



provision of the tariff order of 2003 for the category of supply HTS-II. The Jharkhand State Electricity Regulation Commission ( In short to be referred as JSERC) in exercise of its power conferred upon it under Section 86 of the Electricity Act, 2003 framed the tariff for JSEB which was effective from 01/01/2004. 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 aforesaid demands on A.M.G. basis to “ A.M.G. charge based on load factor of 25% and power factor of 0.9 on contract demand”.

There had been similar proposals with respect of HTS-II and E.H.T. category of consumers and A.M.G charge was proposed to be based on load factor of 30% and 50% respectively. This has been shown in table 5.27of the Tariff order 2003:-

**Table 5.27: Tariff for HTS-I Consumer (Existing/Proposed)**

DESCRIPTION	DEMAND CHARGE	
	Existing	Proposed
Rs./KVA/Month	125	200
Rs./KWh/month	Existing	Proposed
All consumption	1.78	4.40
	FUEL SURCHARGE	
Rs./KWh/month	2.22	
	Annual Minimum Guarantee (AMG) Charge	
	Subject to minimum contract demand for this category monthly minimum demand charge as per appropriate	The following AMG charge shall be realized from the consumer as per appropriate tariff.
	Tariff based on actual maximum demand of that month or 75% of the contract demand whichever is higher. Energy charges based on Factor of 25% and power factory 0.85 on contracted demand payable at the rate of Rs. 1.78/KWh	AMG Charge based on load factor of 25% and power factor 0.9 on contract demand payable at the rate of energy charge applicable to HTS-I Category.

4. The JSERC refused to accept the proposals made by the JSEB after considering the stand of the JSEB and also refused to enhance the tariff for H.T Consumers, as demanded and decided to merge the H.T.S categories in order to rationalize and simplify the tariff structure. With regard to the JSERC after considering and looking into the charges being levied in other neighboring states introduced a minimum monthly charge for all kind of H.T Consumers. The approved tariff, Voltage rebate and Load factor rebate for H.T.S Consumers in tables 5.31, 5.32 & 5. 33 by the Commission is as below:-

**Table 5.31: Approved tariff for HT Consumers**

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

**Table 5.32: Voltage rebate for HT Consumers**

<b>Load factor</b>	<b>Voltage rebate</b>
Supply at 33KV	5%
Supply at 132 KV	7.5%

**Table 5.33: Load factor rebate for HT Consumers**

<b>Load factor</b>	<b>Load factor rebate</b>
40-60%	5%
60-70%	7.5%
Above 70%	10%

5. Therefore, from 01/01/04 there remained only one guarantee charge namely “Minimum Monthly Charge” and the previous stipulations i.e. A.M.G. charges based on “Monthly Minimum Demand Charge” on the basis of actual maximum demand whichever is higher and energy charges based on load factor of 25%, 30%, 50% etc.” had been done away with. As such, the aforesaid tariff notified by the JSERC has an overriding/prevailing effect were any previous conditions or any clause of the agreement were duty bound to charge the appellant on the basis of the tariff of 2003-04.

6. In view of the provision of tariff order 2003-04, the respondents JSEB are supposed to charge monthly bills upon the petitioner only on the basis of actual energy units(K.W.H) and actual maximum demand (K.V.A) recorded in the meter subject to monthly minimum charge, but the bills of the appellant has been charged from the month of December, 2004 on the basis of 75% of the contract demand, as per the old tariff of 1993 and ignoring of the tariff order of 2003-04 therefore the respondents are bound to revise the amount of all bills of the appellant.

On the aforesaid grounds the appellant has prayed for setting aside the energy bills issued by the respondents JSEB against the appellant’s electrical connection No.-NSL-823 for the period from 01/12/2004 to till date, so far it relates to KVA charges, power factor, load factor and voltage rebate, and to direct the respondents to revise all the said bills on the basis of Actual Recorded (KVA) as provided under the current provisions of tariff order of 2003-04.

The appellant has further sought a direction upon the respondents Board to revise/adjust the excess amount realized from the appellant with interest @ 2% per month as provided under Clause 11.10.3 of the Electricity Supply (Code) Regulation, 2005 .

The appellant has further prayed to restraint the respondents Board from raising the bills against the electrical connection of the appellant towards the Demand Charge (KVA Charges) on the basis of the 1993 tariff order of the BSEB, which is no more in existence.

The appellant has also prayed for setting aside the order/Judgement of the Learned VUSNF of JSEB, Ranchi dated 25/08/09 in case no. 33/08.

7. The respondents Board has also appeared and contested this appeal by filing counter affidavit. The respondents JSEB as asserted in its counter affidavit is that the energy bills issued to the appellant (Consumer no.-NSL-823) with effect from 01/01/2004 by the respondents JSEB are in accordance with the tariff schedule issued by the JSERC and the same does not require any interference by this Forum, and as such the order/Judgement of the Learned VUSNF of JSEB, Ranchi dated 25/08/09 passed in case no. 33/08 does not require any interference.

According to the respondents Board, the tariff order 2003-04 issued by JSERC, the same contains two broad parts. The first part contains the schedules of tariff which were 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 have been calculated by the JSEB for raising the same towards the consumers for payments. The second part of the tariff order 2003-04 contains the terms and conditions of supply of electricity which are the integral part of any tariff order/notification.

8. While submitting the tariff petition before the JSERC for 2003-04, the JSEB had submitted a 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 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”.

9. 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 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”.

10. 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**

11. The Learned Counsel of appellant/consumer has based his argument mainly on the memo of appeal and rejoinder filed in context with the counter affidavit filed by the respondent and has also argued that the respondents JSEB can not charge on the basis of

repealed tariff of 1993 of BSEB for charging of 75%, of the contract demand charge and in view of the new tariff schedule 2003-04, the maximum demand (KVA) is to be charged as recorded in the meter.

The Learned Counsel of the appellant has further argued that as per the new tariff for HTS connection as stated in the memo of appeal, the appellant is entitled to get the load factor rebate, voltage rebate as per schedule given in new tariff and also liable to pay electricity charges such as KVA (Demand), KWH (Unit) in accordance with the new tariff from 01/01/2004 as recorded in the meter. The respondent Board has adopted double standard in charging the energy bill as for some consumer's energy bill is being charged as per the actual reading of the demand charges as per the recorded in the meter whereas the appellant/consumer is being charged on the basis of 75% of the demand charge (KVA), load factor and voltage rebate is also being charged on its basis. The Learned Counsel of the appellant has filed the two bills of M/s Maa Chinnmastika Sponge Iron (P) Ltd. for the month of September, 2009 & October, 2009 and also two bills of appellant's M/s Jharkhand Ispat Pvt. Ltd. for the month of September, 2009 and October, 2009. But on perusal of the bills of M/s Maa Chinnmastika Sponge (P) Ltd. and also the bills of appellant's M/s Jharkhand Ispat (P) Ltd., there appears no inconsistency because in both the bills 75% of the contract demand has been charged. The difference in account of contract demand which appears because of the obvious reason that appellant's M/s Jharkhand Ispat has a contract demand of 1000KVA whereas the contract demand of M/s Maa Chinnmastika Sponge Iron (P) Ltd. is of 1767 KVA. Therefore, there is no force in the argument of the Learned Counsel of the appellant that the double standard charges in respect of bill are being adopted by the respondents JSEB. More over the Learned Counsel of the appellant has relied upon two decisions of the previous Electricity Ombudsman held in the case of M/s Maa Chinnmastika Sponge Iron (P) Ltd. and M/s T& T metals (P) Ltd. and as such if there is any difference this may be, in view of the order of the previous Electricity Ombudsman's order. It has also been submitted on behalf of the appellant that in the case of JSEB Vrs. M/s Kumardhubi Steel (P) Ltd. which falls

under HTSS connection, therefore in the case of M/s Kumardhubi Steel (P) Ltd. will not apply in this case.

The Learned Counsel of the appellant also relied upon the letter of the Secretary, JSERC dated 19/12/2005 wherein it has specifically been stated that the tariff schedule of 24<sup>th</sup> September, 1999 and 07/05/2001 were not applicable with effect from 01/01/2004. Thereafter, the Board through its Secretary again wrote a letter after a lapse of three years on 15/07/08 seeking clarification once again regarding the applicability of all terms and conditions, specially minimum billing on account of demand charges. When the present matter was part heard another letter dated 20/03/09 has been written by the Secretary of the Board to the Chairman of the Commission seeking clarification once again with regard to the terms and conditions of supply of electricity and charging of the demand charges by the licensee to the H.T. consumer including H.T.S and HTSS and in reply the Secretary of the Commission vide its letter dated 21<sup>st</sup> March, 2009 as directed by the Commission reiterated its earlier stand. On the basis of the aforesaid letters, it has been further submitted by the Learned Counsel of the appellant that the power is vested with the Commission alone to determine the tariff and once they have clarified it and held that the new tariff schedule of 2003-04 was applicable and if there was any grievance or the Board was aggrieved by the order of the Commission the remedy available to the respondent Board was to invoke Section 111 of the Electricity Act, 2003. Thus till date the respondent Board has neither challenged the tariff order of 2003-04 or even the Electricity Supply (Code) Regulation nor has it challenged the order of the Commission dated 19/12/05 or 21/03/09.

The Learned Counsel of the appellant has also submitted that this case is also on the same principle of Law as held in the case of JSEB Vrs. T & T Metals Pvt. Ltd in case no. EOJ/01/06 and other case no.EOJ/14/07 of M/s Maa Chinnmastika Sponge Iron (P) Ltd and as such appeal of the appellant be allowed. The respondent Board may be restrained to charge 75% of the contract demand and also be directed to charge on actual demand recorded in the meter accordingly.

12. On the other hand, it has been submitted by the Learned Counsel of the Respondents Board that the minimum Monthly Charges (M.M.C.) is not substitute for the maximum KVA demand for the month or 75% of the contract demand whichever is higher nor it has been done away with in new tariff order of JSERC from 01/01/2004. Because M.M.C. is not concerned with demand charges rather MMC is concerned with energy charge. The tariff order of 2003-04 of JSERC at page 115 reads as follows:- The Commission has assumed a minimum level of supply and a minimum level of consumption .....

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

13. 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.

“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 prespecified 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 un metered 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”.

14. It has been further submitted on behalf of the respondents Board that if energy charges go 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 are 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 mentioned at Table no. 5.31 of the tariff order 2003-04 of JSERC and it 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”.

15. So far as contention of the Learned Counsel of the appellant is concerned that the respondents Board has charged 75% of the contract demand on the basis of old tariff order of BSEB and the tariff order of JSERC has not allowed 75% of the contract demand has no legs to stand because the new JSERC tariff order 2003-04 does not show anywhere that the JSEB can not raise bills on the basis of 75% of the contract demand, rather the new tariff order 2003-04 of the JSERC is silent on this point. Further, there is no force in the contention of the Learned Counsel of the appellant that JSEB can not charge 75% of the contract demand on the basis of agreement executed between the appellant and the respondents Board because it is inconsistent in view of clause 11 of the aforesaid agreement.

16. This is a settled principle of Law that agreement binds both the parties if it is not especially against any Law. Charging of bills on the basis of actual maximum demand recorded in the meter or 75% of the contract demand whichever is higher as mentioned in clause 4© of the agreement executed between both the parties is not inconsistent against any Law or even new tariff order 2003-04 of JSERC and therefore this clause 4© of the agreement is binding on the appellant on the basis of actual maximum demand recorded in the meter or 75% of the contract demand whichever is higher.

17. The Learned Counsel of the appellant has relied the order/Judgement of previous Electricity Ombudsman in case No. EOJ/01/06 of M/s T & & metals (P) Ltd. and another case no. EOJ/14/07 of M/s Maa Chinnmastika Sponge Iron (P) Ltd. The Hon'ble Jharkhand High Court in case no. WP© no. 1687 of 2007 ( M/s T & T Metals (P) Ltd.)

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”. Though the order passed by previous Ombudsman has not been stayed by the Hon’ble Jharkhand High Court. But 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 interim 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 pending the hearing . 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”.

18. As such, the agreement executed between the appellant and the respondent on maximum demand charge of supply in any month will be based on the maximum (KVA) demand for the month or 75% of the contract demand whichever is higher. In view of the aforesaid agreement, the bills raised by the respondents Board on the appellant (Consumer no. NSL-823 for a contract demand of 1000 KIVA at 33KV) 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 legally binding on consumer/ appellant. Therefore the appellant is not entitled for any relief as has been prayed by the appellant.

19. Thus, on perusal of the Judgement of the VUSNF I do not find any illegality in it Hence the Judgement/Order of the VUSNF passed in case No.-33/08 dated 25/08/09 is hereby confirmed.

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

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

Sd/-  
Electricity Ombudsman