

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

Case No. EOJ/11/2008

Dated- 20th June, 2008.

JSEB through its Chairman & others **Appellant(s)**
Versus
M/s Divine Alloys & Power Company Ltd. **Respondent(s)**

Present:

| | |
|----------------------------|-------------------------------------|
| Shri. Sarju Prasad | Electricity Ombudsman |
| Shri Rajesh Shankar | Advocate for appellant Board |
| Shri Abhay Prakash | Advocate |
| Shri Vijay Gupta | Advocate for the respondent |

J U D G E M E N T

1. This appeal has been directed against the Judgement/order dated 13/03/2008 passed in case no. 44/07 by Vidyut Upbhokta Shikayat Niwaran Forum (in short VUSNF) of JSEB, Ranchi whereby and where under the petition filed by the consumer/respondent M/s Divine Alloys & Power Company Ltd., have been allowed and the appellant/JSEB has been directed to revise the electric bills from March 2006 to February 2008 on the basis of actual maximum demand recorded in the meter of consumer and to adjust the excess amount, if any, realized by the appellant.

2. The brief facts; giving rise to this appeal is that M/s Divine Alloys & Power Company Ltd., having its works at Raidih Palgam, Chandil, Dist. Saraikela Kharsawan is a consumer of electricity under HTSS category with induction furnace for a contract demand of 3000 KVA. The electric connection was energized on 09.03.2006. It is admitted by both the parties that before the separation of State of Jharkhand from the State of Bihar, there was only BSEB which had a tariff schedule of 1999 dated 24.09.1999 which was applicable in the entire State of Bihar, including the present State of Jharkhand. As per the tariff schedules of 1999 for the HTSS category of consumers with induction furnace was required to pay the maximum demand charges @ Rs. 700/-

KVA/month, on the basis of actual maximum demand recorded in the meter of the consumer or 100% of contract demand whichever is higher. The State of Jharkhand was separated from the State of Bihar with effect from 15th November, 2000 and the BSEB was also divided and the JSEB came into existence with effect from 01/04/2001. In the mean time, the Electricity Act, 2003 came into force with effect from 10.06.2003 and the power to determine tariff had vested with State Regulatory Commissions under Section 86 of the Electricity Act, 2003. According to the provision of the Electricity Act, 2003, the Jharkhand State Electricity Regulatory Commission (in short JSERC) has determined the tariff and has published the same which is effective from 1st January, 2004.

3. In the JSERC tariff order of 2003-04, the tariff for HTSS category of consumers with induction furnace has been dealt with in Clause 5.25 at page 117 onwards and the approved tariff has been given in table 5.36 at page 118. According to JSERC tariff order of 2003-04, the demand charge has been reduced from Rs.700/KVA/month to Rs. 300/KVA/month but the energy charge has been raised from existing Rs. 1.2 per unit (/KWh/month) to Rs. 2.5 per Unites (KWh) /month with minimum monthly charge of Rs. 400/KVA/month. Before coming into force of Electricity Act, 2003, the power to determine the tariff was with the respective State Electricity Boards and the BSEB had issued a fresh tariff order of 2001 which was published in the official Gazette of Bihar State on 07.05.2001, but the State of Jharkhand has not issued any notification in the official gazette adopting the tariff order of BSEB which was published in the State of Bihar on 07.05.2001 and had repealed earlier tariff order of 1999 of BSEB. In the JSERC tariff order, 2003-04 which is applicable with effect from 01.01.2004 so far as it relates to JSEB, there is no provision for charging 100% of the contract demand in case there is less recording of the maximum demand in the meter of the consumer. Rather, we find that there is a provision for minimum monthly charge which is at the rate of Rs. 400/KVA/month, that means if there is any shortfall in the maximum demand recorded in the meter of the consumer plus the unit charge then the consumer is liable to pay the minimum monthly charge at the rate of Rs. 400 /KVA/month. Therefore, we find that in lieu of earlier practice of charging 100% of the contract demand in case there is shortfall in the maximum demand recorded in the meter of the consumer has been done away and in its place a new provision regarding minimum monthly charge has been provided by the JSERC in its tariff order.

4. Although, in the tariff order of JSERC, 2003-04, there is no provision for charging 100% of the contract demand but the JSEB is not only charging the Demand charges on

the basis of 100% contract demand but is also charging the unit charges at the new rate as determined by the JSERC, therefore, the consumer M/s Divine Alloys & Power Company Ltd. moved the VUSNF alleging that the JSEB is illegally charging 100% of the contract demand for a period of March 2006 to February 2008 therefore the JSEB should be ordered to revise the bills .

5. The VUSNF heard the matter and following decisions of this Forum passed in cases of M/s T & T Metals Pvt. Ltd. and M/s Kumardhubi Steels Pvt Ltd (EOJ/01/2006 and EOJ/02/2007), held that the JSEB can not charge 100% of the contract demand with effect from January, 2004 onwards it can charge only on the basis of actual maximum demand recorded in the meter of the consumer and therefore ordered JSEB to revise the bills from October 2005 and onwards on the basis of actual maximum demand recorded in the meter of the consumer and also ordered to refund/adjust the excess amount of bills realized by the consumer. Against this order present appeal has been filed.

6. In case of M/s T & T Metals Pvt. Ltd and M/s Kumardhubi Steels Pvt. Ltd. it has been held by this Forum that after the publication of the tariff order issued by JSERC for the year 2003-04, the JSEB is not at all entitled for raising bills by charging 100% of the contract demand with effect from 01.01.2004 because in the JSERC tariff order of 2003-04, there is no such provision and in the saving clause also there is no mention that provisions relating to charging 100% of the maximum demand in case there is shortfall in recording the maximum demand in the meter of the consumer will remain unchanged. After the issue of the JSERC tariff order, 2003-04, all previous tariff orders of erstwhile Bihar must be deemed to have been repealed. But it appears that still JSEB is not following the ratio of the case of M/s T & T Metals Pvt. Ltd and M/s Kumardhubi Steels Pvt. Ltd. and a number of such other cases are coming for decision before VUSNF and also this Forum.

7. The only submission of the advocate of the JSEB Shri Rajesh Shankar is that the JSERC has mentioned in tariff structure and analysis of tariff in Section 5 of the tariff order of 2003-04. Terms and conditions of supply have been dealt with in clause 5.30 of the tariff order, which states: - "The JSEB has submitted a number of clauses of existing terms and conditions of supply for consideration of the Commission. The Commission has dealt with the power factor surcharge (rebate and penalty) and delayed payment surcharge in this Section. The JSEB has submitted a number of other clauses, while, the others would have to be dealt with at a later stage. This is due to the reason that a detailed and in depth analysis of the issue involved is required and hence they have not been dealt

with in tariff order”. On the basis of this observation the advocate for appellant has submitted that the JSERC has not considered the other terms and conditions and therefore the other terms and conditions as prior to tariff order of 2003-04 would apply.

8. There is a saving Clause 1.4 in page 148 of tariff order, 2003-04 which is as follows:-

“All other terms and conditions in respect of meter rent, supply at lower voltage, capacitor charge, circuit-breaker charge, electricity duty, rebate, security deposit, surcharge for exceeding contract demand etc. shall remain the same as existing in the State”.

From the above saving clause we find that the Commission has mentioned which terms and conditions will remain unchanged but has not mentioned that the charging of maximum demand on the basis of 100% of contract demand in case of any shortfall in recording of the maximum demand will remain unchanged. Therefore, I find that the terms and conditions regarding demand charges as prevailing prior to tariff order of 2003-04 has not been saved by JSERC and therefore the JSEB can not import a condition which is not existing in the saving clause.

9. I do not find any merit in this submission of the Learned Lawyer for the appellant. In the number of similar cases it has been held by this Forum that JSEB can not charge 100% of the contract demand in case there is shortfall in the recording of the maximum demand in the meter of the consumer and JSEB can not charge more than minimum monthly charge as prescribed in the tariff order of JSERC for the year 2003-04.

10. Therefore, I do not find any merit in this appeal hence this appeal is dismissed and order of the VUSNF is upheld. The JSEB must comply with the order of VUSNF within 30 days of this order failing which the respondent shall be entitled interest at any amount realized in excess with same rate the JSEB is charging as delayed payment surcharge.

**Sd/-
Electricity Ombudsman**

