

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

Case No. EOJ/16/2007

Dated- 28th Feb. 2008

JSEB through its Chairman & others **Appellant(s)**
Versus
M/s K.Y.S. Manufacturers & Exporters (P) Ltd. **Respondent(s)**

Present:

Shri Sarju Prasad	Electricity Ombudsman
Shri Rajesh Shankar	Advocate for appellant Board
Shri Abhay Prakash	Advocate
Shri Dheeraj Kumar	Advocate
Shri Ajit Kumar	Advocate for the respondent
Shri D. Pathak	Advocate

J U D G E M E N T

1. This appeal has been filed by Jharkhand State Electricity Board (in short JSEB), Ranchi against the order/Judgement dated 25/09/2007 passed in case no. 18/07 by Vidyut Upbhokta Shikayat Niwaran Forum (in short VUSNF), JSEB, Ranchi.
2. The brief facts; giving rise to this appeal is that M/s K.Y.S.Manufactures & Exporters Pvt.Ltd.,at M-47 & 48, Phase-IV, Adityaour Industrial Area, Gamharia, Jamshedpur, filed a representation before VUSNF which was registered as case no. 18 of 2007, alleging inter-allia that the petitioner M/s K.Y.S.Manufactures & Exporters Pvt.Ltd. was granted the electricity connection for 2700 KVA for running induction furnace on 01-04-1998 and the load was subsequently enhanced to 5100 KVA.from 03/2006. According to the petitioner, the JSEB is billing energy charges not on the basis of actual maximum demand recorded in the month in the meter of the consumer; after the tariff order of 2003-04 passed by JSERC, rather they are billing demand charges on the basis of 100% of the contract demand which is illegal as per the tariff order 2003-04 which is applicable with effect from 01/01/2004. In the tariff order 2003-04, there is no provision for realizing demand charges on the basis of 100% of the contract demand in case there is shortfall of demand recorded in the meter of the consumer.

3. The case was contested by the JSEB and VUSNF vide order dated 25/09/2007 held that JSEB can not realize more than the actual demand recorded in the meter of the consumer against which the present appeal has been filed by the JSEB. The only question for determination in this appeal is whether the JSEB can realize demand charges on the basis of 100% of the contract demand in case there is shortfall in recorded maximum demand in the meter of the consumer, in view of the tariff order of 2003-04 issued by Jharkhand State Regulatory Commission (in short JSERC) from 1-1-2004 onwards.

4. In order to appreciate, it is worth to mention that originally there was the BSEB which was empowered to issue its own tariff order, in the year 2001, to be very precise with effect from 01/04/2001, there was the bifurcation of the Bihar State Electricity Board due to re-organization of State of Bihar and on carving out a new State of Jharkhand. At the time, when there was an unified BSEB as per the tariff order 1999-2001 there was a provision that the demand (KVA) charges per month is to be billed at the rate of actual maximum demand recorded in the meter or 100% of the contract demand whichever is higher. There is subsequent tariff order of BSEB which was published on 07/05/2001 which repealed the earlier tariff schedules of 24/09/99 and reiterated the same provision for billing on the basis of actual maximum demand recorded in that month or 100% of the contract demands whichever is higher. It appears that the JSEB which came into existence with effect from 1st April, 2001 has not issued any notification adopting the tariff schedule of BSEB for the year 2001 which was published on 07/05/2001 i.e. after the separation of the JSEB. After the enactment of new Electricity Act, 2003, the power to fix tariff had vested with the JSERC and in accordance with the provision of Electricity Act, 2003 JSERC, Ranchi has issued a tariff order of the year 2003-04 which is applicable with effect from 1st January, 2004 repealing all other tariff orders applicable prior to this tariff order of JSERC. It is pertinent to note that in the tariff order of JSERC, the unit charges for consumption of electricity have been enhanced from Rs. 1.20 paisa to Rs. 2.50 paisa. It has also made a provision for minimum monthly guarantee, the provision relating to tariff of HTSS category with induction furnace has been mentioned in page 117 and page 118 of the tariff order in clause 5.25. From the tariff order, it is clear that demand charges has been revised from Rs. 700/- to Rs. 300/ but the energy charges has been enhanced from Rs. 1.20/- to Rs. 2.50/-. Thus JSERC gave an additional benefit to JSEB with respect to energy charges by enhancing it from 1.20 per unit to 2.50 per unit and has added a new rate of minimum monthly guarantee charges of Rs. 400/-KVA per month in the new tariff order. There is no mention that the demand charges are to be

levied at the rate of 100% of the contract demand or the actual maximum demand recorded in the meter of the consumer whichever is higher. This means JSERC in the tariff order has done away that clause by which BSEB had made the provision for KVA (Demand) charges on the basis of actual maximum demand recorded in the meter of the consumer or 100% of the contract demands whichever is higher. Thus, it is apparent that although JSEB is charging energy charges on the basis of tariff order of 2003-04 issued by JSERC, at the same time they are applying the provision of tariff order of BSEB which was issued in 1999 and 2001 and charging 100% of the contract demand in case there is shortfall in the demand recorded in the meter of the consumer.

5. This case is well covered by the judgement of this forum passed in M/s T & T Metals Pvt. Ltd Case No. EOJ /01/06 dated 15-02-07 and M/S Kumardhubi Pvt. Ltd Case No. EOJ/02/07 dated 06-06-07.

6. The learned lawyer for the JSEB has submitted that there is a saving clause in the tariff order of 2003-04 as mentioned in page 148 of the tariff order vide Clause 1.4. In order to appreciate the contention of the learned lawyer for the appellant, JSEB it is worth to reproduce Clause 1.4 of the tariff order 2003-04 as contained in page 148 :-

“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.”

7. From the plain reading of the saving clause, it is apparent that the JSERC has mentioned that 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. Although, there is mention of surcharge for exceeding contract demand but there is no mention that in case HTSS consumer with induction furnace the provision relating to charging 100% of the contract demand or the actual maximum demand recorded in the meter of the consumer whichever is higher shall remain the same. Therefore, it is very difficult to hold that the condition relating to demand charges as it was applicable at the time of BSEB will hold good. The JSERC has considered the various aspects and rather it has enhanced the energy charges for more than double with the provision of minimum monthly guarantee. Therefore, I do not find any merit in submission of the learned lawyer

for the JSEB that the provision relating to demand charges as it was existence in BSEB has been saved by Clause 1.4 of the saving clause mentioned above.

8. We find that there is no provision in the new tariff order of 2003-04 regarding realizing demand charges on the basis of 100% of the contract demand in case there is any shortfall in the maximum demand recorded in the meter of the consumer. Therefore, I find that VUSNF is perfectly justified in holding that JSEB can not claim demand charges on the basis of 100% of the contract demand, in case there is shortfall in the maximum demand recorded in the meter of the consumer, rather it must charge on the basis of actual maximum demand recorded in the meter of the consumer with effect from 01.01.2004.

9. No other points have been raised in this appeal.

10. In the result, I find that there is no merit in this appeal. The order of the VUSNF is justified and it is hereby upheld. The appellant, JSEB is directed to implement the order of the VUSNF within 30 days from the date of receipt of the order failing which the JSEB will have to pay interest to the consumer for any amount realized in excess at the same rate at which the JSEB is charging as delayed payment surcharge. In the result, this appeal is dismissed.

Sd/-
Electricity Ombudsman