

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

**Appeal No. EOJ/15/2011**

**Dated- 25<sup>th</sup> November, 2011**

**Jharkhand State Electricity Board** ..... **Appellant**  
**Versus**  
**M/s Johar Steel Enterprises Pvt. Ltd.** ..... **Respondent**

**Present:**

**Electricity Ombudsman** - **Shri Arun Kumar Datta**  
**Advocate for the Appellant** - **Shri Rajesh Shankar**  
**Shri Dheeraj Kumar**  
**Advocate for the respondent** - **Shri Ajit Kumar**  
**Shri Vijay Kumar Gupta**

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

1. This appeal has been filed by the Appellant/J.S.E.B. against the Judgement/Order dated 18.05.2011 passed in case No. 08/2011 by the Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as V.U.S.N.F.) of J.S.E.B., Ranchi, by which the representation of the Consumer/Respondent has been allowed and the demand raised by J.S.E.B. has been quashed and the J.S.E.B. has been directed to revise energy bills as per directions given in its Judgement and to provide the same before the V.U.S.N.F. within 30 days for verification and confirmation.

2. Being aggrieved by and dissatisfied with aforesaid Judgement/Order of the learned V.U.S.N.F. this appeal has been filed by the Appellant/J.S.E.B. for setting aside the aforesaid Judgement/Order passed by V.U.S.N.F. on 18.05.2011 passed in case No. 08/2011.

3. The brief facts of this case is that the Consumer/Respondent took electric connection for running its unit vide consumer No. CKU4 at 33 KV under HTSS mode of Tariff 2004. The Consumer/Respondent had applied for the contract demand of 3000 KVA which was sanctioned but later on the Consumer/Respondent on the basis of measurement had executed an agreement for the load of 3300 KVA and the power supply commenced on 10.07.2006. Since thereafter the Appellant/J.S.E.B. started raising bills on the basis of 100% of contract demand against the provision of 2003-04 Tariff in stead of actual recorded KVA. Therefore the Consumer/Respondent had challenged the illegal bills which were raised on 100% of contract demand issued from 07/06 and onwards in case No. 19/2007 before the V.U.S.N.F. which was disposed of in favour of Consumer/Respondent by order dated 10.10.2007 which was also upheld by this forum by order dated 28.02.2008 passed in appeal No. EOJ/18/2007 and the J.S.E.B. was directed to issue revised bill in accordance with the directions given in the Judgement after allowing adjustment of paid amount and 2% interest on excess charged amount from the Consumer/Respondent was also allowed. The Appellant/J.S.E.B. revised the bills but not in accordance with the orders passed by learned V.U.S.N.F. and this forum. The disconnection notices was issued on 06.09.2008 and the line of the Consumer/Respondent was illegally disconnected on 09.09.2008. This has led the Consumer/Respondent to file the case before the learned V.U.S.N.F.

4. The case of Appellant/J.S.E.B. is that the electrical line of M/s Johar Steel Enterprises was disconnected on 06.08.2008 on account of dishonored cheques which was reconnected on 07.08.2008 after payment of amount of dishonored cheque along with RC-DC amount. The line of the Consumer/Respondent was again disconnected on 09.09.2008 because

of non payment of energy dues. The further case of Appellant/J.S.E.B. is that the D.P.S. was levied on the corrected amount in accordance with the order of this forum and the difference of KVA along with proportionate D.P.S. was already kept in subjudiced head subject to final order/direction/decision of J.S.E.B./Hon'ble High Court as the Appellant has also filed the writ petition against the order of this forum. Therefore according to Appellant D.P.S. on corrected amount is realizable. The Consumer/Respondent has availed power up to 21.01.2007 and after 24.02.2007. Therefore the Consumer/Respondent is liable to pay the energy bills from January 2007 and February 2007. After necessary correction the demand is revised from Rs. 2,23,01,925/- to Rs. 2,04,50,473/-. The Consumer/Respondent has taken electric connection on 10.07.2006 and the line was disconnected on 09.09.2008 on dues and in accordance with Clause No. 08 of the agreement as initial three years of agreement was not completed, therefore MMC for remaining period from 10/2008 to 06/2009 is chargeable. The bills of 02/2007 and 03/2007 are based on the metered consumption. As such consideration of passed average consumption does not arise. On the aforesaid ground the Appellant/J.S.E.B. has prayed for setting aside the impugned Order/Judgement dated 18.05.2011 passed by V.U.S.N.F. in case No. 08/2011.

5. On the pleadings of both the sides the following issues are framed for their discussions and decision there on:-

## ISSUES

### Issue No. I :-

Whether this case is barred in view of the certificate case No. 42/2010-11 filed by the Appellant/J.S.E.B. against the Consumer/Respondent, or not ?

### Issue No.II :-

Whether impugned letter of demand No. 1362 dated 19.05.2010 issued by the Appellant/J.S.E.B. to Consumer/Respondent is fit to be quashed as illegal, or not ?

### Issue No. III :-

Whether D.P.S. can be levied for the period during which erroneous bills were issued against the tariff or not ?

### Issue No. IV:-

Whether disconnections effected on 21.01.2007 and 09.09.2008 were illegal and whether MMC guaranteed charges for the wrongful disconnection period and for balance of agreemental period can be levied, or not ?

### Issue No. V: -

Whether bills for the month of 02/2007 and 03/2007 are liable to be quashed as being violative of Clause 13.4 and 11.3 of regulation 2005.

### Issue No. VI: -

Whether compensation amounting to Rs. 5 crore can be allowed to Consumer/Respondent or not ?

**Issue No. VII: -**

What reliefs and directions can be given in this case.

**FINDINGS**

**ISSUE No. I: -**

6. Shri Rajesh Shankar the learned standing counsel appearing on behalf of Appellant/J.S.E.B. has submitted that the learned V.U.S.N.F. has failed to appreciate that the certificate case No. 42/(Elect.)/10.11 was filed on 04.09.2010 on clear cut amount of Rs 2,04,50,473/- excluding the adjudged amount of Rs. 6,51,08,225/-. According to Shri Shankar sections 43 and 46 of Bihar and Orissa Public Demand Recovery Act 1914 every question between certificate debtor and the certificate holder relating to the making, execution, discharge or satisfaction is to be determined by order of the certificate officer and therefore the V.U.S.N.F. has no jurisdiction to hear this case. In support of his contention Shri Shankar has relied and filed a ruling reported in 1990 (2 PLJR) 131. On the other hand Shri Ajit Kumar the learned Counsel of Consumer/Respondent has submitted that sections 43 and 46 lays down the general bar to jurisdiction of civil courts and not the jurisdiction of V.U.S.N.F. and Electricity Ombudsman which are the creation of Section 42 (5) and 6 of Electricity Act 2003 which is a Central Act and the PDR Act being a state law cannot override Central Act. The C.G.R.F. and Electricity Ombudsman are the forums for redressal of grievances of the consumers against any licensee or the Board. Therefore the jurisdiction of either V.U.S.N.F. or Electricity Ombudsman is not barred by PDR Act. Shri Ajit Kumar has also relied and filed a ruling reported in 2001 (2) PLJR at page 287 in which the Hon'ble court has held at para graph 5 in the aforesaid ruling that "So far the bar

resulting to the jurisdiction of the Civil Court is concern I am of the opinion that the aforesaid provision laid down under the PDR Act refers questions arising between the certificate holder and certificate debtor relating to discharge, satisfaction and making of the certificate amongst other questions. So this question refers to stage after conclusion of the certificate proceedings and consequent upon the grant of certificate to the certificate holder. So the objection raised in this connection is not sustainable in the eye of law". In view of the aforesaid ruling there is no force in the aforesaid contention of the learned standing Counsel of Appellant/J.S.E.B. and therefore I am led to hold that this case is not barred under section 43 and 46 of PDR Act and I am further led to hold that the Appellant/J.S.E.B. has not raised revised bills from 07/2006 to 09/2008 in accordance with the earlier Judgement/Order passed by V.U.S.N.F. and by this forum and the entire amount should be treated as subjudice until correct bills is raised in terms and the directions contained in the earlier Judgement. The Appellant/J.S.E.B. will be at liberty to initiate certificate proceeding under PDR Act only after raising correct bill in obedience of the earlier Judgement/Order passed by learned V.U.S.N.F. and by this forum and accordingly this issue is decided.

**Issue No. II & III :-**

7. Both the aforesaid issues No. II & III are connected with each other, therefore both these issues No. II & III are taken up together for their discussion and decision there on. On these issues it has been submitted by Shri Rajesh Shankar the learned standing Counsel on behalf of Appellant/J.S.E.B. that the learned V.U.S.N.F. has failed to appreciate that the demand has again been verified and corrected in terms of statement of energy bill chart of entire period from 07/2006 to 09/2008 and accordingly letter of demand has been substituted by letter of demand made for

Rs. 2.04 crores and odd which has been issued vide memo No. 2384 dated 18.08.2010. It has been further submitted by Shri Shankar that learned V.U.S.N.F. failed to consider that the D.P.S. levied earlier has been omitted by way of correction in terms of Judgement in the revised statement dated 26.08.2010 and no D.P.S. has been charged in the revised statement dated 26.08.2010 on the other hand it has been submitted by Shri Ajit Kumar the learned Counsel appearing on behalf of Consumer/Respondent that from the chart dated 18.05.2010 which is said to have been prepared by the Appellant/J.S.E.B. in compliance of the order passed by forum vide order dated 10.10.2007 passed in case No. 19/2007 is thoroughly wrong and illegal because the Appellant/J.S.E.B. has no right to calculate and raise any D.P.S. during the period 07/2006 up to the date of correction of bills. But the Appellant/J.S.E.B. has adopted very peculiar method of calculating D.P.S. charge and there by a huge amount has been raised against the consumer. According to Shri Kumar the bills were quashed by the learned V.U.S.N.F. on 10.10.2007 and confirmed by this forum vide its order dated 28.02.2008 in case No. 18/2007 but those bills were revised at much belated stage which disentitles the Appellant/J.S.E.B. from raising any D.P.S. amount for the whole period. I also find my self in agreement with the aforesaid contentions of the learned Counsel of Consumer/Respondent because this forum by its order dated 28.02.2008 passed in case No. EOJ/18/2007 the concerned bills raised by the Appellant/J.S.E.B. for KVA charges @ 100% of the contract demand were quashed and the Appellant/J.S.E.B. was directed to issue monthly bills of the Consumer/Respondent on the basis of actual KVA recorded in the meter of the Consumer/Respondent and further directed for adjustment of entire excess realized from the Consumer/Respondent in the subsequent bills with interest as per the supply code Regulations and the Appellant/J.S.E.B. was directed to issue revise bills on the basis of actual

maximum demand KVA recorded in the meter in each month from 07/2006 and onwards within the period of one month from the date of the receipt of the order. But the Appellant/J.S.E.B. didn't issue any such revised bills within one month and lingered it and thus wrongly and illegally charged the D.P.S. amount for no fault of the Consumer/Respondent and the Appellant/J.S.E.B. cannot penalize the Consumer/Respondent for its own fault. Therefore the notice of demand No. 1362 dated 19.05.2010 issued by Appellant/J.S.E.B. is fit to be quashed as illegal on this score it self and accordingly they stand quashed.

8. Now the question arises as to whether D.P.S. can be levied even for the period within which erroneous bills were issued against the Tariff which were quashed by learned V.U.S.N.F. and also upheld by this forum. On this issue it has been submitted by the learned standing Counsel of Appellant/J.S.E.B. that the D.P.S. has been charged on the corrected amount and the D.P.S. levied earlier has been omitted by way of correction in terms of Judgement in the revised statement dated 26.07.2010 which is payable by the Consumer/Respondent. On the other hand it has been submitted by learned Counsel of Consumer/Respondent that in the ruling reported in 1995 (2 PLJR) at page 717 held in the case of M/s Gaya Roller Flour Mills Pvt. Ltd. versus B.S.E.B. and others no liability on account of D.P.S. can be fastened on the petitioner where he had disputed about the correctness of the bill and the authorities subsequently corrected the bill by making fresh calculations. Therefore in view of the aforesaid ruling no D.P.S. can be levied in a period within which erroneous bills were issued and until the same are revised and corrected. Accordingly both the issues No. II & III are decided in favour of Consumer/Respondent and against the Appellant/J.S.E.B..

**Issue No. IV :-**

9. On the aforesaid issue it has been submitted by learned standing Counsel of Appellant/J.S.E.B. that the learned V.U.S.N.F. failed to appreciate that the electric connection of Consumer/Respondent was disconnected on 06.08.2008 on account of dishonored cheques and reconnected on 07/08/2008 after payment of cheque dishonored amount along with RC-DC amount. But the line of Consumer/Respondent was again disconnected on 09.09.2008 for non payment of energy dues. It has been further submitted by learned standing Counsel of Appellant/J.S.E.B. that the learned V.U.S.N.F. erred in holding that no MMC charges can be levied for above illegal disconnection from 21.01.2007 up to 24.02.2007 and the Consumer/Respondent is liable to make the payment of MMC for the balance period for the agreement in view of settled law that the consumer is liable to make the payment of MMC till the determination of agreement with the licensee irrespective of the disconnection of electricity within the aforesaid period and as such raising of the bill on account of minimum guarantee is completely in accordance with law. On the other hand it has been submitted by the learned Counsel of Consumer/Respondent that the Appellant/J.S.E.B. has no right to raise any MMC for the period running between 21.01.2007 to 24.02.2007 and 09.09.2008 to the month of 06/2009 because the aforesaid period are unlawful disconnection period within which no guarantee can be realized by the Appellant/J.S.E.B. in view of the settled law. It has been further submitted by learned Counsel of Appellant/J.S.E.B. that the disconnection effected on 21.01.2007 has been held to be arbitrary and illegal by the Hon'ble Jharkhand High Court by order No. 02 dated 21.02.2007 passed in WP(c) No. 743 of 2007.

10. On perusal of the order No. 02 dated 21.02.2007 passed in WP(c) 743/2007 it is found that the Hon'ble court has held the disconnection effected on 21.02.2007 as illegal being violative of section 56 of Electricity Act and the electrical connection of the Consumer/Respondent was directed to be restored within 3 days and as such the disconnection effected on 21.01.2007 is accordingly held to be illegal and therefore no MMC can be charged for illegal disconnection from 21.01.2007 up to 24.02.2007 because the line was reconnected on 24.02.2007 after disconnection on 21.01.2007. So far as disconnection effected on 09.09.2008 is concerned, it was done in pursuance of demand letter No. 1895 dated 06.09.2008 and the line was disconnected on 09.09.2008 which is just within 3 days of the demand letter which is in violation of section 56 of Electricity Act 2003 which provides clear 15 days notices to consumer before disconnection of electricity connection which is not done in this case. Accordingly the disconnection made on 21.01.2007 and on 09.09.2008 are held to be illegal and because the aforesaid disconnection are illegal therefore no liability of payment of guarantee charge can be fastened upon the Consumer/Respondent for the disconnection period and it is also held that the Appellant/J.S.E.B. cannot legally levy MMC charges for the balance period of agreement. Accordingly this issue is decided in favour of Consumer/Respondent and against the Appellant/J.S.E.B.

**Issue No. V : -**

11. On this issue the Consumer/Respondent has asserted at paragraph 36 of its Supplementary Counter Affidavit "that the Appellant has no right to raise arbitrary average bills in any month which they have raised in the months of 01/2007, 02/2007 and 03/2007, thus the said amounts have rightly been set aside by the court of V.U.S.N.F.". On perusal of the Judgement/Order of learned V.U.S.N.F. dated 18.05.2011 passed in case

No. 08/2011 it is found that while deciding this issue as issue No. IV the learned V.U.S.N.F. has held that grievance of the petitioner relating to bills for the month 02/07 and 03/07 have been corrected to the satisfaction of the petitioner as is apparent from the relevant columns of statements of bills dated 26.04.2010 and accordingly this issue was decided. I also find my self in agreement with aforesaid finding of learned V.U.S.N.F. and I am also of the view that the grievance of the Consumer/Respondent has already been redressed and accordingly this issue is decided.

**Issue No. VI :-**

12. On this issue it has been submitted by the learned Counsel of Consumer/Respondent that the Consumer/Respondent has been unduly harrassed by the Appellant/J.S.E.B. and the unit of the respondent have been practically ruined, therefore the respondent is also entitled to the compensation to the tune of Rs. 5 crores for which appropriate direction for settlement has also been given by V.U.S.N.F.. On perusal of the Judgement/Order of learned V.U.S.N.F. passed in case No. 08/2011 dated 08.05.2011 it is found that the learned V.U.S.N.F. has directed for employment of an independent agency for calculation of loss suffered by the petitioner due to illegal acts of the Board awarding suitable compensation as deemed fit and proper. I also find my self in agreement with the aforesaid findings of the learned V.U.S.N.F. for employment of an independent agency for calculation of the loss suffered by the Consumer/Respondent due to illegal acts of the Appellant/J.S.E.B. for awarding suitable compensation and accordingly this issue is decided.

**Issue No. VII :-**

13. The Appellant/J.S.E.B. is directed to revise the energy bill as per direction given in this Judgement while deciding the different issues in the

case and the Appellant/J.S.E.B. is further directed to produce the revised bill before the learned V.U.S.N.F. within 30 days from the date of receipt of this order for verification and confirmation failing which the Consumer/Respondent will be at liberty to move this forum within 60 days for implementation of the order.

14. In the result there is no merit in this appeal and the Judgement/Order of learned V.U.S.N.F. passed on 18.05.2011 in case No. 08/2011 is hereby up held without any interference and this appeal is dismissed.

Let a copy of the Judgement be served on both the parties.

Sd/-  
Electricity Ombudsman