

BEFORE THE ELECTRICITY OMBUDSMAN, JHARKHAND

4th floor, Bhagirathi Complex, Karamtoli Road, Ranchi-834001

Appeal No. EOJ/06/2015

M/s Krishna Plastic Appellant

Versus

The Managing Director, JUSCO Ltd. & Ors. Respondent

Present:

Electricity Ombudsman - Shri Ramesh Chandra Prasad
Advocate for the applicant - Sri. Manoj Kumar
- Sri.S.K. Puskar
Counsel for the respondent - Sri. M.S.Mittal,
- Smt. Shilpi John
- Sri. Ankit Vijay

ORDER

(Passed on this 27th day of January, 2016)

1. Brief of the Case.

1.1 The appellant owns a factory located at C-16,4th Phase, Industrial Area, Gamharia , Adityapur . On request of the applicant vide his application No.- 1853 the licensee, Jamshedpur Utilities & Services Company Limited (herein after referred to as JUSCO) agreed to give LT Industrial Power connection against 40 H.P load on the condition of deposit of Rs.3,37,171/- (Rupees three lacs thirty seven thousand one hundred seventy one) within one month towards cost of installation charge, meter security, energy security, supervision charges etc. communicated to the applicant vide their letter dated 09.02.2010. The

applicant vide his letter dated 19.02.2010 informed JUSCO that due to personal difficulty in making payment of the aforesaid amount in one go, electricity connection may be given on payment of Rs.1,00,000/- and remaining balance amount shall be paid in five equal monthly installments after coming into operation of the factory. Subsequently, the appellant with a representation deposited three post dated cheques one bearing number 063772 dated 16/03/2010 for Rs.1,00,000/-, second bearing no.064176 dated 31/05/2010 and third bearing no.064177 dated 31/06/2010 for total amount of Rs.1,29,417/-. The respondents issued money receipt against the aforementioned three post dated cheques. After completion of installation work in the plant, JUSCO provided electricity connection to the plant. Payment was made against the first energy bill in the month of Sept.2010 and the appellant continued to pay against the energy bills till April, 2011. The dispute started from the month of May, 2011 when JUSCO added Rs. 1,09,417/- energy security, meter security charges in the energy bill. On raising objection against energy security amount and meter security amount JUSCO accepted Rs.25,000/- towards Energy Security and Rs. 20,000/- towards Meter Security and accordingly the appellant deposited the aforesaid amount. Subsequently, on 17.10.2012 JUSCO served notice U/s 56 of the Electricity Act, 2003 for disconnection of energy supply for nonpayment of dues of Rs.29, 611. (The appellant protested the Notice and gave full detail of payments of dues on 27.10.2012, but even then JUSCO disconnected supply on 01.11.2012 and later on suo-motto reconnected power line and directed to deposit Rs.25,000/- as security money and, Rs.20,000/- against meter security and Rs.40,135/- towards installation charge.) The appellant did not make payment on the plea that security money and meter security money had already been paid and since, installation charge

break up has not been provided the same could not be paid. Again a notice of disconnection was served on 26/03/2013 for nonpayment of dues of Rs.30,484/- and disconnected power supply on 29/04/2013 in spite of objection. Finally, power supply was disconnected on 04/10/2014 on nonpayment of huge amount of energy consumption and dues of initial installation charges.

1.2 The appellant filed complaint petition before the learned Vidyut Upbhokta Shikayat Niwaran Forum (herein after referred to as VUSNF). The learned VUSNF pleased to pass the following order on 13.07.2015 :

“The petition of the complainant is partly allowed. He is being directed to pay, all the up to date dues of electricity consumption, and initial installation charges dues. The O.P. (JUSCO) will not charge and waive the interest and penalty on installation charges dues. The O.P. (JUSCO) will restore the energy supply to the unit of complainant, after payment of all the dues by the complainant.”

Aggrieved by the aforesaid order the Appellant made Appeal under Clause 20 of the (Guidelines for Establishment of Forum for Redressal of the Grievances of the Consumers and the Electricity Ombudsman) Regulation, 2011

2. Submission of the Appellant:

2.1 The learned Advocate submitted that in spite of several requests, details of the installation charges etc. has not been furnished by JUSCO and as such violated the Regulation of the Hon'ble Regulatory Commission (here in referred to as JSERC). However, in course of hearing before the learned VUSNF details in respect of installation expenses in a separate sheet have been provided by JUSCO and that too without signature of any competent person of the licensee. On perusal of the aforesaid detail of installation expenses one can easily find out numerical mistake in addition in the list. The installation expenses shown in details of initial charges issued under the signature of Dy.

General Manager, Power Service Division ,JUSCO Ltd. On 09/02/2010 is Rs.1,82,868/-whereas in the detail of installation expenses the amount shown is Rs.3,42,024.6/-. This shows the callous approach of the licensee in providing genuine details to their consumers.

2.2 He further submitted that as per direction of JUSCO for getting electricity connection, the appellant issued two post dated cheques with some condition and also gave Rs.1,00,000/- by demand draft in the month of March,2010 but power supply was not given till August,2010.Subsequently,on written undertaking power supply was given on 04/09/2010. The energy bills were paid from time to time till December,2013 and therefore, cannot be said to be a defaulter. Moreover, payment against Security Charges of Rs. 25000/-was made by cheque on 07.06.2011 and Meter Security of Rs. 20000/- by cheque on 26.07.2011 but to utter surprise the appellant was served with disconnection notice U/s 56 of the Electricity Act, 2003 on 17.10.2012. After receiving the notice, the appellant had informed vide letter dated 27.10.2012 that all alleged dues had already been paid and requested to send correct bills. Thereafter, the electricity supply was restored. In spite of several request letters ,the breakup of installation charge was not provided on the other hand sent another notice for disconnection of electricity supply on the ground of false defaulted amount of Rs. 6663/-and Rs.30484/-(Rs.22618+7865.74).In fact these amounts had already been paid by the Appellant on various dates which has also been taken into consideration by the Hon'ble VUSNF in it's order dated 13/07/2015.

2.3 He further submitted that the learned VUSNF failed to consider the provisions of Section 56 of the Electricity Act, 2003 and Supply Regulation Code, 2005wherein it is mandatory for disconnection of electricity to serve notice U/s 56 of the Act giving 15 days time to make payment of dues amount, thereafter only, on nonpayment, power supply can be disconnected. In

contravention of the said provisions, without giving prior notice, JUSCO disconnected the power supply on 04.10.2014. Infact, JUSCO has never demanded installation charges in first, second and third disconnection notice dated 17.10.2012, 26.03.2013 and 26.04.2013 respectively but demanded installation charges during hearing before the learned VUSNF. In fact Rs. 1,45,000/- was already paid by the Appellant, which is undisputed. Admittedly, JUSCO had given electricity supply on 04.09.2010 after receiving undertaking of the appellant on 31.08.2010. The appellant continuously goes on requesting JUSCO to give detail of installation expenses but ultimately the same was made available during the course of hearing before Hon'ble VUSNF though the Licensee is required to give detail of installation charge as per order by the Hon'ble JSERC in Determination of Distribution Tariff for Financial Year 2010-11 for JUSCO which reads as follows:

“Clause 13.6-The petitioner is directed to provide a detailed breakup of the installation charges to the consumers prior to taking up the installation work

2.4 He further submitted that wrong statement in respect of dishonor of cheques, which were issued by the Appellant in the month of March, 2010 has been given by JUSCO. It is true that two cheques were issued, but the two cheques bearing no. 064176 dated 31.05.2010 and 064177 dated 30.06.2010 respectively were not presented before the bank for encashment because there is no stamp and seal of the bank found over the cheques. Therefore, dishonor of cheques is wholly false and concocted with malafide intention for harassment of the appellant. The Appellant has already paid of Rs. 1,00,000/- installation charges, Rs. 25000/- against Security Charges and Rs. 20000/- for Meter Charges where as the Supply Code Regulation, 2005 has fixed meter charges as Rs. 10000/-.

2.5 The learned Advocate further submitted that when the line has been disconnected, the respondents cannot be allowed to raise any minimum guarantee bill and relied on the judgement of the Division Bench of Hon'ble Patna High Court, in the case of M/s Electric (Patliputra Power Equipment Pvt. Ltd. Vs. Bihar State Electricity Board and Ors. (1992 PLJR 62), who has held in para-4, that if the Board unlawfully stopped supply of energy to the consumer then it cannot lawfully claim minimum guarantee charges as the court has held that none can be allowed to take advantage of its wrong or fraud and to hold otherwise will mean giving premium to the wrong committed by the Board.

He further made reference of the judgement delivered in M/s Gaya Flour Mill Vs. Bihar State Electricity Board and Ors. By the Hon'ble Patna High Court (1995 (2) PLJR 710).The licensee JUSCO has disconnected electricity supply without any reasons and disturbed production of the Appellant's company and harassed with malafide intention. Therefore, the Appellant is liable to compensation of Rs. 1,00,000/- and in view of the aforesaid facts and law, the direction of learned VUSNF for deposit of installation charges prior to restoration of electricity is wholly wrong and without records and therefore, the said order is not sustainable, liable to be set aside.

3. Submission of the Respondents:

3.1 The learned Senior Counsel submitted that the Appellant was to deposit Rs. 3,37,171/- within one month against installation charge, supervision charge, service tax, education cess, meter security and energy security etc. for getting electric supply from JUSCO for his plant having load of 40 HP. In order to encourage small entrepreneurs, JUSCO provided electricity supply to the plant on 08.09.2010 on the basis of undertaking communicated vide appellant's letter dated 31/08/2010 wherein request was made to provide electricity connection

after acceptance of payment of Rs. 1,00,000/- and balance amount of Rs. 2,27,171/- within 30 days of energization , or else the Respondent would be at liberty to disconnect the electricity connection. As a matter of fact , the respondents were accommodative enough towards the appellant and afforded final opportunity to the Appellant for making payment of balance amount of Rs. 2,27,171/-, as per commitment. JUSCO agreed for installments and started supplying energy to the Appellant's factory but, the appellant never kept his promise. It is pertinent to note that the cheques referred to were presented before the Bank for realization but to utter surprise only cheque no. 063772 dated 16.03.2010 for Rs. 1,00,000/- was honoured and remaining two cheques were dishonoured. This demonstrates the irresponsible and casual attitude of the appellant for getting the said electricity connection.

3.2The learned counsel further submitted that the Appellant has roguishly suppressed the relevant material fact because he is a habitual defaulter customer of the Respondent. The Appellant used to make partial payment of its electricity bills in the bank account of the Respondent directly without any intimation to the concerned department of the Respondent. Due to such partial payment made by the Appellant in the bank account of the Respondent directly, the Respondent was unable to get the details of the payment made by the Appellant. Moreover, the disconnection was legal and validly made under section 56 of the Electricity Act, 2003 as the Appellant has defaulted by making nonpayment of total outstanding dues. The charges of installation etc has been extensively explained to the Appellant by the Respondent on various occasions, two of such representations are annexed by the appellant itself in its appeal petition as annexure-1 and annexure-13 dated 09.02.2010 and 28.11.2014 respectively to the memo of appeal. The issue raised by the Appellant that the provision of Rule 58 of the Indian Electricity Rules,1956 has not been followed in giving

power supply to the Appellant is misconceived. As per rule the licensee provides power supply to HT/EHT consumers for which independent transformers and other equipments are solely owned by them. Looking at the detail of installation charges it is evident that cost of the transformer has been proportionately charged.

3.3 The learned Senior Counsel vehemently opposed the allegation of cheques under reference were not placed before the bank. He explained the reason that cheques which are normally dishonoured are returned back with endorsement in printed formats wherein cause of dishonor of cheques are printed. Such returned cheques normally do not bear any seal. However, he reiterated that disconnection was made due to nonpayment of total outstanding dues. It is relevant to mention here that all the charges of installation have been explained to the Appellant in person and through letters dated 09.02.2010, 25.03.2010 and 28.11.2014 hence there is no question of compensating the Appellant. The Respondent has followed all the mandatory provisions of the Electricity Act, 2003 and provisions of the Jharkhand State Electricity Regulation Code where in the Licensee can demand meter security from Consumer. Under proviso to clause 13.2.1 of Supply Code, 2005 a Licensee is entitled to receive meter security from a consumer. In fact, the attitude of the Appellant was to avoid payment this way or that way and, moreover, he is guilty of suppression and suggestion falsi and has not approached for redressal of his grievances with clean hands and on this ground alone the appeal deserves dismissal with heavy cost.

4. Issues:

1. Whether not providing detail of installation charges vide letter dated 9th Feb.2010 issued by JUSCO is contravention of the Regulation/Tariff Order of JSERC?

2. Whether as per Regulation of J.S.E.R.C. supervision charge, meter security, energy securities are chargeable?
3. Whether the Appellant is defaulter in payment of installation charge etc.?
4. Whether electric supply of the Appellant was disconnected illegally and, now restoration thereof without making payment against arrear of installation charges is valid?
5. Whether the Appellant is entitled for any relief?

FINDINGS:

Issue No. 1: On application of the Appellant, the licensee JUSCO agreed to supply power to the plant located in AIADA area with a direction to deposit Rs. 3,37,171/- towards installation charge etc. within one month .The Appellant showed inability to deposit such huge amount in one go and requested to deposit Rs. 1,00,000/- initially and rest amount in five equal installments. JUSCO accepted the request and on deposit of Rs. 1,00,000/- (one lac) only completed the installation work and provided electric connection to the said unit . Some post dated cheques against the installments were given to JUSCO by the Appellant. However, all cheques so made were dishonored by the Bank. From perusal of the case record and documents filed by both sides I find that JUSCO in their letter No.PBD/PSK/181/11/09-10 dated 09.02.2010 had asked the Appellant to deposit Rs. 3,37,171/- breakup of which is given below:

- I. Installation charge - Rs. 1,82,868/-
- ii. Supervision charge - Rs. 5486/-
- iii. Service Tax - Rs.18,835/-
- iv. Education Cess - Rs. 565/-
- v. Meter security - Rs. 20,000/-

vi. Energy Security - Rs. 109417.

Total - Rs. 3,37,171/-

The arguments advanced by the Appellant on these points is that JUSCO was duty bound under law to provide him the detail break up of Installation Charge but they had not given any such break up in their letter dated 09.02.2010 and, as such Installation Charge amounting to Rs.1,82,868/- was not deposited as per demand .It is true that detail break up of installation charge was not mentioned in the aforesaid letter.

On perusal of the Tariff Order on Annual Revenue Requirement for Financial Years 2007-08, 2008-09,2009-10&2010-11 and Determination of Distribution Tariff for Financial Year 2010-11 for JUSCO, the J.S.E.R.C. in August,2010 had passed the following direction:

“Clause13.6-The petitioner is directed to provide a detailed breakup of the installation charges to the consumers prior to taking up the installation work.

Based on the above direction JUSCO provided detail break up of installation charge during the course of hearing in VUSNF.

In the light of the aforementioned statutory direction by JSERC in the month of August, 2010, question of any violation of Regulation on 9th February,2010 does not arise at all.

Issue No. 2

Details of initial charges demanded vide letter dated 09/02/2010 include Supervision Charge as Rs. 5486/- , Meter Security Charge as Rs. 20,000/- and Energy Security (for 3 months estimated consumption) as Rs. 1,09,417/-.

The (Electricity Supply Code) Regulation, 2005 has mandated the distribution licensee to recover from the applicant all expenses reasonably incurred in laying service line from the distribution mains to the point of supply on the

schedule of charges approved by the Commission .It is also essential for the distribution licensee to file Schedule of Charges along with every application for determination of tariff under Section 64 of the Act together with such particulars as Commission may require. The schedule of charges approved by the Commission shall unless and otherwise amended or revoked, continue to be in force.

In the light of the aforesaid provisions the Tariff Order issued by JSERC on Annual Revenue Requirement for Financial Years 2007-08,2008-09,2009-10&2010-11 and Determination of Distribution Tariff for Financial Year 2010-11 for JUSCO, in August,2010 becomes relevant.

As per Clause 3.23 of the (Electricity Supply Code) Regulation, 2005 the Licensee can realize 15% of Labour cost as supervision charge. On perusal of letter dated 09/02/2010 it is evident that detail of labour cost has not been mentioned in the said letter issued by JUSCO. Therefore, Supervision Charge of Rs. 5486/- indicated in the details of Initial Charges is questionable. Similarly, basis of calculation for three months estimated consumption for a plant of sanctioned load of 40HP has not been spelt in the said letter. As far as meter security charge is concerned the same is to be guided by the Regulation/Tariff Order.

In order to decide the aforesaid issue, Sec. 47 of the Electricity Act 2003 becomes relevant which reads as below:

(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of Sec.43,to give him reasonable security ,as may be determined by regulation, for the payment to him of all monies which may become due to him.-

- a) In respect of the electricity supplied to such person; or
- b) Where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect the provisions of such line or plant or meter, and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to the line or plant or meter for the period during which the failure continues.”

So this issue is being decided accordingly.

Issue No.3:

The Appellant vide his letter dated 19.02.2010 had agreed to pay Rs. 1,00,000/- in one go balance amount of installation expenses in five equal installments after starting of production in his unit. After receiving Rs.1,00,000/-JUSCO provided electrical connection to the Unit on 08.09.2010. After getting power connection the Appellant did not pay installation charge as promised by him although, the Appellant issued some post dated cheques in favour of JUSCO but, all these cheques were dishonoured by the Bank.

It transpires from the record that the Appellant had not raised any objection in respect of payment against installation charges before getting power connection. The dispute started after two years of getting power supply i.e. on 21.12.2012 after receiving reminder for payment of arrear of installation charges.

Section 56 (1) of the Electricity Act,2003 provides disconnection of supply in the event of failure of non payment by the consumers which follow as below:-

“ Disconnection of supply in default of payment..(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity

due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

- (a) An amount equal to the sum claimed from him, or
- (b) The electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

Whichever is less, pending disposal of any dispute between him and the licensee.”

Therefore, apparently the Appellant is defaulter in payment of arrear of installation charges as promised by him vide his letter dated 19.02.2010 .

So, this very issue is being decided against the Appellant.

Issue No.4:

The 1st disconnection notice dated 17th October,2012 issued U/s 56 of the Electricity Act, 2003 was against an outstanding amount of Rs. 7354/- towards the electricity consumption as per Bill No. 3011660386 dated 04.06.2012, which was due for payment by 25.06.2012. However, as per bill

dated 04.10.2012 the total outstanding dues as on date amounts to Rs.29611/- including current demand. Though, the same had already been paid on 25.07.12. The matter in writing was communicated to JUSCO vide Appellant's letter dated 27.10.12 but in spite of that the power supply was disconnected which is legally not correct.

The second disconnection notice was of 26th March, 2013 for defaulted amount of Rs.6663/- though the same was already paid vide receipt dated 25/07/2011. So, second disconnection of power supply was not justified and legal.

The third disconnection notice dated 27th April,2013 is also related to the aforesaid bill amount of Rs. 6663/- as mentioned in the aforementioned notice. Therefore, this is also not valid.

The last disconnection notice U/s 56(1) of the Electricity Act, 2003 showing total dues amounting to Rs. 1,22,352/- as outstanding Energy Bills and Rs. 1,70,533/- dues against Installment of installation expenses. The Appellant has not produced any payment receipts against the aforementioned dues. So finally JUSCO disconnected the electricity supply of the Appellant's Unit on 04/10/2014. Statutorily the final disconnection made on 04th October,2014 was legal and valid owing to nonpayment of huge amount against electricity consumption and dues against initial installation charges.

The Appellant is defaulter in payment of installation charge as promised vide his letter 19/02/2010. Admittedly, the post dated cheques issued by him in favour of JUSCO were dishonoured by the bank. Endorsement by the bank over returned cheques either by way of seal on it or attached along with printed performa wherein cause of dishonor of cheque or any instrument of

the bank is written is a technical issue and requires expert's opinion from the concerned bank. Based on the material available on record, the contention of the Appellant that the cheques were not placed before the bank well within time is not tenable.

The final disconnection was valid and rest three were invalid.

Issue No.5

The Appellant's plant is not getting power supply from the date it was finally disconnected on 04/10/2014. The issue of raising bill against minimum guaranty has been addressed during argument. The Appellant relied on the Division bench judgement of the Hon'ble High Court, Patna in the case of M/s Electric Patliputra Power Equipment Pvt.Ltd. Vs Bihar State Electricity Board and Ors.(1992PLJR62) and M/s Gaya Roller Flour Mill Vs Bihar State Electricity Board and Ors.(1995(2)PLJR710) .Admittedly, this particular issue was not raised earlier before the court below and, therefore, raising this plea first time at the stage of Appeal is not legally correct.

The Appellant has demanded compensation for illegal disconnections but not stated in his appeal the magnitude of loss incurred in this respect and, therefore, demand for compensation is not tenable.

5. Heard both the parties at length. I have gone carefully through the written submission of the Appellant and documents produced and placed on record.

In the result, I pass the following order:-

- a) The Appeal is partly allowed.
- b) The Respondents are directed to furnish Installation expenses as per provisions of the (Electricity Supply Code) Regulation, 2005 indicating therein threadbare breakup of installation charges.

c) The revised bill so prepared shall include,

i) Installation charge dues without any delayed payment surcharge and,

ii) Admissible energy dues based on the Tariff Order on Annual Revenue Requirement for Financial Years 2007-08, 2008-09, 2009-10&2010-11 and Determination of Distribution Tariff for Financial Year 2010-11 for JUSCO issued in August,2010 by Hon'ble JSERC.

d) The Respondent is at liberty to grant installment against the revised bill if so desire.

e) The Respondent shall ensure power supply immediately after receipt of the payment of revised bill so prepared.

f) No order as to costs.

With the above direction the instant appeal stands disposed of.

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

Sd/-

Electricity Ombudsman