

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

Appeal No. EOJ/13/2011

Dated- 19th August, 2011

JSEB through its Chairman & others	Appellant(s)
	Versus	
Smt. Asha Sinha	Respondent(s)

Present:

Shri Arun Kumar Datta	Electricity Ombudsman
Shri Rajesh Shankar	Standing Counsel for appellant Board
Shri Dheeraj Kumar	Addl. Counsel for appellant Board
Shri S.K. Prasad	Counsel for respondent

JUDGEMENT

1. The appellant Jharkhand State Electricity Board ((In short to be referred as J.S.E.B) has filed this appeal for setting aside the Judgement/order dated 03.05.2011 passed by the learned Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as V.U.S.N.F.) of JSEB, Ranchi in case no. 33/2010 by which the learned V.USNF has allowed the representation/complaint filed by the consumer/respondent and the bills raised against the consumer/respondent have been quashed.

2. The brief fact of this case is that the consumer/Smt Asha Sinha W/o Professor Dr. S.B. Sinha, resident of Sindwar Toli, Morabadi, P.S.-Bariatu, Ranchi is a domestic consumer of JSEB bearing consumer no. KN 22/SIN-17. On 23/01/2010 an inspection was carried out at the premises of consumer/respondent and enhanced the connected load from 1 KW to 5 KW without serving any copy of inspection report and on the basis of 5 KW, the energy bill was charged for 720 units from the month of January, 2010 amounting to Rs. 1,578/- and the energy bill for February, 2010 came for Rs. 24,668/- based on penalty charges of previous 24 months thereafter the energy bill of consumer/respondent came at highly inflated for the month of March, 2010 amounting to Rs. 26,782/-, Rs. 28,659/- for the month of April, 2010, Rs. 30,593/- for the month of May, 2010, Rs. 32,535/- for the month of

June, 2010 and Rs. 36,488/- for the month of August, 2010. Therefore consumer/respondent has earlier filed her case before the court of Chief Electrical Inspector for redressal of her grievances but when the consumer/respondent found that her case does not come under the purview of Section 126 of the Electricity Act, 2003, therefore the consumer/respondent had withdrawn her representation before the Chief Electrical Inspector who allowed her representation to be withdrawn saying that this is not a grievance redressal forum and the consumer/respondent filed her representation/complaint before the learned VUSNF of JSEB, Ranchi. Before filing her case before the Chief Electrical Inspector and also the learned VUSNF, the consumer/respondent had also represented her grievances before the authority of JSEB on which the Assistant Electrical Engineer, Kanke had re-inspected the premises of respondent and submitted the report on 07/11/2010. On inspection report the Assessing Officer has passed an order directing the revenue and billing Section of the office of Electrical Executive Engineer, New Capital, Ranchi for preparing final assessment bill on 5KW accordingly the representation of the consumer/respondent was disposed of. In accordance with the order of the Assessing Officer, the final assessment bill of the consumer/respondent was prepared for a sum of Rs. 24,327.12/- and it was sent to the consumer/respondent vide letter no. 1731 dated 08/12/2010.

3. According to the consumer/respondent she is neither unauthorized user of electricity nor she has committed any theft of power and as such her case does not come under the purview of Section 126 of the Electricity Act, 2003 nor under any explanation of Section 126 of the Electricity Act, 2003. According to consumer/respondent under chapter 15 clause 15.7 sub-clause (iii) of the Jharkhand State Electricity Regulatory Commission (In short to be referred as J.S.E.R.C.) Regulations, 2010 prevails under heading exemption by which the connected load exceeded then it shall not be considered as unauthorized use of electricity and as such there is no question of imposing heavy penalty on the consumer/respondent.

(4.) On the other hand, the case of appellant/JSEB is that the consumer/respondent was indulged in the fault of drawing excess load by the connected electrical equipments in her premises for which the consumer/respondent was not authorized by the Board and as such this case definitely comes under the purview of Section 126 of the Electricity Act. Beside it the consumer/respondent had first moved before the Court of the Chief Electrical Inspector under the provisions of Section 127 of the Electricity Act against the bills raised under Section 126 of the Act. Further the Electricity Supply(Code) Regulations, 2010 of the JSERC

was enforced from 01/09/2010 therefore the aforesaid provisions should not have any bearing on the inspection carried out on 23/01/2010 at the premises of the consumer/respondent. Therefore according to appellant/JSEB the Judgement/order of the learned VUSNF passed in case no. 33/2010 on 03/05/2011 is fit to be set aside and the consumer/respondent be directed to make payment of the final assessed amount.

FINDINGS

5. The learned Standing Counsel of appellant JSEB Sri Rajesh Shankar has argued that on inspection which was carried out on 23/01/2010 in the premises of consumer/respondent the connected load was found to be 5 KW and therefore the load was enhanced from 1 KW to 5 KW and the final assessment bill of consumer was prepared for Rs. 24,327.12/- which was also sent to the consumer/respondent vide letter no. 1731 dated 08/12/2010. He has further argued that the learned VUSNF has failed to appreciate that the consumer/respondent was using excessive load in her premises for which the consumer was not authorized by the Board as such this case definitely falls under the purview of Section 126 of Electricity Act. On the other hand, provisions laid down in Clause 15.7 (iii) of Electricity Supply (Code) Regulations, 2005 of JSERC which was also relied by the learned VUSNF should not have any bearing because the inspection at the premises of consumer/respondent was carried out on 23/01/2010 and the Electricity Supply (Code) Regulations, 2010 was enforced from 01/09/2010 and it has no retrospective effect. On this very ground the Judgement/order of the learned VUSNF is fit to be set aside. It has been further argued on behalf of the appellant/JSEB that the findings of the learned VUSNF is wrong when it held that there is no scope for exercising power under Section 126 of Electricity Act. The learned Standing Counsel of appellant/JSEB has also argued that this is definitely a case of unauthorized use of electricity under 126 of the Electricity Act, 2003 because the sanctioned load of consumer/respondent was only 1KW whereas the consumer/respondent was drawing power of 5 KW which is in excess of the sanctioned load and on this very ground the Judgement/order of the learned VUSNF is fit to be set aside. Because when this is a case under Section 126 of the Electricity Act then only remedy for the consumer/respondent was to move before the Chief Electrical Inspector which Forum the consumer has earlier approached before filing her case before the learned VUSNF and as such the learned

VUSNF has no jurisdiction to entertain the complaint/representation of the consumer/respondent.

6 On the other hand, the learned Counsel Sri S.K. Prasad appearing on behalf of consumer/respondent has argued that the learned VUSNF has rightly held that the case of consumer/respondent does not come under any explanation of Section 126 therefore there is no question of unauthorized use of electricity. Beside it Section 126 does not speak about excess load beyond the sanctioned load is either theft or unauthorized use of electricity therefore the Electrical Executive Engineer, New Capital Division is not authorized to make any assessment if the consumer is not found indulged in unauthorized use of electricity under Section 126 of the Electricity Act, 2003. As such the learned VUSNF has rightly held that the consumer/respondent is not unauthorized use of electricity therefore no question of assessment arises by the Electrical Executive Engineer. The consumer/respondent being aggrieved by the action by the Electrical Executive Engineer had mistakenly moved before the Chief Electrical Inspector for redressal of her grievances whereas the Chief Electrical Inspector has allowed her representation to be withdrawn saying that this is not a grievance redressal Forum.

7. Considering the aforesaid arguments by the learned Counsel of appellant and respondent the issue which arises for determination in this case is that whether the use of electricity beyond the sanctioned load comes under Section 126 of the Electricity Act, 2003 or not.

8. In this connection it has been argued by the learned Counsel of appellant/JSEB that use of electricity beyond the sanctioned load comes within the Section 126 of the Electricity Act because it was unauthorized use of electricity whereas according to the learned Counsel of respondent/consumer it does not come under unauthorized use of electricity nor it comes within the mischief of Section 126 of the Electricity Act. In this connection the explanation (b) of Section 126 of Electricity Act, 2003 reads as follows:- “unauthorized use of electricity” means the usage of electricity-

(i) by any artificial means; or

(ii) by a means not authorized by the concerned person or authority of licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorized

On perusal of the aforesaid explanation the withdrawal of power beyond the sanctioned load does not come under the explanation (b) of Section 126 under heading “unauthorized use of electricity” and therefore I am also led to hold that withdrawal of electricity beyond the sanctioned load does not come under Section 126 of Electricity Act and as such the learned VUSNF of JSEB, Ranchi which has got jurisdiction to entertain any representation/complaint for redressal of grievances of the consumer.

9. I am of this view because if it comes within Section 126 of Electricity Act then the JSERC could not have introduced this provision in Electricity Supply (Code) Regulations, 2005 which was published in Jharkhand State Gazette notification no. 501 dated 01/09/2010. By virtue of this amendment, the JSERC has clearly laid down that “exemption” from unauthorized use of electricity which reads that “where a consumer is billed on demand basis but the connected load exceeds the sanctioned load. In such cases one month notice is to be served by the licensee indicating additional load to be regularized by the consumer.” As such there is no force in the contentions of the learned Standing Counsel of appellant/JSEB that this exemption which was introduced by the amendment dated 01/09/2010 can not benefit the consumer because the premises of consumer was inspected on 23/01/2010. Because on bare reading of explanation (b) under Section 126 of the Electricity Act, 2003 itself the withdrawal of electricity beyond the sanctioned load does not come under Section 126 of the Electricity Act, 2003 therefore the findings of the learned VUSNF is found to be correct and it is accordingly upheld.

10. On perusal of the Judgement/order of learned VUSNF dated 03/05/2011 passed in case no. 33/2010 it is found that while deciding issue No. 2 the learned VUSNF held that the meter when it went defective in the year 2008 can not be ascertained therefore the learned VUSNF has directed that when the meter went defective can be early ascertained from the records of the JSEB and he has relied the 2nd proviso appended to Clause 11.3.1 of regulations, 2005 which reads that “ 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 12 months immediately preceding the month in which meter was last read (including the month) for the period for which meter was stopped recording subject to maximum period of three months”. This findings of learned VUSNF is also upheld and accordingly the appellant JSEB is directed to raise energy bill in terms of the proviso of clause 11.3.1 of Regulations, 2005 when the meter went defective until new meter is installed

and if not already installed then until it is installed in the facts and circumstances of this case. The JSEB is further directed that the JSEB shall take into consideration the consumption recorded for 12 months (prior to the date when the meter went defective). It will be available in the official records of JSEB for the purpose of calculating average monthly consumption and for raising bills in terms of the said proviso of clause 11.3.1 of the Electricity Supply (Code) Regulations, 2005 of JSERC since the date when the meter went defective.

11. Since the aforesaid order is being passed today therefore it is further directed that the JSEB will install new meter within one month from the receipt of this order and also to send one month notice to the consumer/respondent for regularization of the exceeded load in terms of Clause 15.7 (iii) of the Regulations, 2005 which has been included by amendment on 01/09/2010 by the JSERC on the basis of load inspected on 23/01/2010. The impugned bills from January, 2010 and onwards are accordingly ordered to be quashed and the JSEB appellant is directed to issue revised energy bills from the date when the meter went defective and onwards (until new meter is installed) on the basis of 12 months average consumption recorded in the meter prior to its becoming defective the records of which will be available by the appellant/JSEB.

12. In the result the Judgement/order of learned VUSNF is upheld without any interference and this appeal is accordingly dismissed.

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

Sd/-
Electricity Ombudsman

