

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

Case No. EOJ/17/2009

Dated- 8th July, 2010

M/s Vikromatic Steel Pvt. Ltd.	Appellant(s)
	Versus	
JSEB through its Chairman & others	Respondent(s)

With

Case No. EOJ/15/2009

JSEB through its Chairman & others	Appellant(s)
	Versus	
M/s Vikromatic Steel Pvt. Ltd.	Respondent(s)

Present:

Shri Arun Kumar Datta	Electricity Ombudsman
Shri Ajit Kumar	Counsel for M/s Vikromatic Steel (P) Ltd.
Shri Vijay Gupta	Advocate for M/s Vikromatic Steel (P) Ltd.
Shri Rajesh Shankar	Counsel for JSEB & others
Shri Abhay Prakash	Addl. Counsel for JSEB & others

J U D G E M E N T

1. Both the aforesaid appeal nos. EOJ/17/2009 of M/s Vikromatic Steel Pvt. Ltd. (Consumer/appellant) Vrs. JSEB & others and EOJ/15/2009 of JSEB and others Vrs. M/s Vikromatic Steel Pvt. Ltd. (respondent/consumer) are arising out of the same Judgement/order of Learned Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as VUSNF) of JSEB, Ranchi in case no. 11/2009 dated 18/11/2009, therefore both the aforesaid appeals have been taken together for passing judgement.

2. In case no. EOJ/17/2009, the consumer/appellant M/s Vikromatic Steel (P) Ltd. has prayed for setting aside the impugned order/Judgement dated 18/11/2009 passed in case no. 11/2009 by the learned VUSNF of JSEB, Ranchi. So far it relates to the matter of charging of bills of KVA/Maximum Demand and to modify the order accordingly for appropriate and legal basis of charging of bills of maximum demand of the appellant, which the respondents have earlier raised and are raising illegally and against the tariff order of 2003-04.

3. In case no. EOJ/15/2009 appellant/JSEB and others have prayed in this appeal for setting aside the Judgement/order of learned VUSNF of JSEB, Ranchi dated 18/11/2009 passed in case no. 11/2009 by which the impugned electrical bills of the consumer M/s Vikromatic Steel (P) Ltd. was raised by the appellant/JSEB from January, 2004 to till date and onwards, were quashed to the extent that the KVA charges had been levied on consumer/respondent on the basis of 100% of the contract demand instead of actual KVA (Maximum Demand) recorded in each month and the appellant/JSEB is directed to serve the revised bills on the basis of actual KVA (Maximum Demand) recorded in the meter or 75% of the contract demand whichever is higher in each month from January, 2004 to till date and onwards within a period of one month from the date of receipt of the order.

4. The case of appellant/consumer M/s Vikromatic Steel (P) Ltd. in case no. EOJ/17/2009 in brief is that the JSEB/respondents from the very first month of bill itself started the raising wrong and erroneous bills of Maximum Demand (KVA) on the basis of 100% of the contract demand instead of actual recorded KVA from the meter of the appellant. According to appellant M/s Vikromatic Steel (P) Ltd. being notified of the tariff order of 2003-04 issued by the Jharkhand State Electricity Regulatory Commission (In short to be referred as JSERC), the respondents/JSEB has no right to charge the electrical bills of the consumer/appellant on the basis of 100% of the contract demand and the respondents/JSEB can only charge one gurantee charges namely "Monthly Minimum charges" (M.M.C). The respondents/JSEB have assumed and raised monthly minimum charges from the provisions of the new tariff order,2003-04 of the JSERC and have also raised 100% KVA charges on the basis of repealed/lapsed tariff of the erstwhile Bihar State Electricity Board (In short to be referred as BSEB), which is against the provisions of the Electricity Act, 2003 as well as the tariff order of 2003-04 and

Electricity supply (Code) regulations of JSERC. According to appellant/consumer, the new applicable tariff from 01/01/2004 of JSEB as laid down by the JSERC, the respondents/JSEB can only charge monthly minimum charges in terms of Rs. 400/- per KVA/month and no other minimum guarantee unit /maximum demand can be charged and therefore the respondents/JSEB can only charge the electric bills of the consumer only on the basis of actual consumed units and actual recorded/consumed maximum demand (KVA). According to the appellant/consumer, the provisions of the applicable tariff in Jharkhand for HTSS consumers are as follows:-

“2. Tariff.

Tariff for H.T.S.S. Consumers

Description	Tariff
Rs./KVA/Month	DEMAND CHARGE
HTSS	300
	ENERGY CHARGE
Rs./Kwh/Month	
HTSS	2.50
	Minimum Monthly Charge
HTSS	Rs. 400/KVA/Month

Voltage rebate for HTSS Consumers

Load Factor	Voltage Rebate
Supply at 33KW	5%
Supply as 132 KW	7.5%

Load factor rebate for HTSS Consumers

Load factor	Load factor rebate
40-60%	5%
60-70%	7.5%
Above 70%	10%

But contrary to the aforesaid provisions of the tariff order, the JSEB/respondents have acted arbitrarily and have raised the bills of the appellant/consumer from January,

2004 to till date on the basis of the previous tariff i.e, on the basis of full contract demand i.e, 3800 KVA or more if recorded as such instead of charging on the basis of actual recorded Maximum Demand of the appellant/consumer and therefore the bills of the consumer/appellant from the month of January,2004 to till date are fit to be revised and monthly demand of KVA must be calculated on the basis of the actual maximum demand recorded in the meter.

5. The case of appellant/JSEB and others in case no. EOJ/15/2009 in brief is that the respondents/consumer is an Induction Furnace Consumer of appellant/JSEB and therefore its bill on account of demand charges with effect from January, 2004 to till date have been raised on the basis of the contract demand of the consumer/respondent i.e., 3800KVA on 33KV. The consumer/respondent has taken the electric connection bearing Consumer No. HT-7300 under the HTSS tariff (tariff meant for Induction Furnace Consumers) and has also executed a HT agreement for the same. According to the appellant/JSEB, JSERC in its tariff order 2003-04 has dealt with design of tariff structure and analysis of tariff in Section 5 of the tariff 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 Clause 1.4 of the terms and conditions of supply (page 148 of the Tariff order 2003-04) further states as under:-

“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”. Thus other terms and conditions will remain the same as were existing prior to the order/tariff.

6. 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 also 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”. The further case of appellant/JSEB is that prior to the aforesaid tariff order of JSERC, the tariff order for Induction Furnace Consumers was issued vide tariff notification dated 15/03/2000 issued by the Bihar State Electricity Board, 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 consumers 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.

7. According to the appellant/JSEB, the tariff order of 2003-04 of the JSERC does not contain any specific terms and conditions of supply for induction furnace consumers and as such the JSEB is constraint to resort to the terms and conditions of supply as enumerated in the induction furnace tariff notification dated 15/03/2000. The tariff order of 2003-04 issued by the JSERC for HTSS consumers, the unit charge has been enhanced from Rs. 1.25/- to Rs. 2.50/- but the rate for demand charges have been reduced from Rs. 700/- to Rs. 300/- per KVA/month and the minimum monthly charges have been reduced from the existing rate of Rs. 1015/- to Rs. 400/- per KVA/month. Therefore, the bills of the consumer/respondent have been raised under the provision of the induction furnace tariff order dated 15/03/2000 and as such there is no illegality for the same, it is fully justified and therefore the order/Judgement dated 18/11/2009 passed in case no. 11/2009 is fit to be set aside by which the appellant/JSEB has been directed to raise monthly bills on account of the demand charges against the consumer/respondent on the basis of actual

maximum demand recorded in the meter or 75% of the contract demand whichever is higher in each month as maximum demand and to give adjustment to the consumer/respondent raised earlier on account of demand charges and the JSEB can not raise bills on account of demand charges on the basis of 100% of the contract demand.

8. Both the parties in case no. EOJ/17/2009 and EOJ/15/2009 have filed their appeals being aggrieved by and dissatisfied with the order/Judgment dated 18/11/2009 in case no. 11/2009 passed by learned VUSNF of JSEB, Ranchi. The case of respondents of both the aforesaid cases are the same as have been stated in their memo of appeals and therefore the case of respondents in both the aforesaid cases will be needless to be mentioned here again.

FINDINGS

9. On perusal of the cases of both the parties in both the aforesaid appeals, it transpires that both the parties are aggrieved from the order/Judgement of learned VUSNF of JSEB, Ranchi passed in case no.11/2009 dated 18/11/2009 and therefore both the parties have filed their separate appeals being EOJ/17/2009 and EOJ/15/2009. The grievance of the consumer is that the JSEB can not charge on the basis of 100% of the contract demand because the new tariff order, 2003-04 of JSERC does not provide for such charging at the rate of 100% of the contract demand. Because, there is a specific provisions in the tariff order of JSERC by which the JSEB is bound to charge the bills to the consumer at the rate of Rs. 2.50/- per Kwh/Month of actual consumption of units and Rs. 300/- per KVA on actual consumption on maximum demand both subject to a minimum monthly charges of Rs. 400/- per KVA for the full contract demand but the learned VUSNF of JSEB, Ranchi has ordered to revise the electric bills of the consumer on the basis of KVA recorded in the meter or 75% of the contract demand whichever is higher in each month from January, 2004 and onwards. It is stated on behalf of the consumer that in view of the tariff order, 2003-04 of JSERC, the JSEB can only charge the consumer on the basis of actual KVA recorded in the meter and not on the basis of 100% of the contract demand. JSEB is charging the electric bills of the consumer on the basis of 100% of the contract demand on a repealed tariff of erstwhile BSEB which is not applicable after passing of the tariff order of the JSERC.

10. On the other hand, the JSEB is aggrieved by and dissatisfied with the Judgement/order of learned VUSNF of JSEB, Ranchi dated 18/11/2009 passed in case no. 11/2009 because instead of 100% of the contract demand, the learned VUSNF has ordered to revise bills of the consumer from January, 2004 and onwards on the basis of KVA recorded in the meter or 75% of the contract demand whichever is higher in each month. The charging of electric bills from the HTSS consumers by the JSEB is said to be on the basis of tariff for induction furnace consumers dated 15/03/2000 issued by the BSEB, which was published in Bihar Gazette on 06/04/2000. Now the question arises as to whether the JSEB can charge electric bills of the consumer on the basis of old tariff of BSEB dated 15/03/2000 or not. In this regard, there is a letter of JSERC dated 19/12/2005, in which the JSERC has held that the tariff of 2001 is non applicable document with effect from 01/01/2004. In subsequent letters of JSERC, the same stands have been reiterated as stated in letter on 19/12/2005 and recent letter dated 15/07/2008 and 20/03/2009. The JSEB has not challenged the aforesaid order/Judgement dated 19/12/2005 of JSERC, which has been also held by the Hon'ble Jharkhand High Court in the case no. EOJ/02/2007 of JSEB & others Vrs. M/s Kumardhubi Steels (P) Ltd.

11. Therefore, I am also of the view that JSEB can not raise bills on the basis of old/repealed tariff of BSEB on 100% of the contract demand after passing of the JSERC tariff with effect from 01/01/2004 and as such the appeal bearing case no. EOJ/15/2009 filed by the JSEB and others is fit to be rejected on this ground itself.

12. Now question arises as to whether the case of the consumer in case no. EOJ/17/2009 can be accepted or not because the consumer M/s Vikromatic Steel (P) Ltd. has asserted that the JSEB can not charge even on 75% of the contract demand as held by the learned VUSNF of JSEB, Ranchi. Because the new tariff of JSERC only lays down that the bills of the consumer can be only charged 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 of Rs. 400/- per KVA for full contract demand. Therefore, according to the consumer M/s Vikromatic Steel (P) Ltd. the JSEB may be directed to revise the previous bills of the consumer on the same basis and not on the basis of 100% of the contract demand.

13. In this regard, it is stated on behalf of the JSEB that the minimum monthly charges (M.M.C) is not a substitute for the maximum KVA demand for the month nor the new tariff order of JSERC effective from 01/01/2004 has done away with the introduction of minimum monthly charges. Because M.M.C. is not concerned with demand charges rather MMC is concerned with energy charges. I find force in the aforesaid submission made on behalf of JSEB because the tariff order of 2003-04 of JSERC at page 115 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”.

14. I am also of the view that if energy charges go down towards minimum level of consumption then in place of charging actual units recorded in the meter, charging will be done on the basis of MMC. The demand charge is a settled charge to recover fixed costs of licensee and the same can not be mixed up with the energy charges or the MMC. Because of the aforesaid reasons, I can not accept the case of consumer M/s Vikromatic Steel (P) Ltd. and therefore the appeal filed by the consumer being EOJ/17/2009 is also fit to be rejected.

15. This is a settled principle of Law that the agreement executed in between both the parties are binding upon both the parties if it is not against any specific provisions of Law. In this regard, the tariff of JSERC is silent on this point and therefore the agreement executed in between the JSEB and the consumer M/s Vikromatic Steel (P) Ltd. can be made basis for charging the electric bills to the consumer M/s Vikromatic Steel (P) Ltd. According to which the maximum demand charge of supply in any month will be based on maximum KVA demand for the month or 75% of the contract demand whichever is higher. Therefore the learned VUSNF of JSEB, Ranchi has rightly ordered in its Judgement/order dated 19/11/2009 in case no. 11/2009 that the JSEB shall issue revised bills to the consumer M/s Vikromatic Steel (P) Ltd. on the basis of KVA recorded in the meter or 75% of contract demand whichever is higher in each month from January, 2004 and onwards of the month. As the electrical connection of consumer was energized on 09/09/1996, therefore the first 12 months have already been passed as such the learned VUSNF of JSEB, Ranchi has rightly not allowed that the first 12 months service the maximum demand charges for any month will be based on actual monthly maximum demand for that month nor this Forum can direct for charging the electrical bills for the first 12 months on the basis of actual monthly maximum demand for that month.

16. Thus, from the aforesaid discussions and findings made above, I am led to hold that there is no merit in both the appeal nos. EOJ/17/2009 as well as EOJ/15/2009 and hence both the aforesaid appeals are dismissed and the Judgement/order passed by the learned VUSNF of JSEB, Ranchi in case no. 11/2009 dated 18/11/2009, is therefore upheld without any interference. Accordingly the bills issued to the consumer M/s Vikromatic Steel (P) Ltd. from January, 2004 and onwards in which the KVA charges have been raised by the JSEB on the basis of 100% of the contract demand are therefore quashed and the JSEB is directed to issue the revised energy bills of the consumer from January, 2004 and onwards in future to the consumer M/s Vikromatic Steel (P) Ltd. 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. The JSEB is further directed to adjust the excess money realized from the consumer M/s Vikromatic Steel (P) Ltd. in the subsequent bills with interest as per the Electricity Supply (Code) Regulations of JSERC within a period of one month from the receipt of this order failing which the consumer

M/s Vikromatic Steel (P) Ltd. will be at liberty to move this Forum for implementation of this order.

17. In view of the aforesaid directions, both the appeal nos. EOJ/17/2009 and EOJ/15/2009 are disposed of.

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

Sd/-
Electricity Ombudsman

