

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

Case No. EOJ/08/2007

Dated- 31st December 2007

M/s Akshaya Technologies Pvt. Ltd.

.....Appellant(s)

Versus

JSEB through its Chairman & others

..... Respondent(s)

Present:

Shri Sarju Prasad

Electricity Ombudsman

Shri Ajit Kumar

Counsel for the Appellant(s)

Shri Vijay Kumar Gupta (Advocate) Counsel for the Appellant(s)

Shri Rajesh Shanker (Advocate)

Counsel for the Respondent

Shri Manoj Kejriwal

Représentative JSEB

J U D G E M E N T

1. This appeal has been filed under Section 42(6) of the Electricity Act, 2003 against the judgement/ order dated 27/02/07 passed in case no. 18/2006 by Vidyut Upbhokta Sikayat Niwaran Forum (Hereinafter referred to as VUSNF) of JSEB.

2. The brief facts, giving rise to this appeal is that the appellant M/s Akshaya Technology Pvt. Ltd. is situated at Ramgarh Industrial Area, P.O. Marar, Dist-Hazaribagh within the command area of D.V.C. It had an electric connection under HTSS category for a contract demand of 2850KVA at 33000 volts from JSEB in pursuance of an agreement dated 02/08/2001. Damodar Valley Corporation (in short D.V.C) filed a writ petition bearing no. W.P. (C) 1514/2000 before the Hon'ble Jharkhand High Court for a direction to restrain the respondent, JSEB from wrongful and illegal supply of electrical energy to appellant and one M/s Sai Electro Casting Pvt. Ltd. at a pressure of 30000 volts or more without permission of the D.V.C. and in violation with the provisions of Section 18 of the DVC Act, 1948. The Hon'ble High Court of Jharkhand passed an order dated 10/10/2002 in the said W.P (C) holding that in view of Section 18(i) of D.V.C. Act, 1948 the respondent JSEB can not supply electricity at 30000 volts or more to appellant or any other body within the command area of D.V.C., accordingly directed to stop supply of electricity at a pressure of 30000 volts or more to the appellant as well as to M/s Sai Electro Casting Pvt. Ltd.. Against the said judgement/order dated 10/10/2002 passed by the Single Judge of Hon'ble High Court, Jharkhand both the appellant as well as

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Sai Electro Casting Pvt. Ltd. filed L.P.As in the Hon'ble High Court which were registered as L.P.A. no. 97/2003 and L.P.A. no. 76/2003 respectively. Both the L.P.As were heard finally on 16/04/2003 and judgments were reserved which were pronounced on 20/08/2003. Thereafter the respondent, JSEB filed two review petitions before the Hon'ble High Court which were registered as no. 114/2003 and no.116/2003. The State of Jharkhand had also filed two sets of review petitions being civil review no. 123/2003 and 124/2003 but all four review petitions were dismissed vide order dated 17/08/2004. M/s Sai Electro Casting Pvt. Ltd. moved before the Supreme Court in civil appeal no. 5113/2004 which was admitted but no stay order was granted by the Hon'ble Supreme Court. However, the appellant M/s Akshaya Technology Pvt. Ltd. did not prefer any appeal to the Supreme Court thus the order of Hon'ble High Court, Jharkhand against the appellant had become final as on 20/08/2003.

3. After the dismissal of the L.P.A. filed by the appellant, the respondent JSEB did not choose to execute the said order immediately thereafter or within the reasonable period of time.

4. When the matter was pending in L.P.A. and was pending for pronouncement of judgement then a new Electricity Act, 2003 came into force with effect from 10/06/2003. The effect of Electricity Act of 2003 was to give open access system to both the DVC as well as the JSEB to make supply of electricity at any pressure may be more than 30000 volts and even within the command area of D.V.C. The effect of new Act was to give by pass to the provisions of Section 18(i) of the DVC Act, 1948 which provided that within the command area of DVC the power to supply electricity at a pressure of 30000 volts and above vested to DVC alone. The effect of new Electricity Act of 2003 was to give the power to JSEB also to make supply of electricity at 30000 volts and more besides D.V.C. in the command area of the DVC. It appears that the appellant approached the JSEB authority for fresh agreement under new laws and the respondent, JSEB after taking conscious decisions at their highest level considered the prayer of the appellant. The member (Gen. & Dist.) by his letter informed the General Manager-cum-Chief Engineer, Hazaribagh Electric Supply Area, Hazaribagh for granting new connection with 2400 KVA contract demand at 33 KV vide its letter dated 12/07/2003. Accordingly a fresh agreement dated 15/07/2003 was executed between the appellant and the respondent for reducing the contract demand of 1530 KVA at a pressure of 33KV. Accordingly supply of electricity continued to the appellant but all of sudden on 19/12/2005 on the plea of the Hon'ble High Court's order passed in writ petition no. 1514/2000 and L.P.A. no. 97/2003, the electric connection of the appellant was disconnected by the respondent without any prior notice.

5. Against this action of the JSEB the appellant moved before the VUSNF for declaration that disconnection of petitioner's electric connection on 19/12/05 was wholly illegal and award of compensation to the tune of Rs. 3.21 crore along with interest at the rate of 12% per annum from the date of disconnection. The matter was heard by VUSNF and vide impugned judgement dated 27/02/2007, the Chairperson and one Member namely Shri D.C. Sinha held that the disconnection of electric connection of the appellant was not illegal rather it was in execution of an order passed by the Hon'ble High Court, therefore; the appellant is not entitled to any relief. However; another Member Shri K.D.P. Singh took the contrary view and held that in view of the Electricity Act, 2003 which came into force with effect from 10/06/2003, the JSEB was allowed to avail supply of power under open access system to the appellant at 33000 volts and in view of the execution of fresh agreement dated 15/07/2003 the disconnection of electric supply to the appellant is totally illegal and

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FINDINGS

From the material available on the record, the following facts are either admitted or well proved:-

1. The electricity connection of the appellant was provided by the JSEB on 02/08/2001 for a contract demand of 2850KV at 33000 volts by an agreement on 02/08/2001. At that time as per Section 18 of the DVC Act, 1948 it was the DVC only who can give supply of electric connection at 30000 volts or more and without the permission of the D.V.C. the JSEB was not entitled to give connection to the appellant. It is admitted that JSEB has given electricity connection to the appellant M/s Akshaya Technologies Pvt. Ltd. and one M/s Sai Electro Casting Pvt. Ltd. at a pressure of 33000 volts without permission of the DVC. The D.V.C. filed a W.P. (C) petition No. 1514 of 2000 before the Hon'ble High Court of Jharkhand and vide order dated 10/10/2002 the Hon'ble High Court held that the supply of electricity provided by the JSEB is against the provisions of Section 18 of the D.V.C. Act, 1948 and the JSEB must stop to supply of electricity at 30000 volts or more to the appellant and also to M/s Sai Electro Casting Pvt. Ltd. Against the said judgement both the appellant as well as M/s Sai Electro Casting Pvt. Ltd. filed L.P.As as nos. 97/2003 and 76/2003 respectively challenging the order dated 10/10/2002. Both L.P.As were heard on 16/04/2003 and the judgement were reserved which were pronounced by the Hon'ble High Court of Jharkhand on 20/08/2003 dismissing both the L.P.As. In the mean time, old Electricity Act was repealed and a new Electricity Act, 2003 came into force providing for open access system which means any licensee like D.V.C., JSEB or any other licensee can supply electricity in their respective area including the command area of the D.V.C. From the material on the record it appears that after enforcement of Electricity Act, 2003, the appellant approached the JSEB for fresh connection with reduced load at a pressure of 33000 volts. The matter was referred to Member (Gen. & Dist.) who vide order dated 12/07/2003 written to the General Manager-Cum-Chief Engineer, Electricity Supply Area, Hazaribagh gave a clear cut direction to the General Manager-cum-Chief Engineer, Electricity Supply Area, Hazaribagh that in view of the Electricity Act, 2003 applicable from 10th June, 2003 the command area has been made open access zone for supplying electricity by any agency and since the JSEB is supplying power in the entire State of Jharkhand it can also supply 33000 volts in the command area of D.V.C. also. Accordingly a fresh agreement for supply of power was entered between the appellant and the JSEB on 15/07/2003 which continued till 19/12/2005 on which date the electricity connection of the appellant was disconnected without any prior notice. It also transpires that M/s Sai Electro Casting Pvt. Ltd. challenged the orders of the Hon'ble High Court of Jharkhand passed by the Single Judge in the writ petition as well as by the Division Bench in L.P.A. before the Supreme Court but no stay was granted however the appellant did not move the Hon'ble Supreme Court. It is also apparent that the D.V.C. did not pursue the matter regarding disconnection of electricity connection after Electricity Act, 2003 coming into force nor the D.V.C. ever requested to the respondent JSEB to stop supply of electricity to the appellant after Electricity Act, 2003 came into force. D.V.C. did not file any contempt case against the JSEB. It appears that after the judgement passed in L.P.A by the Division Bench of Hon'ble High Court of Jharkhand, JSEB as well as the State of Jharkhand have filed review petitions to review the judgement/order of Hon'ble High Court which were dismissed by the

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Hon'ble High Court but in those review petitions no plea was raised that in view of changed law i.e. after coming into force of Electricity Act of 2003 the whole and sole power of DVC to supply of electricity at a pressure of 33000 volts within the command area of D.V.C. no longer exists and the same has been made open access Zone.

According to the appellant the disconnection of the Electricity connection to the appellant without any prior notice is totally illegal and he was always making payment of the energy charges as per consumption. According to the respondent, JSEB it has disconnected the electricity supply of the appellant as well as M/s Sai Electro Casting Pvt. Ltd. in view of the order passed in writ petition no.1514/2000 and L.P.As no. 97/2003 and 76/2003 pronounced on 20/08/2003. According to respondent the plea regarding open access system as provided in Electricity Act, 2003 was not taken by the appellant before the Hon'ble High Court therefore now the appellant can not take this plea and is barred by principle of Res- Judicarta.

So far plea of Res- Judicarta is concerned; there is no plea of Res-Judicarta as against law. The plea of Res- Judicarta is only available against the fact, the point of law can be agitated at any time. From the letter of the Member (Gen. & Dist.) it is apparent that the respondent has taken a clear cut stand that after the Electricity Act, 2003 which is applicable since 10/06/2003 JSEB can supply electric connection within command area of D.V.C. as it has been made open zone for supply of electricity. It has not at all denied that JSEB has the authority to supply electricity to entire State of Jharkhand but in view of the Section 18 of the D.V.C. Act, 1948 D.V.C. was privileged to supply electricity at a pressure of 30000 volts or more which has been done away by the Electricity Act, 2003.

2. So far question of implementation of the order of the Hon'ble High Court is concerned which was passed in writ petition no. 1514/2000 and L.P.As. no. 76/2003 and 97/2003 which is curious enough the judgement of L.P.A. was pronounced on 20/08/2003 and thereafter D.V.C. did not pursue the matter probably because of the new provision in Electricity Act, 2003 which came into force with effect from 10/06/2003 and did not file any contempt petition nor made any correspondence with the respondent, JSEB for implementation of the order and the JSEB was also sitting tide over the matter for more than two years woke up suddenly after two years and passed the order to disconnect the supply of electricity of the appellant that also without any notice to the appellant and in utter disregard to earlier stand that JSEB after Electricity Act 2003 is authorized to supply electricity even in the command Area of DVC. Although the D.V.C. did not pursue the matter but it appears that M/s Sai Electro Casting Pvt. Ltd. which was also one of the opposite party in the writ petition and a consumer at a pressure of 33000 volts within command area of D.V.C. made the prayer to the JSEB to disconnect his electric line because he has approached the D.V.C. for electricity connection. His prayer for disconnection was not entertained at the lower level of administration of the JSEB because M/s Sai Electro Casting Pvt. Ltd. also had entered into an agreement after coming into force the Electricity Act, 2003 which was enforced and during the period of enforcement of the said agreement M/s Sai Electro Casting Pvt. Ltd. can get disconnection of electricity connection provided by the JSEB only if he makes payment of minimum monthly guarantee for the remaining period of the agreement. Probably; in order to benefit to M/s Sai Electro Casting Pvt. Ltd. JSEB was put to loss of revenue which would have realized from M/s Sai Electro Casting Pvt. Ltd. by way of minimum monthly guarantee charges for the remaining period of agreement. As a matter of fact after the Electricity Act 2003 there is no doubt that open access system has been provided and any

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From the material on the record it appears that JSEB is more interested in violating the law than obeying the same. It had no intention to obey the judgement/order of Hon'ble High Court. JSEB ought to have disconnected the electricity connection of the appellant on the date of judgement passed in the writ petition no. 1514/2000 or on the date of judgement passed by the Hon'ble High Court in L.P.A. but it had waited for more than two years. There is no justification for the JSEB to disconnect the supply of electricity of the appellant that also without notice in view of the fact that after coming into force the Electricity Act, 2003, it has itself entered into a fresh agreement on 15/07/2003 and from the material available on the record I find that disconnection of the appellant's electricity connection by the JSEB on 19/12/2005 is totally illegal and the appellant is entitled for restoration of electric connection along with the compensation. The compensation shall be actual damage and loss to be assessed by a committee of experts to be nominated one of each by the appellant and the respondent JSEB plus Rs. 25000/- with interest at the rate of 10% per annum from the date of filing of the application by the appellant before the VUSNF and till the compensation is paid to the appellant. The appellant and JSEB will nominate one each expert for arriving actual loss and damage due to illegal disconnection of the electricity on 19/12/2005 and such amount shall be compensation due to actual loss and damage in which a sum of Rs. 25000/- as penal damage shall be added and the added amount shall be payable to the appellant with interest at the rate of 10%. In the result this appeal is allowed and the majority judgement of VUSNF is set aside. Both the parties are directed to nominate one expert with intimation to this Forum within 30 days of receipt of the order. The JSEB is directed to restore connection forth with.

Sd/-
Electricity Ombudsman