

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

Appeal No. EOJ/07/2012

Dated- 02nd December, 2015

JUVNL & Others Appellant

Versus

M/s Inderchand Rajgarhia & Sons (P) Ltd. Respondent

Present:

Electricity Ombudsman - Sri Ramesh Chandra Prasad

Counsel for the appellant - Sri Rahul Kumar

- Sri Prabhat Singh

Advocate for the respondent - Sri D.K.Pathak

- Sri Navnit Prakash

J U D G E M E N T

1. The petitioner Company JUVNL has filed this Appeal through its Law Officer Sri Arun Kumar Shrivastav for quashing the order passed on 22/05/2012 by the Learned VUSNF ,Ranchi in Case No.37/2011.

2. Brief of the Case:

The premises of the Respondent was inspected on 30.09.2011 by the officials of Jharkhand State Electricity Board (herein after referred to as JSEB/Board) now a registered company known as Jharkhand Urja Vikash Nigam Limited (here in after referred to as JUVNL/Nigam) in presence of the representative of the appellant. In course of inspection the whole

metering system was found to be slow by 14.26 times, which resulted in less recording of consumption of energy. Based on the inspection, the impugned energy bills were issued by multiplying the readings (both KWH and KVA) by 14.26 times.

Aggrieved by the impugned bill and disconnection notice, the respondents filed petition before Vidyut Upbhokta Shikayat Niwaran Forum (here in after referred to as VUSNF) for redressal of grievances against the impugned energy bills and the disconnection notice. After hearing both parties the Hon'ble VUSNF passed order in paragraph 5 as under:

“In the result therefore, the impugned energy bills (Annexure- 4 & 10 of the petition) as well as the impugned legal notice (Annexure-8 of the petition) are hereby quashed and the O.P. Board is directed to raise energy charges since October'2010 to 14.11.2011 as indicated in Para 4.3 hereinabove. It is hereby made clear that the energy charges for the impugned period shall not carry any D.P.S. The payment already made by the petitioner in terms of the interim order/orders of this forum shall have to be adjusted in revised bills. The Board shall accordingly issue revised bills for the impugned period. This case accordingly stands allowed and disposed of.”

Aggrieved by the order of learned VUSNF in Case No.37/2011 dated 22/05/2011, JSEB preferred an appeal before the then learned Electricity Ombudsman. After hearing both parties the appeal was dismissed vide order dated 21st of September, 2012 on the sole ground that the appeal had been filed beyond the limitation period of 60 days. By way of Writ Petition No.W.P.(C)7654of 2012 JSEB challenged the order dated 21st of September before the Hon'ble High Court, Jharkhand. After hearing both the parties the

Hon'ble High Court disposed of writ petition no. W.P.(C)7654of 2012 dated 05/06-01-2014 with a direction to Electricity Ombudsman to consider the petitioner(JSEB) appeal and decide the same on merit.

After lapse of more than one and half years, JUVNL preferred the instant Appeal which has been registered and restored on 21/07/2015 vide Appeal No. EOJ/07/2012. On request of both parties adjournments were allowed for filing CA or other relevant papers etc. Finally, on 23/11/2013 the matter was discussed at length. It was decided unanimously to submit written argument before 02/12/2015 and final judgment to be delivered on 2nd December, 2015.

3. Submission of the Appellant:

3.1 The learned counsel submitted that without appreciating the actual proposition of law and rules particularly Clause 11.3 of the Electricity Supply Code Regulation,2005 which specifically provides for billing in the event of defective meter the learned VUSNF passed the impugned order in case no.37/2011.

3.2 The learned counsel further submitted that upon some complaint against the respondent, their premises was inspected on 30.9.2011 by a team constituted by the appellant in presence of representative of the consumer and detected that meter of the respondent was running slow by 14.26 times resulting in less recording of consumption of energy. Subsequently, new meter was installed in the premises of the respondent on 15.11.2011 and regular payment is being made by the respondent as per energy consumption recorded in the meter. The period of dispute is October'2010 to 14.11.2011. Had the respondent been aggrieved with the inspection of the appellant then they ought to have challenged the meter testing report by

depositing the requisite charges for meter testing. However, it has not been done by the respondent and moved straight way before the VUSNF, Ranchi. In case of meter being defective, it has to be sent to the third party agency for testing its accuracy as per Clause 13.4 of the Electricity Supply Code Regulation, 2005 subject to a rider that the consumer has to deposit the requisite amount for meter testing. The requisite amount for testing of meter has not been deposited by the respondent and so, it was latches on the part of the consumer and not the licensee. There is no such provision in Electricity Supply Code Regulation, 2005 on the basis of which the present matter has been decided by the Learned VUSNF and, therefore the same is not sustainable in the eyes of law.

3.3 The learned counsel submitted that after order passed by Hon'ble High Court some administrative changes in the appellant's company took place and so some delay has occurred in filing the instant Appeal.

3.4 The learned counsel further submitted that the appellants have acted as per aforementioned notified Regulation of Jharkhand State Electricity Regulatory Commission (here in after referred to as JSERC) for raising energy bills in case when energy meter is running slow. Moreover, the provisions contained in the regulations are binding upon both the parties. Therefore, the appellants have not erred in raising bills and issuing legal notice for disconnection of supply in the case of nonpayment of energy bills.

4. Submission of Respondents:

4.1 The learned Advocate submitted that the connection was initially energized on 14.10.2010 for a contract demand of 210 KVA, and the impugned billing period is from October 2010 to 14.11.2011 (i.e. one day prior to the installation of the new meter in the consumer's premises).

New meter was installed in the premises of the petitioner on 15.11.2011 and energy charges are being raised according to consumptions recorded in the new meter w.e.f 15.11.2011. There is no dispute as far as reading of consumption recorded in new meter is concerned and accordingly payment is being made regularly since 15.11.2011 which is also accepted by the licensee.

4.2 He further submitted that authorities of the appellant visited the premises of the respondent and tested the meter through acu check meter and prepared a report on 30/09/2011 giving absolutely absurd finding that the meter being slow by 14.26 times. At the time of checking of the meter fortunately the authorities found the entire seal intact and no sign of any interference in the meter was detected. However, as per provisions of Clause 13.4 of the Electricity Supply Code Regulation, the licensee is responsible for the maintenance of correct meter and if it is found that the meter is not recording accurately the same shall have to be tested for accuracy at third party facility which is approved by the Commission and before testing 7 days prior notice is to be given to the consumer. But, in absolute contravention of the specific provisions of law without getting the meter tested at third party facility, at their own declared that the meter is slow by 14.26 times and treated the same to be defective since beginning and accordingly raised a bill of Rs. 23,44,281/- in the month of September, 2011 which is totally illegal as per the existing Regulation.

4.3 The learned Advocate submitted that the authorities at their own declared the meter slow by 14.26% which is absolutely without any basis and, therefore, may take average of 6 months or average of 12 months reading of the new meter as per order of the learned VUSNF in case No.37/2011.

5. Issue Involved:

Whether the impugned energy bills for the period from October, 2010 to 14/11/2011 raised on the basis of average determined on the consumption recorded in the new meter from 15/11/2011 to 30/05/2012 as well as the impugned legal notice issued by the Nigam is legally valid ?

6. I have heard learned counsel for the appellants and Sri D.K.Pathak for the respondent. I have carefully gone through the written submissions made by the parties, oral arguments as well as other material brought on record .
7. In order to decide this issue, it will be useful to glance through the relevant provisions of the (Electricity Supply Code) Regulation, 2005 which runs as follow:

“Clause 13.4 Testing and Maintenance of Meter

13.4.1 The distribution licensee shall be responsible for maintenance of correct meters for providing electricity supply to consumer and its periodic testing.

13.4.2 Upon written request of the consumer or otherwise if the authorized representative of the Distribution Licensee finds the meter defective and not recording accurately on inspection, the meter shall have to be tested for accuracy at a third party facility approved by the Commission.

Provided that in case of testing on the request of the consumer, the consumer shall have to pay the testing fee approved by the Commission as per clause 17 of these regulations. Provided further that, if the meter is found to be recording more than the actual consumption, the test fee shall be refunded to the consumer by the licensee by adjustment in the subsequent bill.

13.4.3 Before testing the meter of a consumer 7(seven) days notice shall be issued to the consumer intimating date, time and place of testing for the consumer or his authorized representative to be present during the testing . Consumer or his authorized representative present during testing will sign the test report as a token of witness.

13.4.4 The Distribution Licensee shall issue rectified bills on the basis of the test report with a copy of the Test Report to the consumer within one month of the testing.

Clause 11.3.1 Billing in the event of Defective meters.

11.3.1 Subject to provisions of part XII and Part XIV of the Act in case of a defective meter not recording accurately (slow or fast) the bill of the period of the meter was defective subject to a maximum period of three months prior to the date on which the defect was detected.

Provided further that in case the meter is defective or burnt and has stopped recording or lost, the consumer shall be billed on the basis of the average consumption of the last twelve months immediately preceding the month in which the meter was last read (including that month) for the period for which meter was stopped recording subject to maximum period of three months.

Provided that before testing the meter licensee shall give 7 days notice to the consumer to be present during testing of meter intimating date, time and place of testing and if the consumer or his representative is present the testing shall be done in his presence and he will sign the report as token of witness.

Provided further that in case the meter is defective or burnt and has stopped recording or lost, the consumer shall be billed on the basis of

average consumption of the last twelve months immediately preceding the month in which meter was last read(including that month) for the period for which meter was stopped recording subject to maximum period of 3 months.

Provided that in case of tampering the assessment shall be carried out as per provisions of section 126 or 135 of the Act, depending on the circumstance of each case.”

The above clause clearly envisages that the licensee shall be responsible for maintenance of correct meters for providing electricity supply to consumer and its periodic testing. Moreover, upon written request of the consumer or otherwise if the authorized representative of the Distribution Licensee finds the meter defective and not recording accurately on inspection, the meter shall have to be tested for accuracy at a third party facility approved by the Commission and in case of testing on the request of consumer, the consumer shall have to pay the testing fee approved by the Commission as per clause 17 of these regulations. It has been specifically mentioned in the regulation that before testing the meter of a consumer 7(seven) days notice shall be issued to the consumer intimating date, time and place of testing for the consumer or his authorized representative to be present during the testing . Consumer or his authorized representative present during testing will sign the test report as a token of witness.

In exercise of powers conferred by Section 181 of the Electricity Act, 2003 the JSERC framed (Electricity Supply Code)Regulation, 2005 which specifically deals with various components of power supply and distribution system including energy metering.

The primary submission of the learned counsel was that in case of meter being defective, it has to be sent to the third party agency for testing its accuracy as per Clause 13.4 of the Electricity Supply Code Regulation, 2005 subject to a rider that the consumer has to deposit the requisite amount for meter testing but, the requisite amount for testing of meter has not been deposited by the respondent and therefore it was latches on the part of the consumer and not the licensee. Therefore, direction of the Hon'ble Forum to calculate the bill for the disputed period on the basis of the consumption recorded in the new meter from 15/11/2011 to 30/05/2012 is without any basis.

In the instant case it is quite clear that despite notified regulation the officials of the appellant have unconscionably kept on acting arbitrarily. The law is well settled and regulation framed there under is very clear. The actions were not based on equity and fairness. In that view of the matter, I am not inclined to entertain this ground of attack and accordingly, the same is rejected and the issue is thus resolved in favor of the respondents.

A perusal of the order of the Forum shows that the Forum has properly considered the pros and cons and arrived at proper conclusion. There is nothing to interfere with the order of the Forum. I find no substance in the Appeal, which deserves to be dismissed. The same is accordingly dismissed and disposed of with no order as to costs.

Let copies of the order be served on both the parties for information and compliance.

Sd/-
Electricity Ombudsman