

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

**Appeal No. EOJ/09/2010**

**Dated- 31<sup>st</sup> March, 2011**

<b>JSEB through its Chairman &amp; others</b>	.....	<b>Appellant(s)</b>
	<b>Versus</b>	
<b>M/s Usha Martin Ltd.</b>	.....	<b>Respondent(s)</b>

**Present:**

<b>Shri Arun Kumar Datta</b>	<b>Electricity Ombudsman</b>
<b>Shri Rajesh Shankar</b>	<b>Counsel for appellant Board</b>
<b>Shri Abhay Prakash</b>	<b>Addl. Counsel for appellant Board</b>
<b>Shri Biren Poddar,</b>	<b>Counsel for the respondent</b>
<b>Shri Piyush Poddar</b>	<b>Counsel for respondent</b>

**J U D G E M E N T**

1. The appellant/JSEB has filed this appeal against the Judgement/order dated 09/10/2010 passed in case No. 20 of 2006 by the learned Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as VUSNF) of JSEB, Ranchi by which the petition filed by the consumer/respondent was allowed and the learned V.U.S.N.F. had held that the respondent/consumer can not be treated as running in arrears on account of fuel surcharge and the question of arrears would come up when the Board recalculate the new rates of fuel surcharge and the learned VUSNF has further held that the consumer/respondent is entitled to all rebates including load factor rebate admissible under the new tariff 2003-04.

2. Being aggrieved by and dissatisfied with the aforesaid Judgement/order of the learned VUSNF dated 09/10/2010 passed in case No. 20 of 2006, the appellant/JSEB has filed this appeal for setting aside the impugned Judgement/order dated 09/10/2010 passed in case No. 20 of 2006 by the learned VUSNF of JSEB, Ranchi.

3. The brief case of appellant/JSEB is that a sum of Rs. 12,66,12,223/- is outstanding up to December, 2003 due to short payment of fuel surcharge bills which are

being shown as arrears in each and every bill as per Clause 16.2 (B) of tariff 1993 which is still in existence in accordance with the Clause 1.4 of the terms and conditions of tariff order of 2003-04 of Jharkhand State Electricity Regulatory Commission's (In short to be referred as JSERC) rebate is admissible on current dues if the consumer pays the installment and current dues on or before the due date is specified in the bill. The fuel surcharge is an arrear but the Hon'ble High Court has not quashed the bill and merely allowed the consumer/respondent to deposit fuel surcharge for the period April, 2001 onwards at the same rate on which it has been charged up to March, 2001 till final decision is taken by the Board. The bills of the consumer/respondent were revised from January, 2004 to April, 2004 as per provision of new tariff and short charge was charged in the bill of May, 2004. The consumer/respondent was charged fuel surcharge @ Rs. 2.4401 per unit but the consumer/respondent continued to pay the fuel charge @ Rs. 1.6483 per unit up to the month of December, 2003 in accordance with the Hon'ble High Court's order. The consumer/respondent had paid fuel surcharge up to December, 2003 at the rate applicable up to March, 2001 and the unpaid amount on account of fuel surcharge remained as arrear. The consumer/respondent was running in arrears on account of short payment of fuel surcharge therefore load factor rebate can not allowed to the consumer/respondent as per provision of new tariff, though voltage rebate has been allowed to consumer/respondent. Fuel surcharge is not payable with effect from 01/01/2004 in accordance with the new tariff. The voltage rebate is admissible to the consumer if there is some outstanding dues against them. But the load factor rebate is not admissible if there is arrear in the bill. The consumer/respondent has an arrear of Rs. 12,66,12,223/- on account of short payment of fuel surcharge bills up to December, 2003, therefore the load factor rebate can not be allowed as per the tariff order of 2003-04 and this arrear of Rs. 12,66,12,223/- on account of short payment of fuel surcharge up to the bill of December, 2003 has been shown as arrears in each and every bill. Because of the introduction of computerized billing in the concerned electric supply circle of JSEB the aforesaid arrears of fuel surcharge up to December, 2003 have been inadvertently shown against the column "amount kept in abeyance" and therefore bills for few months were issued to the consumer/respondent with such typographical mistake which was clarified vide letter dated 08/08/2007 issued by the Electrical Executive Engineer (C&R) to the consumer/respondent. The Hon'ble High Court has not stayed the realization of the bill in

the order dated 24/04/2001 passed in C.W.J.C No. 1633/2001 and other analogous matters and the consumer/respondent was given liberty to deposit the fuel surcharge for the period April, 2001 onwards at the same rate on which it has been charged/paid up to March, 2001 till final decision is taken by the Board. In this regard the Board has already taken final decision and revised the fuel surcharge vide circular dated 17/03/2001 and taken a final decision in relation to the revised rate of fuel surcharge.

4. Further case of appellant/JSEB is that the consumer/respondent can not re agitate the same issue before the learned VUSNF of JSEB, Ranchi because this issue has already been decided by the JSERC dated 29/06/2005 and the Appellate Tribunal for Electricity has not set aside the order dated 29/06/2005 passed by the JSERC in its order dated 04/04/2006 and therefore the learned VUSNF has no jurisdiction to entertain the present issue which has already been heard and decided by the JSERC, Ranchi which also operates as resjudicata .

5. On the other hand the case of consumer/respondent namely M/s Usha Martin Ltd, Tatisilwai, Ranchi (Jharkhand) in brief is that the order dated 29/06/2005 and findings dated 29/06/2005 can not be relied by the appellant/JSEB because the Appellate Tribunal for Electricity vide its order dated 04/04/2006 has categorically held that the Regulatory Commission has no jurisdiction in respect of the consumer disputes and the consumer has to work out the remedies before the Forum constituted under Section 42(5) of the Electricity Act, 2003. Further case of respondent/consumer is that the consumer/respondent is not any arrears on account of fuel surcharge because the respondent/consumer is paying the sum in view of the Hon'ble High Court's Order and the respondent/consumer is also getting timely payment rebate in each and every bill which was allowed only to such consumers against whom there is no arrears. The Hon'ble High Court in CWJC No. 1633/2001 vide its order dated 24/04/2001 has directed the respondent/consumer to deposit the fuel surcharge for the period of April, 2001 onwards at the same rate at which it has been charged and paid up to March 2001 till final decision taken by the Court and the respondent/consumer has paid the fuel surcharge and the Hon'ble Court has also directed the appellant/JSEB not to take any coercive steps against the respondent/consumer. As such according to respondent/consumer there is no arrear of fuel surcharge against the respondent/consumer as has been alleged by the appellant/JSEB rather the consumer/respondent has deposited

excess amount of fuel surcharge which is refundable as per the calculation of respondent/consumer. Further case of consumer/respondent is that the Hon'ble High Court has passed the order on 24/04/2001 and the date of so called final decision was taken by the Board is on 17/03/2001 and as such the aforesaid so called final decision was taken by the appellant/Board prior to the passing of the aforesaid order by the Hon'ble High Court. Therefore it can not be said that the so called final decision dated 17/03/2001 was taken pursuant to or after the date of passing of the aforesaid order by the Hon'ble High Court. According to consumer/respondent the appellant/Board has even failed to comply with the direction of the Hon'ble Supreme Court passed in the case of Bihar State Electricity Board Vrs. M/s Pulak Enterprises reported in (2009) 2 JCR 182 (SC) decided on 15/04/2009 by which the appellant Board was directed to work out the actual rate of fuel surcharge from 1996-97 onwards within 03 (three) months from the date of passing of the said Judgement i.e. 15/04/2009 and also the order dated 25/01/2010 passed by the Apex Court in I.A. No. 122-142 of 2009 filed in Civil Appeal No. 7220-7239 of 2000 seeking clarification with regard to the concluding portion of the aforesaid Judgement dated 15/04/2009. Therefore, it was obligatory on the appellant/JSEB to recalculate the rate of new fuel surcharge right from April, 1996 in view of the aforesaid order of the Hon'ble Supreme Court dated 15/04/2009 and order dated 25/01/2010 passed in the case of Bihar State Electricity Board Vrs. M/s Pulak Enterprises. The Hon'ble High Court in the aforesaid order dated 15/04/2009 has directed the appellant/JSEB to work out the actual rate of fuel surcharge from 1996-97 onwards within 03 (three) months from the date of passing aforesaid Judgement i.e., 15/04/2009 and further vide order dated 25/01/2010 extended the time limit for such work out for a further period of 04 (four) months i.e. till May, 2010 and as such there can not be any arrear on account of fuel surcharge against the respondent/consumer because the appellant/JSEB has failed to abide by the aforesaid directions of the Hon'ble Supreme Court dated 15/04/2009 and order dated 25/01/2010 and because of this reason the appellant/Board is liable to refund the entire amount of fuel surcharge realized from the consumer/respondent for the year 1996-97 onwards with interest @ 2% per annum. According to respondent/consumer the learned VUSNF of JSEB, Ranchi has rightly held that the order passed by the JSERC, Ranchi does not operate as resjudicata as it has been passed without jurisdiction which has no legal force in eye of law and the consumer deposes filed by the respondent is well

cognizable by the V.U.S.N.F.. Further the learned V.U.S.N.F. has rightly found out and held that the consumer/respondent can not be treated as running in arrears on account of fuel surcharge and it is entitled to all rebates including load factor rebate admissible under the new tariff 2003-04 and has rightly allowed aforesaid case No. 20 of 2006 in favour of the respondent/consumer. On the aforesaid ground the consumer/respondent has prayed that the appeal of the appellant/JSEB has got no merit and it is fit to be dismissed and the Judgement/order of the learned VUSNF dated 09/10/2010 passed in case NO. 20 of 2006 is fit to be confirmed.

### **FINDINGS**

6. The first contention of the learned Standing Counsel Sri Rajesh Shankar appearing on behalf of JSEB is that the JSERC vide order dated 29/06/2005 passed in the petition No. 14/2004- 2005 has already held that the consumer/respondent namely M/s Usha Martin Ltd., Tatisilwai, Ranchi (Jharkhand) is in arrear and therefore the consumer/respondent is not entitled to get the load factor rebate. Thereafter the consumer/respondent had moved the Appellate Tribunal for Electricity and while passing the order dated 04/04/2006 the Appellate Tribunal for Electricity has not set aside the order dated 29/06/2005 passed by the JSERC and as such the learned VUSNF has no jurisdiction to entertain the petition of consumer/respondent on the same issue which has already been adjudicated upon by the JSERC, Ranchi and as such it is barred by the principle of resjudicata . It has been further submitted by the Sri Rajesh Shankar that the learned VUSNF has relied on the Judgement passed in case of Maharashtra Electricity Regulatory Commission Vrs Reliance Energy and others reported in 2007(8)SCC 381 in which it has been held that the consumer disputes can not be entertained by the State Commission which has been decided much after the order had already been passed by the JSERC on 29/06/2005. Besides the learned VUSNF has failed to appreciate that the order passed by the JSERC on 29/06/2005 has not been set aside by any court of law as such the same has got legal force and is valid till date. The learned VUSNF can not sit in appeal over the order passed by the JSERC. The learned Standing Counsel of appellant/JSEB has relied and filed a ruling of the Hon'ble Supreme Court reported in 1991 (4) SSC. On the other hand it has been submitted by Sri Biren Poddar, the learned Counsel appearing on behalf of consumer/respondent that the order dated 29/06/2005 passed by the JSERC, Ranchi and its findings can not be relied upon by the

appellant/JSEB because the Appellate Tribunal for Electricity vide its order dated 04/04/2006 has held that the Regulatory Commission has no jurisdiction in respect of consumer disputes and the consumer has to work out the remedies before the Forum constituted under Section 42(5) of the Electricity Act, 2003 and accordingly the consumer/respondent has filed his application before the learned VUSNF for redressal of its grievance and the learned VUSNF has rightly held in its Judgement/order that the order passed by the JSERC, Ranchi does not operate as resjudicata as it has been passed without jurisdiction which has no legal force in the eye of the law. The learned Counsel of respondent/consumer has relied upon the ruling reported in 2007 (8) SCC 381 held in the case of Maharashtra Electricity Regulatory Commission Vrs. Reliance Energy and others in which the Hon'ble Supreme Court has held that the consumer disputes can not be entertained by the State Commission whose jurisdiction is limited to disputes between licensees and generating companies only. Sri Poddar appearing on behalf of consumer/respondent has also relied another ruling reported in 2003 (6 )SCC 230 in which the Hon'ble Supreme Court has held that the order passed without jurisdiction is a nullity and any order passed or action taken pursuant thereto are also nullities. In another ruling which has also been relied by the learned counsel of respondent/consumer which has been reported in 2004 (3) SCC held in the case of Ashok Leyland Ltd. Vrs. State of Tamil Nadu and another in which the Hon'ble Supreme Court has held that an order passed without jurisdiction is a nullity and the same can not operate as resjudicata. I also find myself in agreement with the aforesaid contentions raised by Sri Poddar, the learned Counsel appearing on behalf of respondent/consumer and I am also of the view that the order passed by the JSERC, Ranchi on 29/06/2005 is without jurisdiction and as such it is a nullity and has got no legal consequence and it can not operate as resjudicata. So far as the ruling reported in 1991(4) SCC held in the case of State of Punjab and others Vrs. Gurdev Singh is concerned which has been relied by Sri Rajesh Shankar, the learned Counsel appearing on behalf of appellant/JSEB, this ruling is not applicable into the facts and the principle of law of jurisdiction which is involved in the instant case. There is also no force in the contentions of the learned Standing Counsel of JSEB/appellant that unless order is set aside by competent Court the order remains enforceable. The citation at paragraph 8 of the aforesaid ruling reported in 1991 (4) SCC as relied by the appellant/JSEB it is a obiter-dicta which reads at paragraph 8 "but nonetheless the

impugned dismissal order has at least a de-facto operation unless and until it is declared to be void or nullity by a competent Body or Court". On the other hand the ruling relied by the learned Counsel of respondent/consumer held in the case of Dwarka Prasad Agarwal and another Vrs. B.D. Agarwal, Ashok Leyland Ltd. Vrs. State of Tamil Nadu and another and Maharashtra Regulatory Commission Vrs. Reliance Energy and others are fully applicable in the instant case in which question of jurisdiction is involved. In the aforesaid ruling the Hon'ble Apex Court has held that an order passed without jurisdiction is a nullity and therefore the order dated 29/06/2005 passed by the JSERC is also nullity and it is not binding nor it can be said that the learned VUSNF has no jurisdiction to entertain the application of consumer/respondent for redressal of its grievance. The Appellate Tribunal for Electricity has also directed the consumer/respondent to move the proper Forum vide its order dated 04/04/2006 and it also held that the JSERC, Ranchi had no jurisdiction to entertain the application regarding grievances of the consumer and the remedy is under Section 42(5) of Electricity Act, 2003 Thus accordingly it is held that the learned VUSNF has rightly entertained the application of consumer/respondent and its jurisdiction is not barred by resjudicata.

7. Now the next and last contention which has been raised by Sri Rajesh Shankar, the learned Standing Counsel appearing on behalf of appellant/JSEB is that the learned VUSNF has failed to appreciate that the respondent/consumer is an arrear of Rs. 12,66,12,223/- up to December, 2003 due to short payment of fuel surcharge bill which is clearly shown as an arrear in each and every bill. The learned VUSNF has further failed to appreciate that the Hon'ble High Court has not quashed the bill and merely allowed the consumer/respondent to deposit the fuel surcharge for the period of April, 2001 onwards at the same rate on which it has been charged up to March, 2001 till final decision taken by the Board. The bills of respondent/consumer were revised from January, 2004 to April, 2004 as per provision of new tariff, short charge was charged in the bill of May, 2004. The respondent/consumer continued to pay the fuel charge arrears @ Rs. 1.6483 per unit up to month of December, 2003 as per the Hon'ble High Court's order. The consumer/respondent was paying fuel surcharge up to December, 2003 at the rate applicable up to March, 2001 and the unpaid amount on account of fuel surcharge remained as arrear. The Hon'ble High Court had passed the order on 24/04/2001 in

CWJC No. 1633 (2001) and other analogous matters. In the mean time the Board has already taken final decision and revised the fuel surcharge vide circular dated 17/03/2001 and taken a final decision in relation to the revised rate of fuel surcharge. Therefore, the learned VUSNF had failed to appreciate that the Hon'ble High Court has not stayed the bills raised on account of fuel surcharge and thus it can not be said that the respondent is not in arrear. It has been further submitted by the learned Standing Counsel of appellant that the learned VUSNF has committed an error in treating the JSEB as Board which is to decide the new rates of the fuel surcharge pursuant to the order passed by the Hon'ble Apex Court. The learned VUSNF has also failed to appreciate that as per the order of the Hon'ble Apex Court the new rate of fuel surcharge is to be decided by the BSEB and not the JSEB.

8. On the other hand it has been submitted by Sri Poddar appearing on behalf of consumer/respondent that the respondent/consumer fall under the category of High Tension Service (H.T.S.) and according to the tariff of HTS category the appellant/JSEB was required to provide voltage rebate as well as load factor rebate prescribed in the tariff. The respondent/consumer has received power bill for the month of March, 2004 in which arrears for the period January, 2004 to April, 2004 had been wrongly charged on account of alleged arrears of fuel surcharges but actually it was not an arrear because the payment of sum has not fallen due yet in view of the Hon'ble High Court's order. The tariff order 2003-04 allows higher load factor rebate to the consumer and the respondent being a H.T.S consumer is therefore also eligible for higher load factor rebate @ 10%. It has been further submitted by Sri Poddar that the date of passing of the High Court order is on 24/04/2001 and the date of so called final decision taken by the Board is dated 17/03/2001 therefore the so called final decision taken by the appellant/Board prior to passing of the aforesaid order of the Hon'ble High Court passed in CWJC NO. 1633 of 2001 can not be considered that the Board has taken decision in pursuant to the order passed by the Hon'ble Court in C.W.J.C. No. 1633/2001 dated 24.04.2001. The appellant/JSEB has also not complied with the directions of the Hon'ble Supreme Court passed in the case of Bihar State Electricity Board Vrs. M/s Pulak Enterprises reported in (2009) 2JCR 182 (SC) on 15/04/2009 in which the appellant/JSEB was directed to work out the actual rate of fuel surcharge from 1996-97 onwards within 3 (three) months from the date of passing of the aforesaid Judgement dated 15/04/2009 and also the order dated

25/01/2010 passed by the Hon'ble Apex Court in I.A. No. 122-142 of 2009 filed in Civil Appeal No. 7220-7239 of 2000 seeking clarification with regard to the concluding portion of the aforesaid Judgement dated 15/04/2009. The appellant/JSEB has also failed to abide by the aforesaid directions of the Hon'ble Apex Court dated 15/04/2009 and order dated 25/01/2010 and therefore there can not be any arrear on account of fuel surcharge against the respondent/consumer. As the respondent/consumer has paid the fuel surcharge as directed by the Hon'ble High Court in CWJC No. 1633 of 2001 dated 24/04/2001 therefore there is no arrear of fuel surcharge against the respondent as has been alleged by the appellant/JSEB .

9. I find force in the aforesaid submissions of the learned Counsel of respondent/consumer and I am also of the view that the appellant/JSEB could not have taken a final decision prior to the passing of the aforesaid order of the Hon'ble High Court because the Hon'ble High Court has passed order on 24/04/2001 and the appellant/Board had taken decision on 17/03/2001 which can not be said that the appellant/Board had taken a final decision on 17/03/2001 because the order of the Hon'ble High Court was itself passed on 24/04/2001 in case No. 1633 of 2001 and as such I do not find any force in the contentions of the learned Standing Counsel of appellant that on 17/03/2001 Board has already taken a final decision. I am of this view because on the date of passing of the aforesaid order by the Hon'ble High Court the aforesaid letter dated 17/03/2001 was already in existence and in such circumstances the Hon'ble Court could not have used the word in the aforesaid order that "till final decision is taken by the Board". The appellant/JSEB has not taken a final decision as directed by the Hon'ble High Court in CWJC No. 1633 of 2001 passed in 24/04/2001 nor the appellant has yet revised the rate of fuel surcharge in spite of directions of the Hon'ble Supreme Court in M/s Pulak Enterprises case reported in 2009 (2) JCR 182 (SC). The appellant was also granted further time for 4 (four) months from the Hon'ble Supreme Court in I.A. No. 122-142/2009 in the case of M/s Pulak Enterprises and on the other hand the consumer/respondent has made up to date payment of fuel surcharge as per the directions of the Hon'ble Jharkhand High Court in the order dated 24/04/2001 passed in CWJC No. 1633/2001. Because of the aforesaid reasons I am also led to hold that the consumer/respondent is not in arrear of fuel surcharge. The fact that the consumer/respondent is getting timely payment rebate from the appellant/JSEB in the

monthly energy bills which also shows that the appellant is not in any arrears on any account. The amount being shown in the energy bills by the appellant as arrear of fuel surcharge upto December, 2003 must be regarded as “amount kept in abeyance” in view of the order of the Hon’ble Apex Court and the Hon’ble High Court.

10. From the aforesaid discussions and findings made above it is found and held that the consumer/respondent is not running in arrears on account of fuel surcharge and the question of arrears would come up when the appellant/JSEB recalculates the new rate of fuel surcharge as already ordered and directed by the Hon’ble High Court in CWJC No. 1633/2001 and the Hon’ble Apex Court in case of M/s Pulak Enterprises. It is further held that the consumer/respondent is entitled to all rebates including load factor rebate admissible under new tariff 2003-04.

11. In the result there is no merit to this appeal and the Judgement/order of the learned VUSNF of JSEB, Ranchi passed on 09/10/2010 in case No. 20 of 2006 is hereby upheld without any interference and this appeal is hereby dismissed.

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

Sd/-  
Electricity Ombudsman

