

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

Case No. EOJ/06/2009

Dated- 7th June, 2010

JSEB through its Chairman & others	Appellant(s)
	Versus	
M/s Ignite Steel 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 appeal has been filed by the appellant/JSEB and others against the order/Judgement dated 20/08/2009 passed in case no. 18/2008 by the Learned Viduyt 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 Learned VUSNF has directed the appellant/JSEB to issue the monthly energy bills from January, 2004 to July, 2006 and onwards to the consumer/respondent on the basis of KVA recorded in the meter or 75% of the contract demand whichever is higher in each month and the Learned VUSNF has further directed to appellant/Board to adjust with interest the excess money realized from the consumer/respondent in the subsequent bills with interest as per Supply Code Regulations of the Jharkhand State Electricity Regulatory Commission (In short to be referred as JSERC) and the Learned VUSNF has also quashed the impugned bills issued to the respondent/consumer for the period from

January, 2004 to July, 2006 and onwards in which the KVA charges had been raised by the appellant/JSEB on the basis of 100% of the contract demand.

2. Being aggrieved by and dissatisfied with the order/Judgement dated 20/08/2009 passed in case No. 18/2008 by the Learned VUSNF, the appellant/JSEB has filed this appeal.

3. The brief facts of this case in short is that the Respondent/Consumer M/s Ignite Steel Pvt. Ltd. was granted an Electrical connection for 1800 KVA load on 33 KV supply for running Induction furnace under HTSS-1 Category of tariff having consumer No. HT-5 under HTSS mode of tariff 2003-2004 and the connection of respondent/consumer was energized on 01/10/1999. The Consumer/respondent had earlier filed a representation before the General Manager-cum-Chief Engineer, Electricity Supply Area, Jamshedpur (Jharkhand) on 20/03/2008 for correction of energy bills issued for the period from January, 2004 to July, 2006, but the grievance of the consumer/respondent was not redressed, therefore, the consumer/respondent had filed a representation before the Learned VUSNF of JSEB for redressal of its grievances.

4. The case of the appellant/JSEB in brief is that in view of the tariff for induction furnace the bills of consumer were issued vide tariff notification dated 15/03/2000, issued by Bihar State Electricity Board (In short to be referred as BSEB) published in Bihar Gazette on 06/04/2000, which was adopted by the JSEB on 20/03/2001, in which the demand charge was raised on the basis of actual maximum demand recorded in the meter during the month or 100% of the contract demand whichever is higher. On the basis of aforesaid tariff of BSEB, bills of the consumer/respondents were raised and therefore there is no illegality in it. Further the case of the appellant/JSEB is that the JSERC has held that the design of Tariff Structure and analysis of tariff in Section 5 of the Tariff order and the terms and conditions of supply has been dealt in Clause 5.30 of the aforesaid 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 also submitted a number of other clauses, while, the other would have to be dealt with at a later stage. This is due to the reason that a detail and depth

analysis of the issue is required and hence they have not been dealt with in this tariff order”. According to the appellant/JSEB Clause 1.4 of terms and condition of supply lays down 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 existing in the state”. According to the appellant/JSEB the other terms and conditions will remain the same as were existing prior to the Tariff order of 2003-04. Therefore, the learned VUSNF committed an error in holding that consumer is not liable to pay the demand charges on the basis of 100% of the contract demand.

5. The respondent/consumer has also appeared in this appeal through his learned counsel and contested the appeal by filing counter affidavit and also filed a supplementary petition.

6. The case of consumer/respondent in short is that the bills of the consumer/respondent from January, 2004 and onward was to be raised as per the actual maximum demand recorded in the meter for that month and not on the basis of 100% of the contract demand. The earlier tariff schedules of BSEB dated 24/09/1999 and 07/05/2001 have been replaced by the new tariff order of 2003-04 of the JSERC by its letter dated 19/05/2005 after coming into force the new tariff order with effect from 01/01/2004. Further the case of the consumer/respondent is that the new tariff order of the JSERC with effect from 01/01/2004 prescribed for Minimum Guarantee amount in the name of Monthly Minimum Charges in terms of Rs. 400/- /KVA/Month and no other minimum gurantee unit/maximum demand have been prescribed in the new tariff order of the JSERC and as such the bills can only be charged on the basis of actual consumed units and actual recorded maximum demand KVA/Month recorded in the meter. The further case of the consumer/respondent is that the earlier this Forum has decided in the case of M/s T & T Metals Pvt. Ltd that the JSEB has no authority and jurisdiction from 01/01/2004 to charge the maximum demand charge on the basis of 100% of the contract demand and JSEB can only charge on the basis of actual demand recorded in the meter as per the rate prescribed in the tariff order of 2003-04 which was also held by this Forum in the case of M/s Kumardhubi Steels Pvt. Ltd.

7. On the basis of aforesaid fact the consumer/respondent has prayed for setting aside the energy bills issued by the appellant/Board from January, 2004 to July, 2006 so far it relates to charging of maximum demand (KVA) concerned which has been raised on the basis of 100% of the contract demand instead of the actual recorded (maximum demand). The respondent/consumer has further prayed for directing the appellant/JSEB to revise the aforesaid bills on the basis of actual recorded monthly KVA as maximum demand and refund/adjust the excess amount realized from the respondent with interest at the interest rate of 2% per month as provided under Electrical Supply (Code) Regulations.

FINDINGS

8. Shri Rajesh Shankar, the learned standing counsel appearing on behalf of the Appellant/JSEB has submitted that the bills of the respondent/consumer from January, 2004 to July, 2006 have been raised on the basis of contract demand of consumer/respondent i.e. 1800 KVA. As the respondent has taken an electrical connection bearing consumer no. HT-5 under the HTSS tariff which is meant for Induction Furnace Consumers which was energized on 01/10/1999 and had also executed a H.T agreement for the same. The billing of the respondent/consumer have been done on the basis of 100% of the contract demand because the JSERC in its tariff order 2003-04 has dealt with design of tariff structure and analysis of tariff in the Section 5 of the order and the terms and conditions of supply have been dealt in clause 5.30 of the tariff order of 2003-04 which reads 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 the JSERC Regulations in clause 3.6.1 at page 25 of tariff order 2003-04 under heading the JSEB's rejoinder 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”.

9. It has been further argued on behalf of the appellant that prior to tariff order, 2003-04 of JSERC the tariff for induction furnace consumers was issued vide tariff notification dated 15/03/2000 issued by the BSEB published in Bihar Gazette on 06/04/2000, which was also adopted by the JSEB on 20/03/2001. According to the learned counsel appearing on behalf of the appellant/JSEB in Clause 5 of the tariff notification dated 15/03/2000, the demand charge of 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 demand whichever is higher. The tariff order of 2003-04 of JSERC in Clause 5.29 at page 114 has introduced a voltage rebate on energy charge for receiving supply at higher voltage levels, at 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 in induction furnace consumers. The demand charge is a fixed charge and the same has been levied in order to meet the fixed expenses of the Board. The tariff order of 2003-04 of the JSERC does not contain any specific terms and conditions for induction furnace consumers therefore the JSEB is constrained to resort to the terms and conditions of supply as enumerated in the Induction Furnace Tariff notification dated 15/03/2000. Further Clause 1.4 of tariff order 2003-04 is the specific clause of the terms and conditions of supply which are existing in the State of Jharkhand. The tariff order of 2003-04 of JSERC, the unit charge has been enhanced from Rs. 1.25/- to Rs. 2.50/- for the HTSS consumers but the rate of demand charge have

been reduced from Rs. 700/- to Rs. 300/- per KVA per month and the M.M.C. charges have been reduced from the existing rate of Rs. 1015/- to Rs. 400/- per KVA per month which is mentioned in table 5.36 at page 118 which is the approved tariff for HTSS consumers. Because of the aforesaid facts the letter of Secretary, JSERC dated 19/12/2005 is completely out placed, without jurisdiction. According to the learned counsel of the appellant, the bills of the consumer/respondent have been rightly raised under the aforesaid provisions of the Induction Furnace Tariff dated 15/03/2000 and as such there is no illegality in the same and it is fully justified. Therefore, according to the learned counsel of the appellant, the learned VUSNF committed an error in not accepting the contention of the Board that the tariff dated 15/03/2000 is a complete tariff in respect to the induction furnace consumers consisting of the complete terms and conditions of supply of electricity and the mode of billing of the consumers. Therefore the impugned order/Judgement dated 20/08/2009 of the learned VUSNF passed in case no. 18/2008 are fit to be set aside to the extent the prayers have been made.

10. On the other hand Sri Ajit Kumar, learned counsel appearing on behalf of the respondent/consumer has submitted that the JSERC vide its letter dated 19/12/2005 has rejected the stand of the appellant in very strong words, by saying that tariff schedules of 2001 can not be taken cognizance after JSERC tariff order, 2003-04 has been made effective. The Commission recognized the tariff order, 2001 as non applicable documents with effect from 01/01/2004 and also warned that the responsibility of violation of JSERC tariff order 2003-04 issued for JSEB would be rest on JSEB. In reply to recent communications dated 15/07/2008 and 20/03/2009 made by the appellant/JSEB with the JSERC, the JSERC has been pleased to clarify and specify its stand vide its letter dated 21/03/2009 in which the stand as indicated in earlier communication dated 19/12/2005 has been reiterated and reemphasized. The JSEB has admittedly not challenged the order dated 19/12/2005 and the said fact has also been held by the Hon'ble High Court in the case of JSEB Vrs. M/s Kumardhubi Steel in case no. WP© no. 5150 of 2007 which has also been achieved its finality by the Hon'ble Supreme Court passed in case no. SLP© No. 20104/2009 of JSEB Vrs. M/s Kumardhubi Steel Pvt. Ltd.

11. On perusal of the order passed by the Hon'ble High Court in WP© no. 5150 of 2007 at Para 14, I am also of the view that the appellant/JSEB can not raise bills on

earlier tariff notification dated 15/03/2000 of BSEB after coming into force the tariff of JSERC, 2003-04 nor bills of the consumer/respondent can be raised under the said provision of the induction furnace tariff dated 15/03/2000 nor the demand charge of induction furnace consumers can 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.

12 The next contention raised on behalf of the consumer/respondent is that the appellant/JSEB even after the publication of the new tariff, JSEB are very wrongly charging the respondent/consumer on 100% of the contract demand although the tariff order of the aforesaid regulation does not provide for such charging at the rate of 100% of the contract demand. As per specific provision of tariff, the appellant is bound to charge the bill 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 (MMC) of Rs. 400/- /KVA for the full contract demand and therefore as per the existing tariff the respondent is duty bound to pay as per 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 in the case of M/s Maa Chinnmastika, M/s Kumardhubi Steel, M/s Globe Steel, M/s Raj Steel etc. has held that the relevant provision of the tariff order of 2003-04 can not be ignored or thrown away at least so long the same judgement of this Forum is not set aside by any higher Court. According to the learned counsel of the respondent/consumer in view of the clear provision of law as also aforesaid judgments of this Forum, the appellant can only charge the respondent only on the basis of actual recorded KVA (Maximum Demand) and not on the basis of 100% of KVA which has been deprecated and decided by this Forum in various judgments and therefore appellant are also required to revise the previous bills of the respondent at the same basis or as per the ratio laid down in the aforesaid cases decided by this Forum when the issues involved in the present case actually similar to the above referred cases in which this Forum has also held that the actions of the appellant in charging the monthly KVA bills on the basis of 100% of the contract demand are bad and illegal and also can only be charged on the basis of actual demand recorded in the meter

as per the rate prescribed in the tariff order of 2003-04 as held in the case of M/s T & T Metals Pvt. Ltd. dated 15/02/2007.

13. In the case of M/s T & T Metals Pvt. Ltd. as well as in the cases of M/s Maa Chinnmastika, M/s Kumardhubi Steel, M/s Globe Steel, M/s Raj Steel etc., the earlier Electricity Ombudsman, Shri Sarju Prasad has ordered that JSEB can not raise the bills on 100% of the contract demand or 75% of the contract demand as case may be to the consumer and the JSEB can only charge on the actual units consumed by the consumer in the meter as per tariff order 2003-04. Among the aforesaid cases, the JSEB had challenged the order of Ombudsman passed in the case of M/s T & T Metals Pvt. Ltd. before the Hon'ble Jharkhand High Court in WP© no 1687/2007 in which the adjustment part of the order of the Electricity Ombudsman has not been stayed by the Hon'ble Jharkhand High Court and the Hon'ble Court has further ordered that the Board is at liberty to charge bills in terms of agreement between the Board and the consumer. In the case of JSEB Vrs. M/s Kumardhubi Steels Pvt. Ltd. in case No. WP© no. 5150 of 2007 dated 17/04/2009 the issue between the parties were that whether the JSEB can raise bills on the basis of actual maximum demand recorded in the meter or 100% of the contract demand whichever is higher from the very first day of commencement of supply. The issue in respect of revision of bills of the consumer in relation to the demand charge was only for the first 12 months i.e. February, 2004 to January, 2005 therefore it was held that the JSEB can not raise bills at 100% of the contract demand and can take only on the basis of actual consumption recorded in the meter for the first 12 months from February, 2004 to January, 2005. The Hon'ble Jharkhand High Court has also held in the aforesaid judgement 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”. The aforesaid findings of the Hon'ble Jharkhand High Court is binding on this Forum and it can not be termed as obiterdicta as said by the learned counsel for the respondent/consumer. In view of the aforesaid ruling and also in view of the order passed by the Hon'ble Jharkhand High Court in case no. WP© 1687/2007 of M/s T & T Metals Pvt. Ltd. the Board has been directed to charge the bills in terms of agreement between the Board and the consumer. In view of the aforesaid ruling, the agreement executed between the parties has to be made the basis of charging bills in between the Board and the consumer. On the basis of Clause

4© of the agreement was executed between the parties of this case, the learned VUSNF has rightly quashed the bills of the consumer for the period from January, 2004 to July, 2006 and onwards in which the KVA charges has been made by the appellant on the basis of 100% of the contract demand and the learned VUSNF has rightly directed the appellant to issue the monthly energy bills in future to the respondent/consumer on the basis of actual recorded in the meter or 75% of the contract demand whichever is higher in each month as maximum demand. Further the learned Forum has rightly ordered that the appellant/JSEB shall also adjust with interest the excess money realized from the petitioner in subsequent bills and interest as per the Electricity Supply (Code) Regulations of JSERC.

14. The Learned Counsel appearing on behalf of the respondent/consumer has also filed a supplementary petition in which he has prayed that in view of the agreement executed between both the parties the learned VUSNF has inadvertently failed to mention in its order that the demand charges for the first 12 month on the basis of actual recorded KVA which can be modified at this stage if agreement is relied by this Forum. But I do not find any force in the aforesaid contention of the learned lawyer of the consumer/respondent because in this case the connection of the consumer/respondent was energized on 01/10/1999 and therefore the first 12 months has already been passed and the consumer has only prayed to revise its bills from January, 2004 to July, 2006. As such the judgement and orders passed by the Learned VUSNF of M/s Sati Iron & Steel Pvt. Ltd., M/s Himadri Steel Pvt. Ltd. and M/s Jagadamba Ingo-Tech Steel Pvt. Ltd. can not be made basis for passing the order for charging the bills at actual consumption for the first 12 months.

15. Thus, from the aforesaid discussions and findings made above, it is held that the appellant/JSEB can not raise bills on the basis of 100% of the contract demand and as such the impugned bills issued to the consumer/respondent for the period from January, 2004 to July, 2006 and onwards in which the KVA charges have been raised by the respondents on the basis of 100% of the contract demand, are therefore quashed. The appellant shall issue the revised bills to the consumer/respondent on the basis of actual KVA recorded in the meter or 75% of the contract demands whichever is higher in each month from January, 2004 to July, 2006 and onwards within one month from the receipt

of this order. 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. In case the aforesaid order is not implemented by the appellant/JSEB, the consumer/respondent will be at liberty to move this Forum for implementing the order of the VUSNF as well as of this Forum.

16. In the result the order passed by the learned VUSNF in case no. 18/2008 dated 20/08/2009 does not require any interference by this Forum and the Judgement/Order passed by the learned VUSNF is upheld and accordingly this appeal is dismissed in the light of directions and orders as made above.

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

Sd/-
Electricity Ombudsman