

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

Case No. EOJ/13/2009

Dated- 19th July, 2010

JSEB through its Chairman & others	Appellant(s)
	Versus	
M/s Naiyadh Hi-Tech Pvt. Ltd.	Respondent(s)

Present:

Shri Arun Kumar Datta	Electricity Ombudsman
Shri Rajesh Shankar	Counsel for Appellant Board
Shri Abhay Prakash	Addl. Counsel for Appellant Board
Shri Ajit Kumar	Counsel for respondent.
Shri Vijay Gupta	Advocate for respondent.

J U D G E M E N T

1. This appeal has been filed by the appellants/JSEB and others against the Judgement/order dated 09/09/2009 in case No. 27/2008 by the Learned Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as VUSNF) of JSEB, Ranchi by which the learned VUSNF of Jharkhand State Electricity Board (in short to be referred as JSEB), Ranchi has quashed the impugned bills from January, 2004 to March, 2008 in which the KVA charges have been raised by the appellants/JSEB on the basis of 100% of the contract demand and the JSEB was directed to issue the monthly energy bills of the consumer/M/s Naiyadh Hi-Tech Pvt. Ltd. on the basis actual KVA recorded in the meter or 75% of the contract demand whichever is higher in each month as maximum demand from January, 2004 to May, 2008. Further the appellant/Board was also directed to adjust with interest the excess money realized from the consumer/ M/s Naiyadh Hi-Tech Pvt.

Ltd. in the subsequent bills with interest as per the Electricity Supply (Code) Regulations of Jharkhand State Electricity Regulatory Commission (In short to be referred as JSERC).

2. Being aggrieved by and dissatisfied with the aforesaid Judgement/order of the learned VUSNF of JSEB, Ranchi, the JSEB has filed this appeal.

3. The brief fact of this case is that the consumer/respondent was granted an electrical connection bearing Consumer No. GRD-30 HT for 2400 KVA load on 33KV supply for running induction furnace under HTSS mode of tariff 2003-04 effective from 01/01/2004 and the connection of the consumer was energized on 04/02/2002. The bills of the consumer/respondent was charged on the basis of 100% of the contract demand from January, 2004 and onwards instead of actual maximum demand recorded in the meter. Therefore the consumer/respondent had earlier filed his representation before the General Manager-cum-Chief Engineer, Electricity Supply Area, Hazaribagh (Jharkhand) for correction of energy bills issued to the consumer for the period from January, 2004 to May, 2008. But the grievance of the consumer/respondent was not redressed therefore the consumer/respondent had filed his representation before the learned VUSNF of JSEB, Ranchi for redressal of his grievance.

4. According to the case of the appellants/JSEB, billing of the consumer/respondent have been done on the basis of 100% of the contract demand because the JSERC in its tariff order, 2003-04 has dealt with design of tariff structure and analysis of tariff in Section 5 of the above order and the terms and conditions of supply have been dealt in Clause 5.30 of the tariff order of 2003-04 which reads as follows:-

“The JSEB has submitted a number of clauses of the existing terms and conditions of supply for the 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 a later state. This is due to the reason that a detailed and in-depth analysis of the issues involved is herewith required and hence they have not been dealt with in this tariff order”

The further case of the appellants/ JSEB is that the JSEB's rejoinder has been mentioned by the JSERC in Clause 3.6.1 of the tariff order of 2003-04 (at page 25) which reads as follows:-

“ It is to be noted that HTSS is meant for a specific category of consumers, and is highly power intensive and its tariff takes into account the tonnage capacity also. The existing tariff of induction furnace was decided at the request of Induction Furnace Association by the BSEB. However, this tariff is being proposed for consideration and approval of the Commission. The Commission has invited objections from everybody and the process is fully transparent so there is not question of any discussion with Induction Furnace Association. The existing tariff of Induction furnace came into force w.e.f. April, 2001, i.e. after a lapse of more than two year, therefore there is bound to be some increase in tariff has been nominal”.

According to the appellants/JSEB prior to the tariff order of JSERC, the tariff for Induction Furnace Consumers issued by tariff notification of 15/03/2000 issued by the Bihar State Electricity Board (In short to be referred as BSEB) published in Bihar Gazette on 06/04/2000 which was adopted by the JSEB on 20/03/2001. According to Clause 5 of the tariff notification dated 15/03/2000, the demand charge for the Induction Furnace Consumer has to be raised on the basis of actual maximum demand recorded in the meter during the month or 100% of the contract demand whichever is higher. Therefore, there is no illegality in charging the electric bills of the consumer/respondent on 100% of the contract demand and as such Judgement/order of the learned VUSNF of JSEB, Ranchi is fit to be set aside.

5. On the other hand, the case of the consumer/respondent is that the appellants/JSEB can not raise electric bills of the consumer/respondent on repealed tariff of erstwhile BSEB after passing of the JSERC regulations with effect from 01/01/2004. Besides it the JSERC letter dated 19/12/2005 has categorically rejected the stand of the appellants/JSEB that the tariff schedule of 2001 can not be taken cognizance at this stage after JSERC tariff order, 2003-04 has been made effective and as such the Commission has recognized the tariff of 2001 as non- applicable documents with effect from 01/01/2004. Besides it the further communications dated 15/07/2008, 20/03/2009 and 21/03/2009 has also confirmed the earlier communication dated 19/12/2005 in which the same view was reiterated and reemphasized. The appellant/JSEB has not challenged the order dated 19/12/2005 and the aforesaid fact has also been held by the Hon'ble High Court of Jharkhand in the case of JSEB & others Vrs. M/s Kumardhubi Steels (P) Ltd.

According to the consumer/respondent, the appellants/Board can only charge as per the specific provisions of the tariff at the rate of Rs. 2.50/- per KWH on actual consumption of units and Rs. 300/- per KVA on actual consumption of maximum demand both subject to a Minimum Monthly Charges (M.M.C.) of Rs. 400/- per KVA for the full contract demand. But on the one hand, the appellants/JSEB is charging old tariff on 100% of the contract demand as well as Rs. 400/- per KVA for the full contract demand as monthly minimum charges which is against the JSERC regulations. Therefore the consumer/respondent has prayed to set aside the electric bills of the consumer from January 2004 to May, 2008 and to revise/adjust the excess amount realized from the consumer/respondent with interest as per the JSERC regulations and to direct the appellants/JSEB to revise the electric bills of the consumer from January, 2004 to May, 2008 on actual consumption of unit recorded in the meter at the rate of Rs. 2.50/KWH and Rs. 300/KVA on actual consumption of maximum demand both subject to a Minimum Monthly Charges (M.M.C.) of Rs. 400/KVA for the full contract demand.

FINDINGS

6. The learned counsel appearing of behalf of the JSEB has based his arguments as asserted by the appellants in its memo of appeal and it has been further stated on behalf of the appellants/JSEB that after serving six (6) months notice on 27/11/2007 and its electrical connection was permanently disconnected on 31/05/2008 and thereafter a final bill of Rs. 52,34,714/- (Rs. Fifty two lakhs thirty four thousand seven hundred & fourteen) after deducting the security and interest accrued thereupon were served to the consumer/respondent on 26/06/2008. The consumer/respondent failed to deposit the final energy bill of JSEB therefore the appellants/JSEB served a legal notice no. 1034 dated 28/08/2008 for payment of final energy bills. The learned counsel of appellant has also referred Clauses 5 and 5,30 of tariff order of 2003-04 and Clause 1.4 (at page 148) of the tariff order 2003-04 and further Clause 3.6.1 of tariff order of 2003-04 (at page 25). It is further stated on behalf of the appellant/JSEB that prior to the tariff order of JSERC, the tariff for induction furnace consumers were issued vide tariff notification dated 15/03/2000 issued by the BSEB published in Bihar Gazette on 06/04/2000, which was

adopted by the JSEB on 20/03/2001. According to Clause 5 of the tariff notification dated 15/03/2000, the demand charge for induction furnace consumer has to be raised on the basis of actual maximum demand recorded in the meter during the month or 100% of the contract demand whichever is higher.

It has been further submitted on behalf of the appellant/JSEB that from the tariff order of 2003-04 of JSERC, the unit charge for HTSS consumer has been enhanced from Rs. 1.25/- to Rs. 2.50/- but the rate of demand charges have been reduced from Rs. 700/- to Rs. 300/KVA/Month and Minimum Monthly Charges (M.M.C.) have been reduced from the exiting rate of Rs. 1015/- to Rs. 400/KVA/month and as such the letter of JSERC dated 19/12/2005 is without jurisdiction and illegal. Therefore the bill of the consumer/respondent has raised under the aforesaid provisions of induction furnace tariff dated 15/03/2000 and therefore there is no illegality and it is justified.

7. On the other hand, the learned lawyer of respondent/consumer has submitted that after passing of the JSERC regulations dated 01/01/2004, the earlier tariff order of erstwhile BSEB becomes invalid and not enforceable and therefore the charging of 100% of the contract demand over and above the minimum monthly charges by appellant/JSEB is illegal. The earlier tariff order of BSEB have been held to be non applicable documents by the letter of the JSERC dated 19/12/2005 and several other letters in which the same view of JSERC was reiterated and reemphasized, which was also held by the Hon'ble Jharkhand High Court in the case of JSEB & others Vrs. M/s Kumardhubi Steels (P) Ltd.

8. I also find myself in agreement with the aforesaid contentions of the learned lawyer of the consumer/respondent that the earlier tariff notification dated 15/03/2000 can not be made as applicable in the Jharkhand State after passing of the JSERC regulations of 2003-04 effective from 01/01/2004 and therefore charging of contract demand on 100% KVA by the appellants/JSEB can not be allowed. But at the same time, I do not find any force in the contention of the learned lawyer of the consumer/respondent that the JSEB can only charge the bills at the rate of Rs. 2.50/- per Kwh on actual consumption of units and Rs. 300/KVA on actual consumption of maximum demand both subject to a Minimum Monthly Charges (M.M.C.) of Rs. 400/KVA for the full contract demand because MMC is not concerned with demand

charges rather MMC is concerned with energy charges as the tariff order of JSERC of 2003-04 (at page 115) which reads as follows:-

“Commission would like to explicitly mention that if the consumption exceeds the mentioned load factor, no minimum charge would be applicable”.

Further, Clause 5.4 of the JSERC tariff order of 2003-04 (at page 83 & 84) goes to show that there are two parts of tariff structure and minimum guarantee charges which reads that “ a rational tariff structure requires a two part tariff structures incorporating fixed charges to reflect the fixed costs”.

“For Financial year 2003-04 fixed costs comprise of approximately 28% of the total costs of JSEB, whereas the revenue from fixed charges at existing tariffs is only 14.61%. There is thus a distortion in the existing tariff structure that needs to be addressed. At the same time, if the entire fixed costs are recovered through fixed charges, then there will not be sufficient incentive for the Board to maximize the sale of electricity, as a significant portion of its expenses are fixed in nature”. The JSERC tariff, 2003-04 at page 84 further reads that “ The difference between fixed charges and minimum charges is that while fixed charges are charged from consumers irrespective of consumption, minimum charges are levied only when the bill of the consumer is less than a pre specified amount”.

Therefore, in view of the aforesaid Clause of JSERC, if energy charges go down towards minimum level of consumption then in place of charging actual unit recorded in the meter, charging will be done on the basis of Minimum Monthly Charges (M.M.C.). The demand charge is a settled charge to refer fixed costs of licensee and the same can not be mixed up with the energy charges or the MMC.

9. The consumer/respondent has stated at paragraph 11 (at page 9) of its counter affidavit dated 19/03/2010 about the HT agreement under Clause 4(B) and 4 (C) and has further stated at Para 14 (at page 10) in its counter affidavit that the appellants/JSEB is not respecting to the aforesaid clauses of HT agreement.

10. As such, in my view in the absence of any specific clause of JSERC tariff order, 2003-04 the agreement executed in between both the parties shall prevail because this is also a settled Law that the agreement is enforceable if it is not against any specific Law. Therefore, in view of Clause 4© of the agreement, the bills of the consumer/respondent

has to be charged from 01/01/2004 to May, 2008 on the basis of actual KVA recorded in the meter or 75% of the contract demand whichever is higher in each month as maximum demand.

11. Thus from the aforesaid discussions and findings made above, I am led to hold that the appellants/JSEB can not charge the energy bills of the consumer/respondent from 01/01/2004 to May, 2008 on 100% of the contract demand and as such the impugned bills issued to the consumer/respondent from January, 2004 to till May, 2008 in which the KVA charges have been raised by the appellants/JSEB on the basis of 100% of the contract demand are hereby quashed. The appellant/JSEB is directed to issue the revised monthly energy bills to the consumer/respondent on the basis of actual KVA recorded in the meter or 75% of the contract demand whichever is higher in each month as maximum demand from January, 2004 to May, 2008. The appellants/JSEB shall also adjust the excess money realized from the consumer/respondent in the subsequent bills with interest as per the Electricity Supply (Code) Regulations of JSERC within one month from the receipt of this order failing which the consumer/respondent will be at liberty to move this Forum for implementation of this order.

12. In the result, there is no merit in this appeal filed by the JSEB/appellants and as such the appeal filed by the appellants/JSEB is dismissed. Further I do not find any illegality in the Judgement/order of the learned VUSNF of JSEB, Ranchi and hence the Judgement/order of learned VUSNF passed in case no. 27/2008 dated 09/09/2009 is hereby upheld without any interference.

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

Sd/-
Electricity Ombudsman