

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

Case No. EOJ/06/2013

Dated- 18th July, 2014

PetitionerM/s Shah Hitech Auto Alcast Co. Pvt. Ltd.

Versus

Respondent..... J.S.E.B. & Others

Present:

Shri Ramesh Chandra Prasad : Electricity Ombudsman
Advocate for the Petitioner : Sri. Shankar Lal Agarwal
Counsel for the Respondent : Sri. Rahul Kumar
Sri. Prabhat Kumar Singh

ORDER

- 1.** The appeal/representation dated 31-10-2013 received /filed by M/s Shah Hitech Auto Alcast Co.(P) Ltd. pursuant to the order of the Hon'ble Supreme Court dated 17/10/2013 in IA No.4 in civil Appeal No.1225 of 2011 directing the Applicant to approach the Ombudsman and against the Judgement dated 17/07/2009 passed in case No.59/2006 by the Vidyut Upbhokta Niwaran Forum, Ranchi and for restoring of supply of electricity. The same has come up for hearing before the Electricity Ombudsman on 06.11.2013 at Ranchi.
- 2.** The preliminary point of payment of 50% of the supplementary bill of Rs. 76 Lacs and odd was heard ex-parte and date for order was

fixed on 07.11.2013.As per Order passed in this case, the applicant was directed to deposit 50% of supplementary bill in view of Jharkhand State Electricity Regulatory Commission Regulation,(Guidelines For Establishment of Forum For Redressal of Grievances of the Consumers And Electricity Ombudsman)Regulation by 11.11.2013 with Jharkhand State Electricity Board, (in short referred as Board) and to submit receipt thereof before this Forum and thereafter further hearing will be made.

3. Subsequently, a petition was filed on behalf of the applicant that the appellant intends to move Hon'ble Supreme Court against the order of the Ombudsman wherein the petitioner was directed to deposit 50% of the supplementary bill. Different dates till 28.01.14 were fixed awaiting further order of the Hon'ble Supreme Court. The case was due for hearing on 28.01.2014 but could not be heard due to vacancy of Electricity Ombudsman with effect from 11.01.2014 till 04.06.2014.
4. On 06.06.14 a copy of the order passed by the Hon'ble Supreme Court was placed wherein direction was given to hear the appeal on merits without insisting on the pre-deposit. In pursuance of the said order, Respondent Board was directed to file counter affidavit on 13.6.2014.Subsequent date was fixed for filing rejoinder by the Appellant against the counter affidavit filed by the respondent JSEB. The Appellant filed rejoinder on 04/07/2014 which was made available to the Learned Counsel of Board. Subsequently, 10/07/2014 was fixed for final hearing on merit.

5. Order of the V.U.S.N.F., Ranchi

After hearing both sides and after considering the material, the Vidyut Upbhokta Shikayat Niwaran Forum (VUSNF) passed the order as hereunder:

“We are of the opinion that the demand raised by the Respondent Board is not barred by the limitation of Sub Section 56 of the Electricity Act, 2003 and is recoverable by the Board.

Since the amount of short charge is very heavy, the Respondent Board may consider payment of the amount in suitable installments on request of the petitioner as per norms of the Board.”

6. Back ground of the case-

The brief facts giving rise to this appeal is that M/s Shah Hitech Alcast, a company registered under the Company's Act filed this petition through its Director Sri. Dhondulal P. Shah before Electricity Ombudsman for Redressal of grievances pertaining to wrong energy bill issued vide letter No. 1780 dated 11.08.2006 of Rs. 76,78,233(Rs. Seventy Six Lacs Seventy Eight Thousand Two Hundred and Thirty Three)only by way of supplementary bill from the month of December,1998 to November,2005.

The brief history of this case inter-alia is-

The petitioner M/s Shah Hitech Alcast Co. is an H.T.S. consumer bearing consumer No. HJAP-113 with a contract demand of 200 KVA on 11 KV side.

The old meter of the petitioner was changed on 24/11/1998 by competent officers of Board in presence of the representative of the

consumer. The make of this meter was “Duke Armics”, Hyderabad bearing serial number 5127. After installation of the aforesaid meter, installation card was prepared wherein C.T. ratio was recorded as 600/5A, thereby the multiplying factor becomes $\frac{2}{3}$. Thereafter, Board started raising electricity bill considering C.T. ratio as 600/5A and multiplying factor $\frac{2}{3}$, which was regularly paid by the petitioner.

The aforementioned meter which was installed on 24/11/1998 was replaced by a new meter on 25/11/2005. At the time of replacement of old meter by the officials of Respondent Board deputed for replacement of meter, it was detected that the CT ratio is 400/5A in place of 600/5A which was recorded in earlier installation card prepared on 24/11/1998. As such the multiplying factor of the old meter becomes 1 (one) in place of $\frac{2}{3}$ causing short billing of electricity consumption by $\frac{1}{3}$. After replacement, the old meter was sealed in presence of the consumer and kept for retesting and verification. A committee was constituted by office order of Electrical Superintending Engineer, Electric Supply Circle, Jamshedpur vide office order number 35 dt. 02/5/2006 to verify technical parameters of the meter. The committee after inspection found that the meter installed on 24.11.1998 has CT ratio of 400/5A and not 600/5A. The inspection report was signed by members of the committee including representative of the consumer Sri. Binay Kumar Srivastava. On the basis of the said inspection report, supplementary bill along with bill of August, 2006 amounting to Rs. 76,92,573/= was served to the petitioner for payment, which was not paid. Due to non payment, Board issued disconnection order on 19.09.2006 for a sum of Rs. 76, 92,573 under Sec. 56 of the Electricity Act, 2003. The electric supply was disconnected on 22/04/2013 on account of nonpayment of the impugned bill.

Aggrieved by the order of the Forum and the action of the respondent Board the petitioner approached the Apex Court.

The electric supply of the petitioner was restored by the Order of the Apex Court on 26/03/2014 passed in Civil Appeal No 1225/1. After restoration of the electric supply the petitioner is making payment of current bills excluding the arrear shown in the bill.

7. Argument of the Appellant

The submission of the learned Counsel of the Appellant is that the supplementary energy bill is wholly illegal, arbitrary and without jurisdiction and the recovery of the same is barred under Sec.56 (2) of the Electricity Act, 2003. If any mistake has been committed by the Respondent Board, the Board should be blamed for itself and such amount is not recoverable after a period of approximately 8 years. Moreover the petitioner was not given any opportunity of hearing by the respondent Board. Therefore, the energy bill issued vide letter No.1780 dated 08/08/2006 amounting to Rs.76, 78,233/- should be quashed as it is barred by the limitation under the provisions of Section 56 (2) of the Electricity Act, 2003 and the Respondent Board should be directed to issue a fresh bill considering the provisions of Sec.56 (2) of the Electricity Act, 2003. He further submitted that the provision of the said Act puts embargo on the power of the Board to recover the amount after 2 years.

The learned counsel further submitted that the Respondent had already raised bill from December, 1998 to November, 2005 and the amount became due in respective months and on the dates mentioned in the bills. Those bills were regularly paid by the appellant without any dispute. The Respondent has raised supplementary bill on 08/08/2006 for

the same period and still claim that it became due for payment on 27/08/2006.

Further, submission of counsel for petitioner is that the provisions of Section 56 do not empower Respondent Board to recover any amount if the period of two years has elapsed .The supplementary bill raised after about 8 years would act harshly considering that the costs would have eventually been transferred to the consumer of the manufactured goods had the amount so claimed was raised at the appropriate time.

The liability to pay electricity charge is created on the date electricity is consumed and not after the bill is raised.

The learned counsel presented copy of the orders passed by different Hon'ble High Courts and Electricity Ombudsman of various States as under to put emphasis to his argument-

- (i) AIR 2013 Gauhati 12 ,W.P. © No. 10444 of 2003,Dated- 28-8-2012
- (ii) AIR 2007 Bombay 52, W.P.(L) No. 2221 of 2006,Dated- 5-10-2006
- (iii) Order dated 14.08.2013 passed by Electricity Ombudsman for JERC for Goa and UTS Mr. R.K.Kaul in Appeal/Representation No. 18/2013.
- (iv) Order dated 1st July, 2009 passed by Electricity Ombudsman, Bombay Sri. W.G. Gorde in Representation No. 60 of 2009

(8) Argument of the Respondent

The submission of the learned counsel of the respondent is that the Board has right to raise any supplementary demand in case of short charge on account of errors and omissions. So far as the provisions of

Sec.56 (2) are concerned the impugned demand has been raised for the first time on 08/08/2006 and therefore, the said demand is well within the period of 2 years from the date the said sum became first due and is regularly shown on the subsequent bills. So, it is not barred by the limitation of Sec.56 (2) of the Electricity Act, 2003. The liability may be said to be created earlier in accordance with the tariff order, but the amount of short payment became due only after realization of mistake and the assessment of the short charged amount and on raising the bill for the same by the Board.

The learned counsel further submitted that the petitioner was given due opportunity for filing objection and subsequently the matter was explained to him.

He submitted that amount of charges would become “first due” not from the date of consumption of the electrical energy but becomes due only when the demand is made by raising bill for consumption of such electrical energy. The principal contention of the Respondent is that the mistake in recording wrong CT ratio was discovered when the old meter was replaced on 25/11/2005 thereby they had committed a mistake in charging less electricity bill on the basis of wrong calculation using multiplying factor 2/3 in place of 1(one).

To put thrust to his submission, the learned counsel presented copy of the order passed by the Hon’ble Jharkhand High Court in LPA No.329of2007and,W.P.(C)Nos.2777,2261,2430,2274,1306,1257,2016 2330,2030,675 and 663 of 2007 with W.P.(C) 7208 of 2006.

(9) ISSUES INVOLVED IN THIS CASE:-

In the above backdrop, the main issue for consideration, as follows;

- (9.1) whether the Respondent Board is entitled to raise supplementary bill of Rs.7678233/- in August, 2006 which pertained to period from December, 1998 to November, 2005 by correcting the multiplying factor with retrospective effect,
- (9.2) Does Section 56(2) of the Electricity Act, 2003 apply to the arrears prior to coming into force of the said Act which prescribes limitation of 2 years.
- (9.3) Whether the consumer having already adjusted the amount of electricity in his product and the burden was passed upon the purchasers of the product, the demand through supplementary bill with retrospective effect is lawful act on the part of the Board.

(10) CLARIFICATION OF THE ISSUES-

- (10.1) Admittedly, the consumer has consumed electrical energy during the period 12/98 to 11/2005. The quantum of electrical energy should have been calculated on the basis of multiplying factor 1(one) and not applying multiplying factor 2/3. Therefore, shortfall in terms of short unit & KVA by 1/3 while calculating the actual consumption of electrical energy during the period so billed. When the Board raises energy bill as per tariff making specific demand for payment against the consumption of electrical energy, the amount becomes first due for payment for such consumption of electrical energy. The sum can only be said to be due, when a demand is raised for the same. Accordingly, the Board raised the supplementary bill. The amount shown in the bill become due to the consumer for the purpose of payment on the date mentioned in the bill not earlier. Issuing the supplementary bill and demanding the amount

short charged in previous bills of the consumer is not contrary to the tariff order.

- (10.2)** Sub section (2) of Section 56 of the Electricity Act, 2003 deals with the recovery and provides that no sum due from any consumer under this section shall be recoverable after a period of 2 years from the date when such sum has been shown continuously as recoverable as arrear of charges for electricity supplied. Since the amount of impugned bill was not demanded earlier, the same can not be due at any earlier time .The liability may be said to be created earlier, but the amount of short charge became due only after realization of the mistake and the assessment of the short charged amount and on raising the bill for the same by the Board.
- (10.3)** Issuance of impugned bill against short unit & KVA has so happened due to the fault on the part of Board officials. However, the demand of recovery of the impugned bill is not hit by the relevant provision of the Act.
- (11)** I have heard the learned counsel appearing on behalf of both the parties and carefully examined material on record and considered the facts, relevant provisions of law and decision referred to by respective parties and material on record, I am of the view that when the consumer consumes electrical energy, he becomes liable to pay the charges for such consumption of energy.
- (12)** In view of the above findings, I further hold that the period of two years as mentioned in Section 56(2) of the Electricity Act, 2003 would run from the date when such demand is first made by the Board through the impugned bill, against consumption of electrical energy. Therefore, the demand made by the Board through the impugned bill is not barred by

limitation of Section 56 (2) of the Electricity Act, 2003 and is recoverable by the Respondent Board.

- (13) Consequently, I affirm the view of the Hon'ble Vidyut Upbhokta Shikayat Niwaran Forum, Ranchi in the impugned order passed on 17/07/2009 in Case No.59/2006.

This petition/appeal is accordingly dismissed.

Let a copy of the judgement be served to both the parties.

Sd/-
Electricity Ombudsman