BEFORE THE ELECTRICITY OMBUDSMAN, JHARHAND-RANCHI

(4th *floor, Bhagirathi Complex, Karamtoli Road, Ranchi – 834001)*

Present- Prem Prakash Pandey

Electricity Ombudsman

Case No. EOJ/10/2016 **Ranchi, dated,19th day of June, 2017**

The Jharkhand State Electricity Board, now known as Jharkhand Urja Vikas Nigam (JUVN) Limited through its Law Officer namely Mithilesh Kumar, S/o- Sri. R. B. Choudhary, R/o- Kusai Colony, P.O. & P.S.- Doranda, District- Ranchi

…….. **Appellant**

Versus

M/ s Maa Chinmastika Sponge Iron Pvt. Limited situated at Ranchi Road, Binjhar, P.O. - Marar, District- Ramgarh through one of its Director namely Chandidas Chakarborty, S/o- Kali Das Chakarborty, R/o- Ranchi Road, Binjhar, P.O. - Marar, District- Ramgarh

…….. **Respondent**

For the Appellant: 1. Sri. Rahul Kumar (Standing Counsel)
2. Sri. Prabhat Singh (Additional Counsel)

For the Respondent: 1. Sri. D.K.Pathak Advocate
2. Sri. Saket Upadhyay Advocate
3. Sri. Akashdeep Advocate

(Arising out of Judgement and order dated 16/08/2016, passed in complaint case no. 01 of 2013 by the Learned VUSNF, Hazaribag)

J U D G E M E N T

The instant appeal is directed against the impugned judgment and order dated 16/08/2016, passed ,in complaint case no. 01 of 2013, by the Learned

Vidyut Upbhokta Shikayat Niwaran Forum; here in after called VUSNF, Hazaribag, whereby and whereunder ,the learned forum allowed the petition of the petitioner and passed the following order:-

"*Load of petitioner (Respondent) be reduced from 7200 KVA to 6000KVA w.e.f. 28.10.2011 and accordingly revise entire bill, w.e.f. 28.10.2011 on 6000 KVA contract demand.*"

2. **Factual Matrix of the Petitioner/respondent case:-**

A- That the Appellant is deemed licensing-cum-transmission utility, which is engaged in the business of generation, transmission and distribution of electricity to its consumers, within the territorial Jurisdiction State of the Jharkhand. Whereas, the Respondent is a company, registered under Companies Act, 1956, having its unit at Binjhar, Marar, Ramgarh (at present in district Ramgarh) and, is engaged in **business** of manufacturing the **iron steel/sponge iron** and for running its unit, the Respondent had taken an electrical connection from the Appellant under **HTSS mode of tariff,** having **contract demand of 7200 KVA**, however, at present the Respondent unit is not functional.

B- Though, at the time of taking of electrical connection, load of the Respondent was assessed as 7200 KVA, on the basis of measurement of furnace crucible, the petitioner (Respondent) had no option but to accept the load assessed by the appellant, although, the actual required load as per manufacturer's specification was much less than the load imposed by the appellant and accordingly; an agreement under HTSS tariff was executed between the Appellant and the Respondent. The Respondent started to pay his energy bill in accordance with the terms and condition of agreement.

C- It is after coming into force the tariff order 2010-11, the Respondent decided to agitate the matter relating to reduction of contract demand. It is pertinent to mention here that as per provision made under tariff order 2010-11, contract demand is to be ascertained on the basis of manufacturer's specification of the plant, which was further subjected to provisions made under Clause 9.2.4 of the Supply Code Regulation, 2005 (presently Clause 7.17 of the Supply Code Regulation, 2015). Accordingly, based upon the provision made under tariff order 2010-11, the Respondent made an application(Annexure 2) for reduction of load from 7200 KVA to 6000 KVA on 19.04.2011 because as per manufacturers specification load of the furnace make induce to term is 2740 KVA and other furnace make electro therms 250 KVA. Thus, the total load of furnace comes to 2740 x 2 =5480 KVA. If the entire auxiliary load is taken into account, the total required demand, as per manufacturers specification is 6000 KVA and not more than that. Since the petitioners (Respondent) actual load is much less than the contracted load, causing huge monetary loss every month, due to wrong method of assessment of load. But finding no reply on its application dated 19-4-2011, the petitioner (Respondent) sent reminder on 20-5-2011(Annexure 3).

D- Further case of the petitioner/respondent is that just after one day of the service of the reminder letter, the Appellant replied to his letter's dated 19-4-2011, vide their letter bearing meme no1624 dated 21-5-2011 with a direction to submit the application for reduction of load in Board's prescribed format along with all supporting documents (Annexure 4).

E- The further case of the petitioner/respondent is that on receipt of the letter dated 21-5-2011, the petitioner/respondent represented vide letter dated 30-6-2011 before the appellant, stating therein, that since its load is

supposed to be determined as per the provision of existing tariff order 2010-11 and the same is not general reduction of load, the petitioner/respondent is not supposed to apply for reduction of load in prescribed format. However, while adopting the principles of least resistance, the petitioner/respondent has submitted a fresh application in Board's prescribed format before the Assistant Electrical Engineer, Kuju, on 10-9-2011(Annexed 6) and same was received and receipt was granted on 13-9-2011, after informing General Manager cum Chief engineer ,Electric Supply Area, Hazaribag, on 30-6-2011(Annexure 5) but even after complying all the formalities, the Appellant adopted lethargic approach in processing the application for reduction of load and delayed the matter without assigning any reason. Moreover, petitioner/respondent served another reminder vide letter dated 23-4-2012, explaining the entire facts as well as the specific provision of Supply Code Regulation (Annexure 7.

F-. It is alleged by the petitioner/respondent that as per clause 9.2.4 of Supply Code Regulation, the load is deemed to have been reduced after 15 days from the date of reminder letter. Since the petitioner/respondent has already served the reminder on 20-5-2011, itself. Its load is deemed to have been reduced from 5-6-2011 itself and KVA charges are accordingly supposed to be revised from June 2011 itself. It is further asserted by the petitioner /respondent that his contract demand as per the provisions of tariff is supposed to be reduced/re-fixed w.e.f.1-5-2010 i.e. the effective date of the implementation of the tariff order 2010-11, but due to the Atrocities of the Appellant , the petitioner/respondent has already suffered huge financial loss. The Appellant was not redressing the bonafide grievance of the petitioner/respondent and changing demand charges as 75% of contract of

demand every month, whereas, it has never crossed even 5900 KVA. Hence this case has been instituted.

3- The appellant appeared through its Executive Engineer (C&R) Hazaribag ,Electric Supply Area, and filed counter affidavit stating therein:-

a- that petitioner/respondent has not approached the learned forum with clean hands and has suppressed the material facts, as such, the same is liable to be dismissed in limine. It is admitted by him that petitioner/respondent vide dated 19-4-2011 has requested for reduction of contract demand from 7200 KVA to 600KVA. Then General Manager cum chief Engineer, Electric Supply Area Hazaribag vide letter no1624 dated 21-5-2011 requested the consumer to submit request for reduction of contract demand on prescribed format along with all supporting documents in the office of the Assistant Electrical Engineer, Electric Supply Division, Kuju.

b- It is further alleged by the appellant that the petitioner/Respondent himself took approximately 4 months to apply for the same and accordingly the petitioner/Respondent applied in prescribed format on 13.09.2011 without supporting documents, such as documents related with technical specification of furnace. The further case of the Appellant is that the inspection team of Jharkhand State Electricity Board on dated 21.10.2011 detected pilferage of electricity with clear cut proof of bypassing one potential transformer and hence reducing reading taken by meter to 2/3rd in terms of energy consumption and maximum demand. Then, supply line was disconnected on dated 21.10.2011 due to detection of theft of electricity and FIR was lodged in Giddi P.S. on dated 21.10.2011, U/s 135, 138 and 139 of Electricity Act, 2003 against the Petitioner/respondent. So, Clause 9.2.4 of Supply Code Regulation is not applicable in this case.

c- It is further alleged that the Assistant Electric Engineer, Electric Supply Division, Kuju vide letter No. 164 dated 14.4.2012 cancelled the application of the Petitioner/Respondent with information that if he required to deduct load in future then apply again (Annexure-A). Further case of the Appellant is that since earlier load of the consumer was sanctioned as per existing norms and it is mandatory to the consumer to apply for reduction of load in Board's prescribed application form without documents such as documents related with technical specification. It is true that the Petitioner/Respondent applied for reduction of load on 13.09.2011 in prescribed format without supporting documents, as mentioned above, but in the meantime on 21.10.2011, FIR was lodged due to theft of energy by the Petitioner/Respondent and accordingly, electric supply line has been disconnected. Lastly, it is stated by the Appellant that in view of the aforesaid facts and circumstances, Petitioner/Respondent is not at all entitled for the reliefs as prayed by him and accordingly; the instant case is fit to be dismissed with cost.

4- The Petitioner /Respondent filed a reply/rejoinder, supported with an affidavit, against to the counter affidavit filed on behalf of Appellant before the learned forum VUSNF, stating therein that the counter affidavit filed on behalf of the Appellant (JSEB) is full of misleading facts and devoid of any merit. JSEB have not even touched even the basic issue in their counter affidavit and have tried to mislead the forum on frivolous grounds. The JSEB have not stated even a single fact to demonstrate that the Petitioner/Respondent has suppressed any material facts. As matter of fact, JSEB being a licensee are duty bound to follow the rules, regulations and tariff issued by the JSERC, time to time. The JSERC turned down the traditional method of assessment of the load of the furnace consumers on the

basis of measurement of furnace crucible and in its tariff order 2010-11 w.e.f. 1.5.2010 ,propounded that the load of the furnace consumer shall be determined on the basis of manufacturers specifications, therefore, as per the aforesaid tariff order , the JSEB were suo- moto supposed to call for manufacturer's specifications for determination of load, however, they did not prefer to do so , hence, the Petitioner/Respondent, while, invoking the provisions of tariff 2010-11, requested for reduction of load from 7200 KVA to 6000KVA. Appellant/JSEB after receipt of reminder from the Petitioner /Respondent directed the petitioner to submit the application in prescribed format. However, the petitioner had already submitted all the relevant documents, including manufacturer's specifications, in its application dated 19.04.2011 but Appellant/JSEB unnecessarily again demanded from the Petitioner/Respondent to the supporting documents; .Accordingly, Petitioner/Respondent had his letter dated 30.06.2011 again submitted all the supporting documents along with an application in Board's prescribed format. Therefore, it is absolutely wrong statement of the Appellant/JSEB that the Petitioner/Respondent applied in prescribed format without supporting documents. It is further alleged that the reduction of load cannot be refused on the ground of allegation of theft of energy, which is yet to be proved before the competent court of law. However, the Assistant Electrical Engineer, Kuju has got no authority or jurisdiction to cancel the application of Petitioner/Respondent for reduction of load on the ground of theft of electricity and ,as such, the action of the Assistant Electrical Engineer and stand of the Appellant/JSEB is fit to be rejected. Moreover, the letter dated 14.4.12 issued by the Assistant Electrical Engineer, Kuju, has never been communicated to the Petitioner/Respondent. It has further been that Appellant/JSEB cannot decline to accept the manufacturer's

specification without any valid basis. He further stated that it would be evident that from the representation dated 19.4.11(Annexure-2) that the Petitioner/Respondent had submitted all the supporting documents. Moreover, even as per order of the GM- cum- CE Hazaribag, the Petitioner/Respondent again submitted all the necessary documents along with duly prescribed application form. Therefore, it is absolutely wrong statement on the part of the Appellant/JSEB that Petitioner/Respondent had applied without supporting documents. Even assuming that no document was annexed along with the application form (although empathetically denied) the Appellant/JSEB cannot deny that they had not received the supporting documents along with the representation dated 19.04.2011, which has been duly received. Moreover, had it been a case that the application form was submitted without documents, the Appellant/JSEB were supposed to call for the documents or refused the application for want of supporting documents. However, instead of doing any act, the concerned Assistant Electrical Engineer rejected the application on the ground of theft of electricity and in the so called cancellation order dated 14.04.2012, nothing has been whispered with respect to the supporting documents, which has been made strongest defense by the Appellant/JSEB against their misdeeds.

5- Having gone through entire material on the record, the Learned VUSNF Hazaribag, found that Petitioner/Respondent applied for load reduction on 19.04.2011 through plain application with enclosures and served notice on 20.05.2011, as per provisions as laid down in tariff order 2010-11. Upon the direction of the Respondent/Appellant, the Petitioner/Respondent submitted application in prescribed format for which receipt was granted on 13.09.2011. It is further observed by the Learned Forum that as per clause 9.2.4 of Supply Code Regulation, 2005 the

Petitioner/Respondent fulfilled all the criteria for load reduction in the light of tariff 2010-11, under HTSS tariff. The petition dated 13.09.2011 will be treated as an application and notice, both as per clause 9.2.4. of Supply Code reads as follows:- " *If the decision of the application for reduction of contract demand sanction load is not communicated by the licensee within 30 days of the application, the consumer shall send a notice to the licensee requesting for disposal in the matter and if the decision is still not communicated within 15 days of the notice. The reduction of contract demand/sanctioned load shall be deemed to have been sanctioned, from the 16th day after issue of notice to the licensee by the consumers."* It is further observed that on 21.02.2011, raid was conducted, which was entirely different matter and it has nothing to do with tariff order and accordingly Learned Forum Hazaribag passed the impugned order, which is being challenged before this forum.

6- Assailing the impugned judgment and order, the learned counsel appearing on behalf of the appellant has submitted that the Respondent in a very perfunctory manner had submitted an application for reduction of load on 19.4.2011. It is relevant to mention that apart from the provision made under tariff order 2010-11, there are other legal formalities, which are to be performed by a consumer for reduction of load and without completing all those formalities, load of a consumer cannot be reduced. Learned counsel further submitted that since the application dated 19.4.2011 filed by the Respondent was not in prescribed format, so, the Electric Superintending Engineer, Hazaribag vide memo no. 1624 dated 21.5.2011 wrote to the Respondent and requested him to submit an application in prescribed format along with other documents, specified therein, but the Respondent did not respond, rather after lapse of more than three months, the Respondent again

submitted an application on 10.09.2011, being received on 13.09.2011, which was also not a complete application. There had been several documents including the documents related with technical specification of furnace was not submitted by the Respondent. The Learned counsel further submitted that before the requisite document submitted by the Respondent could have been processed and final decision would have been taken, an inspection was carried out in the premises on 21.10.2011 and the inspection team detected pilferage of electricity with clear cut proof of by passing one potential transformer, resultantly, the meter was recording 2/3rd of its original consumption.

7- The Learned counsel for the Appellant has further submitted that the impugned order passed by the Learned VUSNF is erroneous and has been passed without appreciating the correct facts of the case and following settled principles of law and have committed an error in not considering the fact that even the application of the Respondent dated 13.09.2011 was not submitted in a manner, as prescribed, under the Supply Code Regulation and therefore, it ought not to have been directed the Appellant to reduce contract demand w.e.f 28.10.2011. The Learned VUSNF has not properly considered the provisions made under clause 7.17.5 of the Supply Code Regulation, 2015, which clearly says that if distribution licensee fails to decide application for reduction of load within 30 days, the applicant has to give a notice to the licensee in this regard and thereafter only if no decision is communicated to the consumer, the permission for reduction of load shall deemed to have been granted after 15 days of receipt of notice. The Learned VUSNF has failed to take note of the fact that no such notice has ever been served by the Respondent. Moreover, the Learned VUSNF has wrongly interpreted the provisions made under Clause 7.17.5 of Supply Code

Regulation, 2015. The Learned VUSNF has also committed an error in considering the consumption pattern of the Respondent, which ought not to have been considered in view of the fact the meter of the Respondent, during inspection, was found to be recording 2/3rd of its original consumption. However, Learned VUSNF have committed a gross error in directing the Appellant to reduce the contract demand with retrospective effect, which in fact, is not applicable in the case of the Respondent and Learned VUSNF have exceeded its jurisdiction in directing the Appellant to reduce the contract demand.

8- Lastly, the Learned counsel for the Appellant has submitted that there is too vital things which need to be considered:-

Firstly- The application of the Respondent dated 13.09.2011 was not complete and

Secondly- Before the application of the Respondent could have been processed, an FIR was registered, in which, it was found that the meter of the Respondent was recording 2/3rd of its original consumption. Thus, taking in to consideration, this aspect of the matter, the Assistant Electrical Engineer, Ramgarh vide memo no 164 dated 14.04.2012 had informed the Respondent that his application for reduction of load has been rejected, However, it was further stated that if he so wishes, it can make a fresh application for reduction of load. At last, the learned counsel for the Appellant requested to set aside the impugned order dated 16.08.2016 and allow this appeal with cost.

9- Refuting the contentions advanced on behalf of Appellant, it has been submitted by the learned counsel for the Respondent that Learned VUSNF, after hearing both the parties, has minutely gone into the specific provisions of the supply code regulation and the tariff order 2010-11 with

regard to reduction of load and after considering the entire aspect of the matter, has allowed the application of the Respondent and as such there is no inconsistency in the impugned order, which requires interference by this appellate forum. It has further been submitted that the provisions made in the tariff order 2010-11 as well as the Supply Code Regulation are binding upon the both sides of this case, therefore, the Appellant may not be allow to travel beyond the aforesaid provisions and act as per their own whims and desires.

10- The learned counsel further submitted that at the time of taking electric connection, the load of the Respondent units was assessed as 7200 KVA on the basis of measurement of furnace capacity. Since, at that time, there was a provision for determination of load of furnace consumers on the basis of measurement of furnace crucible, therefore, the Respondent had no option but to accept the load assessed by the Appellant on the basis of measurement of furnace. Later on, the JSERC notified tariff order 2010-11 w.e.f. 01.05.2010, wherein, for HTSS consumer, it has been especially provided that contract demand shall not be determined on the basis of measurement of furnace capacity rather it shall be based upon the manufacturer's technical specification of the plant and equipment. The relevant provisions reads as under:- HT Special service (HTSS) *Applicability:- This tariff schedule shall apply to all consumers who have a contracted demand of 300 KVA and more for induction/ arc furnace consumers (applicable for existing and new consumers), the contract demand shall be based on the total capacity of the induction/arc furnace and the equipment as per manufacturer technical specification and not on the basis of measurement."*

11- Thus, on the basis of measurement of furnace, the Appellant assessed the load of the Respondent as 7200 KVA but as per manufacturers specification the load of one furnace make inductotherm is 2740 KVA & the other furnace of make electotherm is 2500 KVA i.e. 2740 KVA. Thus, the total load of furnace of the Respondent comes to 2740 KVA x 2 =5480 KVA. If the entire auxiliary load is taken in to account the total required demand as per manufacturers specification is 6000 KVA and not more than that. Thus, as per aforesaid provision of tariff order 2010-11, Respondent applied for reduction of load from 7200 KVA to 6000 KVA vide representation dated 19-4-2011 but finding no reply on his application, sent reminder on 20.5.2011. But it was very surprising that just after one day of service of the reminder, Appellant replied bearing Memo No 1624 dated 21.05.2011 with direction to submit the application in Board's prescribed format along with all supporting documents. On receipt of that very letter, Respondent represented vide letter dated 30.6.2011, mentioning therein, that since its load is supposed to be determined as per the provisions existing tariff order 2010-11 and the same is not general reduction of load, however, Respondent has submitted an application in prescribed format along with supporting documents before the Assistant Electrical Engineer, Kuju. It is further submitted by the learned counsel for the Respondent that the concerned Asstt. Electrical Engineer, namely Mr. Sitla Prasad was adamant not to accept the application form and after much persuasion the aforesaid AEE finally accepted the application form on 13.09.11. The application form itself reveals the fact that the concerned Executive Engineer has forwarded the application form for acceptance of the same on 23.08.11 itself. Thus, the form itself clearly proved that no delay have been caused for submitting application in prescribed format along with supporting documents on the

part of Respondent. Even after complying all the formalities, the Appellant, especially aforesaid AEE, adopted lethargic approach in processing the application for reduction of load and further delayed the matter without assigning any cogent reason. Though, the Respondent approached on several occasion before the Appellant for reduction of load but all the time, the concerned authorities of the Appellant, assured the respondent that the same shall be reduced very soon. The Respondent finally served another reminder vide letter dated 23.4.12 explaining the entire facts and specific provision of Supply Code Regulation, which was received on 27.4.12, is self explanatory.

12- Learned counsel for the Respondent has further submitted that as per clause 9.2.4 of the Supply Code Regulation the load is deemed to have been reduced after 15 days from the date of reminder. Thus, KVA charges are accordingly supposed to be revised from June 2011 and Appellant is duty bound to reduce the contract demand. Besides the above, since the tariff order 2010-11 has specifically provided the contract demand of the furnace consumer has to be determined on the basis of manufactures specifications, the Appellants are bound to re-fix the contract demand on the basis of manufacturer's specification and charge the demand charges, accordingly. If the provisions of the tariff is taken into right perspective, it was incumbent upon the appellant Board to the notice all the furnace consumers to submit their manufacturers specifications.

13- Lastly, it has been submitted that Respondent has supplied the manufacturer's specification not once but twice along with supporting documents, particularly, manufacturer's specifications. Moreover, if at all the authorities of the Appellant had found the manufacturer's specification missing from the record then they had right, and in fact, they are duty bound to call for such documents but as a matter of fact there has been no such

communication on the part of Appellant rather the Appellant vide their letter dated 14.04.2012 rejected application of the Respondent, simply on the ground that they have lodged FIR for theft of electricity energy against the Respondent. It has been further humbly submitted by the learned counsel for the Respondent that the allegation of theft of electricity has nothing to do with the reduction of load because the provision contained in the tariff and the Regulation cannot be out rightly thrown away on the ground of institution of FIR for commission of theft of electricity. The Appellant has never communicated to the Respondent demanding manufacturer's specifications nor have they even informed that the manufacturer's specification is missing rather just to save their skin & debar the Respondent from its rightful claim, the Appellant is taking frivolous plea of manufacturer's specifications. So far as the issue of theft of electricity is concerned, is yet to be determined by the special court. Thus, at the strength of said FIR, the Appellant cannot deny or reject his application for reduction of load because the Supply Code Regulation, nowhere, suggests that the consumers, against whom an FIR for theft of energy has been lodged, shall not be entitled to reduce their load. The application for reduction of load previously made in the year 2011 and all the communication thereof has been made in between 2011-12 and by that time the Supply Code Regulation, 2015 was not in existence hence the Appellant may not be allowed to take shelter of the provisions of the Regulation of 2015. Lastly, it is also submitted that Learned Forum, categorically analysed the entire aspect of the fact & provisions of Supply Code Regulation, has rightly come to the finding to allow the case of the Respondent with specific direction to the Appellant to reduced the load from 7200 KVA to 6000 KVA w.e.f. 28-

10-2011 and accordingly revise entire bill on 6000 KVA contract demand. Therefore, there is no illegality at all in the impugned judgment and order.

14-. It will admit of now doubt that Appellant is deemed licensing-cum-transmission utility, engaged in the business of generation, transmission and distribution of electricity to its consumers, whereas , Respondent is company registered under the company Act, 1956 and is engaged in business of manufacturing the iron steel/sponge iron and for running its unit, the respondent had taken an electrical connection and his load was assessed as 7200 KVA from the appellant under HTSS mode of tariff and accordingly, an agreement was executed between them. The respondent started to pay his energy bill in accordance with terms and condition of agreement, but after coming into force the tariff order 2010-11, the Respondent decided to agitate the matter relating to reduction of contract demand, under provision clause 9.2.4. of the tariff order 2010-11, on the basis of manufacturer's specifications and accordingly, he made an application on 19-4-2011 for reduction of load from 7200 KVA to 6000 KVA but this application was not in prescribed format, so, the Dy. General manager- cum- Electrical Superintending Engineer, Electric Supply Area, Hazaribag, vide letter no. nil/HESA dated -nil, wrote to the respondent and requested him to submit an application for reduction of load in prescribed format along with all supporting documents in the office of Asstt. Electrical Engineer, Kuju and copy forwarded to Electrical Superintending Engineer, Electric supply circle, Hazaribag vide memo no, 1624 dated 21-05-2011 for information and necessary action (Annexure-1 of the memo of appeal).

15- It is alleged by the appellant that in pursuant to the aforesaid letter, the respondent did not responded rather after lapse of more than three months from the date of issuance of said letter, Respondent again submitted

an application on his letter head along with application in prescribed format but without supporting any document, including the document related with technical specifications of furnace and failed to comply the provision of Supply Code Regulation , on 10-09-2011, which was received on 13-09-2011 in the office of Asstt. Electrical Engineer, Kuju, District Ramgarh (Annexure -2 of the memo of appeal). It is further alleged by the appellant that before the requisite document submitted by the respondent and same could have been processed and final decision would have been taken, an inspection was carried out in the premises of respondent on 21-10-11, in which, inspection team detected pilferage of electricity with clear cut proof of by passing one potential transformer, consequently, meter was recording 2/3rd of its original consumption and accordingly ,an FIR was lodged against respondent (Annexure -3 & 3/1 of the memo of appeal).It is further alleged that taking in to consideration of the aforesaid aspect of the matter The Asstt. Electrical Engineer, Ramgarh vide memo no/164 dated14-04-2012 had informed the Respondent that his application for reduction of load has been rejected, but if he, so wishes it can make a fresh application for reduction of load (Annexure -4)

16- On the other hand, it is strongly opposed by the Respondent with submission that first of all, he had applied for reduction of load through a simple application dated 19-04-2011 with enclosure 1- manufacturer's specification with respect of furnace crucible and, 2- details of actual KVA (maximum demand) recorded during last 12 months. (Annexure -2 with counter affidavit in appeal). He has also submitted that the technical specifications series (Annexure 2-series with counter affidavit of this appeal) ,which was earlier filed by him with his first application and subsequent application but finding no reply on its previous application dated 19-04-

2011 for reduction of load, then, he sent reminder on 20-05-2011,after completion of one month (Annexure-3 with counter affidavit of this appeal). The further allegation of the respondent is that just after one day of the service of the reminder, the appellant replied to his letter dated 19-04-2011 vide its letter no. nil dated nil but memo no.1624 dated 21-05-2011 with direction to submit application in boards prescribed format along with all supporting documents. On receipt of the said letter, he wrote a letter with details on 30-06-2011 (Annexure-5) but adopting the principles of least resistance, he has submitted an application in board's prescribed format for reduction of load, which was forwarded by the concerned Executive Engineer on 23-08-2011 to Asstt. Electric Engineer for acceptance. Again he wrote a letter on 10-09-2011 to the Asstt. Electrical Engineer, Kuju, Ramgarh along with application in prescribed format, which was received on 13-09-2011 and accordingly, issued receipt against the application fee for reduction of load. It is further alleged by the Respondent that Asstt. Electrical Engineer Mr. Sitla Prasad, Kuju, was adamant not to accept the application form and after much persuasion, he finally accepted the application on 13-09-2011 but with malafide intention retained the same and even after complying all the formalities, appellant adapted lethargic approach in processing the application for reduction of load and knowingly & deliberatively delayed the matter without assigning any reason. Although, he had approached on several occasions before the appellant for quick disposal of his application but all the time the concerned authorities of the appellant assured him that the same shall be reduced very soon. Finding no alternative, he finally served an other reminder dated 23-04-2012 explaining the entire facts and relevant provisions of Supply Code Regulation, which was received on 27-04-12 (Annexure-7) . It is also case of the Respondent

that he had supplied the manufacturer's specification not once but twice. but without giving any information for wanting manufacturer's specifications, the appellant vide their letter dated 14-04-2012 rejected his application for reduction of load, merely on the ground that they have lodged an F.I.R. for commission of theft of electricity, which is totally illegal. Because the provisions contained in tariff and the regulation can not be out rightly thrown away on the ground of institution of F.I.R. for theft of electricity. As matter of fact only to save their skin and debar the respondent from its original claim, the appellant has taken frivolous plea of manufacturer's specification. Institution of F.I.R. for commission of theft of electric energy is different matter for which special court has been established. There is no specific provision under Supply Code Regulation that the consumers against whom an F.I.R. has been lodged for theft of electricity shall not be entitled to reduce their load. Thus, the appellant has made baseless allegation of manipulation of document, hence the plea taken by the appellant is not at all tenable in the eye of law.

17- Taking in to consideration of the aforesaid facts, the main issue for adjudication of this case, before me is that:-

(1)-whether respondent has made an application in prescribed format with technical specifications for reduction of load?

(11)- whether appellant was authorized or competent to reject the application of the respondent for reduction of load only on the ground for lodging F.I.R. against the respondent for commission of theft for electric energy?

18- Having considered the entire facts and circumstances of the case, as discussed above, I do find that Respondent has made an application for reduction of load in prescribed format along with relevant documents, including technical specifications, which was under process before the

competent authority of the appellant. This fact is being proved by Annexure-4 of the appellant, in which, it is described that "

"आपका दिनांक 13.9.11 में स्वीकृत भार 7200 KVA से घटाकर 6000 KVA करने हेतु जो आवेदन प्राप्त हुआ था के सम्बन्ध में सूचित करना है कि स्वीकृत भार घटाने की प्रक्रिया हेतु उच्चधिकारियों को सुचित किया गया इसी बीच आपके फैक्ट्री में APT टीम द्वारा चोरी का मामला पकड़ा गया। जिसके फलस्वरूप आपके आवेदन दि० 13.9.11 को निरस्त किया जाता है।"

Which clearly goes to show that there was no defect in application of the respondent. Thus, I find and hold that respondent has made an application in prescribed format with technical specification for reduction of load and accordingly, this issue is decided in affirmative in favor of the respondent. So for as issue (ii) is concerned , I do find that that The Supply Code Regulation has provided certain conditions for reduction of load and it no where provided that consumer against whom an F.I.R. , for theft of Electricity, has been lodged, shall not be entitled to reduce their load. I further do find that when matter with regard reduction of load was pending before higher official of the appellant and without giving any information or decision by them, Assistant. Electric Engineer had got no power to reject the application of the respondent for reduction of load merely on the ground of institution of F.I.R. against respondent. Thus, I find and hold that by virtue of the provisions contained in clause 9.2.4. of the Supply code Regulation the appellant was duty bound to reduce the contract demand of furnace after the laps of 15th days from the date of service of the reminder letter. Apart from this, since tariff order 2010-11 has specifically provided that contract demand of the furnace of the consumer has to be determined on the basis of manufacturer's specifications, and appellant was bound to re-fix the contract demand on that very basis and charge the demand charges, accordingly, issue (ii) is decided against appellant.

19- Having gone throughout the pleadings ,materials and submissions advanced on behalf of both sides and circumstances of the case & also the impugned judgment and order passed by the learned VUSNF ,Hazaribag, I find and hold that the learned VUSNF has correctly considered and appreciated the entire facts 7 circumstances of the case and also material on record in proper perspective & settled principal of law and provisions of the Supply code Regulation and has rightly coming to the finding to allow the application of petitioner(Respondent) with proper direction to the appellant. .Thus, there is no illegality or inconsistency in the impugned judgment and order, which requires interference by this Appellate forum.

20- Therefore, there is no merit in this appeal and it fails. The impugned judgment and order passed by the learned VUSNF, Hazaribag, is affirmed and this appeal is hereby dismissed. Under the facts and circumstances of the case, both parties shall bear their own costs.

Sd/-
(Prem Prakash Pandey)
Electricity Ombudsman