

BEFORE THE ELECTRICITY OMBUDSMAN, JHARKHAND  
4<sup>th</sup> floor, Bhagirathi Complex, Karamtoli Road, Ranchi-834001

**Appeal No. EOJ/05/2015**

Dated -28<sup>th</sup> October 2015

M/s National Industrial Corporation ..... Appellant

Versus

JUVNL & Ors. .... Respondent

Present:

Electricity Ombudsman - Sri Ramesh Chandra Prasad

Advocate for the Appellant - Sri Shray Mishra

Counsel for the Respondent - Sri Rahul Kumar  
- Sri Prabhat Singh

**PROCEEDINGS**

1. The instant Appeal has been filed against the Order passed on 26/06/2015 in Case No.02/2015 by the learned Vidyut Upbhokta Shikayat Niwaran Forum, Ranchi (herein after referred to as VUSNF/Forum) by one of the partners of M/s National Industrial Corporation Sri Vinod Kumar Tulsyan, resident of 5, Main Road, Sethia Compound, P.O. & P.S. Chutia, Distt. Ranchi. The Appeal was registered on 10/08/2015 and was discussed on various dates and finally on 06/10/2015 argument from both side completed with unanimous decision of filing written argument. In response to the aforesaid decision the Respondent submitted notes of argument on 09/10/15 and the Appellant on 14/10/2015.

**2. Brief of the Case as represented by the Appellant :**

**2.1**The appellant/petitioner has a Fabrication Unit situated at Tupudana under Electric Supply Sub-division, Tupudana, Ranchi having its Consumer No. HKLT/AH-1308.

**2.2** The petitioner is being billed under low tension industrial supply tariff (Demand Based) having contract demand of 100 HP. The said electrical connection comes under category of Low Tension Industrial and Medium Power Service (LTIS) on Demand Based Tariff.

**2.3** Under terms of the provisions of 2003-04 Tariff Order, an agreement was executed between the parties on 12.04.2010 wherein it was mentioned that henceforth the consumer shall be billed on the basis of “Maximum Demand Load” subject to the condition that the consumer installs a “Maximum Demand Meter/Trivector Meter” .

**2.4** As per the agreement the maximum demand recorded in a year will be treated as contract load for that year for the consumer who opts for maximum demand meter and the consumer shall be billed year wise on the basis of contract load assessed for that year. But, in spite of the duly signed mutual agreement, it has been mentioned in memo of appeal that the respondents are not raising bills on the basis of maximum demand meter rather the bills are being raised on the fixed rate of 43,900 KVA despite the wholly operational maximum demand meter installed in the premises of the Appellant, which recorded maximum demand of 37 KVA in the meter.

**2.5** The respondents are stated of not complying terms of the agreement agreed on 12.04.2010 and raising the energy bills on the basis of maximum demand of 43.900KVA which is apparent from perusal of the bill for the month of August,2014 issued on 11<sup>th</sup> September,2014 wherein the appellant had consumed only 36.200KVA. Similarly, bill for the month of September,2014

issued on 13<sup>th</sup> October, 2014 the consumption recorded was 28.500 KVA but billed at the rate of 43.900 KVA, which is against the spirit of the mutual agreement executed on 12/04/2010 thereby causing irreparable loss to the appellant.

**2.6** Prayer has been made by the Appellant for direction with regard to consequential benefits to which the appellant is entitled to in the light of the agreement executed on 12/04/2010 which is stated to have not been appreciated by the Learned VUSNF in its judgement dated 26/06/2015.

### **3 Submission of the Appellant:**

**3.1** The learned Advocate Sri Shray Mishra submitted that the Appellant entered into an agreement on 12.04.2010 whereby, it was mutually agreed between the parties that henceforth the billing of the consumer (appellant) shall be on Demand based Tariff. Therefore, the agreement was only with regard to the change in category from Installation Based Tariff to Demand Based Tariff. In the light of the agreement contract demand was to be ascertained as per the definition of contract demand provided under the (Electricity Supply Code) Regulation, 2005 which categorically speaks about the demand which has to be mutually agreed upon shall be the contract demand. Thus in terms of the definition the licensee/respondents are required to ascertain the contract demand of the appellant.

**3.2** He further submitted that instead of ascertaining the contract demand of the appellant the respondents have unilaterally made a theoretical conversion of the earlier sanctioned load of 100 HP, which goes away the moment appellant, shifts the category from Installation Based Tariff to Demand Based Tariff. The appellant had approached the respondents time and again which would be evident from various letters including the letter dated 29.12.2014 raising the

present issue in hand since 2010 but the respondents have not taken a heed to reply even once in these long years ,which reflects the bonafide of the appellant and ulterior motive of the respondents at the same time.

**3.3** He further submitted that the learned VUSNF has rightly affirmed the contentions of the appellant while disposing the application wherein it has been categorically held that the sanctioned load is applicable only to the consumers who fall within the category of Installation Based Tariff whereas contract demand is applicable only to those consumers who fall within the ambit of Demand Based Tariff and in the present matter the respondents have converted the sanctioned load of the appellant into the contract demand which is not in accordance with law.

**3.4** He further submitted that the provision of the Tariff Order 2012-13 the restriction of connected load will not apply to the consumers under Demand Based Tariff making it amply clear that the question of theoretically converting the sanctioned load of the appellant into the contract demand does not arise in any situation. However, had there been the intention of the Hon'ble Commission to allow theoretical conversion of the sanctioned load then in such circumstances the provision enunciated in the tariff order that the restriction of connected load will not apply to the consumers opting for Demand Based Tariff would not have been present. Further, the intention of the Hon'ble Commission was clear in terms of not allowing the respondents to theoretically convert the sanctioned load, for example, if a consumer under demand based tariff is having a demand of 99 KVA and an installed load of 175 H.P. then his sanctioned load cannot be converted in KVA as because the same would cross the limit of 100 KVA and the consumer will be bound to take high tension( H.T.) connection.

**3.5** The learned Advocate clarified that repetitive requests before the respondent authorities were made for opting demand based tariff but in vain. Having no other efficacious remedy, a writ petition was filed before the Hon'ble High Court vide W.P.(C ) No. 586 of 2010. The said writ was withdrawn upon the assurance of the respondents that an agreement is likely to be entered into between the parties. Thereafter a supplementary agreement was entered in to between the parties on dated 12.04.2010. Despite of the agreement bills were raised considering sanctioned demand as contract demand which is not pursuant to the agreement. The contract demand as defined in the tariff order 2003-04 is neither amended nor deleted in successive tariff orders and so provisions of tariff order 2003-04 cannot be brushed aside. Therefore, in the light of the agreement mutually agreed upon, the Licensee is required to ascertain the contract demand of the appellant and settle the issue in accordance with law.

**4. Per contra the Respondent has made submissions as under:**

**4.1** The Learned Counsel submitted that the Appellant is being billed under Low Tension Industrial Supply Tariff (Demand Based) having contract demand of 100 HP. Admittedly, an agreement was entered into between the parties but the appellant has misconstrued the extracts of the agreement and its applicability. In fact the petitioner is a LTIS consumer and has opted for demand based tariff. As per Tariff Order for transmission and distribution businesses for the year 2012-13, "the billing demand shall be maximum demand recorded during the particular month or 50% of the contract demand whichever is higher." Accordingly, the petitioner has been charged on the basis of maximum demand recorded in a month or 50% of the contract demand whichever is higher.

**4.2** He further submitted that the contract demand of the petitioner is 100 HP and from perusal of records(Annexure-1), it appears that KVA recorded in bill for the month of August,2014(bill no.103) issued on 11'th September,2014the KVA is

36.200 KVA which is less than 50% of the contract demand. Therefore 50% of the contract demand being on the higher side the petitioner has been billed on the maximum demand of 43.900 KVA as per Tariff Order 2012-13. Similarly, in the bill for the month of September,2014, KVA recorded was 28,500 KVA, which is again less than 50% of the contract demand and therefore, the petitioner has been charged on the basis of 50% of the contract demand.

**4.3** The learned Counsel submitted that presently tariff order of the year 2012-13 is in force. The Appellant has opted for levying of energy bill under Demand Based Tariff which provides raising of bill on maximum demand recorded during the month or 50% of contract demand whichever is higher. Since the energy consumption of the Appellant is less than 50% of contract demand so demand charges are being levied upon on the basis of 50% of contract demand being on the higher side.

**4.4** He further submitted that the agreement executed on 12.04.2010 between the parties is not denied however, after execution of agreement and installation of Maximum Demand Meter/Trivector, the petitioner comes under the Demand Based Tariff. Admittedly the sanction load of the appellant was 100 HP at the time of exercising option but the same goes away after enforcement of agreement. Pursuant to agreement the Appellant (consumer) shall be billed on the basis of Maximum Demand Load . On perusal of agreement dated 12.04.2010, it is apparent that it was entered into in view of provisions contained in clause 5.19 of the tariff order 2003-04 which has now become redundant as the tariff order of the year 2003-04 has been superseded by several other tariff orders passed by the Jharkhand State Electricity Regulatory Commission (JSERC) and presently tariff order of the year2012-13 is operational. Moreover, said agreement is silent over

the contract demand. Therefore, the Appellant cannot be allowed to take shelter of an agreement which was entered into on the basis of tariff order 2003-04.

**4.5** The learned counsel submitted that the appellant is well aware that his contract demand is 100 H.P. and he cannot deny this fact because contract demand is reflecting in the energy bill ever since he became the consumer of the Respondents. By taking support of an agreement which was entered into on 12.04.2010 the appellant is trying to get impugned bills revised on the basis of actual consumption recorded in the meter which is contrary to the tariff order 2012-13 because the agreement dated 12.04.2010 was in addition to the original agreement entered into between the parties and the said agreement dated 12.04.2010 goes away soon after the tariff order 2003-04 lost its effect. Apart from that the present tariff i.e. tariff order 2012-13, nowhere says that it will adopt provisions made under earlier tariff and, therefore, on that score also the agreement dated 12.04.2010 which was made under the provision of tariff order 2003-04 has now lost its effect and has in fact become redundant.

**4.6** He further submitted that Contract Demand has been defined under Clause 2(1) of the (Electricity Supply Code) Regulation, 2005 which says that the contract demand shall be the demand in KVA or KW or HP as the case may be as mutually agreed between the parties as entered in to agreement or agreed through other written communication. In the present case it is admitted fact that contract demand of the Appellant is 100 H.P. and therefore the Respondents have committed no error in charging demand charges on the basis on 50% of contract demand being on the higher side. Moreover, if the Appellant is aggrieved with the exorbitant contract demand, he could have followed procedure made under Chapter 9 of (Electricity Supply Code Regulation), 2005 which provides for the procedures for enhancement and reduction of contract demand. In fact the appellant has never

exercised this option. For better appreciation formula for conversion of Horse Power into Kilo Volt Ampere is being referred wherein 1 HP is equal to 0.878 Kilo Volt Ampere(KVA). The sanctioned demand of the petitioner is 100 HP . Since the maximum demand is charged in terms of KVA, so 100 HP is converted in terms of KVA then numerically it will be 87.80 KVA and accordingly, 50% of 87.80 KVA will come to 43.900 KVA. The petitioner's consumption in both the months are less than 50% of contract demand hence, as per tariff order of 2012-13 the petitioner was charged on the basis of 50% of contract demand which is in accordance with tariff applicable for the LTIS consumer . In fact, no irregularities have been committed by the Respondents in raising the bills and, therefore, the Appellant can not raise fresh issues or fresh grounds which were not raised before the learned VUSNF. Hence, the Appeal is devoid of any merits and is liable to be dismissed.

**5. On the basis of submissions made by both the parties the following issues emerges for consideration:-**

- (i) Whether the respondents are justified in raising monthly energy bill on the basis of theoretical conversion of sanctioned load in to contract load as per the old agreement and the definition of contract demand as defined in tariff order 2003-04 is applicable in the year 2010 onward?
- (ii) What relief or reliefs the petitioner is entitled to?

**Issue No. (i):**

Section 13 of the MYT ORDER for Generation Business (First Control Period) And Determination of Transmission and Distribution Tariff for FY2012-13, applicable from 1<sup>st</sup> August, 2012 for Jharkhand State Electricity Board (JSEB), deals with the Tariff schedule of different categories in which Low Tension

Industrial & Medium Service (LTIS) is one of the category which reads as follow:

*“This schedule shall apply to all industrial units applying for a load of less than or equal to 100 kVA (or equivalent in terms of HP or kW).*

*The equivalent HP for 100 kVA shall be 114 HP and the equivalent kW for 100 kVA shall be 85.044 kW.*

*Service Character:*

*Ac, 50Cycles, Single Phase supply at 230 Volts or 3 Phase Supply at 400 Volts.*

*Demand Based tariff/Installation based tariff for sanctioned load up to 85.044 kW.*

***Tariff:***

***Installation Based Tariff:*** *All consumers under this category and opting for Installation based tariff shall be required to pay fixed charges per HP as per the applicable tariff rates for this category. If the inspecting officer during the inspection of a premises finds excess load ( more than 114 HP ) then the inspecting officer has to serve one month notice to the consumer for regularization of excess load (above 114 HP). After the expiry of the said one month, the inspecting officer will inspect the premises again and if he still finds un-regularized load in the premises, action may be taken as per law.*

***Demand Based Tariff:*** *All consumers under this category and opting for Demand Based tariff shall be required to pay Demand charges per kVA at the rate applicable to HT consumers drawing power at 11 kV. The restriction of connected load will not apply to consumers opting for Demand Based Tariff.*

***Note:*** *The billing demand shall be the maximum demand recorded during the month or 50% of contract demand whichever is higher. In case actual demand is recorded at more than 100 kVA in any month, the same shall be treated as the new contract demand for the purpose of billing of*

***future months and the consumer will have to get into a new Agreement under the HTS category for the revised contracted demand with the Petitioner as per the terms and conditions of HT supply.***

After coming into force of Electricity Act, 2003 Jharkhand State Electricity Regulatory Commission (JSERC) in exercise of power conferred upon under Clause (x) of Sub-section (2) of Sec. 181 read with Sec. 50 of Electricity Act, 2003 notified (Electricity Supply Code) Regulation, 2005 on 28.07.2005 wherein Sec.2(d) and Sec. 2 (f) deals with high tension (HT)(all kinds HT) consumer and low tension(LT) consumer respectively ,whereas Sec. 2(l) deals with Contract Demand which clarifies that contract demand means demand in kilo watt(KW) or Kilo Volt Amperes(KVA) or HP (Horse Power) mutually agreed between the Distribution Licensee and the Consumer as entered into agreement or agreed through other written communication.

Clause 5.19 of the Tariff Order 2003-04 issued by JSERC reads as follows:

*“The maximum demand recorded in a year will be treated as contract load for that year for the consumer who opts for maximum demand meters. This option shall be availed only after installation of maximum demand meters and executing an agreement with the Board for this option of tariff. In case, the consumer supply their own meters, these will be installed after testing and sealing by the Board and no meter rent will be charged. Minimum consumption charges have been abolished.”*

From the aforementioned definitions, it is clear that sanctioned load is applicable in the case of Installation Based Tariff whereas contract demand is applicable in the case of Demand Based Tariff. Under LTIS demand based tariff the billing demand shall be the maximum demand recorded during the month or 50% of contract demand whichever is higher.

On perusal of the energy bills of August and September, 2014 issued by the respondents, it is observed that against contract demand, without specifying any Unit, 100 is written. It is not clear whether it is in kVA or kW or HP. However, this issue has not been questioned by either side. As per Learned Counsel's submission the contract demand indicated in the energy bill is none other than HP which is equivalent to 87.8 kVA as per tariff order of 2012-13.

**Under this scenario, observation made by the Learned VUSNF's in Case No.02/2015 in para 27 may be referred as under:**

*“Now taking in to consideration the annexure 2 & 3 we find that respondents has calculated the demand taking into consideration conversion of HP into kVA on the formula of 100 HP=87.8 kVA. Whereas, as per tariff Order 2012-13 the formula shall be 100 kVA =114 HP and 100 kVA =85.044 kW. Thus, Annexure 2 & 3 is fit to be set aside. And the calculation from 1<sup>st</sup> April 2012 shall be on the basis of formula provided at page No. 234 of Tariff Order 2012-13 under the heading LTIS. The difference of amount shall be adjusted or paid as the case may be proportionately in the forth coming months and total amount shall be adjusted or paid in the monthly billing of FY 2015-16.”*

*Admittedly, an agreement was entered into by and between the consumer (appellant) and the licensee (the then JSEB) on 12/04/2010 which reads as follows:*

*“In view of the provisions contained in clause 5.19 of the tariff order 2003-04 issued by JSERC and clause 5.1 (a, b) of JSEB tariff order 2003-04 in pursuance of letter no. NIC/ELEC/09-10/039 dated 18.07.2009 issued by the consumer i.e. National Industrial Corporation, 47/49C, Ancillary*

*Industrial Area, P.O. - Hatia, Ranchi. Whereby the consumer has shown its intention to opt for the tariff to be billed on the basis of “Maximum Demand Load” instead of “Maximum Connected Load”:-*

*It is hereby agreed by both the parties that henceforth the consumer shall be billed on the basis of “Maximum Demand Load” subject to the condition that the consumer installs a “Maximum Demand Meter/Trivector Meter.”*

*The rest terms and condition of supply as contained in Tariff Order 2003-04 issued by JSERC Read with the earlier agreement would be applicable to the consumer.”*

From perusal of the record it is clear that the electronic Trivector meter was installed in the premises of the appellant by the respondents on 21-08-2006 in working condition. No dispute was raised by either side regarding accuracy of the Trivector meter. Therefore, it can be said that the meter was giving correct reading of consumption of energy in the factory.

In the instant case from perusal of energy bills for the month of Sep. 2014 and Aug. 2014 the consumption recorded were 28.500 kVA and 36.200 kVA respectively. Accordingly, the respondents have raised average 50% of the contract demand being on the higher side and levied for maximum demand for 43.900 kVA. While arriving at this figure the respondents have taken reference of the LTIS applicability wherein equivalent HP for 100 KVA shall be 114 HP and the equivalent KW for 100 KVA shall be 85.044 KW .As per the above stipulation the respondents have converted 100 HP in terms of kVA and arrived at a figure of 87.80 kVA. Based on this assumption, 50 % of 87.80 kVA comes to 43.900 kVA and,

hence were levied according to aforementioned theory. It is pertinent to mention that the conversion factors have also been defined at page number 248 of the MYT ORDER for Generation Business(First Control Period) and Determination of Transmission and Distribution Tariff for FY 2012-13 for Jharkhand State Electricity Board(JSEB) which is also final true up of JSEB for FY 2003-04 to 2010-11, may be referred in the aforementioned context as given below:

The following shall be the conversion factors, as where applicable:  
( PF=0.85):

1 Kilowatt (KW) = 1.176 kilovolt ampere (kVA)

1 Kilowatt (KW) = 1/0.746 Horse Power (HP)

1 Horse Power (1HP) = 0.878 Kilovolt ampere (KVA)

It is apparent that contract demand is not defined in tariff order 2003-04 but the same has been clearly defined in (Electricity Supply Code) Regulation, 2005. The present Tariff Order 2012-13 does not speak of adopting provisions made under earlier tariffs and so, the tariff order 2003-04 has now become in-fructuous. Since the formula for conversion of HP into KVA or KW into KVA has been given in Tariff Order of 2012-13 at page no. 234 and also at page no. 248, the appellant is entitled to relief accordingly on this score.

### ORDER

6. I have considered the contentions of the Appellant and the Respondent and the facts, statistics and relevant papers, which are on record, and considering them in detail, my findings are as under:

**6.1** The contract demand has not been defined in the Tariff Order of 2003-04, hence, the contract demand of the Appellant has to be fixed as per Clause 2(1) of the (Electricity Supply Code) Regulations, 2005.

**6.2** The Respondents may calculate monthly energy bills on the basis of conversion of contract demand as stipulated in the MYT ORDER for Generation Business(First Control Period) and Determination of Transmission and Distribution Tariff for FY 2012-13 for Jharkhand State Electricity Board(JSEB) which is also final true up of JSEB for FY 2003-04 to 2010-11. Therefore it can be said that it covers also the period 2003-04 and, therefore, the word maximum demand used in JSERC Tariff Order of 2003-04 issued on 27/12/2003 shall be read together with the latest provision as stipulated in Determination of Transmission and Distribution Tariff for FY 2012-13 for JSEB which is also final true up of JSEB for FY 2003-04 to 2010-11.

**6.3** The Respondents may either adjust or recover the amount as the case may be in subsequent energy bills during 2015-16 to be raised on the basis of aforementioned observation.

**6.4** I order accordingly.

**6.5** No order as to costs.

**6.6** Compliance be reported within three months.

**6.7** With this order, Appeal/Representation stands disposed of.

Let a copy of the Order be served on both the parties

Sd/-  
Electricity Ombudsman