Further the action of the JSEB is also against the judgement rendered on the same issue, which has been decided by this Forum in its various judgments including the cases of M/s Maa Chinnmastika, M/s Kumardhubi Steel, M/s Globe Steel, M/s Raj Steel etc., in which this Forum has held that the appellant/JSEB is duty bound to raise bills on actual KVA recorded in the meter and the JSEB is not entitled to raise bills to the consumer on the basis of 100% of the contract demand. On the aforesaid ground the consumer/respondent has prayed to dismiss the appeal of the appellant/JSEB with appropriate and suitable relief to the respondent/consumer.

FINDINGS

7. The learned counsel Sri Rajesh Shankar, appearing on behalf of the appellant/JSEB has mainly relied his argument as per his case as detailed in Memo of appeal filed on behalf of appellant and he has submitted that the JSERC has dealt with design the tariff structure and analysis of tariff in the Section 5 of the terms and conditions of supply have been dealt in Clause 5.30 of the tariff order of 2003-04 which states that “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 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”.

Further Clause 1.4 of the tariff order of 2003-04 issued by JSERC at page 148 states that “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”.

Therefore, accordingly to the learned counsel appearing on behalf of the appellant/JSEB, the other terms and condition will remain the same as were existing prior to the order/tariff. Further the JSEB’s rejoinder has been mentioned by the JSERC in Clause 3.6.1 at page 25 of the tariff order of JSERC which reads as follows;-

“ It is to be noted that HTSS is meant for a specific category of consumers, and is highly power intensive and its tariff takes into account the tonnage capacity also. The existing tariff of induction furnace was decided at the request of Induction Furnace Association by the BSEB. However, this tariff is being proposed for consideration and approval of the Commission. The Commission has invited objections from everybody and the process is fully transparent so there is not question of any discussion with

Induction Furnace Association. The existing tariff of Induction furnace came into force w.e.f. April, 2001, i.e. after a lapse of more than two year, therefore there is bound to be some increase in tariff has been nominal”.

8. On the basis of aforesaid facts it has been further argued on behalf of the appellant/Board that prior to the above tariff order, 2003-04 issued by the JSERC, the tariff notification dated 15/03/2000 was issued by BSEB which was published in Bihar Gazette on 06/04/2000 which was also adopted by the JSEB on 20/03/2001 which was the demand charge for the Induction Furnace Consumers. According to which the bills of the Induction furnace consumers was to be raised on the basis of actual maximum demand recorded in the meter during the month or 100% of the contract demand whichever is higher. Further JSERC introduced the tariff order, 2003-04 in which it has been mentioned in Clause 5.29 at page 114 that voltage rebate on energy charge for receiving supply at higher voltage levels, as the cost of supply at higher voltage is lower. This provision is applicable for HTS categories of consumers but the same has not been provided in the HTSS tariff applicable to Induction Furnace Consumers. According to the learned counsel of the appellant the demand charge is a fixed charge and the same has been levied in order to meet the fixed expenses of the Board. Further in Clause 1.4 of the terms and conditions of supply as detailed in the tariff order, 2003-04 itself contains the saving clause so far as the terms and conditions of supply which are existing in the State of Jharkhand. Because the tariff order,2003-04 of JSERC does not contain any specific terms and conditions of supply for induction furnace consumers, therefore the appellant/JSEB is constrained to resort to the terms of conditions of supply as enumerated in the induction furnace tariff notification dated 15/03/2000 and as such the bills of the consumer/respondent have been rightly raised under the aforesaid provision of induction furnace tariff dated 15/03/2000 and because of the aforesaid reasons the letter dated 19/12/2005 issued by the Secretary of the JSERC is completely out placed, without jurisdiction.

It has been further contended on behalf of the appellant that the learned VUSNF of JSEB has failed to consider that the consumer being the consumer covered under the induction furnace tariff is liable to pay the bills from October, 2006 till July, 2008 and

onwards raised on account of maximum demand on the basis of the 100% of the contract demand from the very day of commencement of electrical supply.

Further the learned VUSNF has failed to appreciate that a new mode of billing for induction furnace consumers started with effect from September, 1999 as per the mutually agreed terms and conditions, after a consensus was arrived at between the BSEB and the representatives of the existing Induction Furnace Consumers in the State of Bihar i.e, Bihar Steel Manufactures Association.

The learned VUSNF has also failed to consider that as per the said consensus, the demand charges mentioned in the aforesaid tariff in Clause-5 would be levied on the actual maximum demand recorded in the meter during the month or 100% of the contract demand whichever is higher. On the basis of aforesaid grounds, the appellant/JSEB has prayed for setting aside the order/Judgement dated 14/05/2009 passed in case No. 26/2008 by the learned VUSNF of JSEB, Ranchi.

9. On the other hand the learned counsel appearing on behalf of the consumer/respondent has submitted that the appellant/JSEB is still charging on the basis of earlier tariff order issued by the BSEB dated 15/03/2000 which is not in existence and a repealed tariff after passing the tariff order, 2003-04 of JSERC. The appellant/JSEB can not charge at the rate of 100% of the contract demand, rather the JSEB/appellant can only charge as per the specific provision of the tariff at the rate of Rs. 2.50/- per KWH on actual consumption of units and Rs. 300/- per KVA on actual consumption of maximum demand both subject to a Monthly Minimum Charges of Rs. 400/- per KVA for the full contract demand therefore, according to the existing tariff the appellant/Board is duty bound to charge the actual KVA recorded in the meter and not on the basis of 100% of the contract demand. It has been further argued on behalf of the consumer/respondent that this Forum has held in cases of M/s Maa Chinnmastika, M/s Kumardhubi Steels, M/s Globe Steel, M/s Raj Steel etc. in which it has been held that the JSEB can only raise the bills of the consumers on the basis of actual recorded KVA (Maximum Demand) and not on the basis of 100% of the KVA. The JSERC vide its communication dated 19/12/2005 categorically rejected the stand of the appellant/Board that the tariff schedules of 2001 can not be taken cognizance after passing the tariff order 2003-04 of JSERC and the Commission has recognized the tariff order of 2001 as non applicable documents with

effect from 01/01/2004 which was also reiterated by the JSERC vide its letter dated 21/03/2009 on communication dated 15/07/2008, 20/03/2009 made by the JSEB with the JSERC. According to the learned counsel of the consumer/ respondent, the JSEB has not challenged the order dated 19/12/2005 of JSERC and aforesaid fact has also held by the Hon'ble Jharkhand High Court in the case of JSEB Vrs. M/s Kumardhubi Steels Pvt. Ltd.

10. The learned counsel of the respondent/consumer has also filed a zerox copy of certified copy of the order of the Hon'ble Jharkhand High Court passed in the case of JSEB Vrs. M/s Kumardhubi Steels Pvt. Ltd. in WP© NO.5150 of 2007. On perusal of the aforesaid judgement I find force in the contention of the learned counsel of the respondent/consumer that the appellant/JSEB can not raise any bills of the consumers on the basis of repealed tariff of BSEB dated 15/03/2000 and the letter of the Secretary, JSERC dated 19/12/2005 which was in replay to the letter of JSEB dated 05/12/2005 which was specifically clarified that the documents related to the tariff schedules dated 24/09/1999 and 07/05/2001 were neither followed nor applicable after notification of the new tariff order, 2003-04 which has attained finality. Therefore, I am also led to hold that the appellant/JSEB can not raise any bills from the respondent/consumer from October, 2006 and onwards at the rate of 100% of the contract demand in accordance with the repealed tariff of BSEB dated 15/03/2000.

11. On perusal of the aforesaid ruling in case WP© No. 5150 of 2007 of JSEB Vrs. Kumardhubi Steels Pvt. Ltd. at paragraph 15 of the aforesaid order, the Hon'ble Jharkhand High Court has held 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". The appellant/JSEB has also mentioned at page 16 (j) of its memo of appeal that the tariff order of 2003-04 of JSERC does not contain any specific terms and conditions of supply for induction furnace consumers, therefore the JSEB is constraint to resort to the terms and conditions of supply as enumerated in the induction furnace tariff notification dated 15/03/2000. In my view instead of relying on a repealed tariff of 15/03/2000 of BSEB, the JSEB should have taken recourse to clause 4© of the agreement executed between both the parties of this case. The consumer/respondent has also stated at paragraph 14 of its counter affidavit that the illegality, what the appellants are committing is that they are neither

billing the respondent as per the current applicable tariff order of 2003-04 effective from 01/01/2004, nor even they have given any respect to the aforesaid clauses.

12. In my view the agreement executed between both the parties of this case should be made the basis for raising the bills to the consumer/respondent from October, 2006 and onwards because the tariff order, 2003-04 issued by the JSERC is silent on this point. This is also the settled law that agreement executed in between both the parties is binding on both the parties if it is not against any law. The Clause 4© of the agreement executed in between both the parties is not against any law and also not against the tariff order of 2003-04. In the case of M/s T & T Metals Pvt. Ltd. in WP© No. 1687 of 2007, the order has not been stayed by the Hon'ble Jharkhand High Court but the Hon'ble High Court has ordered that the Board is at liberty to charge bills in terms of agreement between the Board and the consumers. Therefore, in view of Clause 4© of the agreement executed in between both the parties the bills of the consumer/respondent from October, 2006 and onwards is to be raised and the learned VUSNF of JSEB, Ranchi has therefore rightly ordered to raise the bills of the consumer/respondent from October, 2006 and onwards on the basis of actual KVA recorded in the meter or 75% of the contract demand whichever is higher in each month as maximum demand and the learned VUSNF of JSEB, Ranchi has rightly quashed the bills of the consumer/respondent from October, 2006 and onwards in which KVA charges have been raised by the appellant/JSEB on the basis of 100% of the contract demand. On perusal of the order of the learned VUSNF of JSEB, Ranchi, it appears that the learned VUSNF has inadvertently failed to mention in its order that “ for the first 12 months service the maximum demand charges for any month will however, be based on the actual maximum demand for that month”. In this regard the learned counsel of the respondent/consumer relied and filed the judgments of the learned VUSNF of JSEB, Ranchi held in cases of M/s Sati Iron & Steel Pvt. Ltd. Vrs. JSEB and others, M/s Himadri Steel Pvt. Ltd Vrs. JSEB and others and M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. Vrs. JSEB and others etc., in which the learned VUSNF has ordered to revise the bills of the consumer on the basis of KVA recorded in the meter for the first year and thereafter KVA recorded in the meter or 75% of the contract demand whichever is higher in each month. As such, the aforesaid order of the learned VUSNF needs to be modified to this extent

13. In view of the aforesaid discussion and findings made above, I am led to hold that the appellant/JSEB is not entitled to raise the bills of the consumer from October, 2006 and onwards on the basis of 100% of the contract demand in view of the ruling held in case of WP© 5150 of 2007 and also upheld by the Hon'ble Supreme Court in SLP© No. 20104/2009 of JSEB Vrs. M/s Kumardhubi Steel Pvt. Ltd. and as such the bills of the consumer/respondent for the period from October, 2006 and onwards in which the KVA charges have been raised by the appellant/JSEB on basis of 100% of the contract demand are therefore quashed and the appellant/JSEB is directed to issue the revised energy bills to the consumer/respondent from October, 2006 and onwards as per the actual KVA recorded in the meter for the first 12 months and thereafter on actual KVA recorded in the meter or 75% of the contract demand whichever is higher in each month as maximum demand. The appellant/JSEB is further directed to adjust the excess money realized from the consumer/respondent in the subsequent bills with interest as per the Electricity Supply (Code) Regulations of JSERC within a period of one month from the receipt of this order failing which the consumer/respondent will be at liberty to move this Forum for implementation of this order.

14. In the result this appeal is dismissed with modification and directions as stated above.

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

Sd/-
Electricity Ombudsman