

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

Appeal No. EOJ/10/2010

Dated- 18th March, 2011

| | | |
|---|---------------|----------------------|
| Tata Steel Ltd. | | Appellant(s) |
| | Versus | |
| JSEB through its Chairman & others | | Respondent(s) |

Present:

| | |
|------------------------------------|---|
| Shri Arun Kumar Datta | Electricity Ombudsman |
| Shri M.S. Mittal | Counsel for appellant |
| Smt. Anubha Rawat Choudhary | Counsel for appellant |
| Shri Rajesh Shankar | Counsel for the respondent Board |
| Shri Abhay Prakash | Addl. Counsel for respondent Board |

J U D G E M E N T

1. This appeal has been filed by Appellant/Tata Steel Ltd. Vrs. JSEB and others respondents against the Judgement/order dated 06/08/2010 passed by the learned Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as VUSNF) of JSEB, Ranchi in case no. 24 of 2008 by which the learned VUSNF of JSEB, Ranchi has refused to grant any relief to the petitioner/appellant on the ground the matter being pending before the Hon'ble Apex Court and the appellant/petitioner was directed to come before the VUSNF if required after the decision of the Hon'ble Apex Court. Therefore being aggrieved by and dissatisfied with the aforesaid Judgement/order of the learned VUSNF passed in case no. 24/2008 dated 06/08/2010 the appellant has filed this appeal for setting aside the aforesaid Judgement/order of the learned VUSNF, Ranchi and the appellant has also prayed before this Forum to direct the respondents/JSEB to refund the excess amount amounting to Rs. 78,00,000/- realized from the petitioner/appellant pursuant to interim order passed by the Hon'ble High Court in C.W.J.C. No. 1526/1986 ® and C.W.J.C. No. 1627/1986 ® with upto date interest thereupon @ 24% per annum in terms of the

Jharkhand State Electricity Regulatory Commission's (In short to be referred as JSERC) Supply Code Regulations, 2005 within a week from the date of order particularly in view of the fact that the petitioner had filed a representation dated 07/09/2007 (annexure-7) before the General Manager-cum-Chief Engineer, JSEB Singhbhum Area Jamshedpur on which no order has been passed. The appellant has also made an alternative prayer before this Forum for a direction to the General Manager-cum-Chief Engineer, Singhbhum Area Electricity Board, Jamshedpur to dispose of the representation dated 07/09/2007 filed by the petitioner/appellant within a stipulated time frame after giving opportunity of hearing to the petitioner/appellant.

2. It has been submitted by the learned Senior Counsel appearing on behalf of appellant that the appellant had taken the electricity connection for Tata Growth Shop and had entered into a high tension agreement with the Bihar State Electricity Board (In short to be referred as BSEB) on 02/04/1970 for supply of electricity. The Board has raised bills on the appellant's company for payment of annual minimum guarantee (In short to be referred as AMG charges) for the period 1977-78, 1978-79, 1982-83 and the total amount was Rs. 32,98,512.48/-. Thereafter the appellant had filed a representation before the Chief Engineer of BSEB for remission on account of tripping and power restrictions which was kept for pending for several years and by an order dated 06/10/1986 the then Chief Engineer rejected the claim of the appellant for reduction in respect of AMG and Maximum Demand charges for all the aforesaid period of three years. Thereafter the Board issued a demand cum disconnection notice under Section 24 of the Indian Electricity Act to the appellant's company for payment of Rs. 4,01,99,937.22 towards the AMG charges and Delayed Payment Surcharge (In short to be referred as DPS) thereon. Thereafter the appellant's company filed two writ applications before the Ranchi Bench of Patna High Court being C.W.J.C. No. 1526 and 1527 of 1986 for quashing the order of the Chief Engineer dated 06/10/1986 and for withdrawing the aforesaid demand cum disconnection notice. The Hon'ble Patna High Court vide its order dated 22/10/1986 passed in C.W.J.C. No. 1526/1986 (R) had directed the appellant's company to deposit Rs. 10,00,000/- and accordingly the appellant's company had deposited Rs. 10,00,000/-. Again the appellant's company had deposited Rs. 1,00,00,000/- with the Board in pursuance of the order dated 05/11/1986 passed in

C.W.J.C. 1526/1986 (R). As such according to the learned Counsel of the appellant this total amount of deposited of Rs. 1,10,00,000/- by the appellant's company has also been admitted by the respondent Board in its counter affidavit. According to the appellant in course of final hearing the Hon'ble High Court had allowed both the writ petitions vide its order dated 30/08/1988 and the Hon'ble Court was pleased to quash the order dated 06/10/1986 of the then Chief Engineer as well as demand cum disconnection notice of Rs.4.01 crores and sent the matter back to the Chief Engineer for afresh decision in accordance with the guidelines given in the Judgement. The appellant's company had filed afresh claim petition and the learned General Manager-cum-Chief Engineer passed his order on 24/12/1991 and he had allowed a partial relief of Rs. 2,08,564.77 towards AMG charges. The General Manager-cum-Chief Engineer directed the officials of the Board to calculate the same as per the guideline proposed in his order dated 24/12/1991. Thereafter the appellant's company being aggrieved by the order of the General Manager-cum-Chief Engineer dated 24/12/1991 had filed another writ petition before the Hon'ble High Court being C.W.J.C. No. 746/1992 ® for quashing the same which was dismissed on 21/07/2004 by the Hon'ble Jharkhand High Court. The appellant had also filed another writ petition being C.W.J.C. No. 2574/1993 before the Hon'ble Patna High Court, Ranchi Bench in connection with supply of electricity at Golmuri wherein the similar dispute was pending in the aforesaid writ petition in which the appellant had challenged the demand as well as order of the General Manager-cum-Chief Engineer on similar lines as was done in C.W.J.C. No. 746/1992 (R). As similar issues were involved in both the writ applications being C.W.J.C. No. 746/1992 (R) as well as C.W.J.C. No. 2574/1993 (R), therefore both were heard and disposed of by the common order dated 21/07/2004.

3. The appellant's company had filed two separate Civil Appeals before the Hon'ble Supreme Court which were numbered as Civil Appeals No. 26453 and 26454 both of the year of 2004. About the case pending before the Supreme Court the learned Counsel of the appellant Sri M.S. Mittal has submitted before me that the Supreme Court has remanded the aforesaid cases before the JHALSA for mediation.

4. On the basis of aforesaid facts it has been further submitted by the learned Counsel of appellant that the appellant's company had filed a representation dated

07/09/2007 before the General Manager-cum-Chief Engineer with copy to the Superintending Engineer of the respondent Board for relief prayed in the operative portion of the representation praying therein that “since the aforesaid refund can be claimed irrespective of the fate of cases pending in Supreme Court, the JSEB is requested to calculate the proportionate relief of KVA charges as per the order dated 24/12/1991 and refund the same with Rs. 0.78 crore.

5. However, the claim for refund is being made in this representation without any prejudice to the submission made by the company in SLP (Civil) No. 26454/2004.

6. That it is further submitted that the company is entitled for interest @ 24% per annum on the amount refundable to it in terms of JSERC’s Supply Code Regulations 2005.” But no order has been passed by the officials of the respondent/Board on the representation of the appellant’s company. Therefore the appellant’s company had moved the learned VUSNF of JSEB, Ranchi for redressal of its grievance.

7. It has also been submitted by the learned counsel of the appellant that there is no appeal before the Hon’ble Supreme Court by the Respondent/Board therefore the amount claimed by the appellant’s company may enhance but it can not be lowered down, therefore the claimed amount of Rs. 0.78 crore can well be ordered to be refunded to the appellant by this Forum.

8. On the other hand the learned Counsel appearing on behalf of respondents/Board has submitted that the appellant having aggrieved by the order dated 21/07/2004 passed in C.W.J.C. No. 746/1992 (R) of the Hon’ble high Court, has filed a SLP (Civil No. 26454/2004) before the Hon’ble Supreme High Court and the case is still pending before the Supreme Court for final adjudication and as such the learned VUSNF has considered all aspects of the matter and rightly refused to accept the prayer of the appellant and therefore the appeal filed by the appellant is fit to be dismissed.

9. Though the order of the Hon’ble Supreme Court has not been filed before this Forum but as submitted by Sri M.S. Mittal, the learned Counsel appearing on behalf of appellant that the Hon’ble Supreme Court has remanded this case to JHALSA for mediation in between both the parties therefore I am also of the view that the AMG bills for the aforesaid period have been upheld by the Hon’ble Jharkhand High Court while

dismissing the writ petition No. 746/1992 challenging the validity of AMG bills for the aforesaid period which has been reported in 2004 (3) JCR and 427 (JHR) .

10. Beside it Clause 3 (d) of JSERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Electricity Ombudsman) Regulations, 2005 clearly lays down that no complaint of the Electricity Ombudsman shall lie unless “the complaint does not pertain to the same subject matter for which any proceedings before the Commission or any authority/court of law is pending or a decree or award or a final order has already been passed by the Commission or any competent Court”.

11. Therefore, I am also of the view that this matter is still pending therefore any relief as prayed by the appellant can not be allowed by this Forum at this stage. The appellant as directed by the learned VUSNF of JSEB, Ranchi in its order dated 06/08/2010 passed in case no. 24/2008 may move before the learned VUSNF of JSEB, Ranchi when required. Accordingly this appeal is disposed of with the aforesaid directions.

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

Sd/-
Electricity Ombudsman